

IN THE MATTER OF Order in Council 1662/2003, dated November 12, 2003;

AND IN THE MATTER OF a Commission of Inquiry pursuant to the *Public Inquiries Act*, R.S.O. 1990, c. P.41, as amended;

AND IN THE MATTER OF an Inquiry into the events surrounding the death of Dudley George and the development of recommendations directed to the avoidance of violence in similar circumstances

SUBMISSIONS ON BEHALF OF THE ONTARIO PROVINCIAL POLICE

AND ITS SENIOR OFFICERS

PART II

Mark J. Sandler
Andrea E.E. Tuck-Jackson
COOPER, SANDLER & WEST
Barristers & Solicitors
439 University Avenue
Toronto, ON
M5G 1Y8

Tel.: (416) 585-9191
Fax: (416) 408-2372

E-mail:
msandler@criminal-lawyers.ca
atuckjackson@criminal-lawyers.ca

Counsel for the Ontario Provincial
Police & its Senior Officers

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(1) INTRODUCTION

1. The Commission's most important work is in making recommendations to prevent similar violence in the future. The recommendations must be practical, address areas in which improvements can be made, and equally important, provide support for existing best practices.
2. The latter point cannot be overemphasized.
3. Since 1995, the OPP has introduced a wealth of initiatives to build respectful relationships with Aboriginal communities, to promote self-determination by First Nations communities of their own policing needs, and ultimately self-directed First Nations police services where practicable. Those initiatives have radically changed how OPP officers are selected and trained; how diversity in the ranks of officers and managers is valued and promoted; how cultural awareness is taught as part of an ongoing commitment by the organization throughout the career of an officer, and how specialty programs, such as ERT, TRU, Crisis Negotiation, POU, Incident Command, and Intelligence have evolved to reflect, in the context of Aboriginal incidents, best practices including relationship building, cultural competence, and preventative and proactive policing. New specialty programs have been introduced, such as ART, MELT, and Crisis Mediation. They now all operate within a Framework that emphasizes flexibility, relationship building, dialogue, knowledge and awareness of Aboriginal perspectives and culture, and the use of force only as necessary and as carefully measured. Some of these initiatives are innovative, and unique to the OPP. A number also accord with the development of best practices by other large

police services.

4. Several Part II presentations by the parties have fairly acknowledged Commissioner Boniface's leadership and commitment in this area, but some question whether these initiatives are fully institutionalized; that is, whether they will survive her tenure. As will be demonstrated here, the breadth of these initiatives, their incorporation in Police Orders and other official policy and in the business planning of the organization, the many officers who are committed to their success, and the many more who have entered the force at a time when they form a centerpiece of the OPP's vision, strategy, and culture all support the view that they are here to stay. Having said that, it remains of critical importance that these initiatives be identified by the Inquiry as best practices, and explicitly supported by the Inquiry in its recommendations. This recognition not only further assists in "institutionalizing" these initiatives, but helps ensure that they receive adequate financial support from governments, and that they be considered by other police services and agencies in crafting their own practices. It also assists in educating the public, whose awareness of Aboriginal/police relations is more often fueled by controversy than by successes.

5. Recent events emphasize the importance of educating the public about best practices. The OPP has been criticized by some members of the public for "assuming the role of peacekeepers" in Caledonia and for the exercise of discretion, flexibility and restraint, as if acting as peacekeepers were not an appropriate role of the OPP, and as if force were the only remedy to address such situations. This Inquiry can serve a critical function by identifying, for the public, principles that

should inform police responses to Aboriginal occupations and protests.

6. The OPP Part II Submissions are organized in the following sections:

- (1) Introduction
- (2) Policing Aboriginal Occupations and Protests
- (3) Aboriginal/Police Relations Generally
- (4) Police/Government Relations
- (5) Aboriginal and Treaty Rights
- (6) Additional Submissions and Recommendations

7. The OPP has already provided the Inquiry and the parties with considerable Part II content, identifying the current best practices of the OPP, the evolution of its specialty programs and its response to Aboriginal critical incidents, and its initiatives to build respectful relationships with Aboriginal communities. These were outlined, in large part, through:

- The OPP Forum
- The testimony of Commissioner Boniface and others
- The OPP Incident Simulation and Orientation
- The relevant Police Orders, Standard Operating Procedures, Manuals, and Training Standards
- The OPP Part II Materials (Tabs 1-10)

8. Many of the submissions that follow are drawn from these presentations and materials. As well, the OPP benefited from the presentations made at the Chiefs of Ontario Forum, and from the many research papers commissioned by the Inquiry, or introduced by the parties.

(2) POLICING ABORIGINAL OCCUPATIONS AND PROTESTS

9. Part A of the June 2006 Discussion Paper on Policing Occupations and Police/Aboriginal Relations is extremely helpful in identifying the issues to be addressed by the parties. In our view, the OPP can best assist the Inquiry in this area by directly responding to the commentary and questions generated by the Inquiry in its Discussion Paper.

UNIQUENESS OF ABORIGINAL PROTESTS AND OCCUPATIONS

10. In its introductory comments, the Discussion Paper highlights the ways in which Aboriginal protests and occupations are unique. The OPP concurs that they are unique, and that this uniqueness requires police training and strategies specific to Aboriginal incidents. The OPP Framework for Police Preparedness for Critical Incidents (the Framework) is an example of a strategy that is specially crafted to address Aboriginal incidents, but is also compatible with current best practices for managing incidents generally. Put simply, key features (such as pre-incident relationship building, ongoing communication, understanding the issues, flexibility in approach) also represent best practices for managing a labour dispute or an anti-war protest.¹ However, the unique characteristics of Aboriginal protests and occupations must be fully understood in order to promote their peaceful resolution.

¹As the Discussion Paper notes, de Lint concludes that developments in policing Aboriginal occupations and protests appear to be consistent with contemporaneous developments in the policing of public order events generally.

11. The OPP adopts the Inquiry's outline of ways in which Aboriginal occupations and protests are truly unique. Some elaboration on the OPP experience here might be helpful. For example, the Discussion Paper reflects that occupations and protests may involve communities divided internally. As well, the protesting group may have a contingent of outside members who reject the police role in principle.

12. These comments accord with our experience. Occupations, blockades and other protests may involve Aboriginal communities that are divided in a variety of ways, such as:

- On the merits or legitimacy of the protestors' position;
- On the tactics that should be employed by the protestors;
- On the roles, if any, that First Nations political organizations, elected and traditional leaders, Elders, clan mothers and the protestors themselves should assume in directing or otherwise influencing the course of the protest, and in negotiations on public safety issues with the police, or on whether such negotiations should even take place;
- On who should negotiate with governments or other interested parties on the substantive issues; and on what preconditions should be met before the protests are ended;
- On whether the police have any role to play whatsoever (e.g. whether the protestors can be policed by anyone other than themselves) or on which police services should and should not respond or be in close proximity to the incident;
- Where outsiders -- that is, non-local First Nations or other individuals -- join the protest, or otherwise influence its conduct, on the role that these outsiders should play, and whether they are likely to reduce or exacerbate the likelihood of violence;
- There may be consensus over the legitimacy of the rights being asserted, but disagreement over the identity of those who are entitled to assert or benefit from those rights.

13. These examples reinforce the importance of understanding what is at issue, the various positions being taken, and the full range of interested and influential parties, Aboriginal and non-Aboriginal. They also reinforce the complexities in negotiating a peaceful resolution to Aboriginal critical incidents.

LIMITS AND POTENTIAL OF POLICING OCCUPATIONS AND PROTESTS

14. In its introductory comments, the Discussion Paper also reflects that Aboriginal protests and occupations may require intervention by the federal and provincial governments. Elsewhere, the Discussion Paper reflects that the success of the police operation often depends on others, including governments and/or the First Nations or Aboriginal community, taking steps to address the issues.

15. This point is an important one.

16. Police generally cannot and should not negotiate the substantive issues between protestors and governments or third parties. In our view, Aboriginal occupations, blockades, and other forms of protest, almost invariably make governments (federal, provincial, First Nations and municipal) interested parties. This means that the ability of the OPP to resolve an incident peacefully can be undermined by:

- A crisis-oriented approach by governments (reacting to crises rather than heading them off);
- Delayed involvement where timely involvement may diffuse a potentially volatile situation;

- Non-involvement, where such involvement is called for;
- A government response that does not reflect long-term strategic thinking; or
- A response that is inconsistent with the approach represented by the Framework.

17. Many witnesses and research papers have voiced the frustrations borne out of an untimely and under-resourced resolution of Aboriginal issues. Although there is a wealth of literature documenting this problem, it remains deeply problematic, and the OPP continues to find itself forced to address its consequences. It is more appropriate for other interested parties to make recommendations to break this logjam, but the OPP lends its support to any recommendations that make the speedy and just determination of Aboriginal claims more likely. Indeed, with respect, there is no greater imperative for this Inquiry than to address this problem. The best way for the OPP to address a critical incident is to have no incident at all.

18. The Discussion Paper also notes that the police role may be complicated by the conventional view of government/police relations that draws a bright line between policy and police operations. This point is fully addressed in Part 4 of these submissions (Police/Government Relations), but should be briefly discussed here.

19. It is generally well recognized that certain police activities should not be subject to direction or interference by government. This is often framed in terms of “operational independence” and draws upon the distinction between policy decisions (said to be the responsibility of government) and operational decisions (said to be the responsibility of police.) As will later be developed, these distinctions are not so

simply made. This is particularly true in the context of Aboriginal occupations or protests where policy and operations often intersect.

20. The peaceful resolution of Aboriginal occupations and protests often requires the sharing of information or views between police and government. For example, in making policy decisions, including whether to seek injunctive relief, governments should understand the dynamics on the ground. That perspective comes, in large part, from the police. An informed government will be better situated to make policy decisions that will reduce the likelihood of violence. This requires the flow of information, particularly historical information, from the police to government. Conversely, in making operational decisions to preserve the public peace, the police should understand what policy decisions have been made or are likely to be made by government.

21. It follows that the sharing of information between government and the police is of great importance, and properly utilized, will facilitate the peaceful resolution of incidents. Further, this sharing must be timely. For example, if government decides that it will publicly announce the end of negotiations with occupiers, the police should not hear about it for the first time when the announcement is made. Such decisions have Public Order implications. Indeed, they may compel more focused dialogue between occupiers and the police, or the marshalling of police resources to deal with possible fallout.

22. There are instances where these principles are misunderstood, and where important policy decisions are not communicated in a timely way to the police. This

may occur based upon misunderstandings of the true lessons to be learned from Ipperwash. When federal, provincial or other governments make policy decisions on Aboriginal disputes (e.g. whether there will be negotiations, what will be negotiated, what court actions will be taken or will be contemplated) and fail to communicate those decisions in a timely way to the police, public safety may be endangered.

23. In summary, the policing of Aboriginal occupations and protests must, as a best practice, include ongoing sharing of information between all interested parties, including government and the police. As will be highlighted elsewhere, legitimate concerns of avoiding either the appearance or reality of political interference need not be addressed through costly and complex structural changes, but through some simple measures to enhance transparency and accountability. These will be described in section 4 of these submissions.

POLICE OBJECTIVES

24. The Discussion Paper provisionally identifies several objectives for police in addressing Aboriginal occupations and protests:

- Protect and restore public order;
- Minimize the risk of violence at occupations and protests;
- Facilitate the exercise of constitutionally protected rights; and
- Facilitate the building of trusting relationships that will assist Aboriginal and non-Aboriginal policy-makers in order to constructively resolve the dispute in issue

Question 1: Are these principles appropriate to guide the Inquiry's analysis and recommendations on policing occupations and protests? Or, should there be others and what should they be?

25. The OPP accepts that these principles are appropriate to guide the Inquiry's analysis and recommendations. Indeed, they find expression in the *Purpose* section of the Framework:

- Promote an operationally sound, informed and flexible approach to resolving conflict and managing crisis in a consistent manner;
- Offer a framework that demonstrates accommodation and mutual respect of differences, positions and interest of the involved Aboriginal community and the OPP; and
- Promoting and developing strategies that minimize the use of force to the fullest extent possible.

26. The OPP respectfully requests that the Inquiry Report also specifically recognize, in this context, the role of the police as peacekeepers. As noted in the Introduction, the OPP has recently been criticized at Caledonia on the basis that it should be enforcing the law, not acting as a peacekeeper. Protecting and restoring public order or safety necessarily involves keeping the peace. A peaceful site promotes the safety of all interested parties.

27. This means, in practice, that the enforcement of the law requires the exercise of discretion. Discretion may involve whether, when or how enforcement action is taken to address alleged breaches of the law. There is nothing new about this principle, or exclusive in its application by the OPP. It represents identified best practices in jurisdictions across Canada and elsewhere. Further, the OPP recognizes that the exercise of discretion must be informed by circumstances, including the fact

that it arises in the context of an assertion of Aboriginal rights. This does not mean that anyone, Aboriginal or non-Aboriginal, is “above the law”. It means that enforcement of the law is always contextual and done with regard to the overriding police objectives identified earlier. Again, there is nothing new about this principle or exclusive in its application to the OPP. That being said, these principles are often misunderstood by members of the public, or unexplained in the media. This, again, has been evidenced during the Caledonia dispute.

POLICE RESPONSES TO OCCUPATIONS AND PROTESTS

Best Practices

28. In its Discussion Paper, the Inquiry addresses best practices to reduce the risk of violence. The paper notes Clairmont and Potts recommendation that the potential for violence is reduced if police and others strive to build a web of mutual support or interdependence between police/protestors and promote trusting relationships that encourage and facilitate peaceful negotiations. This involves, in part, the institutionalizing of conflicts.

29. We agree. The OPP initiatives to build respectful relationships with Aboriginal communities (elaborated upon in response to later questions) are all intended, amongst other things, to ensure that when a critical incident develops or might develop, the OPP has already established trusting relationships that facilitate discussion and resolution. Building trusting relationships cannot await a crisis.

30. Several of the OPP initiatives are of particular importance in the context of institutionalizing conflicts:

- The position of the Aboriginal Liaison Officer -- Operations, together with regional liaison officers and ongoing dialogue between Detachment Commanders and First Nations leaders as part of regional or local business plans, all ensure that these relationships exist;
- ART and MELT are specifically designed to foster these relationships even before a critical incident and draw upon them when such incidents may occur;
- The Commissioner's Select Liaison Council on Aboriginal Affairs (now to be complemented by regional liaison councils) not only fosters these relationships, but provides resources when issues arise;
- The Regional Aboriginal Strategy Committees can be drawn upon in a similar way;
- All of the initiatives designed to promote cooperation, understanding and interoperability between existing First Nations police services and the OPP (such as job shadowing, NAPS Investigative Unit, ISSU, secondment of OPP officers to First Nations services and joint operations and training) build relationships with First Nations communities, through their police services, and facilitate an earlier understanding of issues percolating in the community;²
- Of course, the Framework is central to this approach. It is elaborated upon at various points in these submissions.

31. Clairmont and Potts identify two related, but distinct categories, to meet the appropriate police objectives: an appropriate policing strategy or style; and institutional policies and capacities.

² See Under Siege: How the People of the Chippewas of Awash Unceded First Nation Asserted Their Rights and Claims and Dealt with the Backlash (December 16, 2005) at 151 where the analogy between "secondments" and First Nations' "adoptions" is made.

Policing Strategy

32. Clairmont and Potts note that interviewees consistently identified police strategies during an occupation or protest to reduce the risk of violence in the following ways:

- Understand and respect the history, traditions, culture, and claims of Aboriginal protestors;
- Listen, communicate and negotiate honestly;
- Be patient and emphasize communications at every turn;
- Remain neutral as to the substance of the dispute;
- Build trusting relationships with protestors, First Nations communities and others involved in an occupation and protest;
- Commit to minimizing the use of force and to escalate only to prevent personal harm or serious property damage; and
- Maintain public order.

33. All of these complementary strategies are specifically articulated in the OPP Framework, and in the training surrounding its application. Several deserve additional comments:

34. Understand and respect the history, traditions, culture, and claims of Aboriginal protestors -- This is now a centrepiece of the OPP strategy not only in relation to occupations or protests, but generally. It is not only articulated in the Framework, but supported by the OPP Promise and Focus on Professionalism, the Mission Critical Issues, the corporate, regional and local business plans, and most importantly, in the introduction of Native Awareness Training to applicants, recruits

and recruiters, probationary officers, front-line officers, specialty teams, intelligence personnel, Professional Standards Bureau investigators and Incident Commanders.

35. Commit to minimizing the use of force and to escalate only to prevent personal harm or serious property damage, and maintain public order --In addition to the points already made, the Gradual Application of Force (GAF) now forms an integral part of training of OPP members, including ERT members, Incident Commanders and POU Commanders. The present command structure for POU events (Gold-Silver-Bronze) also ensures that Bronze POU Commanders are well positioned (on the scene) to make the very best decisions on use of minimal force. ³

Institutional Policies, Resources and Capacity Building

36. Clairmont and Potts also identify a number of institutional policies, resources and capacities that contribute to improving the web of mutual support/interdependencies, institutionalize occupations and protests, and thereby reduce the potential for violence. The OPP agrees. The four that are specifically identified are commented upon immediately below:

Internal policies addressing police responses to occupations and protests

37. The Framework represents the OPP's key internal policy addressing its response to Aboriginal occupations and protests. It is now part of Police Orders and the OPP's "critical policy"⁴. Equally important, the OPP has taken steps to ensure

³ See OPP Part II materials, Tab 5 (OPP Public Order Units: A Comparison of 1995 to 2006)

⁴ A "critical policy" is a policy that has been determined to be of extreme importance to OPP

that it is used across the Province.

