

THE IPPERWASH INQUIRY

PART I

FINAL SUBMISSIONS OF THE CHIEFS OF ONTARIO

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INTRODUCTION – POLICIES AND POLITICS HAVE CONSEQUENCES

Government policies have consequences. When a government adopts policies hostile to the rights of a group of citizens, those policies will have consequences. When a government pits one group of people against another for political advantage, those politics will have consequences.

Dudley George was a victim of such government policies and politics.

The shooting death of Dudley George on the evening of September 6, 1995 was the result of a multitude of individual events and acts. Those events and acts were the inevitable risk created by a government, led by Premier Mike Harris, that was anti-native and was willing to exploit anti-native sentiments among members of the public to derive political benefit.

Anti-native government policies and politics are wrong. They are wrong not only because they can lead to tragic events such as the death of Dudley George, but because they are inherently antithetical to the Canadian constitution and Canadian values.

Preventing such tragedies in the future requires a rethinking of the way in which governments' relate to First Nations people. Adjustments to the institutional framework of government will be futile if the underlying mindset that pervaded the Harris Government continues to hold sway.

Instead, a relationship with First Nations people which fully respects their inherent rights and which creates effective and timely processes to address their legitimate claims is required. Such a relationship cannot be based on the mere legalities of aboriginal rights, but must instead flow from an understanding and respect that recognizes the essential, foundational role of First Nations in Ontario and Canada.

OVERVIEW OF SUBMISSIONS

Over the course of the Inquiry into the death of Dudley George, evidence was heard from hundreds of witnesses, and thousands of related documents were examined. Reviewing this evidence to determine the truth of what happened on September 6, 1995 would be a daunting task, even in the best of circumstances. Here, where the Inquiry was delayed 10 years, the task is even more difficult.

Despite these difficulties, four realities have emerged over the course of this Inquiry. These realities, which follow logically from each other, lead to the ultimate conclusion that Premier Mike Harris and his government were responsible for the shooting death of Dudley George:

- 1) Mike Harris and his Conservative Party were elected on a platform hostile to First Nations people and their rights. Instead of embracing the special history and culture of Ontario's First Nations, the Harris Government sought to limit their place in Ontario society to the bare legal minimum, supporting the position of non-native citizens in any conflict between the two groups and adopting a broad policy of treating First Nations and non-native people "the same";
- 2) Once elected, the Harris Government set to work implementing its policies. The occupation of Ipperwash Provincial Park by a group of First Nations persons in the fall of September 1995 provided the new government with the opportunity to apply its policies, to appear tough and to be seen as "actioning" on First Nations issues. At meetings with civil servants, Premier Harris' Executive Assistant, Deb Hutton, reiterated the Harris Government's policy that "this government treats aboriginals and non-aboriginal people the same." The situation at Ipperwash was viewed by the Harris Government as a "test" and the decision was made to be seen to "control" the situation;
- 3) In the face of resistance from experienced civil servants attending the meetings with Mr. Harris' representative, an unprecedented meeting was convened in the Premier's dining room with the relevant Ministers and Deputy Ministers. Inspector Ron Fox, the OPP/ First Nations liaison who had attended the earlier

meetings was also invited and in attendance. At that meeting, Premier Harris declared, "I want the fucking Indians out of the park."; and

- 4) Following the meeting, Ron Fox informed Inspector John Carson, the OPP incident commander at Ipperwash Park, of the Premier's views. Following this exchange of information, a decision was made to deploy the heavily armed Crowd Management and Tactical Rescue Units ("TRU") and to have them march down to the Park in the dark of night to confront the occupiers, contrary to the OPP's operational plan and policy. In the ensuing melee between the police and the occupiers, Dudley George was fatally shot by a TRU team member.

These four sets of objective facts encompass the core reality of the events of September 4-6, 1995. In their testimony before the Inquiry, Deb Hutton, Mike Harris and other representatives of the former Conservative government attempted to reconstruct their actions at the time as being responsive to particular exigencies on the ground. Similarly, now-Deputy Commissioner John Carson and other senior OPP provided elaborate explanations for why they broke with the operational plan and OPP policy to order a dangerous night time deployment of heavily-armed personnel. Such *ex post facto* reconstructions should be rejected. The Harris Government had an explicit policy and approach to First Nations issues. Their reaction was entirely consistent with that policy and approach. The OPP heard and understood the Harris Government's message and broke with past-practice in a manner that was consistent with that new message.

There is no reason to search for alternate explanations. Nor can any alternative explanations withstand scrutiny.

1. A PARTY AND A GOVERNMENT HOSTILE TO FIRST NATIONS

The history of Canadian and Ontario governments' relationship with First Nations people is not a happy one. The list of tragedies that have befallen First Nations communities at the hands of racist and ignorant government policies is long.

In the years leading up to 1995, however, some efforts had been made to bring the two communities together in a climate of mutual respect. Constitutional negotiations surrounding the "Charlottetown Accord" included First Nations interests. In 1991, the Ontario Government signed the Statement of Political Relationship ("SPR") with native leaders.¹ The SPR recognized First Nations' inherent right of self-government and the government to government nature of the relationship between First Nations and the Ontario government. It was viewed as a historical document by First Nations people.

This momentum towards a positive relationship of mutual respect ended with the election of Mike Harris' Conservative government and their Common Sense Revolution. The rhetoric of the Harris Common Sense Revolution campaign emphasised the Conservative Party's desire to bring "fundamental change" to the political system, and to do away with the "status quo".²

Unfortunately for Ontario's First Nations, the proposed change to the status quo of the government's relationship with native people was not a positive one.

In their campaigning and governing, the Harris Government adopted policies that were hostile to First Nations in order to appease other constituencies. These anti-native policies were communicated under the principle of "equality". That principle, when applied to First Nations people, meant that inherent rights of First Nations, which were promised to First Nations in exchange for massive contributions to the national wealth of Canadian society, would be minimized wherever possible and balanced against the interests of non-native supporters of the Harris Government.

¹ Exhibit P-643.

² Exhibit P-922.

a. The lie of equality

The anti-native policies advanced by the Harris Campaign and subsequent government were couched in the cynical rhetoric of “equality”. As part of this platform the government sought to change its relationship with First Nations people by minimizing the province’s recognition of aboriginal rights and emphasizing the “equality” of First Nations people.

This notion of “equality” was developed to contrast the Harris Government’s approach to First Nations issues from those of the previous NDP government and the perception that the inherent rights of First Nations people were unfair to non-native Ontarians. The rhetoric of “equality” was targeted in a negative manner towards First Nations groups. In his testimony before the Inquiry, former Ontario Regional Chief Gord Peters described how the rhetoric of “equality”, as expressed by the Harris Conservatives, was understood as anti-native by the First Nations leadership:

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.

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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.

18 Q: So in treating you equally, the
19 government was ignoring the historical -- your historic -
20 - First Nations historical relationships with the -- with
21 the government and their historical and constitutional
22 legal rights?

23 A: Absolutely, yes; that's -- that's the
24 perception that we had when -- when that agenda was being
25 forwarded.

[Horner Examination of Gord Peters March 31, 2005, p. 182-3]

To label this as a policy to promote “equality” is especially toxic when one considers that the policy was aimed at restricting the rights of some of the poorest communities in the province.

The Harris Campaign referenced native issues twice in its campaign literature. In both instances this policy of “equality” was front and centre and included:³

- 1) the elimination of the Interim Enforcement Policy (which had been adopted by previous governments to minimize the prosecution of First Nations persons for hunting and fishing) to ensure that fish and game laws were enforced “equally”; and
- 2) the inclusion of non-natives in land claim negotiations.

In both instances, the Harris team sought to change the status quo by adjusting First Nations policy to better respond to the concerns of non-natives.

This negative focus on First Nations rights, subjecting First Nations issues to the concerns of non-natives, was highlighted in the “Report of the Mike Harris “Northern Focus” Tour”, a

³ Exhibit P-924, “Bringing Common Sense to Community Development”; Exhibit P-925 “A Voice for the North: Report of the Mike Harris ‘Northern Focus’ Tour.”

companion document to the Common Sense Revolution campaign platform.⁴ The “Northern Focus” document was the Harris Campaign’s most in-depth statement on First Nations issues, but addressed them only in response to the “anger and resentment” felt by non-natives. The following is a direct quote from that document:

Native Issues

There is growing anger and resentment over Queen’s Park’s handling of native land claims in Northern Ontario. Non-natives voiced concern and consternation that land claim negotiations are conducted behind closed doors. With most of Ontario under some form of land claim, resource companies said they were worried about the potential impact of settlements on property rights and long-term development.

In many instances, Northern Focus found that Queen’s Park was alienating non-natives. People believe that two systems of conservation law are being created: one for natives, and another for non-natives.

Residents in Iron Bridge told Northern Focus at a town-hall meeting that they were angry about a recent land claim in their area. They believe the NDP and their local MPP failed to take the interests of non-natives into the account.

The mining community at Kidd Creek, near Timmins, wanted the uncertainty over land claims to be settled. Once the issue was settled, they were confident that deals could be worked out with native bands to develop new mining properties. Boise Cascade Woodlands superintendent Doug Prebble said native treaties have always dealt with hunting and fishing rights, but were now expanding to include forestry products.

The Ontario Federation of Anglers and Hunters told Northern Focus in Thunder Bay that the rate of native harvesting of fish and game was depleting resources more quickly than that of non-natives. It was argued that such natural resources should belong equally to all Canadians.

The document goes on to recognize the economic hardship faced by First Nations communities, but only in the context of recognizing the entrepreneurial efforts of those communities.

Similarly, the “Northern Focus” document commits the government to “encourage” entrepreneurialism, but gives higher priority to the need to balance the inherent rights of First Nations with the interests of non-natives:

⁴ Exhibit P-925

Our Commitments

A Mike Harris government will balance the interests of native and non-native Ontarians by ensuring that all stakeholders are represented in native land claims negotiations. Native rights must be respected, but land claims negotiations cannot be the exclusive preserve of provincial bureaucrats and native band leaders.

By the same token, a balance must be struck between native hunting and fishing rights and the priorities of conservation, with equal treatment for all Ontarians. (*For more on our hunting and fishing policies, see page 31.*)

Just as non-natives should have a say in the outcome of land claims and conservation disputes, so native Canadians should have their input heard on issues affecting their communities. Native concerns will be reflected in making new policy for the North, perhaps through an advisory council or similar body.

We believe that many of the social problems being suffered by native communities can be directly linked to the lack of economic and community development on reserve lands. We will work closely with native leaders to promote and encourage this development, so that native Canadians can use their creative and entrepreneurial talents to the fullest.

Ontario's native population has been marginalized in many ways, leading to tensions and social problems in both native and non-native communities. We hope to break this cycle through fair and inclusive treatment that recognizes those communities as equal.

As stated by former Regional Chief Gord Peters, the emphasis of the Harris government was assimilation of First Nations into "mainstream" economic activity with government policy being focused on encouraging such developments, rather than on giving First Nations what was rightfully theirs and providing the basis for them to make their own choices. The assimilation approach treats First Nations as mere "stakeholders" and their rights as mere "interests" to be balanced against the interests of other "stakeholders".

While the Harris campaign documents make reference to the existence of First Nations constitutionally-protected rights, these are described as minimal obligations that the government "must" adhere to.

The Harris campaign's negative view of First Nations was not confined to its campaign literature. In a 1994 interview regarding the involvement of non-Native persons in the land claims process, Mike Harris himself stated that a Harris Government would not be afraid to confront First Nations interests. "There's a whole notion of guilt because native people haven't fully adapted from the reservations to being full partners in this economy[...] We can't let that guilt preclude us from reaching a common sense solution [...] Too many (natives) spend all their time on courts and lawyers and they just stay home and do nothing."⁵

In effect, Harris explained the "guilt" as being caused by the failure of First Nations people to adapt rather than on the fact that Canadian society has enjoyed the benefits of what it received under treaties with First Nations while not living up to its promises. Harris then also criticized First Nations for trying to use the courts and lawyers to enforce their rights. From a First Nations perspective, this comment is a disturbing echo of a time when aboriginal people were not allowed to hire lawyers.

The Harris Campaign made it clear that its election would mark a change in the way First Nations issues were approached by the government. With respect to the Interim Enforcement Policy, Mr. Harris explained in a May 1995 interview that if the Conservatives were to form the government:⁶

the orders from Mike Harris will not be the same as they are from Bob Rae to lay off. The orders will be if somebody is violating the laws of our conservation and affecting the management of our resource, then we will apply the law. That was the policy of our government when we were in power. It changed when Shelley Peterson took over resource policy and carried on with Bob Rae and Bud Wildman.

In sum, the Harris Campaign delivered a clear message to the electorate that a Harris Government would be tougher on First Nations persons than the previous regime. While the existence of a baseline of court-recognized constitutionally-protected rights was admitted, the Harris Campaign emphasized those policies that would counter those inherent rights against non-native interests in order to treat First Nations more "equally". This policy of equality and the

⁵ Exhibit P-978

⁶ Exhibit P-979

desire to look tough on First Nations issues would carry through the election of the Harris Government.

As described by Gord Peters, First Nations were under no illusion: the so-called principle of “equality” was code for an anti-native political agenda.⁷

b. The new government reiterates its anti-First Nations positions

Once elected, the Harris Government did nothing to indicate a departure from its stated campaign policy of treating First Nations “equally” by countering their inherent rights against the interests of non-natives.

This change in First Nations policy was clearly felt by those whose job it was to implement the government policy. Julie Jai, Acting Director of Legal Services of the Ontario Native Affairs Secretariat (“ONAS”) at the time, testified that the Harris Government’s aboriginal policy represented a “180 degree shift” in policy from the previous government:

14 Q: And when you say there was quite a
15 change in policy, can you describe briefly the change in
16 policy that you referred to from the previous government
17 to the new government?

18 A: I would say that the previous
19 government was -- had done a lot. It was probably the
20 most of all of the previous governments, it had done the
21 most, for example, to recognize the right of self
22 government of Aboriginal people. They had signed the
23 statement of political relationship. They were involved
24 in a large number of negotiations.

25 So, a -- a number of things had been done

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1 which could be viewed as accommodating the interests of
2 Aboriginal people so that -- so to some extent that had
3 raised the expectations of Aboriginal people by having
4 had several years under that government.

5 And then a different government came in
6 with a very clear policy that Aboriginal people do not
7 get any special rights. And so that's kind of, you know,
8 a huge, like 180 degree shift from what the policy of the
9 previous government had been.

⁷ Esmond Examination of Gord Peters, March 31, 2005, p.25-6.

10 Q: Okay.
11 A: So we were concerned that this would
12 cause difficulties for us in our work with -- part of our
13 role at ONAS is managing relationships between government
14 and First Nations.

[Millar Examination of Julie Jai, Aug. 30, 2005, p. 79-80]

Shelley Spiegel, an acting executive coordinator in the Cabinet Office, charged with coordinating the decision making processes of government through cabinet, described the Harris Government's change in First Nations policy as a shift from progress in the recognition of aboriginal rights and improving the government relationship with First Nations to one that was less "sympathetic" to First Nations concerns:

6 Q: And what did you understand the
7 direction of the new government to be?
8 A: I understood that it would be a
9 change in direction. It wouldn't have been moving I
10 think on the continuum that we had seen in the last ten
11 (10) years to recognizing Aboriginal rights and resolving
12 any of the outstanding issues.
13 That it was going to be a shift. That
14 there had been a steady progression and progress being
15 made in ten (10) years and that that was going to change.
16 Q: And can you say anymore about what
17 you understood about the new approach, that it was --
18 A: That it wasn't going to be as
19 sympathetic. I can't recall anything.

[Ferrier Examination of Shelley Spiegel, Sept. 21, 2005, p. 88]

The substance of the Harris Government's position on First Nations issues and its commitment to the principle of "equality" was further expressed by members of the government and their staff in official briefings by Ministry of the Attorney General and ONAS staff following the 1995 election.

For instance, Julie Jai testified that a second briefing on native issues was requested by the Premier's Office staff, after they were "surprised" by the scope of First Nations' constitutionally protected rights and the manner in which those rights constrained the provincial government.⁸

Despite these briefings, political staff from both the Premier's Office and the Minister of Natural Resource's office insisted on their commitment to the "equality" principle for First Nations.

Julie Jai described their reaction to the briefings as follows:

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

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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.

[Millar Examination of Julie Jai, Aug. 30, 2005, p. 69-70]

The Harris Government also reiterated it's anti-native policy in the media. In an interview with Ontario Out of Doors magazine in August of 1995, newly-appointed Minister of Natural

⁸ Millar Examination of Julie Jai, Aug.30, 2005, p.67-68.

Resources Chris Hodgson stated “As far as I’m concerned conservation of species takes precedence over the race of the hunter [...] Conservation laws should be enforced equally.”⁹

The newly-elected Harris Government also took decisive action to implement the “equality” policies of its platform, cancelling harvesting agreements with several First Nations within weeks of its election.¹⁰

Thus, from the early days of their government, Premier Harris and his Ministers’ remained committed to implementing their policy of minimizing the scope of First Nations rights in the name of “equality”.

c. Subsequent First Nations policies are entirely consistent with initial statements

The Harris Government’s commitment to “equality” and the minimization of First Nations rights remained intact throughout its mandate. Even after the tragic events of September 6, 1995, the Harris Government continued apace with its anti-native policies. There is no reason to believe that those policies were suspended during the course of September 4, 5 and 6, 1995.

The clearest and most formal articulation of the Harris Government’s anti-native policies was evidenced by the cabinet’s decision (only three months after the killing of Dudley George) to formally ignore the Statement of Political Relationship, a political document that was seen as a foundational instrument by Ontario’s First Nations leadership.

In Cabinet Minute 5-24A/95, dated December 13, 1995, Premier Harris’ cabinet formally, but secretly, decided that the SPR would be ignored.¹¹ Instead, the Cabinet documents indicate a decision by the Harris Government to adopt principles such as “Equality” and “Legal Obligations” to describe its overall direction for addressing aboriginal matters. In addition, the government anticipated a strategy of abdicating any responsibility for First Nations relations by “aggressively assert[ing] the federal lead and fiscal responsibility for aboriginal issues where appropriate.”

⁹ Exhibit P-1009.

¹⁰ Vella Examination of Chris Hodgson, Jan. 11, 2006, p.325-8

¹¹ Exhibit P-1080

The Cabinet Minute also withdrew the Harris Government from the previous government's commitment to the concept of aboriginal self-government, stating that there would be no commitment on the inherent right and that any responsibility for self-government was a federal matter.

The Harris Government's decision to ignore the SPR, which was revealed for the first time at this Inquiry, is consistent with the approach that it had taken to First Nations policy from the outset of the Common Sense Revolution campaign and through its election as the new government. First Nations people were to be treated "equally" and were not to receive any special treatment aside from those strict legal rights that had been recognized as constitutionally required by formal decisions of the courts, preferably of the Supreme Court of Canada.¹²

Given the Harris Government's consistently anti-native position both before and after the Ipperwash incident, there is no reason to believe that the policy would have changed over the course of those 3 days in September 1995. In fact, the evidence indicates that the events of those days were tragically marked by the implementation of that policy.

¹² Exhibit P-979; Horton Examination of Mike Harris, Feb. 16, 2006, p. 334.

2. IPPERWASH – AN OPPORTUNITY TO IMPLEMENT A NEW WAY OF GOVERNING

With the takeover of Ipperwash Provincial Park on the evening of September 4, 1995, the Harris Government was faced with an important opportunity to put its First Nations policy into practice. And Premier Harris did not let the opportunity pass – adopting the hard line position that had underscored all of his previous statements on First Nations issues.

From the very outset, the Premier's Office, represented by the Premier's Executive Assistant for Issues Management, Deb Hutton, and the Premier himself took a lead role in managing the Ipperwash situation. The takeover of Ipperwash Provincial Park was approached as a political opportunity to demonstrate the government's tough line on First Nations people and to differentiate their position from that of the previous government.

In the hours following the occupation of the Park, the professional civil service began implementing its standard procedures for dealing with First Nations blockade and protest situations, procedures which had successfully resolved prior occupations and blockades without the death of an aboriginal person for over a hundred years. A meeting of the Interministerial Committee for Aboriginal Emergencies (the "IMC") was convened, with the Acting Director of Legal Services of ONAS, Julie Jai, serving as chair.

The purpose of the IMC meetings was to develop strategies and options for dealing with the occupation of the Park. The structure of the IMC had been established to provide for the efficient communication of information between professional civil servants and political leadership on the complex issues that arise in the event of First Nations blockades or protests. Given their years of experience, professional civil servants would be able to assist political staffers to develop the options required to resolve such situations in a fair and careful manner. The expertise of this committee should have been particularly important in the Ipperwash matter, given the relative inexperience of the new Harris Government.

Julie Jai, who chaired the meeting, described the significant amount of understanding required to effectively deal with the frustration that is generally felt by First Nations persons who have made the decision to engage in occupations or blockades:

A: Okay. So, the role of the committee
22 is basically as set out in that briefing note of July
23 10th, 1995. It is to coordinate and gather information
24 as quickly as possible and ensure that information comes
25 in and goes out.

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1 And the committee basically assesses and
2 processes that information and then makes a
3 recommendation as -- usually as to some process to put in
4 place to either avoid a, you know, a -- some sort of
5 direct action or to resolve it. So, if there's a road
6 blockade or an occupation, we would try to come up with a
7 recommendation for some means of ending the occupation or
8 the road blockade.

9 And that would usually be by finding out
10 what the concerns were that had led to the occupation or
11 road blockage and then coming up with a recommended
12 process for dealing with those concerns.

13 Q: And when you say a, "recommended
14 process for dealing with the concerns", what do you mean
15 by process?

16 A: **I guess the -- the -- the committee's
17 work, I guess, is premised on an assumption that the
18 reasons why people take direct action is because they --
19 there is some underlying concern or frustration that they
20 have, and that they want a means of resolving that or --
21 or being heard.**

22 So, one of the first things we try to do
23 is come up with some suggestion as to how they can have
24 that grievance be heard or discussed without having to
25 block a road or occupy a park in order to do that.

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1 So, one of the means would be to, you
2 know, sort of gather some information and then maybe send
3 somebody to meet with the protesters and ask them, you
4 know, well, why are you here, what are your concerns?

5 And then, you know, if they say, well, our
6 concern is, you know, 'X' or 'Y' and then sort of say,
7 well, okay what if we appoint a -- somebody to meet with
8 you and we have a separate process for discussing 'X' and
9 'Y'.

10 And we show that we -- we'll commit to,
11 you know, being very serious about talking about this
12 with you, and that we will do this as soon as you put

13 down the barriers or, you know, end the road blockade or
14 whatever the action is that they are being taken -- that
15 they're taking.

16 So, it's really a pro -- a way of finding
17 another process other than this process of blockading or
18 occupying places which is really kind of, you know,
19 inconvenient for everybody because it's not fun to be on
20 a blockade or -- and it doesn't really solve the
21 underlying problem.

22 **So, I guess our view, traditionally, has**
23 **been that these things happen because people are**
24 **frustrated that they haven't had an opportunity to be**
25 **heard, that they haven't had a -- a channel or process**

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1 for discussing their concerns and therefore one way of
2 resolving them is by providing that opportunity in
3 another forum. [Emphasis Added]

[Millar Examination of Julie Jai Aug. 30, 2005, p. 115-117]

In the case of the IMC meetings convened for Ipperwash, however, Deb Hutton, who had no policing or First Nations experience, took the lead and was an “extremely forceful” presence:

6 Q: Okay. And then with respect to the
7 meeting, beyond that can you tell us anything without
8 referring to your notes? I know this is hard. What I'm
9 trying to get you to tell us is as much as you can
10 without -- before we go to your notes.

11 **A: Hmm hmm. Just that Deb Hutton was at**
12 **the meeting and was again extremely forceful and was a**
13 **very, kind of, major presence. Somebody who, when she**
14 **walked into the meeting, you could really feel that she**
15 **was there, you know, sort of very, very assertive and**
16 **very assertive in her views. [Emphasis Added]**

[Millar Examination of Julie Jai, Aug. 31, 2005, p. 71]

This, according to Julie Jai and others, was not consistent with past practices:

5 **A: I was unused to political staff**
6 **taking such a dominant role at these meetings. Like, in**
7 **the past, political staff had come really to bring**
8 **information back to their Ministers or to engage in sort**
9 **of a dialogue rather than to give explicit direction as**

10 directly as she appeared to do. [Emphasis Added]

[Perschy Examination of Julie Jai, Sept. 13, 2005, p. 42]

Nonetheless, it was clear to all present that Deb Hutton, speaking on behalf of the Premier, was in charge of the meeting. One participant, the Solicitor General's executive assistant Kathryn Hunt, was even led to believe that Ms. Hutton was chairing the meeting.¹³

Ms. Hutton's attendance at the IMC meetings of September 5 and 6, 1995 occurred only after she had spoken with the Premier, although neither Ms. Hutton nor the Premier could recall whether they spoke on the evening of September 4 or the morning of September 5. Nonetheless, the evidence is clear that Ms. Hutton spoke with the authority of the Premier when she attended the IMC meetings on the mornings of September 5 and 6, 1995. In his testimony before the Inquiry, Premier Harris indicated that he had full confidence in Ms. Hutton to express his views, and the meeting notes of attendees clearly indicate that on numerous occasions Ms. Hutton communicated the fact that she was speaking on behalf of the Premier.¹⁴

Numerous witnesses gave evidence regarding the IMC meetings of September 5 and 6. In analysing their evidence, 3 facts emerge consistently.