38. There are two separate monitoring processes in place.

- The Manager of Emergency Management and Planning, Field Support Bureau chairs the Provincial ART Strategy Committee that teleconferences weekly. This forum is used to share information about ongoing and potential incidents. The Framework is at the centre of every discussion and the Chair of the Committee monitors its use;
- Incidents assessed to be high-risk are under the command of a Level 2 Incident Commander. There is a mandatory operational review of every Level 2 Incident by a member of the L2 IC Review Committee, which is made up of four Commissioned Officers including the Field Support Bureau Commander, Incident Command Program Manager, Lead Level 2 Incident Commander Instructor and one Regional Senior Level 2 Incident Commander. If the incident has involved a First Nations community or Aboriginal subject, the Framework is one of the areas reviewed to ensure that the Incident Commander worked within the policy.

39. As well, as reflected in the OPP Part II materials, Tab 4 (OPP Emergency Response Services: Comparison of 1995 to 2006), officers are now trained on the use of the Framework. Applicants for Level 2 Incident Command must successfully demonstrate an ability to manage Aboriginal issues, and are tested on a scenario that involves application of the Framework. The Framework now figures prominently in questioning by Promotional Boards. As well, Exhibit P-1711, introduced during Commissioner Boniface's testimony, contains contemplated refinements to the Framework. One recommendation made by the Chiefs of Ontario and accepted by the OPP is that the Framework be disseminated to all self-directed and OPP administered First Nations police services, as well as to communities that are policed directly by the OPP. The OPP goal is to complete this process by the end of 2006.

employees from an operational perspective.

Protocols between police and other police services, First Nations governments or organizations, and/or other agencies involved in occupations and protests

40. There are operational protocols between the OPP and most First Nations police services in Ontario. See, for example, the Operational Policing Service – Protocol Agreement between Nishnawbe-Aski Police Service and the Ontario Provincial Police June 27, 2003 (which forms an attachment to the draft OPP Part II materials (Aboriginal Initiatives: Building Respectful Relationships), distributed at the OPP Forum.

41. There is no existing protocol between the OPP and the MNR. MNR may be acting in an enforcement capacity (analogous to the role of police), or as an interested party in a rights dispute, or both. The OPP would welcome working with the MNR on an operational protocol that conforms to the approach and best practices identified in the Framework. Where MNR is acting alone in an enforcement capacity, it may wish to consider adoption, in whole or in part, of the principles articulated in the Framework.

42. The OPP is not a party to protocols with DFO or DIAND. It is a party to protocols with the Chiefs and Councils of First Nations communities such as Oneida, Chippewas of the Thames and Cape Croker whose police services are OPP administered.

43. The OPP is currently working with the Chiefs of Ontario and Nishnawbe-Aski Nation to develop communication/dialogue protocols.

44. In response to later questions, the OPP will address whether additional protocols should be entered into, similar to the RCMP/AFN protocol.

Effective internal police training and supports for Aboriginal conflict resolution and peacekeeping

45. The Aboriginal Relations Teams (ART) are mandated to provide “support and assistance in the spirit of partnership in building respectful relations between police services and Aboriginal peoples and communities while honouring each one’s uniqueness and the Creator’s gifts with dignity and respect.” The Major Event Liaison Teams (MELT) are mandated “to establish and maintain open and transparent lines of communication with all stakeholders who may be affected, directly or indirectly, by major events. A Major Event Liaison Team will work towards building a relationship of trust, mutual understanding, and respect between police and stakeholders.” It follows that ART and MELT members, as well as the Aboriginal Liaison Officer – Operations, and the Crisis Mediator under the Framework are all involved in Aboriginal conflict resolution and peacekeeping.

46. This is the most important component of the training for ART and MELT members. A Training Syllabus for ART/MELT forms an attachment to the draft OPP Part II materials (Aboriginal Initiatives: Building Respectful Relationships), introduced at the OPP Forum. It reflects sessions dedicated to:

- Emotional Intelligence;
- Difficult Conversations;
- Negotiations;
- Selecting Conflict Management Styles;
- Conflict/ADR Models/Approaches to Conflict;
- Positions to Interests;

- Barriers to Communication/Culture;
- Framing and Reframing;
- Anger; and
- Scenario (Clash of Cultures).

47. As well, the Crisis Negotiators basic training or “Foundation Course” is two weeks long, which exceeds Provincial Adequacy Standards. It is dedicated to conflict resolution and negotiations. There is a one-day Aboriginal component. In addition, the one-week Native Awareness course is mandatory for all crisis negotiators. As well, due to inreach initiatives, there are now seven Aboriginal crisis negotiators.

Support for alternative dispute resolution within First Nations communities

48. The OPP supports the provision of financial resources to First Nations communities for alternative dispute resolution services. These may form part of the community policing model of First Nations police services or be offered through other agencies. The OPP currently offers Crisis Negotiator training to First Nations police services, and the OPP also utilizes the trained First Nations police services negotiators where appropriate. These trained negotiators could provide support for alternative dispute resolution within First Nations communities.

Ontario Provincial Police

49. The Discussion Paper notes the importance of the Framework, which appears consistent with best practices and also represents an important policy statement of

the organization's public commitment to minimize the use of force and promote peaceful conflict resolution. Questions focus on the Framework's implementation, effectiveness, sustainability, and accountability.

50. The Discussion Paper asks how the OPP will ensure that this approach is embedded across the organization. Our answer is fully contained in paragraphs 37 to 39 above and need not be repeated here. The Discussion Paper also says that Caledonia raises questions about whether this approach can be sustained in the face of opposition from some non-Aboriginal third parties and potentially inconsistent court decisions. The success of this approach in these circumstances may depend on government support.

51. Nothing that follows should be taken as a comment on the ongoing court proceedings in Caledonia. But some principled observations can nonetheless be made.

52. Opposition to the Framework's approach is not unexpected. People are entitled to their opinions. However, in the OPP's experience (reaffirmed by recent events), this opposition is sometimes deeply offensive, and at times hateful and racist. Intemperate opposition often obtains a disproportionate voice in the media. It may be articulated, for example, in stereotypes about Aboriginal peoples and the assertion of their rights. Intemperate, aggressive, hateful or racist expressions inflame any incident, make its peaceful resolution more difficult, and leave scars in the community not easily healed. Although often overlooked, it also has an emotional impact on the Aboriginal and non-Aboriginal OPP officers who are exposed to it on a

daily basis.⁵

53. The Framework's approach can be sustained in the face of opposition and issues surrounding court decisions. However, there is no doubt that opposition can make its application more difficult. In our view, this can be addressed in several ways.

54. First, an Aboriginal occupation or protest may impact not only on existing users of occupied or blockaded land, but adjacent property owners and communities. Professor Coyle indicates in his paper that ONAS has served a liaison role with the public and with land users who may be affected by a possible settlement of an Aboriginal land claim in an effort to identify and address their concerns.⁶ The OPP and its Commissioner can and do meet with the public and interest groups to address public safety concerns. Governments and other interested parties must also prioritize informing local members of the public and officials on the substantive issues and their impact in a timely way.⁷

55. Second, there is ample support for the view that the public generally (apart from those locally affected) has little appreciation of Aboriginal rights. Professor Coyle eloquently makes the case that the public has little understanding that the basis of Aboriginal land claims is Canadian law, and that not only is there a legal basis for land claims arising from Canada's history, but that Aboriginal peoples have

⁵ See Wawryk, *The Collection and Use of Intelligence in Policing Public Order Events* at 26. The author states that anonymous critics of measured response can "contribute to the demonization of the protestors (indeed of the police) and skew public opinion."

⁶ See Coyle, *Addressing Aboriginal Land and Treaty Rights in Ontario: An Analysis of Past Policies and Options for the Future*, at 46.

⁷ *Ibid.* at 63.

continuing rights that receive constitutional protection.⁸ Nor, in our view, does the public generally understand that this is not some favour or charity bestowed upon Aboriginal peoples, or assertions driven only by “ancient history.” That is not to say that every assertion of Aboriginal or treaty rights has merit. But it dispels the notion that all such claims are presumptively unwarranted. Simply put, the public at large might be more tolerant of a measured, flexible approach if the invalidity of Aboriginal assertions was not presumed.⁹ The need for public education on Aboriginal issues is articulated in a number of the Part II papers presented to the Inquiry, and in the recommendations of various Inquiries, including the Royal Commission on Aboriginal Peoples.¹⁰ The OPP strongly supports such recommendations, and their importance.

56. Third, the De Lint paper suggests that Oka demonstrated that a hasty use of injunctions quickly challenges police to apply the law. “Where ground is disputed and where the dispute is constitutional, attempting to resolve the matter through the terms of an injunction is to quickly reduce the scope of communications to an off-site interpretation of legality.”¹¹

57. The OPP position concerning court injunctions is more nuanced than it was in 1995. In 1995, there was a presumption that competing land claims/occupations

⁸ *Ibid.*, at 2.

⁹ *Ibid.* at 63. Professor Coyle makes the related point that increasing public access to land claim information may increase public support for efforts to resolve land claims.

¹⁰ See Consultation respecting Coyle, *Addressing Aboriginal Land and Treaty Rights in Ontario: An Analysis of Past Policies and Options for the Future* (April 29, 2005) at 4 (Peter Russell); Royal Commission on Aboriginal Peoples, at 2.2.1 and 3.5.9 (cited in *Under Siege: How the People of the Chippewas of Awash Unceded First Nation Asserted Their Rights and Claims and Dealt with the Backlash* (December 16, 2005)); Nashkawa, *Anishinabeck Perspectives on Resolving Rights Based Issues and Land Claims in Ontario for the Union of Ontario Indians* (February 16, 2006) at 9.

¹¹ de Lint, *Public Order Policing in Canada: An Analysis of Operations in Recent High Stakes Events* at 34.

should necessarily be addressed through the injunctive process. Prior incidents had successfully been resolved through the injunctive or court process, not necessarily by immediately acting on the court order, but by utilizing the existence of the court order to negotiate an end to the incident.

58. It remains the case that the OPP is, as a rule, not prepared to take sides on such disputes, and may require a court order to take certain types of enforcement action. However, there is also recognition by the OPP that, in some circumstances, applications for injunctive relief, the timing of such applications, or the terms of any injunctive relief, may not ultimately advance public safety and order, but may exacerbate tensions and actually inhibit the expeditious and peaceful resolution of the issues.

59. The Framework now recognizes the need for flexibility in this regard. This explains why no specific reference is made to injunctive relief in the Framework itself.

60. It follows that great consideration should be given by applicants for injunctive relief (and by governments either bringing such applications or who appear as interested parties) to whether such applications will contribute to the peaceful resolution of the incident or even advance the long term interests of the applicant. The OPP favours the creation of a government policy that complements the Framework's approach, and articulates factors that would inform the approach to applying for, or supporting, injunctive relief, and the timing of such applications. The

preservation of public order and safety should figure prominently in this policy.

61. Fourth, at present, the government appears as counsel for the OPP in court proceedings. Later in these submissions, we address measures to avoid the appearance of, if not actual, political interference. Where the provincial government asserts a direct interest in the subject matter of an Aboriginal occupation or protest (e.g. as a landowner), it may be advisable that the OPP, at its initiative, be separately represented in Court. This enhances the appearance and reality of the OPP's neutrality in any claims dispute, and its ability to negotiate on public safety issues.

Question 3: Is the OPP Framework an appropriate approach? What other policies or resources are needed to support this approach?

Question 4: How can or should the provincial government support the Framework?

62. The OPP believes that the Framework represents a "best practice" for responding to Aboriginal critical incidents. It was introduced during the OPP Forum, when the OPP invited a dialogue on it, as well as other OPP initiatives.

Commissioner Boniface, in her testimony at the Inquiry, introduced refinements to the Framework, arising out of the OPP and Chiefs of Ontario presentations, as well as during the OPP Incident Simulation and Orientation. These refinements are discussed in the OPP Part II materials, Tab 2 (Aboriginal Initiatives – Building Respectful Relationships, Section G) and are not reproduced here.

63. Immediately above, we outlined how the provincial government can support the Framework. The federal government should not be overlooked here. As

previously indicated, it is almost invariably an interested party respecting Aboriginal critical incidents. Further, in the OPP's experience (and as reflected in Professor Coyle's paper), the division of powers between federal and provincial governments means that in many cases, neither level of government can fully resolve a land or treaty claim on its own. The OPP favours the development of a federal policy that complements the OPP 's approach to Aboriginal critical incidents, and creates a process (as recommended by Professor Coyle) to enable Ontario and Canada to resolve, in a timely way, disagreements between them about their share of responsibility for past actions of the Crown.¹²

64. Earlier, the point was made that governments must develop a timely, well-resourced capacity to respond to assertions of Aboriginal rights. Professor Coyle reflects, in his paper, that ONAS (now OSAA) is, on its own admission, significantly under-resourced. Adequate resources, financial or otherwise, should be directed to the resolution of Aboriginal issues.

65. Finally, the Framework has its best chance for success if it continues to be supported by all of the OPP initiatives to build respectful relationships with the Aboriginal community. Those initiatives, including training of officers on how to apply the Framework and on Native Awareness, are now being done within existing budgets. This is true also for recent initiatives, such as the anticipated expansion of ART to meet future needs. Their continuation and enhancement depend on adequate financial resources.

¹² Ibid. at 34,62.

RCMP First Nations Protocols

66. Clairmont and Potts conclude that protocols can be valuable when policing occupations and protests by helping to create an atmosphere of communication, understanding, trust and collaboration that help institutionalize contention. They cite the RCMP protocols with First Nations, such as the protocol with AFN which provides for agreement to strike a special group drawn from lists advanced by both parties that will meet with local officials and explore peaceful resolutions. The RCMP in British Columbia has also entered into a protocol with the federal Department of Fisheries and Oceans and the B.C. Aboriginal Fisheries Commission, representing the interests of Native fishers.

Question 5: Should the OPP or other Ontario police forces develop public safety protocols with First Nations on a provincial or local basis similar to the RCMP protocols?

67. If First Nations political organizations in Ontario (whether COO or the Provincial Territorial Organizations) wish to explore operational or public safety protocols in Ontario, the OPP would be highly receptive to doing so. COO in its Part II presentation emphasized the importance of a direct dialogue between the OPP and COO on mutual issues, and it is expected that ongoing discussion will lead to a communication/dialogue protocol to enhance that direct dialogue, and promote consultation on First Nations issues. The OPP is currently working with the Chiefs of Ontario and Nishnawbe-Aski Nation to develop such communication/dialogue protocols.

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

First Nations Police Services and Intra-First Nations Protests

69. Clairmont and Potts discuss the potential and limitations of First Nations police services in policing protests and occupations. It is noted that their capacity is very limited, including the lack of specialized training. They note that there may be problems when serious occupations occur off reserve where the OPP has greater capacity, but may not have ready access to or awareness of key local people. They argue that collaboration between police services could be advanced through more protocols. They also note that virtually everyone interviewed supported the development of an integrated conflict negotiation/peacekeeping team to solidify the informal relations that have developed between OPP and First Nations services. Finally, they note that many, if not most, Aboriginal occupations and protests occur within First Nations communities themselves, requiring that resources be allocated to increase the capacity for alternative dispute resolution within First Nations

communities. These and other observations generate the next three questions.

Question 6: Should the OPP and First Nations police services develop protocols to promote cooperation and clarity when policing occupations and protests?

70. The OPP does not see additional operational protocols between it and First Nations police services as the answer to the issues identified above. Operational protocols do exist between the OPP and most of the self-directed First Nations police services. (It is likely that they will ultimately exist between the OPP and all the self-directed services.) The complexities of policing occupations and protests in Ontario require the utmost flexibility in how specific incidents are addressed. Existing protocols provide flexibility within broad parameters. As witnessed during the OPP Incident Simulation, it is a well-established best practice for the OPP to seek permission as part of a consultative process before deploying OPP resources on First Nations territories. Where incidents occur “off reserve”, there are a myriad of factors that inform the roles that will be played by the OPP and the First Nations police service in responding. For example, the First Nations police service may agree to assume temporary policing responsibilities for an area normally patrolled by the OPP as part of a negotiated process to defuse tensions. Six Nations Police Service has performed this role at Caledonia. Or the OPP will draw upon First Nations police service officers to facilitate discussions with particular interested parties. In summary, each incident invites consideration of what roles should be played by the OPP and the First Nations police service. The key to a successful approach is ongoing consultation with the First Nations police service.

71. Interviewees told Clairmont and Potts – correctly – that an excellent

relationship exists between the OPP and First Nations police services. In our view, cooperation between the OPP and First Nations police services is best enhanced – not through additional protocols – but through the following:

- Support of First Nations police services coordinated by OPP First Nations Programs. First Nations and Contract Policing staff members have acted as technical advisors in every transition to a new police service. Five of the last seven provincial negotiators for First Nations policing issues have been OPP officers on loan to Ministry staff. Five of nine First Nations Chiefs of Police in Ontario are former OPP officers;
- The Nishnawbe-Aski Police Service (NAPS) Investigative Support Unit brings OPP and NAPS officers together to work on significant policing issues within the Nishnawbe-Aski Nation;
- The Integrated Support Services Unit (ISSU) was developed with Ontario's First Nations Chiefs of Police to enable the OPP, RCMP and First Nations police services in Ontario to develop crime prevention initiatives that target suicide prevention, youth empowerment and community wellness;
- The OPP has made its Native Awareness Training program available to other First Nations police services (e.g. Anishinabek, Nishnawbe-Aski, Treaty Three, Akwesasne, UCCM, and Lac Seul). As well, Aboriginal officers from Nishnawbe-Aski and Lac Seul have been invited to speak about their personal experiences in residential schools. In November 2006, there will be a Native Awareness "Train the Trainers" program to increase the number of available trainers, and enhance their own cultural and practical knowledge. Eight to ten officers from First Nations police services will be attending this program;
- As noted earlier, the OPP Framework will be disseminated to all self-directed and OPP administered First Nations police services, as well as to communities that are policed directly by the OPP. The OPP goal is to complete this process by the end of 2006;
- Developmental secondments are being offered to OPP Aboriginal officers (that is, secondments designed to develop or enhance the officers' abilities and qualifications) For example, OPP Aboriginal officers have recently served or are currently serving in the following capacities: acting Chief of Walpole Island Police, acting Supervisor of Oneida Police, acting Supervisor of Gull Bay Police, acting Supervisor of Pikangikum Police, Acting Chief of Mnjikaning Police;
- A number of OPP officers, Aboriginal and non-Aboriginal have also been seconded to provide assistance to First Nations police services. For example, a senior investigator and middle manager was seconded to Treaty Three Police; a senior officer as Chief of Lac Seul Police; a senior officer as Director of Support of Anishinabek Police Service; an officer as Operations Manager of Mnjikaning

Police Service; and an officer as Supervisor of Oneida and Walpole Island Police Services);

- The OPP Academy and First Nations and Contract Policing Bureau developed a First Nations Investigators Course in 1998 and a First Nations Family Violence course in partnership with the First Nations Chiefs of Police Association in 2000. These courses were offered to First Nations officers, whether or not they were OPP members. At present, the mode of delivery is to grant priority access at the OPP Academy to officers of First Nations police services for Sexual Assault, Criminal Investigators and Supervisors courses;
- OPP Detachment Commanders are required to meet regularly with local First Nations police services and local elected leaders to discuss issues of mutual interest. The Manager, First Nations Programs consults daily with OPP policed communities, and self-directed First Nations police services. The OPP's senior management participates in the First Nations Chiefs of Police Association, including the Commissioner. This is all in addition to the consultation that takes place between the Aboriginal Liaison Officer – Operations, regional liaison officers, ART, ISSU, senior management, senior regional command staff and First Nations communities, including their police services, in Ontario;
- The OPP and First Nations police services are joint participants in investigative or enforcement initiatives (e.g. Joint Anti-Smuggling Task Force – Akwesasne – ongoing; Integrated Border Enforcement Team – Akwesasne, Six Nations, Walpole Island, Garden River, Thunder Bay, Kenora – ongoing);
- The OPP has worked with First Nations police services on multiple training initiatives. For example, an officer has been trained as an ERT member with Mnjikaning Police Service; 12 Treaty Three officers are to be trained in emergency response containment commencing in the fall of 2006; First Nations police service officers have received training as crisis negotiators. As noted elsewhere, after leaving the OPP Academy and during their probationary period, officers job-shadow a First Nations police officer (assuming proximity of a First Nations police service) for two weeks;
- A number of OPP Aboriginal officers have joined First Nations police services. The OPP Northern Experience was a three-day version of OPPBound, a recruitment initiative done with the participation of the Nishnawbe-Aski Police Service. The Northern Experience will be repeated this fall;
- The OPP policies and Police Orders are provided to First Nations police services for their use in development their own policy manuals. OPP updates to policy are also provided by DVD for these services to assess whether their own policies should be revised.

As well, the OPP and First Nations police services have worked cooperatively on many Aboriginal critical incidents since 1995. In summary, additional operational

protocols are, in our view, not needed. The level of cooperation and interoperability between the OPP and First Nations police services is, in our respectful view, unmatched, and enhanced by flexible operational protocols that currently exist.

Question 7: Should the OPP and First Nations police services develop an integrated conflict negotiation/peacekeeping team?

72. The OPP supports an approach to conflict negotiation/peacekeeping that, again, reflects the complexities unique to the Ontario policing environment. There are 134 First Nations in Ontario that are currently served by 12 police services. The OPP provides direct policing to 20 First Nations and administers policing for 19 more First Nations. There are currently nine self-directed First Nations police services, four of which are regional (Nishnawbe-Aski, Anishinabek, United Chiefs and Councils of Manitoulin Anishnaabe and Treaty Three Police Services), and five of which serve individual communities (Six Nations, Akwesasne, Wikwemikong, Lac Seul and Mnjikaning Police Services). These First Nations are highly diverse in many ways: culture, language, geography, population, resources, political structure and governance, policing needs and other substantive issues. Support for an integrated conflict negotiation team is understandable – and in principle desirable. However, the strength of the Ontario policing regime and Ontario First Nations Policing Agreement – namely, the promotion of community choice of policing options and the establishment of self-directed police services – makes an integrated Ontario-wide conflict resolution team impractical. An integrated, standing conflict negotiation team also raises resource issues for First Nations police services.

73. The OPP must respond to Aboriginal incidents occurring within its policing

jurisdiction, but which involve individuals policed by First Nations police services. The OPP's potential unfamiliarity with these individuals is said to support consideration of an integrated conflict negotiation team. In our view, this issue is better dealt with in other ways. First, the ongoing consultation between the OPP and First Nations officers on emerging issues assists in familiarizing the OPP with these issues, and those involved in those issues within the community. Second, access by First Nations police officers to crisis negotiation, ERT and other emergency response training enables those First Nations officers to be utilized as crisis negotiators or as ERT members when incidents occur on or in close proximity to their policing jurisdiction. In other words, rather than having a standing conflict negotiation team which includes First Nations police service officers (with all the resource issues that entails), it is preferable to work towards interoperability between police services to be used as circumstances dictate. Finally, the OPP intends to expand its ART and MELT membership, drawing upon police officers across the Province who have familiarity with local issues and individuals.

Question 8: How can the capacity of First Nations police services and governments to peacefully resolve intra-band disputes be increased?

74. At the outset, the point should be made that First Nations – not the OPP – are best situated to determine how their capacity to resolve intra-band disputes can be increased. As earlier indicated, the OPP supports the provision of financial resources to First Nations communities for alternative dispute resolution services. The OPP can also assist the capacity of First Nations police services to peacefully resolve intra-band disputes by offering its crisis negotiator training to those services (which is now done). These trained negotiators could then provide support for alternative dispute

resolution within First Nations communities. The OPP can also make the Native Awareness Training course available to officers from First Nations police services. As previously reflected, this too is now done. This program increases the cultural competencies of officers, Aboriginal or non-Aboriginal, and enhances their abilities to build respectful relationships that help resolve disputes.

Municipal Police Services

75. The Discussion Paper notes that municipal police services may not be familiar with Aboriginal issues or may not have dedicated policies to address Aboriginal occupations and protests. Clairmont and Potts recommend greater planning, integration and support between the OPP and other police services in the jurisdiction.

Question 9: How can the OPP best support municipal or other police services to police Aboriginal occupations and protests effectively?

76. In our view, the OPP can best provide this support, if requested and subject to financial capability, by:

- Disseminating the Framework to municipal police services that provide front-line policing for First Nations communities (such as Durham and Sarnia) or which police communities with significant First Nations populations;
- Making its Native Awareness Training program available to such services. Officers have attended from Toronto, York, Durham, Peel, Hamilton, Brantford, London, Barrie, North Bay, Sudbury, Thunder Bay, Kenora, and Sturgeon Falls. Specialty training (such as ART/MELT) can also be made available to other services;
- Providing support, on request, from OPP specialty teams, such as ART, MELT, and Crisis Negotiation. This can extend from deployment of OPP resources to

consultation.

Other Government Agencies

77. The Discussion Paper notes that Aboriginal occupations and protests often involve many government agencies, including MNR, MOT, MAG and others. Municipalities may also be involved. Clairmont and Potts report that many police officers identified a need to communicate the less-partisan nature of the police role to these agencies, and contend that agency officials sometimes pressure them to take action rather than wait out the occupation or protest. Police services sometimes play an important moderating and liaising role with other agencies.

78. The RCMP has an inspector-level liaison with the federal DFO and First Nations in B.C.'s lower mainland. The officer is a conduit between the parties, providing support and advice for DFO enforcement activities and consults with First Nations in B.C.

Question 10: Should the OPP and related agencies develop protocols to promote cooperation and clarity when policing occupations and protests?

79. As previously indicated, the OPP would welcome working with the MNR on an operational protocol that conforms to the approach and best practices identified in the Framework. The MNR is the Ministry most often engaged, in our experience, as an interested party respecting Aboriginal occupations or protests. There is no demonstrated need for a protocol with other Ministries or agencies at present. Concerns raised by officers that other agencies misunderstand the less-partisan

nature of the police role or the OPP approach to the peaceful resolution of Aboriginal occupations or protests should be addressed through training at such agencies, together with dissemination of a provincial government policy, earlier recommended, that is compatible with, and supportive of, the approach represented by the Framework.

80. Again, protocols can signal the signatories' commitment to appropriate objectives, and thereby enhance the relationships of these signatories with Aboriginal communities. However, as repeatedly emphasized, the OPP Framework promotes a flexible approach. What this recognizes, amongst other things, is the inherent flaw in overstructuring how critical incidents will be resolved. In the OPP's experience, each critical incident raises unique issues and unique solutions. What this means, for example, is that best practices have been developed by the OPP for integrated response, POU, crisis negotiation etc. These best practices are always to be applied within the context of the Framework. However, apart from these identified best practices, neither policies nor protocols should fetter the ability to address unique issues, and craft unique solutions.

81. Clairmont and Potts refer to the inspector-level liaison established by the RCMP with the federal DFO and First Nations in British Columbia's lower mainland. Instead of creating a liaison position for each agency and First Nation dealt with, the OPP has created a position of Aboriginal Liaison Officer –Operations (staffed at present by a Superintendent), regional liaison officers, the Commissioners' Select Liaison Council and regional councils, regional Aboriginal Strategy Committees, ART and MELT teams that perform liaison functions, and an infrastructure, supported by

corporate, regional and local business plans, that mandates ongoing consultation with First Nations. As well, the Aboriginal Liaison Officer – Operations is now mentoring four officers, in recognition of the need to ensure continuity of that position, and additional personnel supporting that position. These liaison initiatives serve the Ontario policing environment.

Restoring Relationships

82. The Discussion Paper notes that the Framework directs the OPP to hold a session where police and parties in conflict can establish a plan that addresses damage done during the dispute or crisis. The OPP also undertakes to maintain a continued OPP presence that can respond to community questions or concerns relating to the role of local or emergency response officers during the critical incident. It may also be equally important to restore relationships and trust with the affected non-Aboriginal community as well. Community meetings may be appropriate for the non-Aboriginal community as well.

<p><i>Question 11: How can police restore and/or establish good relations with First Nations/Aboriginal communities and the non-Aboriginal communities after an occupation or protest?</i></p>
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83. The OPP is currently working on such a plan in Caledonia although the occupation has not yet ended. What must be involved, at a minimum, is dialogue between the OPP, affected communities and stakeholders. The OPP is already consulting with leaders in various communities in this regard. Symbolism or ceremony is an important component of such a plan, as are events that emphasize

positive aspects of pre-existing relationships between the affected communities, and the social and economic interdependence of the communities. ART, MELT and the Aboriginal Liaison Officer – Operations figure prominently in such a plan.

84. The Framework specifically addresses strategies to restore relationships after a critical incident is over. It suggests that at this stage, “persons in dispute are emotionally and physically exhausted” and that parties “may deny the existence of a dispute or crisis” or “may want to reflect on what has just occurred and want to discuss the lessons learned and identify peace-building actions.” Some of the steps outlined are as follows:

- Involve, where applicable, ART members or First Nations liaison officers as a culturally appropriate conflict resolution strategy;
- Maintain through the ART members or First Nations liaison officer, a continued OPP presence which can respond immediately to local community questions or concerns relating to the role either local detachment personnel or emergency management services performed during the critical incident;
- Encourage a non-confrontational meeting to discuss with the disputants the lessons learned from the crisis;
- Consider who needs to be involved as well as who can best represent the OPP;
- Facilitate a session where police and parties in conflict can establish an action plan that addresses the damage done during the dispute or crisis.

Debriefing

85. The Discussion Paper notes that prompt, objective and thorough review of incidents is a valuable tool for police to examine their experience systematically and learn from it. Clairmont and Potts report that although much effective police practice can be learned from training, much is learned through debriefing and sharing

experiences with others similarly engaged. They report that we uncovered excellent individual practitioners but saw little evidence of any systematic organizational building upon their efforts.

Question 12: How should police services review and analyze the policing of occupations and protests? Should First Nations or Aboriginal people participate in this activity? If so, how?

86. Clairmont and Potts are correct that the OPP has had “excellent individual practitioners” (including former Inspector Potts), but could be critiqued for the absence of a systemic organizational building upon their efforts. We agree that the OPP must have an “institutional memory” of best practices, and ensure continuity as skilled officers retire or assume other responsibilities. This point has very recently been addressed.

87. The OPP now has two separate monitoring processes in place to review or evaluate Aboriginal critical incidents. These have been referred to in another context, but bear repetition here:

- A Provincial ART Strategy Committee now exists that teleconferences weekly. The Manager of Emergency Management and Planning, Field Support Bureau chairs it. This forum is used to share information about ongoing and potential incidents. The Framework is at the centre of every discussion and the Chair of the Committee monitors its use. The OPP will be introducing formalized Minutes of these Committee meetings to promote institutional memory.
- Incidents assessed to be high-risk are under the command of a Level 2 Incident Commander. There is a mandatory operational review of every Level 2 Incident by a member of the L2 IC Review Committee, which is made up of four Commissioned Officers including the Field Support Bureau Commander, Incident Command Program Manager, Lead Level 2 Incident Commander Instructor and one Regional Senior Level 2 Incident Commander. If the incident has involved a First Nations community or Aboriginal subject, the Framework is one of the areas reviewed to ensure that the Incident Commander worked within the policy.

88. All Aboriginal critical incidents are reviewed as part of the first monitoring process. Indeed, the Provincial ART Strategy Committee does not await the completion of a critical incident, but will review the approach taken pre-incident or as a critical incident is occurring. The Committee also communicates lessons learned to affected officers or specialty programs.¹³

89. A number of critical incidents are also reviewed as part of the second monitoring process, if the incident has been assessed as high-risk. Here, lessons learned are shared with the other Level 2 Incident Commanders. The small number of Level 2 Incident Commanders facilitates the organization's ability to effectively communicate these lessons, and share experiences. If policies need to be changed, the Managers responsible for key programs sit as members of the L2 IC Review Committee and can make the necessary changes and inform those affected.

90. Debriefings of front-line officers regularly take place, often mid-incident. This enables these officers to share experiences, and enables Commanders to modify the tactical approach to an incident. Debriefings also allow senior command to explain to front-line officers the strategic approach being taken to an incident and why. This is particularly important where questions have been raised by members of the public or internally about the approach to an incident.

91. As well, as indicated elsewhere, officers are now trained on the use of the Framework. Applicants for Level 2 Incident Command must successfully

¹³ The Committee performs the functional equivalent of "rolling audits" respecting the Framework, that is, ongoing evaluations of the Framework's approach, to generate improvements: Wawryk, *The Collection and Use of Intelligence in Policing Public Order Events* at 25.

demonstrate an ability to manage Aboriginal issues, and are tested on a scenario that involves application of the Framework.¹⁴ What this means is that lessons learned can be incorporated into the training regime. The existence of both initial and maintenance training for specialty programs, Level 2 Incident Commanders and for POU Commanders enables training enhancements to be easily made. For example, as a result of points raised at the OPP Incident Simulation and Orientation, instruction of ERT members and POU Commanders on the special considerations and unique responses involving an Aboriginal blockade, occupation or land dispute is now being incorporated into their training.

92. The Chiefs of Ontario's recommendation 7 was that "[a]t the post-critical incident stage a method to evaluate the operations of this policy [the Framework] is necessary and must include the OPP ... and First Nation leadership to ensure ongoing success." Commissioner Boniface, in her testimony, agreed that input and guidance from the First Nations leadership on developing assessment tools would be welcome. In addition to the input currently received from the Commissioners' Select Liaison Council on Aboriginal Affairs, the OPP is prepared to work with the First Nations leadership to develop additional assessment tools.

CONSTITUTIONAL RIGHTS AND THE USE OF INJUNCTIONS

93. The Discussion Paper reflects that the Inquiry has heard somewhat contradictory views on the propriety and strategy of using injunctions at Aboriginal occupations and protests. Some argue that injunctions are appropriate because they confirm the police's legal authority to take more assertive steps against protestors.

¹⁴ See Warwyk, at 25 where the importance of training and scenario opportunities is noted.

Others argue that injunctions reduce police operational flexibility and should, therefore, be sought and enforced with great caution.

Question 13: How can and should police services and governments balance constitutional rights with public order in Aboriginal occupations and protests? When are injunctions for occupations and protests appropriate?

94. This question has been answered in paragraphs 56 to 60. In our view, other than crafting a government policy that recognizes that injunctive relief, or its timing, may exacerbate a situation, and ultimately not advance the applicant's interests or the public interest, it is impossible, in our view, to define with precision when an injunction is appropriate.