- a) The policy of the Harris Government was to treat First Nations people and non-natives "the same";
- b) Deb Hutton and the Premier wanted the occupiers out of the Park as soon as possible; and
- c) The Harris Government viewed the situation at Ipperwash Park as an opportunity to demonstrate the new government's resolve against First Nations.

The most compelling evidence relating to the events as they unfolded at the IMC meetings is that which was created contemporaneously with the meetings: meeting notes produced by attendees and the taped conversations between Inspector Ron Fox, an OPP officer seconded to the office of the Deputy Solicitor General as a Native Affairs Liaison who had been in attendance at the IMC

¹³ Millar Examination of Kathryn Hunt, Nov. 2, 2005, p. 46.

¹⁴ Millar Examination of Mike Harris, Feb. 14, 2006, p. 78-79.

meetings, and then-Inspector John Carson, the incident commander on the ground outside Ipperwash Park. In both instances, the evidence was produced at, or just following the meetings, and accordingly provides the best evidence of the event, untrammelled by the passage of time or the desire to “spin” the story to cast participants in the best light or to minimize criticisms of others.

a. The policy of the Harris Government was to treat First Nations People and non-natives “the same”

Deb Hutton made it clear at the IMC meeting that the policy of the Harris Government, as had been made evident in their earlier campaign statements regarding “equality”, was to treat First Nations people “the same” as non-First Nations people.

In a conversation with John Carson following the September 5 meeting, Ron Fox indicated that Deb Hutton had expressed this policy with respect to the occupiers:¹⁵

The Premier’s made it clear to her his position is that there be no different treatment of the people in this situation as opposed to non-native.

These contemporaneous observations by Ron Fox are consistent with observations made in handwritten notes by attendees to the IMC meetings. The notes of several attendees confirm that Deb Hutton expressed the position of the Premier’s office as being that “this Government treats aboriginals and non-aboriginal people the same.”¹⁶

In her notes of the September 5, 1995 meeting, Elizabeth Christie, a Ministry of the Attorney General lawyer advising the committee on legal options, states that Deb Hutton described the message of “equality” as being a central component of the Harris Government’s First Nations policy:¹⁷

Strategic imperative = this government treats non-aboriginal and Aboriginal people the same.

In her testimony before the Inquiry, Ms. Christie confirmed this statement, stating that she had a “very clear recollection” of Ms. Hutton making that statement:

¹⁵ Exhibit P-444A, TAB 16, p. 116.

¹⁶ Exhibit P-970 (Korol Notes), p. 3; see also Exhibit P-730 (Prodanou Notes), p. 4.

¹⁷ Exhibit P-735 (Sept. 5 Christie notes), p. 11.

17 A: Because of it's -- because it
18 demonstrated to me -- well, it demonstrated to me an
19 unnerving ignorance of constitutional law and -- and the
20 laws of Canada because, as a lawyer, my understanding and
21 sort of knowledge was that -- that based on the
22 Constitution and the Charter and -- and jurisprudence,
23 that we don't necessarily treat Aboriginal and non-
24 Aboriginal people the same.
25 There are good reasons and -- and laws that

111
1 require that we do treat them differently in certain
2 circumstances.

[Worme Examination of Elizabeth Christie Sept. 26, 2005, p.110-111]

The shallowness and disingenuousness of this emphasis on “equality” was further highlighted by the Harris Government’s political staff’s desire to compare the park’s occupation by First Nations protestors to a biker gang invading a private residence.¹⁸

In response to these suggestions, Ron Fox attempted to educate political staff on why First Nations occupations require a different response and more complex considerations. While this explanation is described in several of the meeting notes,¹⁹ this is how he summarized his exchange with political staff shortly after the discussion occurred:²⁰

Fox: And ah the bottom line is wants them out and you know was asked me well what would the police do in a situation where there wasn't natives. I said well I mean you can't compare apples and oranges.

Carson: Right.

Fox: I said you know I mean I come to your house and I plunk myself down and you ask me to leave and I don't and you call for police intervention. Chances are I don't have colour of right for being there.

Carson: Right.

¹⁸ See Horner Examination of Anna Prodanou, Sept. 21, 2005, p. 53-54.

¹⁹ See, e.g., Exhibit P-636 (Sept. 6 Hipfner notes), p. 5.

²⁰ Exhibit P-444A, Tab 16, p. 116-117.

Fox: Whether it's actual or perceived and I said it's a little bit different here where talking about land claims and treaties. Well no I mean this is it's solid I mean it's our property and I said yes by virtue of letters patent that were produced in 1929 but I said I mean these people refer to treaties that go back to pre-confederation days.

Carson: Yep.

Fox: So I said I'm not suggesting for a minute that the course of action is a course of non-action.

[...]

Fox: Okay so the bottom line is ah I said you know I'm not suggesting a course of non-action but I said my theory has always been to make haste slowly.

Carson: Right.

Fox: And I said what has to be done I mean there is a whole whack of world steps that I know are in place now and are being done.

The desire of the Harris government to be seen as applying its policy of treating First Nations "the same" was thus made clear to the attendees of the IMC meetings.

b. Hutton and Harris wanted the First Nations occupiers out of the park as soon as possible

The clearly intended implication of the Harris Government policy of treating First Nations and non-natives the same was, in the context of the occupation of Ipperwash Provincial Park, that the occupiers be removed from the park "as soon as possible". In the view of Deb Hutton and Premier Harris, the government's title was clear, and there was no need to engage in any "negotiations" with the occupiers. They should simply be removed.

Members of the IMC understood that, when the government policy was described as treating First Nations persons and non-natives "the same", an aggressive and urgent approach to the situation was being advocated - an approach that would not require a potentially lengthy Court process:

5 Q: And it was your view that this more
6 urgent approach was being favoured by political staff --

7 by the political staff there; is that correct?

8 A: Yes.

9 Q: Yes. And as an example of this more
10 urgent approach, you raised the -- the -- this Hell's
11 Angels metaphor that -- that was brought up by one of the
12 political staff; is that correct?

13 A: Yes.

14 Q: And -- and I'm -- I just want to
15 clarify what was -- what your understanding of this
16 metaphor was.

17 This metaphor was raised to mean that, as
18 an example, that if the Hell's Angels were to show up on
19 your lawn, you would just call the police and the police
20 would come and remove them; is that correct?

21 A: That's pretty well what was said.

22 Q: And so -- and that the under -- your
23 understanding was -- would be the police would just come
24 and there would be no court process involved prior to
25 removal of the -- of the trespassers.

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1 A: That's -- that's what was suggested
2 in the Hell's Angels example.

[Horner Examination of Anna Prodanou, Sept. 21,2005, p. 53-54]

The juxtaposition of the government policy of “equal” treatment with an urgent approach to remove the occupiers expressed clearly the anti-native animosity of the government policy. In fact, as Ron Fox and Elizabeth Christie noted, a slow, cautious approach would have been the standard procedure for the OPP regardless of the First Nations aspect.²¹

Nonetheless, Deb Hutton made it clear in the IMC meetings that the occupiers were to be removed as soon as possible, describing the Premier’s views on the matter as being “Hawkish.”²²

Over the course of the Inquiry, several witnesses gave contradictory, and often incredible suggestions for what Ms. Hutton had meant by her use of the term “hawkish”, culminating in Jeff Bangs’ description of the term as meaning “cautious.”²³ In reality, Ms. Hutton’s use of the term “hawkish” to describe the Premier’s views on this matter is easily understandable in the context

²¹ Worme Examination of Elizabeth Christie, Sept. 26, 2005, p. 111-112.

²² See references to “Hawkish” in Sept. 5, meeting notes: Exhibit P-730 (Prodanou Notes), p.2; Exhibit P-510 (Hipfner Notes), p. 4; Exhibit P-536 (Jai Notes), p.4.

²³ Worme Examination of Jeff Bangs, Nov. 3, 2005, p. 53-54.

of her demands at the IMC meetings and Mr. Harris' declaration that "I want the fucking Indians out of the Park" at the subsequent meeting in his dining room.

Mr. Harris wanted the First Nations occupiers removed from the park without delay. He did not want any negotiations. The use of force if necessary was an inescapable inference. He was "Hawkish". No subtleties of interpretation are required. The word clearly was used in its normal sense.

The Inquiry heard extensive evidence regarding the urgency with which Deb Hutton pushed to resolve a situation that might otherwise have been approached in a methodical and cautious manner, consistent with Ipperwash being an empty provincial park that was closed for the season. Anna Prodanou, Senior Communications Officer and Acting Manager of Communication of ONAS described the options discussed at the IMC meetings as falling into 3 categories: (1) the option of waiting for more information from the occupiers, (2) the option of applying for and obtaining an injunction, and (3) the option of taking more urgent, drastic action. Ms. Prodanou testified that the political staff, such as Deb Hutton favoured the last of these.²⁴ Julie Jai provided similar testimony of Deb Hutton rejecting the measured approach advocated by ONAS and Ron Fox:

14 Q: Okay? So, I'm focussing on three (3)
15 meetings, the meeting of August the 2nd and the meeting
16 of September 5th and the meeting of September 6th which
17 everyone's been talking about, the IMC meetings.

18 A: Yes.

19 Q: And at those meetings, without going
20 to them specifically, I can if you want to, certainly
21 there's evidence that you've given and others have given
22 that some people at those meetings were advocating what I
23 will call a measured approach.

24 A: Yes.

25 Q: Is that correct?

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1 A: Yes.

2 Q: And some people at those meetings
3 were advocating not overreacting to the situation and

²⁴ McAleer Examination of Anna Prodanou, Sept. 20, 2005, p. 217-218; Horner Examination of Anna Prodanou, Sept. 21, 2005, p. 52-53.

4 being patient; is that correct?

5 A: Yes.

6 Q: And, for example, Ron Fox was
7 advocating that?

8 A: Yes.

9 Q: And also to a degree I got the
10 impression that that was either a position that ONAS was
11 advocating or was sympathetic to?

12 A: Yes.

13 Q: Now, we know that there was a
14 consensus at each of these meetings that -- that you
15 recorded.

16 A: Yes.

17 Q: But it is very important for us to
18 know specifically what was said by Ms. Hutton, apparently
19 on behalf of the Premier, at these three (3) meetings and
20 I just want to be clear.

21 **Correct me if I'm wrong, my impression is**
22 **that at no time in any of those three (3) meetings did**
23 **Ms. Hutton advocate a measured approach or a patient**
24 **approach or the idea of not overreacting?**

25 A: That's correct.

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1 **Q: And indeed to the extent that there**
2 **was discussion on those issues I have the impression that**
3 **it was Ms. Hutton reacting against those ideas?**

4 A: Yes.

5 Q: Is that -- am I correct? Now, also
6 we do know that the consensus at these meetings, at least
7 the September 5 and September 6 was that an injunction
8 would be sought and we know that there was considerable
9 discussion about an injunction at those two (2) meetings
10 in particular; is that correct?

11 A: Yes. [Emphasis Added]

[Horton Examination of Julie Jai Sept. 14, 2005, p. 182-184]

In demanding that a more urgent approach be taken, Ms. Hutton gave no indication that she or the Premier were in favour of obtaining an injunction. On numerous occasions, Ms. Hutton indicated that the government's primary concern was to have the occupiers removed "as soon as possible." Ms. Hutton in fact initially rejected the prospect of obtaining an injunction requiring

that the occupiers vacate the park, stating that she did not want to wait the 2 weeks that government lawyers indicated it could take to obtain such an order.²⁵

Instead, the prospect of obtaining an injunction that would permit the OPP to remove the occupiers at their own discretion was advocated by others at the meeting who were seeking to achieve a consensus:

12 Q: All right. Now, my impression of
13 your evidence is that Deb Hutton, on behalf of herself
14 apparently, on behalf of the Premier, was advocating the
15 objective of getting the occupiers out of the Park within
16 a day or two (2), correct?

17 A: Yes.

18 Q: All right. And my impression was
19 that the idea of an injunction was something that others
20 were proposing as a way of dealing with the situation; is
21 that correct?