THE ROLE OF GOVERNMENT

95. The Discussion Paper notes that if an occupation occurs on Crown land, governments determine whether and how to seek an injunction. Decisions on this issue may affect the police response or increase/decrease the risk of violence. The sustainability of a particular approach to an Aboriginal occupation and protest may at times depend on the government's willingness to at least commit to negotiations on the substantive issues in dispute. This issue may be framed as the alignment of government and police objectives in occupations and protests. It may be helpful for the provincial government to develop its own policies and protocols for government ministries or agencies that are consistent with the OPP's Framework or best practices to reduce the risk of violence. Public policies and protocols are important accountability mechanisms.

Question 14: How can governments support the peaceful resolution of occupations and protests during an event? Should governments adopt a policy on the use of injunctions?

96. In earlier responses, the OPP has recommended that the federal and provincial governments adopt policies compatible with the OPP Framework, and which recognize factors (including applications for injunctive relief and their timing) that may affect public order or safety. No additional submissions need be made here.

97. The Discussion paper stresses the general importance of accountability and transparency of police and government decision-making. They limit the power of the police to act unilaterally and give the police more legitimacy when coercive force is justified. A distinction is drawn between internal accountability and external accountability, with some discussion of each. It is noted that the Inquiry must be mindful of the many different accountability mechanisms that already exist.

Question 15: How can or should internal and/or external accountability for the policing of occupations and protests be improved?

98. Internal accountability – The Discussion Paper notes that internal accountability depends on procedures for keeping detailed records of incidents. In the course of a critical incident, OPP officers prepare substantial records or materials. Current OPP note-keeping practices, as contained in Police Orders, were identified by Commissioner Boniface in her testimony, and summarized in the OPP Part II materials, Tab 8 (OPP Daily Journals and Note Taking: A Comparison of 1995-2006 (Police Orders)). Qualified scribes now prepare Incident Commanders' notes, which must be corrected and adopted by the Incident Commanders. Public Order Commanders on the scene are accompanied by a scribe with a micro-cassette

recorder. All radio and phone communications coming into and going out of the Provincial Communications Centres are recorded and stored digitally. At Level two incidents involving the integrated response, all radio communications are recorded and stored digitally, as are all TRU radio communications on a separate frequency, and all crisis negotiations. Where practicable, the telephone lines in the Command Post are also recorded and stored digitally. These policies are described in the OPP Part II materials, Tab 4 (OPP Emergency Response Services: A Comparison of 1995 to 2006, Appendix A and Appendix B.) The OPP now has enhanced videotaping capacity to record, for example, the deployment of POU or arrest teams at a POU event. There is now greater reliance upon written Intelligence Reports, in which information has been subjected to the intelligence process.

99. In paragraphs 88-90, the mandatory reviews of Level 2 and Aboriginal critical incidents were explained. They are a central feature of internal accountability respecting Aboriginal critical incidents. They permit not only a systemic review of the OPP response to a critical incident, but the sharing of lessons learned with Commanders, and the incorporation of those lessons into the initial and maintenance training of Commanders and specialty officers. Front-line officers also participate in debriefings where issues are discussed.

100. The Framework also specifically addresses post-incident operational reviews, coupled with consideration of “who needs to be involved in the operational review, when best to conduct the review and where.” Depending upon the circumstances, this can be a review conducted by the Provincial ART Strategy Committee, the Level 2 Incident Command Review Committee or a specially composed review team.

101. Where an allegation of misconduct is raised internally or through an external complaint, it is investigated by Professional Standards Bureau. This represents another means of internal accountability. For example, a complaint made by a member of the First Nations community following the conclusion of a Level 2 Incident resulted in an 18 month review of the TRU program, the decision to disband one of the three TRU teams, and disciplinary actions taken against individual officers.

102. There are 31 investigators with Professional Standards Bureau, including the Commander, a detective inspector, an inspector and sergeant majors for each region. Many of these investigators, including all of the senior officers, have attended the one-week Native Awareness Training course, and more investigators will be attending when spots are available. Investigators are also trained in major case management. An investigator assigned to a complaint raising First Nations issues will have attended the Native Awareness Training course. The most senior officers, including the Commander, will act as case managers for the most sensitive or complex matters, and where appropriate, may seek input from community leaders.

103. Internal accountability must also be examined through the prism of the OPP Business Plan, which creates accountabilities for non-compliance with OPP policies or failures to meet standards respecting ethics, respectful relationships, and diversity. This requires some elaboration. As reflected elsewhere, at the core of the OPP's multiyear strategy, plan or vision is The OPP Promise. It refreshed the OPP's definition of values and ethical standards that would best characterize the future of the organization. It was developed through focus groups conducted in 2002 with hundreds of officers, civilians and members of the public. It affirmed that policing is

about respectful relationships, fairness, courage and caring, accountability, valuing diversity and continuous learning.

104. The OPP Promise became the cornerstone for the OPP's core strategy known as Focus on Professionalism. Drawing in part upon the OPP Promise, the Focus on Professionalism strategy identifies, through the Executive Council, the Mission Critical Issues which support the core business of the OPP. These Mission Critical Issues include: Relationship Building with Aboriginal Communities, Meeting the Needs of Diverse Communities and Professionalism. The strategy is then to "operationalize" the OPP's values, ethics and Mission Critical Issues, by embedding them into all facets of OPP operations.

105. To move this from the theoretical to the practical is done through a three-year business planning cycle. This means that at the corporate level, the OPP must articulate initiatives to advance its Mission Critical Issues. These initiatives are described elsewhere.

106. As part of the business planning cycle, every Bureau, Region and Detachment must not only support these corporate initiatives, but articulate in writing what activities and initiatives will be undertaken within their Bureaus, Regions and Detachments to build relationships. The individualized business plans are submitted to the Business Planning Unit through the chain of command. These business plans set measurable goals. Quarterly written reports outline what has been done in furtherance of the business plans. Senior managers are held accountable by the Commissioner's Committee; deviations from projected goals must be explained. As well, accountabilities around the Promise and the Professionalism policy have been

written into all staff performance and learning and development plans.

107. In 2004 and 2005, focus groups were again held across the province, this time around the core value of diversity. The objective was to identify skills, knowledge, attitudes and actions required to be effective in serving a highly diversified public. Again, this has resulted in a strategy to integrate valuing diversity into all facets of the OPP operations, including recruitment, staffing and continuous learning, with accountabilities. Police Orders specifically addresses these issues, including discrimination, harassment, illegal profiling and accountability of employees and manager/supervisors. (See, for example, Police Orders, 6.10.3 and 6.10.4)

108. External accountability – Existing OPP policies and protocols, including the Framework, are public, and provide significant external accountability. Bill 103, founded on recommendations made by Justice LeSage establishes an Independent Police Review Director and a new public complaints process. In our view, it is somewhat beyond the scope of this Inquiry to analyze Justice LeSage's recommendations or Bill 103. However, the OPP is supportive of a process that enhances transparency and accountability. As the Discussion Paper notes, the Commissioners' Select Liaison Committee on Aboriginal Affairs provides important advice and support to OPP management and operational Commanders. It represents another external accountability mechanism, although not involving the larger public. As indicated earlier, the OPP would welcome discussion on operational protocols with COO and/or Provincial Territorial Organizations, a component of which would involve ongoing consultation with those organizations. Such consultation currently takes place informally with the participation of the Commissioner and senior management. As well, consultation currently takes place

informally with non-Aboriginal community leaders.

109. The Discussion Paper notes that it may be appropriate to identify means by which the OPP can explain and answer appropriate questions about its decisions and activities to its responsible Minister, the legislature or the public at large. At present, the OPP does inform its responsible Minister, generally through the Deputy Minister, about its past decisions and activities. This process contributes to external accountability of both government and the OPP. Legislative committees are also empowered to hear from the OPP Commissioner on issues relevant to the mandate of those committees. As for additional accountability through explanations by the OPP directly to the public, the OPP is often constrained by the fact that its decisions relate to ongoing court proceedings where the facts remain in dispute. Indeed, parties to this Inquiry have reinforced this point in connection the early press release issued by the OPP in connection with Ipperwash.

(3) ABORIGINAL AND POLICE RELATIONS GENERALLY

110. Part B of the June 2006 Discussion Paper on Policing Occupations and Police/Aboriginal Relations is extremely helpful in identifying the issues to be addressed by the parties. Again, the OPP can best assist the Inquiry in this area by directly responding to the commentary and questions generated by the Inquiry in its Discussion Paper.

First Nation Police Forces in Ontario

Q.16: Should First Nations police be organized and funded as replacements or enhancements to OPP services in First Nations communities?

111. The OPP strongly supports the view (echoed by all senior OPP officers interviewed by Clairmont and Potts) that First Nations police services should not be regarded only as enhancements to OPP services. The OPP, through both former Commissioner O'Grady and Commissioner Boniface has proactively supported a policing model in Ontario that promotes the concept of community choice and the establishment, where desired, of self-directed police services. Although the "replacement v. enhancement" dichotomy is often used, even the term "replacement" is somewhat inaccurate, since First Nations police services are not simply intended to "replace" the services provided by the OPP, but meet the needs of their communities in ways that may or may not have been realized by the OPP in the past. That being said, the OPP strongly supports significant increases in funding for such police services, consistent with their objectives and freestanding status.

112. Even when self-directed First Nations police services are not regarded as mere enhancements, and even when their funding is significantly increased, the OPP will likely still be called upon to provide specialized services to them. To illustrate, the OPP presently delivers specialized services to many municipal and First Nations police services. Indeed, there are 135 specialized service framework agreements pursuant to which the OPP provides specialized services. The OPP also provides investigative support to many municipal and First Nations police services. This is a reflection, in part, of the large financial costs associated with some specialized services, particularly those that require full-time officers who must constantly train to maintain perishable skills. Smaller police services may not have the demonstrated need or the financial resources for such full-time specialty teams. As well, despite strong support for the principle that First Nations should police themselves, the difficulties for local First Nations police officers in policing Aboriginal occupations or protests (and potentially serving as TRU or POU members in their own communities) has been well recognized, and acknowledged by First Nations police services.¹⁵ As a result, there may always be a need for the OPP to provide some policing for Aboriginal occupations or protests, even within a policing structure that financially and philosophically supports self-directed First Nations policing.

Q.17: How can the federal government, provincial government, or OPP improve policing by First Nations police forces? Should the federal and/or provincial government enact framework legislation to recognize and support First Nation police forces?

113. Commissioner Boniface, in her testimony, made three relevant recommendations on this topic, which are adopted here:

¹⁵ See Wawryk, at 29. In small communities, local police should interact with the community, leaving crisis management duties to qualified personnel brought in.

- There be consideration for a legislative framework for First Nation police services which does not exist today;
- Within that legislative framework, the appointment of First Nations officers by the OPP Commissioner be discontinued, and be transitioned into appointment by the First Nation Police Service or Board;
- The Inquiry recommend increased funding for First Nation police services and those police services which deliver services to the First Nation communities, so that they can help in building community capacity.

114. The Discussion Paper correctly notes that many of the OPP initiatives presented at its January forum are designed to support First Nations policing, most notably NAPS Investigative Support Unit and the Integrated Support Services Unit (ISSU). Participants at the Forum and the Inquiry's own research noted the generally very good relations between the OPP and First Nations police services in Ontario. The OPP respectfully suggests that its specific initiatives to support First Nations policing (some of which were set out in paragraph 71 above) should be acknowledged as best practices by the Inquiry.

Relationships between Aboriginal Peoples and Police

115. The Discussion Paper notes that Professor Hylton summarizes the best practices and recommendations identified in the literature review and the survey conducted as follows:

- Police leadership must support and model strong diversity policies;
- Police recruitment screening must be designed to eliminate racist candidates with racist views;
- A proactive Aboriginal recruitment strategy must be maintained over time with a goal of police service membership mirroring the community make-up;

- Employment and family assist care programs, as well as other programs for Aboriginal police members must be provided in order to support full participation in a historically hostile system;
- Increased emphasis must be placed on cross-cultural training for recruits and experienced police service members, using Aboriginal police officers in an experiential environment (not through academics, advocates or other Aboriginal leaders).¹⁶

116. These are all correctly regarded as best practices and all find expression in the OPP existing initiatives. Some of these initiatives originated with the OPP. The breadth of some of these initiatives is unprecedented in policing.

117. The initiatives have been fully documented elsewhere. It is convenient here to simply highlight them, noting examples of how they conform to each of the best practices identified by Professor Hylton.

- **The OPP Promise, Focus on Professionalism, Mission Critical Issues, and Business Planning** – These have been outlined in paragraphs 104-107, the OPP Part II materials, Tab 2 (Aboriginal Initiatives: Building Respectful Relationships, Section C) and Tab 3 (OPP Responses to Commission Questions: Aboriginal Initiatives, questions 1-3). They collectively represent the OPP's commitment to "strong diversity policies" identified by Professor Hylton as a best practice.
- **The Commissioners' Select Liaison Council on Aboriginal Affairs** – This Council brings together respected First Nations people to advise on sensitive Aboriginal issues. The Council has been instrumental in developing or refining

¹⁶ See Hylton, *Challenge, Choice and Change: A Report on Evidence-Based Practice in the Provision of Policing Services to Aboriginal Peoples* at 14-18. Hylton states that searches were initiated for "in service" innovations, race relations strategies, mentoring and exchange programs. It is said that, unfortunately, the documented initiatives in the literature were largely presented within the context of cross-cultural training and affirmative action programs. Promising activities and innovations were noted elsewhere, such as the National Indian Youth Academy in Washington State. With respect, no reference was made to the OPP or its initiatives, which include the very kinds of promising activities and innovations described by Hylton. See for example, the OPP Youth Summer Camp and the PEACE program, outlined herein.

many of the OPP initiatives now in place. Its history, composition and role are fully outlined in the OPP Part II materials, Tab 2, Section C.

- **The OPP Youth Summer Camp** – Over 400 children have attended this annual camp run by sworn OPP officers. The camp’s goals are to create positive youth-police relations in the communities served. Many of these campers have been Aboriginal children from across Ontario. This initiative is more fully described in the OPP Part II materials, Tab 2, Section D.
- **The Police Ethnic and Cultural Exchange (PEACE)** – This program provides temporary employment, in partnership with the community, to youth from diverse ethnic and religious backgrounds. Band Councils fund participation in the program for Aboriginal youth. It provides youth and OPP officers with the opportunity to work with, and relate to, each other. This initiative is more fully described in the OPP Part II materials, Tab 2, Section D.
- **Aboriginal Outreach Initiatives, including OPPBound, and OPP Northern Experience** -- OPPBound is an award-winning outreach recruitment program designed to attract people interested in a policing career from identified groups such as women, Aboriginal people and visible minorities. Candidates experience a week in the life of an OPP recruit, in an atmosphere in which their culture and diversity are supported. Other strategies of Aboriginal outreach were described by Commissioner Boniface during her testimony and are now summarized more fully in the OPP Part II materials, Tab 2, Section D. Outreach is the most significant component of the OPP’s “proactive recruitment strategy” identified by Professor Hylton as a best practice.
- **Aboriginal Inreach Initiatives, including Emergency Services Bound** -- Commissioner Boniface also described existing Aboriginal inreach strategies for internal recruitment of Aboriginal officers for specialties, including integrated or emergency response units. Emergency Services Bound is a one-week program designed to provide Aboriginal OPP officers with the necessary information to make informed decisions about becoming emergency response officers. Similarly, five workshops were held throughout Ontario in 1995 to encourage Aboriginal officers to become crisis negotiators. Other Aboriginal inreach initiatives are fully summarized in the OPP Part II materials, Tab 2, Section D. Aboriginal inreach is another component of the OPP’s “proactive recruitment strategy.”
- **Support of First Nations police services coordinated by First Nations Programs** – The OPP has consistently and repeatedly stated and demonstrated its support for the development of self-directed First Nations policing. As well, First Nations and Contract Policing staff members have acted as technical advisors in every transition to a new police service. Five of the last seven provincial negotiators for First Nations policing issues have been OPP officers on loan to Ministry staff. Five of nine First Nations Chiefs of Police in Ontario are former OPP officers. The NAPS Investigative Support Unit and the Integrated Support Services Unit represent two of a number of supports provided in participation with First Nations police services. The role of First Nations Programs

(formerly First Nations Policing Section) is explained in the OPP Part II materials, Tab 2, Section E.

- **The Nishnawbe-Aski Police Service (NAPS) Investigative Support Unit –** This unique integrated initiative brings OPP and NAPS officers together to work on significant policing issues within the Nishnawbe-Aski Nation.
- **The Integrated Support Services Unit (ISSU) –** This concept was developed with Ontario's First Nations Chiefs of Police to enable the OPP, RCMP and First Nations police services in Ontario to develop crime prevention initiatives that target suicide prevention, youth empowerment and community wellness. The NAPS Investigative Support Units and ISSU are more fully described in the OPP Part II materials, Tab 2, Section E.
- **Native Awareness Training –** Based on consultation with Elders, Aboriginal leaders, and Aboriginal officers, the OPP offers extensive training on First Nations issues, ranging from training for all recruits and probationary officers (including job shadowing with a First Nations police officer) to an intensive, one-week award winning course already taken by over 2000 officers. A fulsome description of the various Native Awareness programs is now contained in the OPP Part II materials, Tab 2, Section E. More will be said about this training in paragraphs 132 to 143 of these submissions.

Two aspects of the selection and training of OPP officers should be specifically noted here. In the recruitment process, interviews now include questions designed to identify prejudices, biases and intolerance towards others. Reference checks include specific questions regarding acceptance of diverse communities and past use of racial slurs or negative remarks. Psychological testing is also done. Recruitment officers are themselves diverse, and are all required to take the one-week Native Awareness Training course. To paraphrase Professor Hylton, this screening is designed "to eliminate racist candidates with racist views."

Second, OPP officers who receive Native Awareness Training learn through the life experiences of OPP Aboriginal officers and leaders. That is why all of the instructors for the Native Awareness Training course are Aboriginal officers. They, in turn, are under the care and instruction of spiritual leaders in the community. As well, Aboriginal officers from the OPP, NAN, and Lac Seul attend to speak about their personal experiences in residential schools. At the same time, the OPP has supported Aboriginal members in having the flexibility of schedules to travel to events and settings where they can share and learn from elders and from each other. To again adopt Professor Hylton's description of a best practice, the OPP Native Awareness Training shows an "emphasis on cross-cultural training for recruits and experienced police service members, using Aboriginal police officers in an experiential environment (not through academics, advocates or other Aboriginal leaders)." As Professor Hylton notes, cross-cultural training utilizing academics or advocates may often be ineffective.

Indeed, these programs may worsen the situation.¹⁷

- **Promotion Criteria** – Criteria for the selection of Promotional Board members includes the diversity/demographic profile of the OPP. Officers seeking promotion are required to address Aboriginal issues, including where applicable, the Framework.
- **Aboriginal Liaison – Operations** – This office was created in 1996 to provide operational support to senior members of the OPP, by enhancing relationships with the Aboriginal community and ensuring an understanding of Aboriginal issues impacting upon policing decisions. This office and the three initiatives that immediately follow are all described more fully in the OPP Part II materials, Tab 2, Section F.
- **Regional Aboriginal Strategy Committees** – These Committees, established in OPP regions across the province, assess the status of OPP relationships with Aboriginal communities and make ongoing recommendations as to how to improve relationships and service delivery.
- **Aboriginal Relations Team (ART)** – Selected police officers, largely Aboriginal, are trained in mediation and conflict resolution in support of an appropriate OPP emergency response. These officers also build relationships and trust proactively to prevent the escalation of issues. All 40 ART members have served in Caledonia.
- **Major Events Liaison Team (MELT)** – This new team is designed to specifically address major events or critical incidents, to support their successful resolution.
- **Framework for Police Preparedness for Aboriginal Critical Incidents** – This Framework is now incorporated into Police Orders and is part of OPP “critical policy.” It articulates best practices, governing the OPP response to critical incidents. Applicants for Level 2 Incident Command positions must successfully complete seven mandatory fields, including managing Aboriginal issues. Their assessment includes one scenario involving the application of the Framework. The Framework is more fully described in the OPP Part II materials, Tab 2, Section G and at Tab 3, questions 15-18, and 20-25.
- **Crisis Negotiator Program Enhancements** – The program has been enhanced to ensure that all crisis negotiators received full Native Awareness training. As well, there are six OPP Aboriginal officers trained and assigned as crisis negotiators. With their involvement comes significantly increased language capacity. This program is more fully described in the OPP Part II materials, Tab 2, Section G.

¹⁷ Hylton, Challenge, Choice and Change: A Report on Evidence-Based Practice in the Provision of Policing Services to Aboriginal Peoples at 13-14.

- **Aboriginal Officers Leadership Forum and other institutional support and development of Aboriginal members** – This annual forum enables OPP Aboriginal officers to share experiences, and generate recommendations to the OPP Commissioner on issues of importance. To again paraphrase Professor Hylton, this is one of several programs for Aboriginal police members that support their full participation in the OPP. The forum is more fully explained in the OPP Part II materials, Tab 2, Section H, as is the initiative immediately below.
- **Zhowski Miingan – Traditional Aboriginal Drum** – In 2002, a traditional Aboriginal Drum was gifted to the OPP Aboriginal officers. There are 11 officers who sit at the Drum. It is a rare honour for officers of a police service to be given the care of a traditional Drum. Zhowski Miingan (Blue Wolf) has drummed at over 110 events and has received six eagle feathers. This is another best practice as it supports a respectful, equal place for Aboriginal peoples in both the OPP and the Aboriginal community.

118. The following represent new or additional activities that the OPP supports to enhance its efforts to build relationships with the Aboriginal community¹⁸:

- **Regional Liaison Councils** -- Building upon the success of the Commissioners' Select Liaison Council on Aboriginal Affairs, the OPP is working towards the establishment of Regional Liaison Councils. Selection of members has commenced in North West Region, and an annual meeting has taken place in the Eastern Region with Elders and Chiefs from Akwesasne, Tyendinaga and Golden Lake since 2002.
- **Executive Development Program** -- The Canadian Police College in Ottawa currently has a Senior Police Administration Course offered to senior officers in Canada and elsewhere. The OPP, in partnership with the RCMP and First Nations Chiefs of Police supports a similar Executive Development Program to be offered through the Canadian Police College in which Aboriginal issues figure prominently. Its development is underway, and is expected to be available by the spring of 2007.
- **Additional Aboriginal Liaison Operations Officers**-- The OPP recognizes the need to ensure continuity of the Aboriginal Liaison Operations Officer position, and additional personnel supporting that position. Recent events have underscored these needs. The current Aboriginal Liaison Operations Officer is now mentoring four officers.
- **Additional ART members** – The OPP has also identified the need for additional ART members. Indeed, the entire complement of 40 current ART officers has been fully engaged. As a result, the OPP intends to expand the number and regional representation of ART members. Although not all ART members are

¹⁸ These were described, in similar terms, in the OPP Part II materials, Tab 3, question 2.

necessarily Aboriginal, the OPP inreach strategy concerning ART is designed to familiarize all potentially eligible Aboriginal officers with the role of ART and encourage applications to this specialty function. The OPP will strive to double the number of ART members.

- **Enhanced Mentoring for Aboriginal members** -- At present, candidates applying to the OPP who self-identify as Aboriginal are tracked to ensure that their file is dealt with expeditiously. If unsuccessful at a stage in the recruitment process, Aboriginal candidates are also mentored by OPP officers where appropriate. As well, mentoring of Aboriginal officers by more senior Aboriginal officers is facilitated through the Aboriginal Officers Leadership Forum. The OPP's strategy is to provide additional means of mentoring Aboriginal officers, and supporting their advancement. Commencing in 2005, Aboriginal Sergeants began to job shadow the Manager of First Nations Programs. As well, developmental secondments are being offered to Aboriginal officers (that is, secondments designed to develop or enhance the officers' abilities and qualifications) For example, Aboriginal officers have recently served or are currently serving in the following capacities: Acting Commander of the Human Resources Bureau, lead for the revamped TRU selection process, acting Chief of Walpole Island Police, acting Supervisor of Oneida Police, acting Supervisor of Gull Bay Police, acting Supervisor of Pikangikum Police, Acting Chief of Mnjikaning Police. Additional secondments were earlier referred to.

This fall, the "coaching triangle" concept will be introduced at the Aboriginal Officers Leadership Forum. The triangle links senior, middle level and junior officers in three-person mentoring partnerships. It should also be noted that counselling for stress and trauma is provided to Aboriginal officers by clinical and traditional Aboriginal counsellors, as well as through Aboriginal peer support. See, in this regard, the OPP Part II materials, Tab 9 (The Impact of Stress on Officers and the OPP Response). These programs again accord with the best practices identified by Professor Hylton. Enhanced mentoring and employment and family counseling support the equal participation of Aboriginal officers in the OPP.

- **Localized Native Awareness Training** – The OPP has recognized that the Native Awareness Training course should not be confined to any single culture. One day of the current course is devoted to familiarizing participants with varied cultures. As well, the course has been adapted, with local input from Elders and community leaders, to emphasize locally relevant cultures. For example, in the last two years, courses have been offered at Six Nations and Akwesasne devoted to the Haudenosaunee culture. As well, officers are provided information about local cultural practices and history at various stages in their training. As earlier indicated, in November 2006, there will be a Native Awareness "Train the Trainers" program designed to increase the number of available trainers, and enhance their own cultural and practical knowledge. Twelve to sixteen OPP officers, and eight to ten officers from First Nations police services will attend. They will be provided with teaching points, basic presentation packages, principles of adult education, and will be taught how to tailor their training to address local needs. The OPP will also invite greater participation by local Elders

and organizations to enhance the program.

- **E-Learning** – The OPP is working to enhance training for officers posted in more remote locations. The OPP Academy has designed an interactive DVD program that addresses the unique issues for the Nishnawbe-Aski Police in investigating sexual assault allegations. It is now available. It is complemented by “chat room tutors.” This program is, in turn, being used for the development of similar programs. The OPP is also developing an e-learning tool to be used at the OPP Academy. It will utilize extracts from the OPP Forum at the Ipperwash Inquiry on DVD (together with multiple choice questions) to teach all recruits about First Nations policing.
- **OPP Accolade Awards – Jim Potts Award** – The OPP has instituted an award honouring Jim Potts, which recognizes the uniformed or civilian individual or team best achieving the OPP’s Vision, Mission and The Promise by their significant contributions to policing in First Nations communities. This can include work such as innovative programming, prevention initiatives, community involvement, investigations, enforcement, promotion of cultural awareness, or building partnerships and relationships in First Nations communities. The award winners for 2003 to 2005 are described in a recent attachment to the OPP Part II materials, Tab 2 (provided to the Inquiry and the parties in PDF format by email).
- **Women Behind The Badge** – Six OPP officers were featured in three one-hour documentaries, produced by a Canadian TV production company in 2004/2005. The series has aired several times on TVO, Court TV and other cable television channels. The making of the documentary was supported by the OPP Uniform Recruiting Unit as a method of encouraging women from all communities to consider becoming OPP officers. The series candidly looked at the lives of the six women, both on the job and at home. One of the six women was an Aboriginal officer, who spoke from the heart about the challenges she has faced as both a police officer and a First Nation woman. The OPP would like to support similar projects in the future.
- **LEAD** -- The OPP has worked in partnership with the Law Enforcement Aboriginal and Diversity Network (LEAD) Executive Committee of the Canadian Association of Chiefs of Police (CACCP). This year, the 2006 Aboriginal and Diversity Policing Conference was sponsored in Toronto. Fittingly, the theme was building trust. The Conference Chair and Vice-Chair were both senior OPP officers. The OPP will continue to support programs developed in partnership with LEAD.

119. In addition, as noted earlier, every Bureau, Region and Detachment must not only support these corporate initiatives, but must articulate in writing what activities and initiatives will be undertaken within their Bureaus, Regions and Detachments to build relationships. Several examples of local activities or initiatives are:

- Regularized meetings between Detachment Commanders and local elected Chiefs;
- All Terrain Vehicle safety workshops for youth;
- Coordinated use of detachment facilities along the Trans-Canada Highway for a group of Aboriginal women walking across Ontario to raise diabetes awareness;
- Suicide prevention workshops;
- Measurable goals for Native Awareness Training for local officers (e.g. “x” number of officers to take the course by “x” date);
- Participation in Flotilla for Friendship, an Aboriginal-focused police and youth event;
- Local recruiting initiatives.

Question 18: Have the OPP’s initiatives improved relations between Aboriginal peoples and the OPP? What else is needed for the OPP or any other policing organization to improve relations?

120. In the OPP Part II materials, Tab 3 (OPP Response to Commission’s Questions: Aboriginal Initiatives, question 7), the OPP was asked how we assess whether our initiatives are achieving their objectives. The question posed here – have the OPP’s initiatives improved relations between Aboriginal peoples and the OPP – invites a similar answer.

121. The OPP, through a rigorous business planning cycle has the means to assess whether the organization, and its Bureaus, Regions and Detachments have met certain projected and measurable goals (e.g. establishing regularized meetings with elected Chiefs, or ensuring “x” number of officers have attended Native Awareness Training courses within “x” period of time.)

122. However, it is admittedly more difficult to assess whether OPP programs are successfully achieving objectives such as “building relationships with Aboriginal communities” since relationship building is not quantifiable.

123. That being said, some obvious means exist to assess whether such programs are achieving significant success:

- The OPP Commissioner and executive report a level of networking with Aboriginal communities, organizations and leaders that surpasses (albeit anecdotally) previous levels. That networking has been drawn upon to reduce tensions on a number of occasions;
- Recruitment of Aboriginal officers to the OPP or, through the OPP, to First Nations police services, and the promotion of Aboriginal officers within the OPP is largely quantifiable and represents one means of measuring success. In 1995, there were 49 self-identified Aboriginal officers. At present, there are 125 to 135 self-identified Aboriginal officers:
 - 1 Superintendent and 1 Acting Superintendent
 - 1 Inspector
 - 14 Sergeants
 - 115 Constables (approximate)

As well, a number of OPP Aboriginal officers have joined First Nations police services. These numbers show significant progress, with much more to be accomplished.

- The existence of multiple participations with First Nations police services (through protocols, joint training, joint investigative units, secondments of OPP officers to First Nations police services, the NAPS Investigative Support Unit and the Integrated Support Services Unit etc.) must intrinsically be regarded as a measure of success;
- The evaluations by OPP attendees of the Native Awareness Training course (which have almost invariably been positive) represent a means of measuring success, as will the results of the OPP Longitudinal Study of New Recruits. The first of its kind in Canada, the OPP Longitudinal Study of New Recruits was launched in 2004 in partnership with a Nipissing University research team, led by Dr. Greg Brown of the Criminal Justice Program. The goal of the Longitudinal

Study is to evaluate the impact of selected OPP policies and practices on the performance and job satisfaction of individuals in three consecutive OPP recruit classes over a five-year period. The study also provides an opportunity to identify trends, patterns and systemic issues based on such factors as age, family status, race, gender, type of work, region/bureau, career mobility, advanced training, promotion, employment history and educational background;

- OPP programs (or individuals participating in them) have been recognized or the subject of awards. Although such recognition and awards do not involve formal evaluations, they do speak to the success of such work:
 - Commissioner Boniface – Order of Ontario – 2001 (primarily for work in First Nations policing)
 - Paul Trivett and the Native Awareness Program – Ontario Public Service Amethyst Award – 2000
 - Glenn Trivett – Governor General's Order of Merit – 2002 (for Suicide Intervention and Native Awareness Programs)
 - Presentations of Eagle Feathers to Zhowski Miingan and the OPP drummers – eight separate communities
 - Commissioner Boniface and Glenn Trivett – First Nations Chiefs of Police Partnership Award – 2005
 - Commissioner Boniface – Ontario Public Service Amethyst –2004 (for the Focus on Professionalism)
 - OPP --International Association of Chiefs of Police Civil Rights Award (two) – 2005 (for The Focus on Professionalism and The Promise as well as for OPPBound 2004)
 - Inspectors Robin Jones and Bob Bruce – Ministry of Community, Safety and Correctional Services Ovation Awards – Creativity and Innovation – 2002-2003 (for OPP Bound)

- Significant networking or consultation continues with First Nations leadership and members. Through this consultation, the OPP receives significant feedback on our initiatives:
 - The Commissioner obtains advice from the Commissioners' Select Liaison Council on Aboriginal Affairs, as well as through meetings with Aboriginal leaders, elected Chiefs, Chiefs of Ontario and the Provincial Territorial Organizations;
 - Senior regional command staff also has relationships with leaders of the Provincial Territorial Organizations. Regional Commanders meet with the

Grand Chiefs. Detachment Commanders are required to meet regularly with local First Nations police services and local elected leaders to discuss issues of mutual interest;

- Regional Aboriginal Strategy Committees regularly provide additional community input to the OPP. As previously noted, the OPP is also developing Regional Liaison Councils;
 - The role of the Aboriginal Liaison Operations Officer includes consultation with the Aboriginal community and its leadership on issues of importance. As well, many detachments have designated liaison officers who work with the First Nations communities, particularly where the OPP administers the First Nations police services. These liaison officers meet regularly with community members;
 - Members of the Integrated Support Services Unit and ART consult with First Nations communities on a daily basis as part of their functions;
 - The Manager, First Nations Programs consults daily with OPP policed communities, self-directed First Nations police services, as well as Elders involved in cultural teachings;
 - The OPP senior management participates in the First Nations Chiefs of Police Association, including the Commissioner.
- The OPP has also utilized external consultants to evaluate and improve its programs. For example, Dr Karen Mock and three staff members of the Canadian Race Relations Foundation attended the one-week Native Awareness Training course in 2004. Although no written report was generated by the Foundation, it is fair to say that the feedback was very positive. Dr. Mock and her staff reviewed adult learning principles, facilitation techniques and environmental considerations. Most important, it was recommended that a more rigorous evaluation process take place after participants have an opportunity to distil what transpired, particularly given the intensity of the experience. As a result, in addition to oral and written evaluations sought from participants at the end of the course, there is a survey sent to all participants one year later. Participants are asked, for example, what they remember, what was most important and how have they applied what they learned. Similarly, an independent consulting firm, David Weiss and Associates, facilitated the focus groups and the Executive Council business planning process that led to the OPP Promise. The same consulting firm facilitated the development of the OPP's strategies, plan or vision on valuing diversity, and how diversity training is now delivered to officers.