22 A: Yes.

23 Q: **So, in other words Ms. Hutton didn't**
24 **come to the meeting with the idea that or to present to**
25 **the meeting the idea that an injunction was the**

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1 **appropriate response, that was what others were**
2 **proposing; is that correct?**

3 A: **Yes.** [Emphasis Added]

[Horton Examination of Julie Jai, Sept. 14, 2005, p. 184-185]

Over the course of this Inquiry, much evidence was heard on the issue of obtaining an injunction. There were many questions by lawyers about the distinction between a “regular” injunction, an injunction obtained on “short-service”, and an “ex-parte” injunction. As several witnesses testified, however, the legal distinctions were technical matters that were ultimately left to government lawyers.²⁶ The position of Ms. Hutton and Premier Harris was simply that the occupiers should be removed as quickly as possible. Ms. Hutton did not create the plan to obtain an injunction, nor did she advocate for an injunction:

²⁵ See Exhibit P-536, (Sept. 5, Jai Notes), p. 8.

²⁶ Millar Examination of Larry Taman, Nov. 14, 2005, p. 128.

23 CONTINUED BY MR. WILLIAM HORTON:

24 Q: I want to be clear, Ms. Jai, that the
25 idea of an injunction did not come from Ms. Hutton?

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1 A: Correct.

2 Q: The idea of an injunction came from
3 others who were at the meeting?

4 A: Yes.

5 Q: And Ms. Hutton was not advocating, in
6 particular, the injunction as a way of dealing with the
7 matter, her point was that the occupiers needed to be out
8 in a day or two (2), correct?

9 A: Yes.

10 Q: And the injunction was merely one (1)
11 of the methods that others were putting forward as to how
12 that objective might be achieved, correct?

13 A: Yes.

14 Q: And indeed, when Ms. Hutton spoke to
15 the subject of the injunction, as Mr. Downard has just
16 mentioned, it was simply to express a preference if there
17 was to be an injunction, that it would be an injunction
18 ex parte, rather than on notice, correct?

19 A: Yes.

[Horton Examination of Julie Jai, Sept. 14,2005, p. 186-187]

Ms. Hutton's disinterest regarding the injunction was again evidenced at the September 6 IMC meeting, at which one of the Ministry of the Attorney General's top civil litigators, Tim McCabe, advised the meeting that the Ministry could seek an injunction on abridged service, in which case a court order could be obtained in the best case by Friday (two days later). Despite this advice, Ms. Hutton again conveyed the Premier's desire to have the occupiers removed more quickly, "he wants them out in a day or two."²⁷

Thus, the Harris Government's desired course of action was made clear. The occupation of an empty park, closed for the season was seen as an urgent situation requiring prompt, drastic action. Treating First Nations people "the same" meant that the occupiers were to be removed from the Park as soon as possible.

²⁷ Exhibit P-536, (Sept. 6, Jai Notes), p. 3.

c. The Harris Government viewed the situation at Ipperwash Park as an opportunity to demonstrate their new government's resolve against First Nations

Deb Hutton and Premier Harris' desire to remove the occupiers as soon as possible was not merely an erroneous exercise in judgment by a relatively inexperienced government. The decision to take precipitous action to have the occupiers removed without delay was seen as a political opportunity. Ms. Hutton and Premier Harris saw the situation at Ipperwash Park as an occasion to set the tone of the new government, a government that had run on a platform of rejecting the status quo, and which promised a new way of doing business on aboriginal issues.

The Harris Government demonstrated this preference for politics over prudence in its statements regarding the manner in which the occupiers were to be dealt with, as well as in its rejection of numerous warnings and recommendations from professional and experienced civil servants and OPP officers.

From the outset, Deb Hutton made it clear in the IMC meetings that the new government was prepared to consider different options from the last government. Scott Hutchison, a government lawyer who attended the September 6 meeting testified that Deb Hutton, on behalf of the new government adopted a "new tone" with respect to First Nations issues, indicating that "things that might not have been considered under the previous government were live options under this government," and that the decision to move "as fast as possible" and to deal with the issue in a "law and order tone" differed from "the tone that informs the way the previous government had dealt with First Nations, either generally or on this particular issue."²⁸

Mr. Hutchison further testified that Deb Hutton and other political staff were encouraging a more proactive approach to the situation that differed from past practice:

- 1 What were the certain things that you felt
- 2 the ministers wanted to have thought about?
- 3 A: For example, the notion of moving as
- 4 quickly as possible and then making that the priority and
- 5 moving as quickly as possible to remove protesters and
- 6 making that a priority as opposed to -- to diffusing the
- 7 situation, however long it took.
- 8 That's the sort of thing I had in mind.

²⁸ Horton Examination of Scott Hutchison, Aug. 29, 2005, p. 249-250.

9 Q: And then --
10 A: And again, we've seen comments in the
11 different passages from other people's notes that I've
12 been referred to.

[Horton Examination of Scott Hutchison, Aug. 29, 2005, p. 247]

The Harris Government's desire to demonstrate its proactive approach on First Nations issues was also reflected in the meeting notes taken by various attendees. When Ms. Hutton indicated to the attendees that the Premier was "Hawkish" on this issue, she further explained to the meeting (as several attendees recorded in their contemporaneous notes) that such an approach was required in order to "set the tone" for how the government would deal with these issues over the next 4 years. It was seen as a "test" and a situation over which the Premier's office wanted to be "seen as having control" and "moving expeditiously."²⁹

Thus, despite their lack of experience in these matters, Deb Hutton and other political staff at the IMC meetings rejected the suggestions and recommendations being made at those meetings and persistently pressed for options which would deal with the matters on an urgent basis. In so doing, Deb Hutton and other political staff showed considerable disdain for the efforts of the professional civil servants. David Moran, Executive Assistant to the Attorney General attended at the IMC meetings and criticized the manner in which the meetings were conducted and the length of time they took. He also described a similar frustration on the part of Deb Hutton.³⁰

On cross-examination, however, Mr. Moran was unable to point to any particular reason for his belief that the meetings took too long or were poorly chaired. Instead, his responses indicated a refusal on the part of himself and Ms. Hutton to accept the professional advice of government lawyers, professional civil servants and police, all of whom were urging a more cautious approach. Ms. Hutton and Mr. Moran refused to accept this advice, even though, as Mr. Moran admitted, they had no prior experience in this area, and no knowledge about injunctions:

14 Q: I'm suggesting to you, Mr. Moran,
15 that your participation and the participation of Deb

²⁹ See Sept. 5 meeting notes: Exhibit P-730 (Prodanou Notes); Exhibit P-969 (Pinto Notes); Exhibit P-510 (Hipfner Notes); Exhibit P-536 (Jai Notes); Exhibit P-636 (Sept. 6 Hipfner Notes).

³⁰ Worme Examination of David Moran, Oct. 31, 2005, p. 213-214.

16 Hutton at that meeting was seen to be exactly what it was
17 and that was a reflection of arrogance on the part of the
18 Government of the day.

19 Q: Would you agree with that?

20 A: No, sir.

21 Q: Now --

22 A: What I was suggesting, sir, was that
23 for instance, someone such as Tim McCabe's boss would
24 have been a valuable addition to the meeting. Someone
25 like Mark Rosenberg who was the senior civil lawyer

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1 within the Ministry would have been a valuable addition
2 to the meeting.

3 Q: Mr. Moran, who between you and Mr.
4 McCabe had more experience with respect to dealing with
5 First Nations litigation matters and meetings of the IMC?

6 A: I'm not -- I'm not suggesting that --
7 that Tim wasn't qualified, that his opinions weren't
8 valued. What I was suggesting was that it would have
9 been a valuable addition for Tim's boss to be in the
10 meeting as well.

11 Q: Why do you say that? What is the
12 possible basis that you have for saying that?

13 A: I guess it was just a reflection of
14 the personal respect I have for Mr. Rosenberg.

15 Q: Just a seniority thing, right?

16 A: No, sir.

17 Q: There's not -- you don't have any
18 other basis for believing that Mr. Rosenberg had more to
19 contribute to this meeting than Mr. McCabe other than --

20 A: I didn't say more.

21 Q: -- the fact that it was -- that --
22 other than the fact that Rosenberg was his boss, isn't
23 that right?

24 A: What I said was I thought that he
25 could have been a valuable addition to the meeting, and

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1 my comments were much more focussed in terms of they --
2 commission on how to fix the process in the future.

3 Q: All right. Are -- are you aware, Mr.
4 Moran, that Mr. McCabe is viewed as perhaps the leading
5 Crown lawyer with respect to this type of matter and was
6 at the time?

7 A: Oh, sure. I have said all along I

8 thought he should have been in the meeting and that I
9 agreed with him there.

10 Q: Why are you then suggesting that Mr.
11 Rosenberg had something to add?

12 A: I think that -- that a number of
13 senior officials could have provided some insight to the
14 meeting.

15 Q: Wouldn't that just have made the
16 meeting longer, more people?

17 A: It could have.

18 Q: All right. Let's just move on. I'm
19 interested in your views before you attended any of these
20 meetings.

21 A: Yes, sir.

22 Q: Now, I think you've -- I think you've
23 -- I've understood you to say that before you attended
24 the first IMC meeting on September the -- the 5th, let's
25 take that as our date --

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1 A: The -- the first one -- this -- the
2 October one or the August one I mean.

3 Q: I'm saying before September the 5th.

4 A: All right.

5 Q: I think I understood you to say that
6 you did not have any knowledge about injunctions; is that
7 correct?

8 A: No. Yes. Yes, sir.

9 Q: You're agreeing with me?

10 A: Yes, sir.

[Horton Examination of David Moran, Nov.1, 2005, p.303-306]

Ms. Hutton, too, indicated that she was frustrated at the lack of “options” being put on the table. In expressing concern about a lack of options, however, it was clear that the options being sought were options which would result in the faster removal of the occupiers. The tone of this frustration was made particularly evident by her reference to the OPP’s strategy of following its operational plan and standard policies to give time for a peaceful resolution to be reached as the “do nothing” approach. Her focus was simple: get the occupiers out as soon as possible, with no negotiations:

1 Q: All right. But, you were -- you
2 continued to be of the view not -- during the course of
3 the September 6th moving -- meeting that the removal of
4 the occupiers as soon as possible and the position of no
5 negotiations was the proper approach for the Government
6 in these circumstances?

7 A: That's right. As I said, removal of
8 the occupiers, ending the occupation, that was our goal.
9 And I felt that for a number of reasons that I discussed
10 yesterday, having no substantive negotiations was
11 something that needed to be firm throughout the course of
12 the occupation until it ended.

[Vella Examination of Deb Hutton, Nov.22, 2005, p. 27]

Ultimately, the recommendation that came out of the IMC meetings was for Ministry of the Attorney General lawyers to seek an injunction requiring that the occupiers vacate the park as soon as possible. This suggestion only emerged, however, as a compromise solution between, on the one hand, ONAS officials and Ron Fox, who wanted to take a slower, wait-and-see approach, and, on the other hand, Ms. Hutton who, speaking on behalf of Premier Harris, indicated that the government simply wanted the occupiers removed “within a day or two”. Ms. Hutton gave no indication at the time that she supported the consensus that emerged from the meeting.³¹ In adopting this approach, Ms. Hutton’s refusal to give credence to the professional advice of more experienced counsel indicates a rejection of reason in favour of perceived political advantage.

The self-serving suggestion of Ms. Hutton and Premier Harris that the real reason for wanting to get the occupiers out more quickly was for “public safety” amounts to a frail and non-credible excuse. This suggestion contradicts the informed judgment which was expressed at the time by more experienced civil servants – a judgment that was tragically borne out by events. This suggestion also contradicts the repeated assertions by Mike Harris that his was a new and inexperienced government which merely followed the advice it was given by the experts.

³¹ Horton Examination of Julie Jai, Sept. 14, 2005, p. 193-197; Horner Examination of Eileen Hipfner, Sept. 20, 2005, p. 43-45.

3. THE “DINING ROOM” MEETING – INSTRUCTIONS FROM A PREMIER

Following the September 6 IMC meeting, a further, unprecedented meeting was convened in a board room adjacent to the Premier’s Office at Queen’s Park.³² Although no witness was certain who had organized the meeting, several conceded that a meeting in the Premier’s Dining Room would most likely have been organized by the Premier or his staff.

In attendance at the meeting were the Ministers of all departments relevant to the situation at Ipperwash – the Minister of Natural Resources, which was responsible for the park; the Solicitor General, who was responsible for the police; and the Attorney General, who was responsible for any legal actions the government might take, as well as for native affairs. The Deputy Ministers for all three ministries were also in attendance, along with some political staff, Inspector Ron Fox and Sergeant Scott Patrick, Deb Hutton and the Premier.