124. An important point needs to be made here. The Discussion Paper correctly notes at page 16 that previous inquiries and reports have emphasized a history of

mistrust between Aboriginal peoples and the police, and at the risk of oversimplification, how that history has been characterized. Nothing that follows takes issue with that history. Nor can it be denied that the events at Ipperwash significantly and negatively impacted upon the relationship between the OPP and the Aboriginal community, requiring constant work and renewal. That being said, the OPP as an organization, and many of its senior and front-line officers have benefited from an excellent relationship with members of the Aboriginal community, its leadership and organizations. Indeed, the evidence at this Inquiry has reinforced this point, particularly in the context of relationships between local OPP officers and Kettle and Stony Point prior to Ipperwash. In the paper, “Anishinabek First Nations Relations with Police and Enforcement Agencies”, Dwayne Nashkawa notes at 18:

To characterize the overall relationship between the OPP and First Nations as negative would be misleading and inaccurate. In northeastern Ontario, a recent anti-racism initiative found that police were seen as more positive than negative by Aboriginal respondents. 55% of Aboriginal respondents agreed that police in their neighbourhoods are usually helpful and treat them fairly, and only 10% disagreed or strongly disagreed with that statement. The initiative focused on urban centers (North Bay, Timmins and Sault Ste. Marie).

125. The paper fairly acknowledges that leaders, most notably Commissioner Boniface, are providing leadership on bridging the gulf between law enforcement agencies and First Nations peoples. It identifies several best practices involving OPP officers: for example, their participation in a Nipissing First Nation healing circle to help the affected family and community deal with the impact of a murder. At the circle, the investigating officers of the OPP were praised for their efforts to keep the community informed during the investigative process and for the respect shown to

community members. It also provided the OPP with an opportunity to explain firsthand how the investigation was conducted and how some laws, policies and procedures prevented them from sharing information during the investigation. This left the attendees with a much clearer understanding of the OPP's role.¹⁹

126. The OPP and Aboriginal leadership recognize that we must build upon those aspects of the relationship that have been identified as positive, and work towards improving those aspects that have been identified as wanting.

Question 19: How can Aboriginal peoples be involved in the design, implementation, and evaluation of initiatives to improve relations?

127. Immediately above, and throughout these submissions, the OPP has identified ways in which it consults on an ongoing basis with Aboriginal communities respecting issues of concern. That consultation has included feedback on the design and implementation of our initiatives to improve relations. As previously indicated, a number of these initiatives have been developed in consultation with the Commissioners' Select Liaison Council on Aboriginal Affairs, Regional Aboriginal Strategy Committees, First Nations police services and as joint initiatives with First Nations communities (such as the PEACE initiative).

128. Having said that, Commissioner Boniface indicated, in response to recommendations made by the Chiefs of Ontario, that the OPP would welcome involvement by the First Nations community in ART related issues, including training,

¹⁹ See Nashkawa, Anishinabek First Nations Relations with Police and Enforcement Agencies (August 30, 2005) on behalf of the Union of Ontario Indians at 20.

and would welcome input and guidance from the First Nations leadership on developing assessment tools to evaluate the application of the Framework. The OPP has also indicated that, as part of its initiative to ensure that Native Awareness Training extend to varied cultures, we will invite even greater participation by local Elders and organizations to enhance the program.²⁰ These and other ways to involve Aboriginal peoples in the design, implementation and evaluation of initiatives to improve relations can also form part of the communication/dialogue protocols earlier discussed.

Question 20: How can the provincial government support the OPP and other police forces in their efforts to improve relations with Aboriginal peoples?

129. As reflected earlier, the provincial government and, where applicable, the federal government can support the OPP and other police forces in their efforts through adequate funding to continue and enhance these initiatives.

Racism and Policing

Question 21: Are the conventional or historic strategies to combat racism in policing sufficient? Or is more needed?

Question 22: How can or should Aboriginal peoples be involved in the design, implementation and evaluation of initiatives to reduce racism?

130. The Discussion Paper identifies some of the OPP's initiatives to address

²⁰ See Nashkawa, Anishinabek First Nations Relations with Police and Enforcement Agencies (August 30, 2005) on behalf of the Union of Ontario Indians at 36 (recommendation 8.1).

racism in policing. The OPP's submissions have also identified a number of these initiatives: the OPP Promise, Focus on Professionalism, Mission Critical Issues, Business Plan, Police Orders addressing discrimination, illegal profiling, ethics, accountabilities etc. Our earlier submissions have also articulated the importance of involvement by Aboriginal peoples in the design of these initiatives.

131. Of course, a centerpiece of the OPP's initiatives to address racism is its Native Awareness Training. The course participants include front-line officers, liaison officers, Detachment Commanders, crisis negotiators, Incident Commanders, emergency services personnel, such as ERT and TRU members, community service officers, newly appointed senior officers, recruiters, in-service trainers, OPP Academy staff and OPP Aboriginal members. Over 2000 OPP police officers have participated in the one-week Native Awareness Training course. As reflected below, it is now mandatory for certain specialty areas.

132. However, it is important to emphasize that this course is only part of a larger strategy to select and train officers in a way that both enhances awareness of Aboriginal culture and sensitivity, and roots out racism. Commissioner Boniface, during her testimony at the Inquiry, introduced Exhibits P-1709 (Screening and Training for Aboriginal Issues). It was intended to show what screening and training now occurs as individuals move from being applicants for employment as OPP constables to Level 2 Incident Commanders.²¹

²¹ See Consultation respecting Teillet, *The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario* (March 15, 2005) at 9 where it is said that some cross-cultural training is discouraging because it is often a one-time event, whereas officials and personnel change quite frequently. The OPP approach speaks directly to that

133. The recruitment process was earlier described in paragraph 117 (under Native Awareness Training) and need not be repeated here. The screening processes now in place are designed to eliminate racist candidates with racist views.

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

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

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

- Identify all First Nations police services in the region to which they are posted;
- Identify all Aboriginal cultural affiliations within their detachment/regional area;
- Specify a minimum of three Aboriginal concerns impacting on policing service;
- Identify at least one police strategy and the partnerships required to address one of the identified concerns.

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

concern. The training extends throughout the OPP, and through the life of each OPP officer.

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

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

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

138. Many front-line officers also attend the one-week Native Awareness Training course during their careers. At present, the course will be offered 16 times during the calendar year. Demand is high, given the limited number of attendees at any one time. Priority is given based upon various criteria, including the officer's involvement in, or exposure to Aboriginal issues, and the requirement that the course be taken for certain specialties or programs.

139. When officers seek promotion, they appear before Promotional Boards. The

criteria for selection of Board members include diversity. At least one of the questions directed to applicants for promotion requires officers to address Aboriginal issues. The Framework now figures prominently in the promotional process.

140. When officers apply to join integrated response units, their selection and training includes the following:

Crisis Negotiators

- 2 of the 10 questions at the crisis negotiator selection board are directly related to Aboriginal issues management;
- 1 day of training on course, including history, cultural, legal, socio-economic teachings;
- 1 week Native Awareness Course.

Aboriginal Relations Team / Major Event Liaison Team

- One week introductory course is developed around Aboriginal issues.

Emergency Response Team

- Native Awareness Training is week 1 of 9-week ERT Basic course;

Tactics and Rescue Unit

- One week Native Awareness Course for all TRU team members; ²²
- Mandatory maintenance training
 - TRU are required to participate in an annual workshop with Aboriginal Liaison Operations Officer during the TRU semi- annual;

²² This accords with a recommendation made by the Union of Ontario Indians. See Nashkawa, Anishinabek First Nations Relations with Police and Enforcement Agencies (August 30, 2005) at 36: OPP tactical units should be sensitized to the unique cultural needs and circumstances of First Nations and their citizens.

- Members participate in an outreach program for First Nations police officers;
- Members participate in Emergency Response Demonstrations to First Nations Leaders and Communities.

Incident Commander (Level 2 and includes Public Order Commander)

- 2 days of training on course, including history, cultural, legal, socio-economic teachings;
- Assessment includes 1 scenario where the situation involves an Aboriginal subject and/or location;
- Managing Aboriginal issues is one of the 7 mandatory fields in order to successfully complete; failure to demonstrate the required knowledge, skills and abilities results in the officer failing the course, and not being designated as a Level 2 Incident Commander;
- 1 week Native Awareness Course.

141. The OPP is unique in mandating this level of Native Awareness Training for integrated or emergency response officers.

142. In addition to members of integrated response units, the one-week Native Awareness Training course is mandatory for in-service trainers, and recruiters. As well, it is now recognized that diversity and cultural competence in the ranks of intelligence personnel is a major asset. Steps have been taken by the OPP to promote diversity amongst intelligence officers, and training on Aboriginal issues. These steps are discussed in the OPP Part II materials, Tab 7 (OPP Intelligence Services: A Comparison of 1995 to 2006).

143. As earlier indicated, there are 31 investigators with Professional Standards Bureau. Many of these investigators, including all of the senior officers, have

attended the one-week Native Awareness Training course, and more investigators will be attending when spots are available. An investigator assigned to a complaint raising First Nations issues will have attended the Native Awareness Training course. The most senior officers, including the Commander, will act as case managers for the most sensitive or complex matters, and where appropriate, may seek input from community leaders.

144. The Discussion Paper notes that the Ontario Human Rights Commission has provided guidance on how organizations can identify and combat racism. Consistent with that guidance, the OPP has developed a comprehensive anti-racism and racial discrimination policy (earlier referred to) which forms part of its Police Orders, created monitoring and implementation strategies that extend to selection and recruitment, in-service training, valuing cultural competencies and diversity across the organization, a policy on illegal profiling, internal accountabilities, all reinforced through its business planning process. It is expected that the longitudinal study (earlier described) will also assist the OPP in evaluating the success of some of these initiatives.

145. The Ontario Human Rights Commission also states that appropriate data collection is necessary. As the Discussion Paper notes, this issue has arisen in the context of the debate over the publication of a data collection study of racial profiling by the Kingston Police Department. Chief Closs was troubled by the absence of sound operational research on this subject. He believed that data collection was potentially a proactive monitoring and oversight tool for police to ensure bias-free policing, as well as serving an important educative role within the police force. He

wrote that there was a lack of provincial leadership on the issue of bias-free policing.

Question 23: Does the provincial government have a responsibility to promote bias-free policing? If so, what can or should the provincial government do to support the OPP and other police forces in their efforts to reduce racism?

Question 24: Should the OPP undertake a data collection project similar to the Kingston project?

146. The provincial government has a responsibility to promote bias-free policing. This can be done, in part, through leadership on issues that transcend individual police forces. For example, the OPP has addressed illegal profiling in its Police Orders, and developed training in this area. The provincial government could consider policies that have application to all police services.

147. The availability of relevant and sound data has the potential to promote bias-free policing. The literature on data collection raises issues that have not been addressed at this Inquiry. For example, it has been shown that police officers in some American jurisdictions deliberately stop “white male” drivers to skew the statistics on profiling. Concerns have been raised about the soundness of the Kingston data, which we cannot speak to. That being said, the OPP would welcome further discussions on best practices for bias-free policing.

(4) POLICE/GOVERNMENT RELATIONS

148. The June 2006 Discussion Paper on Government/Police Relations is, again, extremely helpful in identifying the issues to be considered by the parties. Much of the Discussion Paper's commentary is referred to in the submissions that follow, although, here, the OPP has not attempted to respond sequentially to every question posed in the Discussion Paper. The different approach here reflects the OPP's ultimate position that some of these difficult questions need not be answered by the Inquiry, but that recommendations can be made that improve transparency and accountability of government and the police, without introducing complex or costly institutional reforms.

149. The OPP submissions in this area are informed by what we see as the true issues raised by the evidence during Part I of the Inquiry. To state the obvious, recommendations should be grounded in the evidence. With respect, this Inquiry need not – and should not – address every systemic issue that has been identified concerning government/police relations.

150. As previously submitted, the evidence overwhelmingly demonstrates that the government did not direct or improperly influence the OPP in its operational decisions at Ipperwash. The evidence also overwhelmingly demonstrates that the OPP – from its Commissioner to its front-line officers – understood that they were to take no direction from the government on specific operational matters at Ipperwash. However, the OPP recognizes – as did its senior officers during their testimony – that apart from actual direction or influence, things could have been done better to avoid even the appearance of direction or influence.

151. It is important to the OPP as an organization – and in the public interest, that even the appearance of improper influence or partisan policing be avoided. As will be submitted in the paragraphs that follow, there are some relatively simple measures that can be taken to avoid even the appearance of improper influence or partisan policing. These measures will also reduce any risk of actual influence or partisan policing. A number of them are connected to the concept of “transparency.” There is no doubt that transparency in decision-making not only enhances accountability, but in the context of Aboriginal issues, addresses historic suspicions held about government and police. Within the limits dictated by policing, the OPP welcomes enhanced transparency in decision-making.

152. The Discussion Paper identifies at page 11 the core principles that the Inquiry has provisionally identified to use as reference points for its analysis and potential recommendations in this area.

Question 1: Are these principles appropriate to guide the Inquiry’s analysis and recommendations on police/government relations? Or, should there be others and what should they be?

153. The OPP accept that the identified principles are appropriate to guide the Inquiry’s analysis. “Respecting the practical demands and operations of police and government” must include recognizing the necessity of information sharing between government and police, in a manner compatible with non-partisan policing, so as to promote the very best policy making by government, and the very best policing of occupations and protests. This point is fully developed in later paragraphs.

154. The Discussion Paper notes that the *municipal* provisions of the Ontario *Police Services Act* reflect the conventional theory of police/government relations in which police have independent authority for “operations” and governments have “authority” to direct “policy”. Although the Act does not explicitly prohibit the provincial Solicitor General from intervening in OPP operations, the Discussion Paper states that it is likely that most provincial policy makers believe the policy/operations distinction applies to the OPP as well.

155. The OPP agrees. Section 31(4) of the Act provides that local police boards will not direct the Chief of Police “with respect to specific operational decisions or with respect to the day to day operations of the police.” Although section 17(2) of the Act does not impose a similar limitation upon the direction that the Solicitor General can give to the Commissioner of the OPP, in our view, this limitation is recognized in practice, and finds support in jurisprudence and academic commentary.

Commissioner Boniface and former Commissioner O’Grady also adopted this limitation as defining, in part, the relationship between the OPP and the provincial government. It also finds expression in Exhibit P-578 “Ministerial Control and the Ontario Provincial Police – A Discussion Paper” (the “Ministry Paper”) and adopted by both Commissioners as an accurate reflection of the existing relationship.

<i>Question 11: Should police independence be codified? If so, where?</i>

156. The OPP supports consideration of an amendment to the Ontario *Police Services Act* to provide some symmetry between the *municipal* provisions of the Act, and the absence of specific prohibitions respecting the Solicitor General’s authority to direct the police on operational matters. The OPP also supports the adoption of

the principles reflected in the Ministry Paper (together with the additional principles contained in these submissions) as government policy. The policy will, of course, be available to the public, enhancing accountability.

157. It is important to note that the *municipal* provisions of the Ontario *Police Services Act* do not prohibit local police boards from directing Chiefs of Police respecting “operational policies,” but only respecting specific operational decisions or with respect to the day to day operations of the police. These distinctions are important ones. It is appropriate that government make policies that generally affect police operations. (The Discussion Paper refers to the phrase “policies of operations”, particularly in the context of Ministerial Directives.) Indeed, statutes and regulations that govern police conduct and standards (*Criminal Code, Highway Traffic Act, Police Services Act, Provincial Adequacy Standards* etc.) represent policy decisions by governments that directly impact upon operations. Policy decisions to prioritize enforcement against “guns and gangs,” illegal biker activities or terrorism represent choices that directly impact upon police operations. Accordingly, one must avoid oversimplifications that deny government’s legitimate policy role in operational matters. The phrases “specific operational decisions” and “day to day operations of the police” are no doubt designed – albeit imperfectly -- to acknowledge government’s legitimate role in “policies of operations”, while avoiding interference in specific operations so as to induce partisan policing or its appearance.

Question 2: Is it advisable to define police “independence” definitively?

Question 3: In which areas should police have “independent” decision-making authority? What criteria may assist decision-makers determine if an issue is “policy”

or “operational”?

Question 4: Do Aboriginal and/or other public order events raise “policy” issues in which governments can and should intervene?

Question 5: Should governments have the right to issue directions in “policy” areas outside the core area of police activities in criminal investigations?

Question 6: Should governments have the right to intervene in the “policies of operations?”

Question 14: Do policing issues involving Aboriginal peoples justify unique police/government rules? If so, what are they?

158. The Discussion Paper reflects that the policy/operations distinction provides decision-makers with an apparent bright line demarking where police independence ends and permissible government intervention begins. However, policy issues can arise in the context of ongoing operations, and definitive definition of “policy” and “operations” may be both unwise and/or impossible. The Discussion Paper then discussed some options.

159. In our view, a definitive definition of “policy” and “operations” would be unwise, unworkable and indeed counterproductive, particularly in the context of the policing of Aboriginal occupations or protests.

160. In the OPP’s experience, operational and policy decisions do and should intersect, and this is particularly so in the context of Aboriginal occupations and protests. Sound operational policing decisions are appropriately informed by government policy decisions. And those policy decisions will sometimes only be made in the context of an ongoing occupation or protest.