The purpose of the meeting was, according to Deputy Attorney General Larry Taman, “to make sure everybody understood what the Premier’s view was.”³³

That view was made absolutely clear at the outset of the meeting. The former Attorney General of Ontario and lifetime political ally of Mr. Harris, Charles Harnick, testified that as he walked into the Dining Room meeting, Mr. Harris stated in a loud voice:³⁴

“I want the fucking Indians out of the park.”

This view, while expressed emphatically, and leaving no doubt as to the Premier’s wishes, was entirely consistent with the policy that his representative, Deb Hutton, had expressed at two previous IMC meetings. The chilling truth is that the comment may have seemed quite unremarkable to others in the room at the time.

During the course of the Inquiry, a significant amount of evidence was heard regarding whether Premier Harris knew that Inspector Ron Fox, who was in attendance at the meeting, was an OPP officer seconded as a First Nations liaison officer to the office of the Deputy Solicitor General.

³² Horner Examination of Robert Runciman, Jan. 11, 2006, p. 243-244.

³³ Horner Examination of Larry Taman, Nov.15, 2005, p. 241.

³⁴ Worme Examination of Charles Harnick, Nov. 28, 2005, p. 9-10.

Despite the fact that Ron Fox had repeatedly provided updates on OPP operations at the IMC meetings (on which the Premier was briefed) and did so again at the Dining Room meeting, Premier Harris maintains that he has no recollection of Ron Fox. Moreover, it is rather troublesome that no witness was prepared to take responsibility for Mr. Fox having been invited to the meeting. Nonetheless, one fact is incontrovertible, Premier Harris forcefully expressed his view that the occupiers should be removed as soon as possible to a meeting of all relevant Ministers, Deputy Ministers and political staff – persons who were capable of carrying out the Premier’s demands.

In the end it is irrelevant whether Mike Harris knew that Ron Fox was an OPP officer. He was well aware that all of the persons required to carry out his instructions were present. The instructions of Premier Harris were that the occupiers of the park be removed. Nothing turns on whether he anticipated the precise means by which that would be accomplished.

It is necessarily the prerogative of a government to set its own policies. However, where, as here, the government attempts to implement those policies in a delicate situation, over the protests of its most competent advisors, more than mere policy is at play. In the case of Ipperwash, a very dangerous game of politics was being played: a game that was played with peoples’ lives by a Premier who had no experience in dealing with policing issues or matters of public safety.³⁵

Inspector Ron Fox, who attended at both the IMC meetings and the Dining Room meeting testified that he had vigorously opposed the urgent approach of Deb Hutton and Premier Harris at the IMC meetings.³⁶ Despite this advice, Ron Fox discovered at the Dining Room meeting that the Premier, coming out “strong,” continued to advocate an urgent response.³⁷ As Ron Fox told Chief Superintendent Chris Coles only minutes after the meeting:

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 and 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

³⁵ Horton Examination of Mike Harris, Feb. 16, 2006, p. 284-286.

³⁶ Horton Examination of Ron Fox, July 18, 2005, p. 174-6.

³⁷ Exhibit P-515.

simple trespass to property that's in his thinking. He's not getting the right advice ah or if he is getting the right advice he's certainly not listening to it in any way shape or form.³⁸

In fact, the Premier had received advice from senior officials that a more cautious approach should be adopted. Larry Taman gave evidence that he understood that advice from himself and the Attorney General that a "go slow" approach be taken had been rejected personally by Premier Harris even before the Dining Room meeting occurred:

20 Q: And earlier you had been involved in
21 meetings with the Attorney General and Solicitor General
22 where you had discussed a go-slow attitude one might say,
23 right?

24 A: Yes.

25 Q: And so the Attorney General was

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1 informing you that in spite of his previous agreement
2 with you and others that there should be a go-slow
3 attitude he'd been instructed by the Premier not to go
4 slowly but to go quickly, right?

5 A: I think that's the sense of it, yes.

6 Q: And as he informed you of that he was
7 indicating to you that that was then the ruling. There
8 was no more debate about slow or fast; we're going
9 quickly, right?

10 A: Yes. If I could just say one (1)
11 thing in fairness to Mr. Harnick and I think you put it
12 fairly in your -- in your question, Mr. Rosenthal.

13 I don't think it was so much a question
14 that he changed his mind, it was a question that in the
15 days leading up to this when we talked about it the
16 people I've discussed, Mr. Runciman, Mr. Harnick agreed
17 that there didn't seem to be any great need to go
18 quickly. The Committee had asked for an injunction.
19 There was conversation carrying on but the situation did
20 change that morning.

21 Q: Yes. And had Mr. Harnick, in his
22 earlier conversations with you, indicated his
23 understanding of what you understood, that going quickly
24 could increase the danger of someone getting hurt?

25 A: I think it would be fair to say that

³⁸ Exhibit P-444A, Tab 37, p. 274.

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1 he was content at that time to follow the advice that he
2 was receiving.

3 Q: Including from you, you mean?

4 A: Sure.

5 Q: And so it wasn't that he had changed

6 his opinion, he just told you the Premier said quick and

7 that's the end of the discussion?

8 A: That's the way I see it.

[Rosenthal Examination of Larry Taman, Nov. 15, 2005, p. 190-192]

Despite the expression of concern by Larry Taman, Ron Fox and others about moving precipitously, Premier Harris continued to press for a quick resolution to the problem. The safer approaches of giving the situation a chance to stabilize or co-operating with First Nations leadership in seeking a resolution of the occupation were rejected by the Harris Government because those options gave the appearance of working with First Nations, which ran counter to their stated policies of conferring no special rights on First Nations and the Premier's Office's position that it didn't "want to be seen to be working with Indians at all."³⁹ These positions were maintained even when they interfered with the ability of civil servants to effectively do their job.⁴⁰

On numerous occasions, OPP and professional civil servants suggested that more time was needed in order for discussions and negotiations to be undertaken with the occupiers. This approach was described as the standard approach to such matters by civil servants and was part of the operational plan of the OPP. Despite these standard procedures, the Harris Government rejected any attempts at negotiations, despite the fact that the experienced professionals preferred such an approach for reasons of public safety. Ron Fox testified as follows regarding the September 6th IMC meeting:

7 Q: Can you give me some examples, some
8 tangible examples from September the 6th?

9 A: Yes. When people would make a point,
10 what they felt was -- was their point, they would say
11 that forcefully, they would talk over others who would
12 try to interject with perhaps an opposing point of view;

³⁹ Exhibit P-637 (Sept. 6 Christie note).

⁴⁰ Worme Examination of Elizabeth Christie, Sept. 26, 2005, p. 132.

13 in that fashion.

14 Q: All right. And perhaps you can just
15 indicate who articulated strong views forcefully and what
16 those views were.

17 A: The representative of the Premier's
18 Office, Deb Hutton, indicated again, that it was the
19 position of -- of the Government that the occupiers were
20 to removed, there would be no negotiation; there was
21 concern that the police would enter into negotiations
22 with the occupiers.

23 And I recall explaining that that was two
24 (2) different things and that's why I had mentioned the
25 difference between negotiation and front-end

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1 communication.

2 It was that type of -- of atmosphere, you
3 could tell from the body language that this was the
4 position that was to be taken --

5 Q: And were you --

6 A: -- in their view.

7 Q: I'm sorry. Were you also
8 articulating a view forcefully?

9 A: Yes, I believe that I was.

10 Q: And your view as communicated was
11 what?

12 A: My view again, as I've testified
13 yesterday, that it wasn't a simple trespass matter, there
14 was a greater complexity to it, that one had to move
15 slowly as we went through this, understanding that the
16 police were not to negotiate a land claim per se, or
17 burial site, but they needed to negotiate with the people
18 there to effect the purpose required, and that was to
19 ensure public safety.

20 Q: And did anyone on behalf of the
21 Ministry of Natural Resources articulate strong, forceful
22 views at the September 6th meeting?

23 A: Yes, they did. Again, it was
24 restated that the -- the Park was the property of the
25 Ministry of Natural Resources or at least they had

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1 stewardship of it. They were concerned, and I believe
2 legitimately so, that the -- the Park would be damaged if
3 the occupation were to continue and be rendered
4 inoperable as a Park.

5 My view would probably contradict theirs
6 in -- in some fashion, in that mine was that public
7 safety was paramount, and that the things and -- and
8 property, whether it was picnic tables or it was
9 maintenance sheds, they were of lesser concern from a
10 policing perspective.

[Vella Examination of Ron Fox, July 12, 2005, p. 57-59]

Before the Inquiry, Deb Hutton and Premier Harris testified that any rejection of negotiations was simply a rejection of “substantive” negotiations. This position is untenable. The evidence is that they refused to accept the distinction that was offered at the time by the police. There is no evidence that suggested that a substantive land claim be “negotiated.” The fact is that Deb Hutton and Mike Harris did not want to be seen to be working with First Nations “at all,” even if it was in the form of front-end communications by professional police officers.

Larry Taman also testified that he, along with the Attorney General and the Solicitor General felt that it was important to remain calm so that the highly charged situation was permitted to stabilize both at the park and within the government:

16 I wanted to start, Mr. Taman, with
17 comments you made yesterday regarding meeting with some
18 civil servants in the early morning of September 6th,
19 1995. And they were concerned about the Premier's views,
20 or the -- the statements made by -- by Deb Hutton at the
21 IMC meeting regarding the hawkish atmosphere.
22 And -- and you stated that you told them
23 that your view was that it was important that nobody got
24 hurt. And you said that the Solicitor General and the
25 Attorney General agreed with this and that generally, you

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1 should -- we should try to be stabilizing the situation
2 both internally and externally.

3 And I want to ask you a little bit more
4 about stabilizing the situation internally. What did you
5 mean by that?

6 **A: Well, I meant that we should be**
7 **trying to be calm and that we shouldn't be taking too**
8 **seriously every word that was said by whoever said it and**
9 **that we should be working our way methodically through**
10 **the problem.**

11

12

(BRIEF PAUSE)

13

14

Q: And would you agree that -- that it was this slower approach, this methodical approach as you said, that was required in order for the Government to develop its policy response to this situation?

18

A: I think it was more in my mind an issue of giving the situation a time -- a decent time to develop so that it would be possible to bring it to a safe resolution.

22

Q: And so -- so -- then that -- but that's -- I would understand that as being more of an external stabilization, that you wanted the situation down at the Park.

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1

And so was there anything more internal, within government, that you were concerned should be stabilized?

4

A: I was concerned that we get some clarity about what was going on; that we get some clarity about instructions. It fairly quickly became clear to me that we had to get some clarity about who should be at what meeting and so on.

9

So, these were all things that we needed to do to settle into the problem. [Emphasis Added]

[Horner Examination of Larry Taman, Nov. 15, 2005, p. 238-238]

Larry Taman further testified that his concern for caution was expressed at the Dining Room meeting, where he advised the Premier that it might be better police practice to “wait and to give the situation a chance to stabilize and to sort of come into order in a –in a – in a more slower and more careful way.”⁴¹

These views appear to have been reported by Ms. Hutton to Premier Harris as the “do nothing approach”. If any of this advice had been conveyed to Premier Harris before the Dining Room meeting, it clearly was given little weight in his thinking. Indeed, he and Ms. Hutton claim now

⁴¹ Millar Examination of Larry Taman, Nov. 14, 2005, p. 113.

to have reached an independent and contrary view that public safety required early removal of the occupiers.⁴²

⁴² Horton Examination of Mike Harris, Feb. 16, 2006, p. 284-299; Vella Examination of Deb Hutton, Nov. 21, 2005, p. 206-207.

4. MESSAGE COMMUNICATED AND RECEIVED

The message conveyed by Premier Harris at the Dining Room meeting, consistent with the message that had been advocated on his behalf by Ms. Hutton at the IMC meetings and consistent with the Harris Government's policies with respect to First Nations issues, was that the government wanted the occupiers out of the park as quickly as possible. There is no evidence of any statement by Mike Harris or Deb Hutton qualifying this desire by reference to injunction proceedings.

This message was ultimately received by the OPP leadership on the ground at Ipperwash, was communicated to the rank and file officers, and was subsequently acted upon. Although the declaration of the Premier that he wanted the "fucking Indians out of the Park," ran counter to the OPP's operational plan and policy, the OPP decided to deploy heavily-armed members of the OPP's Crowd Management Unit and Tactical Rescue Unit into the Park area that very evening. The only realistic explanation for this decision by the OPP is that its members, including Incident Commander John Carson, were reacting to the Premier's orders or, at a minimum, had their professional judgment seriously clouded by the clearly expressed and widely broadcasted views of the Premier.

a. The Premier's Message was received by the OPP.

There can be no doubt that the message conveyed by the Premier at the dining room, following two previous IMC meetings at which his representative conveyed a similar message, was clear. The Harris Government wanted the First Nations people out of the park. Without delay.

Premier Harris testified before the Inquiry that the fact that the OPP allowed even "one second" of occupation to take place displeased him.⁴³

This was certainly the message understood by Ron Fox, and one which he conveyed to John Carson in a subsequent telephone conversation. In that conversation, Inspector Fox explained to then-Inspector Carson that "the political people are really pushing."

In explaining the desire of the political people to move quickly, he further elaborated that the Government was unconcerned with any issue of native rights. Carson understood from Fox that

⁴³ Sandler Examination of Mike Harris, Feb. 15, 2005, p. 25-26.

the government “just want us to go kick ass,” an interpretation with which Inspector Fox agreed.⁴⁴

Inspector Fox, on the same telephone call, subsequently informed Chief Superintendent Chris Coles of the Premier’s views on the matter, stating that:⁴⁵

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.

A further message received by Ron Fox at the Dining Room meeting was that the OPP had made mistakes in not preventing the initial occupation of the Park, and not going in earlier to remove the occupiers as a matter of trespass. Inspector Fox and Carson both disagreed with this view, but they nonetheless understood that that was the Premier’s statement.

OPP officers on the ground had also been advised of this political pressure emanating from the Premier’s office, having been briefed on the issue by John Carson following his initial call with Ron Fox on September 5:

25

1 Q: Yeah. Now, at that command team
2 meeting, that would be the various senior officers in
3 charge of various aspects of the operation, is that
4 right?

5 A: Yes.

6 Q: It would include Detective Sergeant
7 Wright as well?

8 A: I believe he was there, yes.

9 Q: Yeah. So he heard you say that the
10 Premier -- well, let me back up. The handwritten notes
11 say you said something about Premier and no different
12 treatment from anyone else.

13 Can I fairly conclude that what you were
14 saying to the command team was that you'd received
15 information that the Premier's wishes were that the
16 Natives receive no different treatment from anybody else?

17 Or if I'm -- if I'm mis-stating what these
18 notes suggest, just help me out.

⁴⁴ Exhibit P-444A, Tab 37, p. 262.

⁴⁵ Exhibit P-444A, Tab 37, p. 274.

19 A: I would suggest what I was doing was
20 simply informing them what Ron Fox had told me.

21 Q: Right.

22 A: I'm not suggesting -- I would be very
23 cautious to suggest that -- that it was any more than
24 passing information on.

[...]

27

1 Q: And one (1) of his views apparently
2 is that the Natives should be treated no differently than
3 anybody else should be treated; is that right?

4 A: That's what I said.

5 Q: Now it strikes me as a little bit
6 unusual that the participation of the Premier and -- let
7 me rephrase that. It seems to me a little unusual that
8 the fact that the Premier had some views on a particular
9 policing situation would be conveyed to the command team.
10 It strikes me as unusual.

11 Do you agree that it is -- it is a bit
12 unusual?

13 **A: It's unusual that I would have had**
14 **access to that information. Normally that would be --**
15 **well, the term "unusual" is good. I'm not normally as**
16 **incident commander aware of -- of any of the Premier's**
17 **views in regards to our day to day operations.**

18 **Q: Right. And as -- as we discussed,**
19 **what is being transmitted to your command team is not**
20 **only the fact that the Premier has views but actually in**
21 **substance what those views are on this particular -- in**
22 **this particular area; is that right?**

23 **A: That's true.**

24 Q: And again, this -- this was
25 approximately mid-afternoon on the 5th; is that right?

28

1 A: Right. [Emphasis Added]

[Klippenstein Examination of John Carson, June 8, 2005, p. 22]

b. The deployment of the CMU and TRU on the evening of September 6 was not foreseen in the OPP's operational plan or policies.

Until the deployment of the CMU and TRU on the evening of September 6, 1995, the OPP at Ipperwash had proceeded with operational matters in accordance with the operational plan that

had been developed by a team of OPP members in anticipation of a possible takeover of the Park. That operational plan, known as "Project Maple" had, as its defining purpose, set out in large letters on the second page of the document : "Objective: To contain and negotiate a peaceful resolution."⁴⁶ John Carson, the officer charged with implementing that plan agreed that the use of force was contrary to Project Maple's objectives:

CONTINUED BY MR. WILLIAM HORTON.

14 Q: Deputy Commissioner, the use of force
15 that you decided upon on the event of September the 6th,
16 I think it's fair to say and you'll agree with me --
17 was contrary to what you had set out to accomplish when
18 this incident began; is that fair?

19

20 (BRIEF PAUSE)

21

22 A: I'm not sure I understand the context
23 of -- like the ideal situation is you don't have to use
24 any force.

25 Q: Yeah, well, to make it simple, let's

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1 just go to Project Maple, Exhibit 424.

2 A: Correct.

3 Q: And I read from the very first page:
4 "Objective: To contain and negotiate a
5 peaceful resolution."

6 And peaceful means without the use of
7 force?

8 A: That would be the preference, yes.

9 Q: No, that was your objective?

10 A: Sure.

11 Q: And once you decided to use force, it
12 was contrary to what your objective had been; is that
13 right?

14 A: Well -- well, yes and no. It just
15 isn't that simple. If the occupiers in the parking lot
16 simply went back into the Park and stayed there, there
17 would be no reason to apply any force whatsoever.

18 So, it would have still met the criteria.

19 Q: You don't interpret sending -- how
20 many men, how many officers, thirty-two (32) plus
21 officers --

⁴⁶ Exhibit P-424.

22 A: Correct.
23 Q: **Down the middle of the road, plus six**
24 **(6) tactical and rescue unit members hidden in the**
25 **bushes, you don't interpret that as a use of force?**

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1 A: **It's a use of force, yes.**
2 Q: **And isn't -- isn't a use of force**
3 **regardless of whether or not you get what you want out of**
4 **it?**
5 A: **Fair enough.**
6 Q: **And if you do get what you want out**
7 **of it, you got what you want because you used force,**
8 **right?**
9 A: **Fair enough.**
10 Q: **You would -- you weren't under the**
11 **impression that you were initiating a negotiation on the**
12 **evening of September the 6th?**
13 A: **No.**
14 Q: **So you were using force to achieve**
15 **your objective rather than negotiations?**
16 A: **Correct.**
17 Q: **Correct? It was contrary to your**
18 **objectives?**
19 A: **Correct. [Emphasis Added]**

[Horton Examination of John Carson, June 27, 2005, p. 172-174]

The deployment of CMU and TRU on September 6, 1995 was also contrary to OPP policy as set out in the 1991 Briefing Note for the Interministerial Policy Forum (the "O'Grady Policy").⁴⁷ That policy emphasised the need to seek negotiated solutions to conflicts with protesters, and that force should only be used where "death or serious injury was immediately probable". Under cross-examination, Deputy Commissioner Carson conceded that the policy placed a considerable emphasis on avoiding the use of force and that the deployment of the CMU and TRU was a use of force.

13 Q: No. Okay. Now, I just want to go to
14 what it says.
15 "When dealing with anti-social or
16 alleged criminal behaviour involving
17 protesters,..."

⁴⁷ Exhibit P-472.

18 And you agree with me that that policy
19 covers both anti-social and alleged criminal behaviour,
20 correct?
21 A: Correct.
22 Q: The fact that there may be criminal
23 behaviour does not suspend the application of this policy
24 in and of itself; correct?
25 A: I'm sorry?

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1 Q: This policy can apply even if there
2 is criminal behaviour?
3 A: It could, but --
4 Q: It could.
5 A: It could.
6 Q: It could. The fact that there's
7 criminal behaviour doesn't immediately mean this policy
8 no longer applies, right?
9 A: Fair enough.
10 Q: Okay.
11 "Involving protestors, hostage-takers,
12 and armed persons."
13 Do you see that?
14 A: Yes.
15 Q: Again, the fact that persons are
16 armed doesn't immediately mean this policy doesn't apply?
17 A: Correct.
18 Q: Even though they are armed and even
19 though they may be engaged in criminal behaviour, this
20 policy could still apply?
21 A: Sure.
22 Q: Should be considered?
23 A: Sure.
24 Q: And then, it says:
25 "The initial response of the OPP has

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1 traditionally been one (1) of
2 negotiation in an effort to avoid the
3 use of physical force if at all
4 possible."
5 Do you see that?
6 A: Yes.
7 Q: Okay. And then, it says:
8 "The only exception to this approach
9 has been in situations where death or

10 serious injury was immediately probable
11 if force was not used to control
12 events. Do you see that?
13 A: Yes.
14 Q: And you have already agreed with me
15 that sending the forces down to meet the occupiers was a
16 use of force, correct?
17 A: Yes.
18 Q: And you already indicated in many
19 different ways that that use of force carried the risk of
20 injury and -- and possibly death once that decision was
21 made, correct?
22 A: Correct.
23 Q: And that's the reason why the OPP has
24 a policy that says the only exception is in situations
25 where death or serious injury was immediately probable if

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1 force was not used; correct?
2 A: Right.
3 Q: Now, regardless of whether you read
4 this policy, were you aware that that was the policy?
5 A: The context of it, yes.
6 Q: You knew that it was important that
7 the kind of force that you deployed on that evening not
8 be deployed unless there was something like what's
9 described in the policy as death or serious injury being
10 immediately probable if force is not used?
11 Would you agree with that?
12 A: Yes.

[Horton Examination of John Carson, June 27, 2005, p. 178-181]

Instead of force, both Project Maple and the O'Grady Policy emphasised a slow, peaceful approach to ending standoffs, calling for negotiators to coordinate discussions with occupiers to avoid the use of force. Such procedures were followed during the course of September 5 and 6, with various degrees of success.

Despite limited success in communicating with the occupiers, there was no indication until the evening of September 6, 1995, following Ron Fox's phone calls with John Carson and Chris Coles, and John Carson's closed-door and unreported meeting with Chief Superintendent Coles and Superintendent Parkin, that the OPP would take action to move into the area of the Park.

In light of the plan and policy that were in place, some justification for the use of force on the evening of September 6, 1995 was required, one that indicated the existence of a probable and immediate risk of death or serious injury. As is set out below, Deputy Commissioner Carson, who was responsible for the deployment of the CMU and TRU that evening, was unable to provide such a reasonably supportable justification.

c. None of the risks identified by John Carson justified the dangerous use of force.

In his testimony before the Inquiry, John Carson took full responsibility for the decision to deploy the Crowd Management Unit and the Tactical Rescue Unit on the evening of September 6, 1995. He did so despite the dangers inherent in sending in the CMU and TRU, fully armed, on a night time operation in which it would be difficult for the units to see. In fact, in one instance prior to the confrontation in the Sandy Parking Lot, a First Nations member who, carrying a stick, had walked up the road towards the CMU was mistakenly identified as carrying a gun. Nonetheless, Inspector Carson made the decision to continue the march towards the Park:

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7 Q: Inspector Carson, it took several
8 seconds for them having identified a man as carrying a
9 gun to determine that he was carrying a stick.

10 A: Correct.

11 Q: Okay. Right. The initial
12 identification was wrong, correct?

13 A: Correct.

14 Q: Therefore. And in the -- in a
15 confrontation that could occur in the Sandy Parking Lot,
16 you did not expect that your men would have the luxury of
17 several seconds to make a determination as to whether
18 someone was carrying a stick or a gun, correct?

19 A: Fair enough.

20 Q: Okay. So you knew, in advance, that
21 there was a risk that your men could misidentify somebody
22 as carrying a stick rather than carrying a gun in that
23 situation?

24 A: That's fair.

25 Q: And you knew that in advance of

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1 sending them down the road?

2 A: I knew that while they were going
3 down the road, yes.

4 Q: Right. And you could have stopped
5 the march at that time; that was in your power to do?

6 A: Yes.

7 Q: And you made the personal decision at
8 that point that they would continue marching on down the
9 road to a parking lot which you expected to have -- in
10 which you expected to find people with sticks?

11 A: Correct.

[Horton Examination of John Carson, June 27, 2005, p. 121-122]

Given the dangers inherent in undertaking such an operation, and the extent to which such a decision departed from the operational plan that the OPP had established in anticipation of this precise situation, it must fall to John Carson to explain why the decision was made to deploy the CMU and TRU teams down East Parkway Drive towards Ipperwash Provincial Park in the late evening of September 6, 1995.