161. Experience provides many illustrations of this point. For example, if a government decides to negotiate with occupiers, or having so negotiated, decides to terminate those negotiations, these decisions often impact upon public safety issues, and will generally compel the OPP to consider what resources should be available or what proactive steps should be taken to reduce the risk of violence when those government decisions are made known. A decision by government to terminate negotiations may require additional officers or the POU to at least attend the scene, or cause ART members to discuss with the occupiers their mutual expectations, and how the public safety issues might be addressed.

162. Similarly, a decision by government to purchase lands in dispute from third parties may inform the next operational decision to be made by police. An obvious example: that decision may cause the third parties to invite the court to rescind a contempt order, making its enforcement by police unnecessary.

163. The ability of police to make sound operational decisions will therefore not only require that government communicate relevant policy decisions to the police, but do so in a timely way.²³ Police do not always have – particularly in locations where occupations and protests traditionally occur – immediate access to additional resources. Nor should the police be negotiating with occupiers and others in a “catch-up” mode. This does not accord with the proactive policing to resolve conflicts, articulated in the Framework.

²³ See Wawryk, *The Collection and Use of Intelligence in Policing Public Order Events* at 16. The author states that police may be faced with a challenge requiring instant reactions if they are informed late or not at all of enforcement decisions by other government actors.

164. In summary, government may properly make decisions within its “policy” sphere that should be communicated to police in a timely way, and that should properly inform police operational decisions within their “operational” sphere. This is not, on any purposive analysis, improper influence or direction by government.

165. There is also information in the possession of the police that should appropriately be communicated to government to inform its policy decisions. In this regard, policy decisions may include the government’s positions in relation to a land claim, on whether negotiations will be undertaken and with whom, on what process should be engaged to facilitate negotiations, on whether negotiations should be made conditional on others acting or ceasing to act in a particular way, on whether the court process should be engaged or supported by government, and on the timing of judicial proceedings. There are an infinite number of such decisions that government may be called upon to make in the context of an Aboriginal occupation or protest, and many will be informed by historical information about what has happened “on the ground.” This would often include information about the claims being made, and by whom, as well as the interactions between police, occupiers, elders, clan mothers, elected and traditional leaders, and local non-Aboriginal leaders or community members. Simply put, uninformed policy making may be poor policy making, and indeed may ultimately endanger public safety.

166. Several observations flow from the above.

167. First, the conventional understanding that the police have independent authority for “operations” and government has authority to direct “policy” should not

translate into prohibitions from information sharing that may reasonably advance informed policy making, on one hand, and informed operational decisions, on the other hand.

168. It is respectfully submitted that some cross-examination of witnesses during the Inquiry on the communication of “operational” details (for example to the Interministerial Committee) failed to recognize the appropriateness of sharing information. With respect, the characterizations of shared information as operational too hastily led some to conclude that this predetermined the issue whether any or all of that information should have been shared. This was particularly flawed in that the information shared was historical, as opposed to information about future OPP deployments or tactics, including the deployment of CMU and TRU. The latter was never shared with government before the deployment took place.

169. Second, the imperfection even in the municipal provisions of the Ontario *Police Services Act* becomes obvious. Policy decisions are appropriately made and communicated to the police during Aboriginal occupations or protests. The prohibition against directing specific operations or the day to day operations of the police undoubtedly cautions against obvious improprieties, such as attempting to influence a criminal investigation of a political supporter, but does not, in the absence of further clarity, address appropriate interventions where operational and policy decision-making are specific and made “day to day” in connection with an Aboriginal occupation or protest. Accordingly, any amendment to the *Police Services Act* to achieve symmetry may also involve some reworking of the municipal provisions as well.

170. Third, precise definitions of “policy” and “operations” to meet an objective of delineating what can and cannot be communicated are impossible. Information that need not – and should not – be shared in the context of one incident, may need to be shared in the context of another. Similarly, it is unhelpful and perhaps impossible to precisely define “police independence” in a way that truly assists in advancing the principles earlier identified. Apart from that constraint, the Patten Report’s conclusion that the phrases “police independence” and “operational independence” should be replaced with “police operational responsibility” has much to commend itself. The OPP does not regard itself as unaccountable; sometimes, the emphasis on “independence” fails to acknowledge police accountability, even in those spheres where police cannot be directed by government. That being said, “police independence” from the Crown in the exercise of its law enforcement functions has been described by the Supreme Court of Canada in *R. v. Campbell and Shirose* as one of the fundamental and organizing principles of the Constitution. Properly understood, the phrase should not be lightly discarded.

171. Fourth, while precise definitions to delineate what information or views should or should not be communicated are impossible, there are examples that clearly fall on one side of the line or the other. It is well recognized that the police should not readily communicate to government, in the context of a politically charged occupation or protest, that the CMU or TRU are about to be deployed to move protestors back into the park. It is difficult to understand why such a decision should be shared with government in advance of the deployment. Put another way, even if it could be argued that sharing such information might advance informed policy

making, the dangers associated with sharing the information (particularly in terms of perception) are too high to justify it being shared. Similarly, government may hold views on how the POU or TRU should be deployed by police. Even if it could be argued that sharing such views might advance informed operational decisions, the dangers associated with sharing those views (given the importance of preserving neutral policing and the perception of such) are too high to justify those views being shared.

172. It follows, in our view, that information between government and the police should be shared when the sharing of that information would benefit informed policy decisions by government or informed operational decisions by the police, *and* where those benefits are not outweighed by the dangers associated with the sharing of those views to neutral policing and the perception as such.

173. Drawing upon the above observations, and some of the language reproduced in the Discussion Paper, the OPP recommends the following approach as a starting point:

- Recognize that “policy” and “operations” are fluid concepts, incapable of precise definition;
- Acknowledge that governments and police may appropriately share information, particularly in the context of Aboriginal occupations and protests, where policy and operations often intersect;
- Articulate in a government policy clear examples of situations in which information sharing is appropriate, and which enhance policy and operational decision-making. These examples should include situations involving Aboriginal occupations or protests;
- Articulate in a government policy clear examples of situations in which information sharing is inappropriate, and which undermine identified principles,

such as non-partisan policing or the perception of such. These examples should include situations involving Aboriginal occupations or protests.

174. As previously noted, Commissioner Boniface, former Commissioner O'Grady and others testified that the Ministry Paper accurately reflects their understanding of the relationship between the Ontario government and the OPP. In our view, it should be used as a resource to create a formal government policy in this area. It outlines the statutory framework within which the Solicitor General and the OPP operate, and provides examples of appropriate and inappropriate direction/advice/communication between government and the OPP.

175. The Inquiry's Discussion Paper correctly notes the limited assistance that is provided by the jurisprudence or inquiry reports on the "outer limits of police independence from government" or where public order policing fits within any "zone" of police independence. However, the jurisprudence and reports are helpful in identifying clear examples of inappropriate information sharing to be articulated in a government policy.

Question 8: Should governments have the right to give non-binding advice to police on operational matters? If so, how can this "guidance" be made transparent or governments made accountable?

176. As earlier indicated, governments can share information or views with the police when the sharing would benefit informed operational decisions by the police, and where those benefits are not outweighed by the dangers associated with the sharing of those views to neutral policing and the perception of such. If the government should not be *directing* the police in an operational sphere, it will generally follow that it should not be giving even non-binding *advice* in that sphere.

That is because any benefits associated with the sharing of those views will generally be outweighed by the danger that the non-binding advice will be perceived to constitute a direction or an attempt to improperly influence the police. As reflected below, if the communication takes place, concerns can be addressed through documenting the communication to enhance transparency and accountability.

177. The evidence at this Inquiry illustrates the above point well. Although Superintendent Fox made it clear that he did not take the Premier's comments about how the OPP had handled the initial occupation of the park or any other comments as direction to the OPP, he and others were questioned about the possibility that such comments could nonetheless be taken as efforts to improperly influence or as an implicit direction to the police. Indeed, Superintendent Fox told the Incident Commander, John Carson, that the Premier believes he can direct the police. Our submissions recognize the potential dangers in offering "advice" to the police on operational matters that cannot be the subject of direction.

Question 9: Should governments have the right to be informed of any operational matter, even one involving an individual case, if it raises an important question of public policy?

178. An important distinction needs to be maintained between informing the government in advance of operational activities or decisions, and informing the government of operational activities or decisions that have already taken place. The latter may be framed as the Minister's "right to know". As stated in the Ministry Paper at page 12:

Right to Know

(a) What right does the Minister have to be fully informed of matters respecting the OPP?

Section 2(2) of the Ministry of the Solicitor General Act provides that “the Solicitor General shall preside over and have charge of the Ministry”. A necessary adjunct to this responsibility is the right and duty to be kept fully informed of any matter in the Ministry. This would include being informed of any operational matter, including an operational decision in an individual case. But the Commissioner could withhold information that would result in a serious breach of confidence, jeopardize an investigation or put any person at risk. Of course, the Commissioner, in making that decision, would be held accountable if he exercised that power incorrectly.

(b) Can the Minister demand information?

The Minister could insist on being kept informed of any matter within the Ministry, including an operational or a policy matter. The rationale for this right to know is that the Minister is ultimately accountable in the Legislature for the efficiency and effectiveness of law enforcement in the province. He or she must, in the normal course, be able to answer questions on matters of operational policy. Exceptions would be questions concerning ongoing police investigations, where public answers could jeopardize the safety of an individual or hamper the conduct of an investigation or proceeding.

This conforms to the OPP position.

Question 10: Do current structures or processes ensure accountable and transparent decision-making by the police and government on police/government relations?

Question 17: Should there be a Police Services Board for the OPP? Are there other ways of facilitating greater public participation in formulating and discussing the policies that govern the OPP?

Question 18: Should there be greater use of Ministerial Directives to the OPP? Should all governmental directions be reduced to writing and made public? Should the Commissioner have the option of asking that governmental direction be reduced to writing in the form of a Ministerial directive?

Question 19: How should governmental directions to the police be recorded during a crisis? If government issues directions during a crisis, how should they be transmitted and recorded?

179. These questions are best addressed together.

180. The OPP agrees that transparency in decision-making can be improved. We also recognize (as did both Commissioner Boniface and former Commissioner O'Grady) that a police services board can promote, through its public processes, public participation, accountability and transparency. Having said that, there are significant impediments to the introduction of a province-wide police services board to govern the OPP.

181. The provincial policing framework that pertains to the OPP is complex. Section 19(1) of the *Police Services Act* confers responsibility upon the OPP to provide policing services in the parts of Ontario that do not have municipal police forces other than municipal law enforcement officers; provide policing services in respect of all navigable bodies and courses of water in Ontario except those that lie within municipalities; maintain a traffic patrol on the connecting links within the meaning of section 21 of the *Public Transportation and Highway Improvement Act*, and maintain investigative services to assist municipal police forces on the Solicitor General's direction or at the Crown Attorney's request.

182. The OPP has simultaneous involvement in different tiers of policing (provincial, municipal and First Nation), a strong operational relationship to federal policing services, a significant role in providing specialized services to municipal and First Nation police services, and a unique provincial role in terms of public order maintenance and emergency management.

183. To illustrate this complexity, the OPP provides direct policing services to approximately 182 municipalities not policed by another service, and to another 130 municipalities via 103 contracts. It provides direct policing to 19 First Nations and administers policing for 20 more First Nations. It delivers specialized police services pursuant to 135 specialized service framework agreements and on request from the Crown Attorney, a police services board, a Chief of Police or the Ontario Civilian Commission on Police Services. The OPP provides policing on highways, waterways, provincial parks and trail systems. It provides investigative assistance to municipal and First Nation police services, and is responsible for emergency response and resources for major incidents, emergencies or disasters. Finally, the OPP leads the many provincial joint-force multi-jurisdictional task forces, and police support programs such as the Ontario Sex Offender Registry and the Provincial Violent Crime Linkage Analysis System.

184. There is a wide range of difficult issues associated with a province-wide police services board to govern the OPP. What would the relationship be between the province-wide police services board and local police service boards? Would the OPP be answerable, depending on which of the 400 communities it polices, to two police services board? What would the relationship be between the province-wide services board and First Nations communities? Even if the province-wide board had Aboriginal representation, would it meet the needs of individual First Nations, enhance community policing, accommodate the multiple policing models chosen by First Nations, and preserve the relationships between OPP and local communities? Would it truly be seen to represent and articulate the needs of the over 400

communities, municipal and First Nation, that are policed by the OPP? Given the breadth of Ontario (the OPP patrols 1,081,667 square kms of land and 113,731 square kms of water), would it truly enhance public participation in its processes or be seen as remote or unwieldy? What would its capacity be to address intergovernmental policing issues, such as those generated by the OPP's operational relationship to federal policing services?

185. In summary, although the OPP is not philosophically opposed to being governed by a police services board, the Inquiry must consider whether adding yet another police services board would, as Professor Roach queries, “cause confusion and diffuse accountability.” As the Discussion Paper notes, the Inquiry must ask whether a police service board model of public participation can be effectively reproduced at a provincial level or is otherwise advisable.

186. Finally, the OPP questions whether the evidence at this Inquiry compels such a complex and costly reform. There is no evidence that the government directed or influenced the OPP operations at Ipperwash. There is no evidence that government direction or influence is a systemic or recurrent problem in connection with the OPP. On the contrary, the evidence shows a robust understanding within the ranks of the OPP of police independence from government, although we all struggle with the difficult grey areas identified here. The OPP Commissioners who testified at this Inquiry brought wisdom, personal integrity, strength of character and professionalism to their positions. Commissioner O'Grady worked with governments of every political persuasion. Both Commissioners showed a healthy appreciation of their operational

independence. The case has not been made for the necessity or feasibility of a province-wide police services board.

187. In our view, there is a wealth of internal and external accountability mechanisms that exist for OPP operational decisions, including the decision on how to respond to Aboriginal occupations or protests. These mechanisms have been discussed in Sections 2 and 3 of these submissions and need not be repeated here.

Transparency in decision-making by the police and government on police/government relations could nonetheless be enhanced in several ways:

- As already recommended, a government policy should be created that addresses the relationship between government and the OPP. Its features have earlier been described;
- The policy could extend to all relevant Ministries, with appropriate recognition of the Solicitor General as the responsible Minister for the OPP;
- Where government shares information with the OPP in the context of an ongoing operational matter, the information exchange should, where practicable, be documented. We agree with the Hughes Report that accountability for government interventions during an event is best achieved through appropriate record keeping and effective case management. Government directives or interventions are thereby preserved for posterity and, if needed, for review;
- Significant “policies of operation” should generally be reduced to writing and, where possible, publicly available;
- The Commissioner may request that governmental direction be reduced to writing in the form of a Ministerial directive;
- Post-critical incident, the OPP should brief affected communities on the decision-making process. Such briefings must be practicable, and done in a manner that complies with the law, and recognizes overriding interests such as public safety, privacy, preservation of ongoing investigations or confidential sources, and not prejudicing ongoing court proceedings.²⁴

²⁴ See Nashkawa, Anishinabek First Nations Relations with Police and Enforcement Agencies (August 30, 2005) on behalf of the Union of Ontario Indians at 36: “Following an enforcement action by a tactical unit, First Nation leadership should be provided with a briefing on the actions and their outcomes whenever possible.”

Question 16: Should advice or directions from the government be directed to the Commissioner or through the Commissioner's office? How can operational decision-makers, incident commanders and front-line officers within the OPP be insulated from inappropriate government directions or advice?

188. The Ministry Paper addresses this issue at various pages:

The Deputy Minister is the chief administrative officer of the Ministry. He or she should act as a buffer between the political authority and the Commissioner. It is the Deputy's responsibility to inform himself/herself of all matters being handled within the Ministry and to decide which matters are of sufficient importance so that the Minister ought to be informed or to raise issues of policy for the Minister's consideration. (13)

...

Reporting relationships should also be respected in order to avoid any perception of political interference (as opposed to the Minister's right to be fully informed on all matters under his or her jurisdiction). Accordingly, it would be advisable for the Minister to direct his or her requests for information to the Commissioner. (18)

...

The desired chain of communication is from the Minister to the Deputy Minister to the Commissioner, and from the Commissioner to the Deputy Minister to the Minister. The Minister may meet with both the Deputy Minister and the Commissioner together or with either individually. Where the Minister wishes to discuss an issue with the Commissioner alone, he or she should advise the Deputy Minister of the intention. Communication will also be enhanced through official social contact. (22)

...

The Minister may ask to be informed on the general activities of the OPP as they pertain to any investigation or activity. The Minister should make such request through normal channels, that is, through the Deputy Minister to the Commissioner to the investigating officer. To do otherwise might be seen as political interference in the operation of the police. The Commissioner may refuse to make a full report if he believes it would contain information, disclosure of which would be contrary to the public interest. (25)

The OPP agrees with this position.

189. However, there should be no absolute rule that prohibits contact other than through the Commissioner's office. It is generally the preference. However, it must be recognized that the exigencies of critical incidents may compel a different approach. The Deputy Commissioner, for example, may communicate directly with the Deputy Minister. It may be important for the Commissioner to communicate directly with the Premier or Minister Responsible for Native Affairs. Professor Stenning correctly notes that consultations between police commissioners and government ministers, including premiers and prime ministers, prior to and during public order operations are not seen as inappropriate in either Australia or New Zealand, but indeed, may be seen positively. Through similar consultations (sometimes initiated by the OPP Commissioner), she has facilitated appropriate involvement by government in substantive issues arising out of Aboriginal occupations or protests. These consultations cannot only be seen through the prism of allegations made about government interference at Ipperwash. It is of critical importance here that "the baby not be thrown out with the bathwater." Enhanced record keeping should substitute for inflexible prohibitions.