In his testimony before this Inquiry, John Carson suggested eight possible explanations for deploying the CMU and TRU teams. However, under cross-examination by counsel for the Chiefs of Ontario, it was made clear that none of those explanations were individually or cumulatively sufficient to explain his decision.

i. Possible Invasion of Cottages

One risk raised by John Carson as a potential reason for deploying the CMU and TRU teams on the evening of September 6, 1995 was the risk that the occupiers would invade nearby cottages. In reality, however, there had been little indication aside from a few stray comments that there was a risk of occupiers attacking nearby cottages. Moreover, none of the actions taken by the OPP in the lead up to the CMU and TRU deployment were consistent with a belief that the occupiers would invade nearby cottages. No efforts were made to evacuate the cottages and, in fact, a group of irate cottagers were told to return to their cottages only hours before the CMU and TRU moved on the park:

Q: Now, I want to turn briefly to the
10 basis for the decision to send your forces down the road
11 and I appreciate this has been covered ad nauseam, but I
12 do want to make sure I understand something about each of
13 the key elements.

14 I understood you to say that one (1) of
15 the risks that you had in mind when you decided to send
16 your forces down the road, was the possible invasion of
17 the cottages by the occupiers; is that correct?

18 A: Correct.

19 Q: And is it also correct that earlier
20 that same afternoon, Mark Wright, to your knowledge, had
21 met with some irate cottagers. He told them to calm down
22 and go home, and he reported that to you, correct?

23 A: Yes.

24 Q: And it's clear, is it not, that Mark
25 Wright would not have advised the cottagers to do that,

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1 and you would not have advised the cottagers -- you would
2 not have agreed with that, if you thought the cottagers
3 were going to be invaded in their cottages that night,
4 correct?

5 A: I'm sorry, I'm -- I'm not sure I
6 understand.

7 Q: All right, let's put it this way,
8 let's cut to the chase.

9 As of the time that you spoke to Mark
10 Wright at eight o'clock on the evening of September 6th,
11 approximately --

12 A: Right.

13 Q: I think I have your evidence correct
14 that you did not anticipate any invasion of the cottages
15 that night?

16 A: No.

17 Q: All right. And I'm suggesting to you
18 that once you made the decision to send in the CMU, and
19 you decided to get a message to the cottagers, ultimately
20 it was a message about staying put in their cottages,
21 correct?

22 A: Basically, yes.

23 Q: All right, and that was to protect
24 the cottagers from the results of your decision to go
25 down the road and confront the occupiers, isn't that

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1 right?

2 A: Are you talking about Mark Wright's
3 meeting?

4 Q: Well, I was initially -- I was trying
5 to cut through that and not go back to the Mark Wright

6 meeting. The Mark -- when Mark Wright met with the
7 cottagers --

8 A: Correct.

9 Q: All right. He told them to calm down
10 and go home.

11 A: Right.

12 Q: He reported that to you.

13 A: Right.

14 Q: You didn't disagree with the advice
15 he'd given the cottagers?

16 A: No, of course not.

17 Q: Right. And the reason that Mark
18 Wright told them to go home and calm down, and the reason
19 you didn't disagree with that, was because you weren't
20 expecting any invasion of the cottages that night?

21 A: Right, we didn't want a confrontation
22 between the cottagers and the occupiers.

23 Q: I'm coming to that in a minute. But,
24 in -- I'm just talking about the invasion of the cottages
25 right now.

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1 A: Right.

2 Q: I need to break this --

3 A: It was -- it was a -- a -- how would
4 I term it; a threat that had been there for some period
5 of time.

6 **Q: Yeah. All I'm trying to get at now,**
7 **Mr. -- Deputy Commissioner Carson is, in terms of that**
8 **threat, as of eight o'clock when you spoke to Mark**
9 **Wright, you did not have any thought in mind that the**
10 **cottages were going to be invaded that evening.**

11 A: Correct.

12 Q: All right. And later on that
13 evening, when you decided to get a message to the
14 cottagers, to ultimately the men -- you talked about
15 different options, but ultimately the message was to stay
16 put, stay in their cottages, right?

17 A: Right.

18 Q: And the -- the purpose of that was to
19 make sure they -- as you've testified, didn't stumble
20 onto the operation.

21 A: Oh, sure, yes.

22 Q: Right.

23 A: I just didn't understand your
24 question --

25 Q: Right.

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1 A: -- earlier, I'm sorry.

2 **Q: So the purpose of that advice to the**
3 **cottagers was to protect the cottagers against the**
4 **consequences of your decision to send the CMU to confront**
5 **the occupiers?**

6 **A: That's fair, we didn't want them to -**
7 **- to come out and be caught in the middle of it.**

8 **Q: Right. They wouldn't be at that risk**
9 **if you didn't decide to go down the road.**

10 **A: Fair enough.** [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 135-139]

ii. Guns in the Park.

Despite years of attempts to establish that Dudley George and the occupiers in the Park were armed at the time of the CMU and TRU deployment, the OPP and OPPA have been unable to provide this Inquiry with any evidence that firearms were in fact present in the park.

Nonetheless, regardless of whether such firearms did exist, John Carson, in deciding to deploy the CMU and TRU, indicated that he did not believe that the officers would be fired upon.

“Guns in the park” was not his reason for deploying the CMU and TRU:

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14 Q: And again, just to -- I -- hopefully
15 a quick point, but we've heard a lot of evidence, Deputy
16 Carson, about guns in the Park, and guns in the camp, and
17 guns and -- gunfire the night before, and all that sort
18 of stuff and I just -- again, I just want to be clear,
19 that as of the time that you were actually sending your
20 officers down the road, you did not have any concerns
21 about being confronted by gunfire; as late as that point
22 in time, correct?

23 A: I didn't believe we'd be fired upon.

24 **Q: Right, you had just -- whatever**
25 **evidence there was, you -- that did not translate, in**

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1 **your mind, to your men being fired on when they arrived -**
2 **- or your -- your officers being fired on when they**
3 **arrived at the Sandy Parking Lot?**

4 A: I -- I didn't -- I didn't believe
5 that would occur, no. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 139-140]

iii. Fires in the Parking Lot

At one point in his testimony, John Carson identified a concern about fires set in the Sandy Parking Lot as being one of the risks that prompted his decision to deploy the CMU and TRU. On cross-examination he admitted that no such fire had, in fact existed in the Sandy Parking Lot that evening:

140 Q: No. And just again to quickly cover
7 another point, you mentioned as one (1) of the many
8 reasons in your mind, fires that had been set by the
9 occupiers, correct?
10 A: Yes.
11 Q: And I believe the evidence will show,
12 and I can -- I can take you to some references in the
13 scribe notes, but I'll try to avoid that, that the --
14 there was no fire in the Sandy Parking Lot that night,
15 and there was nothing in the Sandy Parking Lot to set on
16 fire that night.
17 Do -- do you accept that that's the case
18 or do you --
19 A: No, that's fair.

[Horton Examination of John Carson, June 27, 2005, p. 140]

iv. Closing of the Kiosk Blinds.

An additional risk identified by John Carson was a concern that was raised by the closing of blinds in a Park kiosk located in the general vicinity of the Sandy Parking Lot. Inspector Carson indicated a recollection of some concern that the kiosk could be used as a sniper location by the occupiers. However, the TRU sniper units that had been deployed to observe the situation had, prior to the deployment of the CMU established that there was no risk to the cottages from the kiosk. John Carson also conceded on cross-examination that the kiosk did not pose a risk to any operations in the Sandy Parking Lot:

Q: All right. Okay. And another reason

21 that you mention for sending your officers down the road
22 on the evening of September the 6th was something to do
23 with the kiosk blinds, you mentioned that at one (1)
24 point?

25 A: Right.

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1 Q: All right. And I just -- I just want
2 to be clear that actually, by the time your officers were
3 walking down the road, you had dismissed the kiosk as a
4 risk to any operations in the Sandy Parking Lot?

5 A: Correct. My concern was the line of
6 sight from the kiosk --

7 Q: Yeah.

8 A: -- to the Sandy Parking Lot.

9 Q: So, before the decision was actually
10 implemented, you had satisfied yourself on that?

11 A: Right.

12 **Q: And again, the kiosk was only an**
13 **issue if you did send your officers down the road to**
14 **confront the occupiers in the Sandy Parking Lot, correct?**

15 **A: Right.**

16 **Q: You -- you weren't expecting someone**
17 **sitting in the kiosk to shoot at the cottages?**

18 **A: No. [Emphasis Added]**

[Horton Examination of John Carson, June 27, 2005, p. 140-141]

v. Vehicle Movement in the Park.

Another issue raised by John Carson in assessing the risks that led to the deployment of the CMU and TRU that evening was the movement of vehicles within the park. While there were no reports of such vehicles causing any harm, John Carson testified that they had concerned him. On cross-examination, however, John Carson testified that he did not make any efforts, prior to deploying the CMU, to determine why there was vehicle movement in the park, and whether it was cause for concern:

19 Q: And another point that you mentioned
20 as a reason for -- in your mind, for sending people down
21 the road, was the movement of vehicles within the Park,
22 correct?

23 A: Yes.

24 Q: And you really had no idea why that

25 was going on?

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1 A: No, I didn't.

2 Q: And you never made any investigations
3 or inquiries with respect to why that was happening?

4 A: Inquiries?

5 Q: Yes.

6 A: Well, we had -- during the day we had
7 a helicopter up trying to monitor what activity was
8 happening there. We sent people down there to attempt to
9 stimulate some discussion, but did -- did we have the
10 ability to ask questions, and discuss it, that didn't
11 occur.

12 Q: Stay with me on this --

13 A: Okay.

14 Q: -- Deputy Commissioner. As of eight
15 o'clock on the evening of September the 6th, you were
16 formulating in your mind the reasons why you might send
17 the CMU in.

18 A: Right.

19 Q: And one (1) of the concerns you've
20 said you had was that there are vehicles moving around in
21 the -- in the Park?

22 A: And into the parking lot.

23 Q: And you -- you stated that that was
24 your understanding?

25 A: Right.

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**1 Q: Okay. And all I'm trying to
2 determine is that at that point you didn't make any
3 further inquiries as to why this is happening; Why are
4 they moving those vehicles around, right?**

5 A: Fair enough.

**6 Q: Okay. And as far as moving them into
7 the Sandy Parking Lot, the Sandy Parking Lot is a parking
8 lot, I gather, is that right?**

9 A: Right. Right.

10 Q: It is -- it is used to park vehicles?

11 A: Yeah. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 141-143]

vi. Cottagers Might Attack Occupiers.

Earlier in the evening, Mark Wright had met with a group of irate cottagers threatening to attack the occupiers themselves. In his examination in chief, John Carson indicated that this might have been another risk that he assessed in deciding to deploy the CMU and TRU. In fact, however, John Carson conceded on cross-examination that his information at the time of deployment was that Mark Wright had defused the situation with the local cottagers, and that they were sent back to their homes, a decision that would not have been made if the OPP really considered an attack by the cottagers on the occupiers to be a risk:

Q: All right. And then another reason
13 that you gave was that you were concerned that the
14 cottagers were going to attack the occupiers, is that
15 right?

16 A: Well, that was certainly a concern,
17 yes.

18 Q: And I -- just to quickly summarize
19 the -- the facts in play on that, Mark Wright had told
20 the cottagers to calm down and -- and go back to the
21 cottages, and they did that?

22 A: Right.

23 Q: Is that correct?

24 A: Yes.

25 Q: And you had no further information

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1 that the cottagers were going to confront the occupiers
2 that night?

3 A: Correct.

4 Q: Okay. And if you did have that
5 concern you could have evacuated the cottages?

6 A: Yes.

7 Q: And in fact, you -- at one (1) point
8 you discussed that --

9 A: Yes.

10 Q: -- with Mark Wright and Inspector
11 Linton, correct?

12 A: Correct, correct.

13 Q: And it was -- I might come back to
14 this, but I suggest to you that it was actually Mark
15 Wright who opposed any solution through the evacuation of
16 cottages.

17 A: I can't recall that particular point

18 one way or the other. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 143-144]

vii. Baseball Bats in the Sandy Parking Lot.

Earlier in the evening, Mark Wright had also driven past the Sandy Parking Lot and noticed several occupiers were out in the parking lot with baseball bats. John Carson identified this report as another reason he decided to send the CMU and TRU down to confront the occupiers. On cross-examination, however, he was unable to identify the nature of the concern regarding the baseball bats that would have led him to deploy the CMU and TRU. He conceded that he did not believe that the occupiers with baseball bats would attack an OPP checkpoint or the TOC centre:

Q: Right. We might -- we might come
20 back to that. Now, I want to then come down to the issue
21 of the baseball bats in the Sandy Parking Lot.

22 A: Right.

23 Q: And you indicated that the fact that
24 there were occupiers in the Sandy Parking Lot with
25 baseball bats was one of the reasons you decided to send

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1 the Crowd Management Unit and the TRU down to confront
2 the occupiers, correct?

3 A: Yes.

4 Q: Now, what exactly did you think the
5 occupiers were going to do with the baseball bats?

6 A: Well the information was, when Mark
7 Wright had -- had stopped at that corner, that there was
8 several there with baseball bats, and that -- and the
9 exchange that took place, they made it clear it was in
10 his best interest that he -- that he moves on right
11 shortly.

12 And it appeared that if he didn't comply
13 with that, that the baseball bats may be something to be
14 considered.

15 Q: Well, I want to just -- just take all
16 that as read. I want to be more specific about what you
17 thought the threat was beyond the point of Mark Wright's
18 encounter with these individuals with the baseball bats.
19 So let's -- let's just take it one at a time.

20 Did -- did you think that the occupiers
21 were going to potentially attach the checkpoints using
22 these baseball bats?

23 A: I didn't know if they were or if they
24 weren't.

25 **Q: Did -- did you think that was likely?**

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**1 That -- that a group of men with baseball -- or well I
2 think maybe they were all men with baseball bats, I don't
3 know.**

**4 But, that -- that they would march on the
5 checkpoints with bats knowing that there's armed officers
6 at the checkpoints?**

7 A: No. I -- I didn't believe that was
8 going to happen.

9 **Q: Okay. You -- you didn't think they
10 were going to attack the -- the TOC centre if they could
11 get past the checkpoints with -- with their baseball
12 bats, did you?**

13 A: No. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 144-146]

Inspector Carson indicated that he might have been concerned that the baseball bats would be used against the cottages. However, this possibility had clearly been discounted when the decision was made to send the cottagers back to the cottages, and not to evacuate the cottages. Carson could not point to any contemporaneous document that indicated a concern that the occupiers would attack the local cottages with baseball bats. Instead, the contemporaneous evidence suggests that the OPP's belief at the time was that the occupiers were carrying baseball bats defensively, waiting for the OPP to attack them.

In a recorded phone call just prior to the deployment of the CMU, Inspector Dale Linton had informed John Carson that the occupiers in the parking lot that had been observed by Mark Wright were "waiting for us to do something."⁴⁸ On cross-examination, John Carson agreed that this was a reasonable assessment, particularly given that in a later phone conversation he indicated that the occupiers were "getting ready for us":

⁴⁸ Exhibit P-444B, Tab 51.

15 CONTINUED BY MR. WILLIAM HORTON:

16 Q: This is a telephone conversation that
17 you had with Inspector Linton at about 8:15 say, on
18 September the 6th, 8:15 p.m.?

19 A: Correct.

20 Q: Okay. And this is actually the first
21 conversation that you had with Inspector Linton after you
22 spoke to Mark Wright?

23 A: I believe so, yes.

24 Q: Mark Wright had given you the first,
25 very brief information that you'd had about people in the

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1 Sandy Parking Lot with baseball bats?

2 A: Right.

3 Q: Right. And now you're talking to
4 Inspector Linton, and just go to the top of page 325
5 where Inspector Linton says to you, quote:

6 "Yeah, and so we just got a statement
7 now. She says they were hassling her.
8 Mark Wright came through and they told
9 him they didn't know he was a cop, or
10 else get the hell out of there, and now
11 they've got the school bus down in that
12 corner, and they're bringing a dump
13 truck in. They're in the kiosk with
14 the windows down, so..."

15 And these are the words I want you to
16 focus on:

17 "They're waiting for us to do
18 something."

19 And then he goes on to say:

20 "So I just called the TRU team in, and
21 we're probably --[I'm skipping a few
22 words]

23 We're probably going to go down and
24 arrest that group of eight (8) or so
25 people blocking the roadway, and

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1 there's no doubt that, you know,
2 they're waiting for something."

3 And then he goes on. Did you see that
4 statement by Inspector Linton?

5 A: Yes.

6 Q: Okay. And you understood that that

7 was his assessment of the situation at the time?

8 A: Sure.

9 Q: Okay. And if you go to Tab 52, this
10 is another conversation that you had with him a couple of
11 minutes later. I think there was a problem on the line.
12 Page 332, second quote from Linton, he says:

13 "My concern is that you have the school
14 bus moving down there, you've got the
15 dump truck moving down there, you've
16 got people in the kiosk pulling the
17 blinds all down and I think that, you
18 know, the threat of maybe sniper fire,
19 or like they're doing something inside,
20 getting ready for us."

21 Do you see that statement?

22 A: Yes. Right.

23 Q: And you see that assessment?

24 A: Yes.

25 Q: And I suggest to you that it was

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1 Inspector Linton's assessment that the people who were in
2 the Sandy Parking Lot were anticipating a -- a conflict
3 with you, with the OPP; isn't that correct?

4 A: It's possible, yes.

5 Q: Well that was -- that was his
6 assessment at the time, correct?

7 A: Right.

8 **Q: And -- but they were in the parking**
9 **lot waiting and expecting you to come down the road; that**
10 **-- that's what his assessment was, right?**

11 A: Yes.

12 **Q: And that was a reasonable assessment,**
13 **was is not, Inspector Carson? As opposed to some**
14 **scenario where they're massing the troops to go and**
15 **invade the cottages with baseball bats; isn't -- isn't**
16 **that a more reasonable interpretation of events?**

17 A: Sure, it's -- it's a possible set up;
18 there's no problem -- no doubt about that.

19 Q: So did it occur -- did it -- did you
20 ask yourself the question, what -- what is it that they
21 needed to have baseball bats for?

22 Did you -- did you ask yourself the
23 question, perhaps it's a rational explanation, as to why
24 these people in the Sandy Parking Lot have baseball bats?

25 A: I can't tell you if I asked myself

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1 that question.

2 Q: Okay. Well, it -- it didn't --

3 didn't occur to you, then, that maybe they were expecting

4 to be attacked by people with clubs or bats; did that

5 thought cross your mind?

6 A: I couldn't tell you if it did or it

7 didn't.

8 Q: Well, it seems to have occurred to

9 Inspector Linton that that's what they were doing, that

10 they were anticipating some sort of a movement by the

11 OPP, right?

12 A: That appears what he's referring to,

13 yes.

14 Q: And in fact, as events unfolded, you

15 did send people down the road to confront the occupiers

16 with clubs, correct?

17 A: Correct.

18 Q: Except that you also had people with

19 guns hiding in the bushes, is that right?

20 A: Correct. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p.148-152]

viii. Gerald George Incident.

The final explanation proposed by John Carson to explain his decision to deploy the CMU and TRU on the evening of September 6, 1995 was that it was in response to an escalating situation evidenced by an attack by a group of occupiers on a passing vehicle. Through his examination, it was established that, contrary to various OPP reports at the time, the vehicle of a passing female resident was not attacked by 5 to 8 “natives with baseball bats.” Instead, as the Inquiry has heard more accurately, Gerald George, a Kettle and Stony Point Band councillor who had written a letter to the editor of a local paper that reflected poorly on the occupiers, had driven to the Park to speak with them. As he was driving away, one of the occupiers threw a rock at his car, denting the rear fender. Gerald George then stopped at an OPP checkpoint to file a report.

On cross-examination, John Carson conceded that he made no effort during a period of some two or three hours between receiving the report and ordering the CMU to begin marching down the

road, to confirm the erroneous reports of the woman's car being attacked with baseball bats prior to making the high-risk decision to deploy the CMU and TRU:

15 Q: Right. Now, I want to just go to the
16 last point in terms of your thinking, your decision
17 making process, when you decided to send your officers
18 down the road, and that's the Gerald George incident, the
19 -- the car incident?

20 A: Oh, yes, yes, I'm sorry.

21 Q: And we've already amply gone into the
22 fact that the information you had was wrong, and you
23 don't dispute that, that it was wrong in many significant
24 respects?

25 A: That's fair. [Emphasis Added]

[Horton Examination of John Carson, June 27, 2005, p. 156-157]

Thus, none of the potential rationales offered by John Carson provide a convincing explanation for why the OPP, which up until that point had promoted the exercising of extreme caution, would depart from their operational plan and policy and march toward the park to confront the occupiers in the middle night. No other rationale was identified by John Carson in support of his decision.⁴⁹

Moreover, to the extent that any of his rationales would have raised some concern at the time, the stated OPP plan and policy would have dictated that more information be gathered.

The only remaining, logical explanation for John Carson's decision is that he was influenced, either consciously or subconsciously by the Harris Government's clearly expressed desire to take swift affirmative action against the occupiers.

⁴⁹ Horton Examination of John Carson, June 27, 2005, p. 181.

CONCLUSION

On the evening of September 6, 1995, John Carson, contrary to the OPP's operational plan and general policy, and without any evident justification, deployed the heavily armed CMU and TRU in the dark to confront the First Nations protestors who were occupying an empty provincial park that was closed for the season. At the time that he made his decision, John Carson was aware that the Premier of the province was displeased with the performance of the OPP up to that time and that he wanted swift, affirmative action.

Carson's receipt of that information provides the only reasonable explanation for his decision to take such dangerous action as deploying the CMU and TRU at night without any confirmed threat of death or serious injury.

The reality is that the actions of the OPP on the evening of September 6, 1995 were entirely consistent with the preferred option that had been expressed by Deb Hutton and the Premier over the course of the previous two days. Premier Harris stated in a loud voice "I want the fucking Indians out of the Park." The act taken by the OPP was the logical, foreseeable and desired result of the proactive, actioning approach that the Harris Government had been pursuing.

Clearly, the death of Dudley George was a tragedy, but it was a risk that had been entirely foreseen by experienced civil servants and police officers over the course of the previous days. The Harris Government ignored these warnings and did so to further the anti-native policies that they had been elected on.

It is not possible to know with certainty what is in peoples' minds, not even after protracted inquiry and enormous effort. That is why the law presumes that people intend to cause those results which are the natural and probable consequences of their acts.⁵⁰

Government policies have consequences. Dudley George died as a result of the anti-native policies of the Harris Government and the specific interventions of Mike Harris in the occupation of Ipperwash Park.

⁵⁰ *McNichol v. Grandy*, [1931] S.C.R. 696 quoting *Huth v. Huth* [1915] 3 K.B. 32; *Young v. Toronto Star Newspapers Ltd. et al*, 77 O.R. (3d) 680, [2005] O.J. No. 4216; *R v. Grossman*, [1994] O.J. No. 4078 at 18

The prevention of such tragedies in the future requires a change in the way our governments deal with First Nations people. Changes to the legal structures of government are not in themselves sufficient. The IMC was established to provide a framework and process for dealing with frustrations of First Nations people who had suffered hundreds of years of injustices. But this was insufficient for dealing with an attitude and approach to First Nations issues that was as hostile to aboriginal persons as that of the Harris Government. Without understanding and accepting the frustration felt by First Nations people after centuries of mistreatment, governments will be unable to deal effectively with their legitimate claims and grievances or to build relationships with First Nations to prevent such tragedies from occurring in the future.

The issue is not what can be done to better protect the police from political interference. The issue is how to make both the government and the police more responsive and accountable in their dealings with First Nations. Many witnesses at the Inquiry sought to fill real or alleged gaps in their memory with idealized accounts of how government is supposed to work. Although all the facts can never be objectively established, the Ipperwash Inquiry has given us a unique insight into how government processes actually work to the prejudice of aboriginal people. The problem is nothing less than a corrosive and systematic refusal within the entire legal system to provide appropriate mechanisms for addressing the legitimate claims and grievances of First Nations people.

In idealized political theory, the law must be respected. In the real world, respect must be earned – even by the law. For this purpose, the effect of the law is perceived by those against whom it is enforced as indivisible, with no distinctions between levels, branches or agencies of government. It is a matter of political leadership to ensure that the law is used, and is seen to be used, as a fair arbiter of the rights and obligations of all. An emphasis on swift-legal procedures to deal with protests by those whose claims have been ignored for many lifetimes and deliberately hobbled by our government and legal system is neither fair nor just. If it is perceived by an individual or community that the law is being used to break them, they may come to view the breaking of the law as a matter of indifference, or even as a justified necessity.

The failure of the Canadian legal system to provide effective and timely redress to the legitimate claims and grievances of First Nations created the explosive situation which existed at Ipperwash

and which exists elsewhere in Canada today. The short-sighted, divisive and abusive attitudes of Mike Harris and his government with respect to aboriginal people lit the fuse at Ipperwash.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25th day
OF JULY, 2006**

“Signed William G. Horton”

William G. Horton
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