190. The OPP recommends four additional steps that can be taken to better insulate operational decision-makers, Incident Commanders and front-line officers from any inappropriate government direction or advice. Even where there is no inappropriate government direction or advice, these steps enhance the perception of non-partisan policing:

Development of an OPP policy on access to the Command Post

191. The OPP is developing a policy on the presence of politicians and other non-police personnel in an operational Command Post. Such a policy should preserve the discretion conferred upon Incident Commanders in this regard, but articulate the factors that should inform the exercise of that discretion.

192. The OPP proposed policy may reflect the following:

- (1) Generally, only police officers, as may be necessary to perform their duties, should attend an operational Command Post;
- (2) Generally, politicians should not attend an operational Command Post. Their attendance can create the perception, if not the reality, of political influence over operational decisions;
- (3) Similarly, where the incident arises out of an assertion of rights (such as a blockade, occupation or analogous protest), representatives of interested parties should not attend an operational Command Post for similar reasons. This extends to both government and non-government representatives;
- (4) Nothing in this policy is intended to eliminate the discretion conferred upon Incident Commanders to regulate access to an operational Command Post, having regard to all of the circumstances, including the desirability of communicating with non-police personnel on issues of importance, and the existence of practical alternative locations to do so.

Training

193. OPP officers (particularly Level 2 and Public Order Commanders) should, of course, be trained respecting the OPP policy on access to the Command Post. Such training should include discussion of the issues raised concerning government influence or interference in operations at Ipperwash, and how these issues should be dealt with when they arise. To be clear, this issue (including the importance of limiting access to the Command Post) has already been discussed by Commanders

within the OPP, and incorporated as a best practice into Incident Command of Level 2 Incidents and Public Order events.

194. Politicians and government bureaucracy should also be trained on any government policy developed (as recommended earlier) on the relationship between government and police. Such training should include discussion of the issues raised concerning government influence or interference in operations at Ipperwash.

Buffers

195. The Incident Commander, John Carson, met and/or spoke with politicians while serving as Incident Commander. To be clear, it is important that OPP operational personnel meet or speak with community leaders, including politicians. The OPP can significantly reduce anxieties, dispel unsubstantiated rumours, and prevent vigilantism through such communications. Similarly, community leaders can provide the OPP with indispensable information about the events occurring in their communities, likely “flash points”, and the need for immediate dialogue with identified parties to avoid vigilantism. Politicians represent their communities, which are likely stakeholders or affected by the events as they unfold. As Deputy Commissioner Carson noted in his testimony (June 1, 2005 at 65-66):

.... [W]hat is clear is the police must be provided with all viewpoints. Information from political leaders may validate or dispute other information known to the police. The confirmation or lack thereof may be an important consideration. The viewpoint may be from a perspective otherwise not available. The elected official may be an important individual to communicate a vital message to the community that contributes to a positive outcome.

It is always essential that police be provided with information from every source. When the OPP is responding to First Nations communities in regards to any major occurrence, it is expected that the commander will seek out the chief of council or representative thereof to ensure that there's an understanding of police operations.

The police commander must assess all available information in order to decide on the independent application of law. In general, such autonomy can be achieved by the use of an operational liaison officer as suggested in the previous recommendation.

This approach would preclude any elected official needing direct access to the incident commander. However, I would be cautious of any suggestion that precludes absolutely that the incident commander not be able to have a face to face meeting with an elected official.

It is recommended that in major occurrences where appropriate, police assign an operational liaison officer who is designated as the contact person for elected officials.

The liaison officer would receive information and update the elected official as appropriate in the public interest.

196. The evidence at the Inquiry raised two concerns: the perception of improper influence or interference by government because politicians were meeting directly with the Incident Commander; second, the overburdening of the Incident Commander through the need to perform the role as community liaison, as well as his many other roles.

197. In addition to the proposed policy on access to the Command Post, these concerns have already been addressed in a variety of ways. The Gold-Silver-Bronze Command structure for Public Order events, identified as a best practice in England and by Warwyk is now utilized by the OPP. This formalized structure distributes responsibilities previously assumed by a single Incident Commander and permits the

on-scene POU Commanders to be insulated from community or political contact. Second, the position of Aboriginal Liaison Officer – Operations, together with the development of ART and MELT teams provide the Commanders with trained resources to develop and sustain communications with community leaders, both Aboriginal and non-Aboriginal. These officers can and do serve as liaisons with affected communities and as buffers, if needed, for Commanders. Under some circumstances, this role can also be performed by the OPP Detachment Commander, a municipal Chief of Police, or the Chief of the relevant First Nation Police Service (particularly if the incident is occurring within his or her jurisdiction.) Indeed, the OPP Incident Simulation illustrated the latter approach.

198. In our view, there should be no inflexible rule that Commanders cannot communicate with politicians or other community leaders. Commanders, as was the case with Deputy Commissioner Carson, may be assigned to an incident for months or several years. There will be times when concerns about political influence or overwhelmed Commanders are negligible. Commanders may have relationships with community leaders that can be utilized to reduce the likelihood of violence. These relationships should not automatically be discarded. The better approach is to recognize, through training, the concerns that have been identified at the Inquiry, and that those concerns should inform a Commander's discretion as to whom he or she will meet with and when. Rather than institutionalize yet another position – that is, a Community Liaison Officer as a buffer, the OPP accepts that the specific assignment of such an officer as a buffer should be a resource available to a Commander. In most cases, it can be served by the Aboriginal Liaison Officer – Operations, and/or members of the ART and MELT teams, the Detachment Commander or the local

Chief of Police.

(5) ABORIGINAL AND TREATY RIGHTS

Brad Seltzer, June 13, 2006 Testimony at 174-176

Ipperwash was, without a doubt, the most significant experience of my life and my career. It had a profound impact on me and still burdens me almost eleven (11) years later. My wife, my children, and all who know me know that to be true.

Like others, I attended the Ipperwash occurrence because I was assigned to the task. I attended with the goal of doing my job to the best of my ability and towards the mutual goal of peaceful resolution. But that was not to be.

When I was briefed by Inspector Carson at 4:00 a.m. on September 7th as to what had happened overnight I was shocked. The tide had turned so quickly and I experienced a heartfelt disappointment that the goal we had as a group would not be achieved. It was a tragedy beyond expectation. Control was fragile if not lost. Emotions were high and I was deeply concerned for the future of the next few hours or days.

I had never experienced a situation of this magnitude but was comforted by the thought that somehow the collective professional skill of so many would bring this again under control.

Later that day Inspector Carson and I talked again. Where were we? What do we need to do? A citizen had died, police personnel had experienced a life-threatening environment, SIU was or would be on scene interviewing some. A psychologist and trauma counsellors were interviewing others. Morale was shattered by the events and our hope of a communication contact was gone and we had been so close.

I thought of the first question that Bob George had asked me the day before, Do you have any power? No? Then they won't talk to you.

I said, John, we are out of our league. This isn't something we can fix. His response was slow and deliberate. I believe it bothered him as it did me. Emotionally he said, We have to handle it; there's nobody else coming.

All at the same time I felt anger, denial, frustration and despair and that's the unresolved emotion that I'm still left with today every time I hear the word, "Ipperwash."

Resolution is found at a table in the spirit of inclusion, not with a couple of people yelling at each other over a fence. The police can deal with public safety and security but the police were left to handle a situation that we had no power to resolve.

The resolution of these matters lies within our governments, the foundations of power that society leans on when social structures become ineffective and as we know this isn't just an occurrence for today or even tomorrow.

This is a moment in time in Canadian history and as the old adage says, unless we change our direction we are likely to end up where we are headed.

Commissioner Boniface, June 15, 2006 Testimony at 189:

Land grievances must be addressed in this country. I would like to ask the Commissioner to ensure that the Federal Government, in his recommendations, is called upon in a leadership role if communities are to live in peaceful co-existence. These grievances cannot and will not ever be resolved by police services.

Commissioner O'Grady, August 23, 2005 Testimony at 85-87:

Over the years ... throughout Canada there have been many instances in which groups of First Nations individuals frustrated, I think, by the lack of the timely resolution to land claims or to other issues, have taken part in blockades or so-called occupations and, inevitably, the police become involved.

In most cases, I'm happy to say, ... a peaceful, temporary resolution is reached. But given its repetitive nature, given the involvement of frustrated and understandably occasionally emotional people on the one hand and apprehensive police on the other hand, I think that a tragedy, sooner or later, is predictable and, of course, that's why we're all here today.

Police operational procedures can always improve and hopefully will. Police and First Nations relationships can improve and hopefully will, but I think that the best approach is a preventative one. I think that's standard thinking in policing these days.

So that, given the history of the relationship between the First Nations people and this country, I believe that it's incumbent upon the Federal, the Provincial and the First Nations Governments to expedite the settling of land claims and the like issues. Without government's commitment to these issues, we'll continue to see the police involved in matters, which could have been prevented by government leadership and action.

Acting with goodwill, governments could bring about resolution, so that tragedies such as this one could be prevented.

And I really think that should be the overriding principle. All of the operational improvements and approaches will not preclude another tragedy because we're dealing with human beings ...

And surely, to prevent them from taking place, should be the objective.

199. In the OPP's view, there is no greater imperative than to ensure that the resolution of Aboriginal treaty and rights claims is timely, fair and well-resourced. Frustration with existing processes has overwhelmingly been shown to be a significant catalyst for occupations, blockades and other protests. As former Commissioner O'Grady noted, even as police operational processes and relationships with First Nations dramatically improve, they provide no guarantee that future violence will not occur. As was earlier indicated, the very best way for police to respond to Aboriginal occupations and protests is not to have them at all.

200. Although it will be for other parties (with greater expertise) to propose recommendations to address the present failings in addressing assertions of Aboriginal rights, the OPP lends its support to any recommendations that will assist in addressing this problem on an urgent basis.

201. We also echo comments made by Ontario Regional Chief Toulouse, by Chief Mercredi, and many other voices, that public education about Aboriginal peoples, their history, concerns and aspirations will improve relationships between Aboriginal and non-Aboriginal peoples, and incidentally contribute to reducing the likelihood of violence during occupations or protests. It will also facilitate the healing process

when communities become divided during such occupations or protests.

202. Regardless of the merits of specific Aboriginal claims, the public at large must understand the underpinnings of such claims, and not regard the vindication of Aboriginal rights as a favour or charity to Aboriginal peoples. As earlier indicated, it is sad to say that the media cannot always be relied upon to ensure that this story is told.²⁵

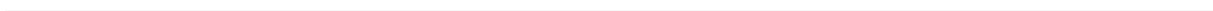
203. Accordingly, the OPP strongly supports recommendations to promote public education on these issues. We support the recommendation of the Union of Ontario Indians that a joint public education program on treaties, First Nation history and contemporary issues be developed that is relevant to local communities and treaty areas, to complement other initiatives to enhance awareness. The OPP would be pleased to participate in such educational programming, if called upon.

Chief Mercredi, April 1, 2005 Testimony, at 52-53:

You don't get to know people through conflict, that's the last place to look to understand people. You don't understand the police through conflict, and you obviously don't understand Aboriginal people through conflict...

Issues of government are important to our people. And because they're important to our people, they're important to the rest of the country. And our neighbours have to see us in a different context, not as troublemakers but people who are trying to build a better life for themselves and they want to use self-government as a vehicle towards that end.

²⁵ See Miller, *Ipperwash and the Media: A Critical analysis of how the story was covered* (December 15, 2005)



(6) ADDITIONAL SUBMISSIONS AND RECOMMENDATIONS

204. Based upon the submissions already made, the OPP has the following proposed recommendations for the Inquiry. Paragraphs where these points have already been made are identified for convenience:

1. That the Inquiry identify the OPP initiatives to build respectful relationships with the Aboriginal community as best practices; (paras. 4,29-30,117-119)
2. That these initiatives continue and be enhanced, through adequate financial support from the provincial government and, where applicable, the federal government; (para. 65,129)
3. That other police services consider the OPP's and other identified best practices to build respectful relationships with the Aboriginal community in crafting their own practices; (para. 4)
4. That priority be given to the speedy and just determination of Aboriginal claims; (paras.16-17, 199-200)
5. That adequate resources (financial or otherwise) should be directed to the resolution of Aboriginal issues; (para. 64)
6. That the Inquiry specifically recognize the important role of the OPP and other police services as "peacekeepers;" (para. 26)

7. That the Inquiry identify the Framework for Police Preparedness for Critical Incidents as a best practice for responding to Aboriginal occupations or protests; (para. 37-39; 49)
8. That the OPP continue to take steps to disseminate the Framework to all self-directed and OPP administered First Nations police services, and to communities that are policed directly by the OPP; (para. 39)
9. That the OPP also disseminate the Framework to municipal police services that provide front-line policing for First Nations communities or which police communities with significant First Nations populations; (para. 76)
10. That the MNR consider adoption, in whole or in part, of the principles articulated in the Framework for its enforcement activities; (para. 41)
11. That the OPP and MNR consider the development of an operational protocol which conforms to the approach and best practices identified in the Framework; (para. 79)
12. That the OPP continue to work with the Chiefs of Ontario, the Nishnawbe-Aski Nation, and others, including the Provincial Territorial Organizations to develop communication/dialogue protocols; (para. 67)
13. That the OPP consider, if so desired by First Nations political organizations, the

desirability and feasibility of operational and public safety protocols with such organizations; (paras. 67-68, 108)

14. That the OPP expand its ART and MELT membership, drawing upon officers across the Province who have familiarity with local issues and individuals, as resources permit; (para. 73)

15. That financial resources be provided to First Nations communities for alternative dispute resolution services, to be offered either through First Nations police services and/or other agencies; (paras. 48,74)

16. That public education about Aboriginal peoples, their history, concerns and aspirations be promoted, in consultation with Aboriginal leadership, that is relevant to local communities and treaty areas, to complement other initiatives to enhance cultural awareness; (paras. 55, 202-203)

17. That the provincial government consider the creation of a policy on its approach to Aboriginal occupations and protests. Such policy, amongst other things, should complement and support the Framework's approach, and articulate factors that will inform the government's position on the timing and desirability of court process for injunctive and other relief. The policy should address all relevant government agencies or Ministries; (paras. 60, 95-96)

18. That the federal government consider the creation of a policy that should also complement and support the Framework's approach, and articulate factors that

will inform the government's position on the timing and desirability of court process for injunction and other relief; (paras. 60,63,95)

19. That both governments consider the creation of a process to enable them to resolve, in a timely way, disagreements between them about their share of responsibility for past actions of the Crown; (para. 63)

20. That it may be advisable that the OPP, at its initiative, be separately represented, where appropriate, during court proceedings concerning Aboriginal occupations or protests. This would enhance the OPP's ability to remain, and appear to remain, neutral; (para. 61)

21. That the Inquiry identify as best practices the OPP initiatives to build cooperation and interoperability between it and First Nations police services, including NAPS Investigative Support Unit, ISSU, access to Native Awareness Training, secondments, and joint training, investigative and enforcement initiatives. Adequate financial resources should be available to enable these initiatives to continue and be enhanced, particularly in relation to the training of First Nations police service officers in crisis negotiation, and emergency response and containment, to enhance capacity and interoperability; (paras. 71,72,74,114)

22. That the OPP work with the First Nations leadership in the continuing design, implementation and evaluation of its initiatives, including input on ART and Native Awareness Training, and on developing additional tools to assess the success of its initiatives; (paras. 92,128)

23. That the federal and provincial governments significantly increase funding for First Nation police services and those police services which deliver services to the First Nation communities; (paras. 111,113)
24. That there be consideration of a legislative framework for First Nations police services, and that within that framework, the appointment of First Nations officers by the OPP Commissioner be discontinued, and be transitioned into appointment by the relevant Service or Board; (para. 113)
25. That the Inquiry identify as best practices the OPP initiatives, including inreach and outreach programs, to recruit diverse and bias-free officers, including Aboriginal officers, and to train all officers to enhance cultural awareness and root out racism; (paras. 130 et seq.)
26. That consideration be given to the amendment of the Ontario *Police Services Act* to address the current absence of specific statutory prohibitions respecting the Solicitor General's authority to direct the police on operational matters; (paras. 156,169)
27. That information between government and the police should be shared, particularly in the context of Aboriginal occupations or protests, when the sharing of that information would benefit informed policy decisions by government or informed operational decisions by the police, and where those benefits are not outweighed by the dangers associated with the sharing of those views to neutral

policing and the perception of such; (para. 172)

28. That the provincial government develop a policy that, amongst other things:

- Acknowledges that governments and police may appropriately share information, particularly in the context of Aboriginal occupations and protests, where policy and operations often intersect;
- Articulates clear examples of situations in which information sharing is appropriate, and which enhance policy and operational decision-making. These examples should include situations involving Aboriginal occupations or protests;
- Articulates clear examples of situations in which information sharing is inappropriate, and which undermine identified principles, such as non-partisan policing or the perception of such. These examples should include situations involving Aboriginal occupations or protests;
- Draws upon the principles articulated in the Ministry Paper;
- Could extend to all relevant Ministries, with appropriate recognition of the Solicitor General as the responsible Minister for the OPP;
- Provides that where government shares information with the OPP in the context of an ongoing operational matter, the information exchange should, where practicable, be documented; (paras.173,174,187)

29. That politicians and government bureaucracy be trained on any government policy developed on the relationship between government and the police; (para. 194)

30. That significant government “policies of operation” generally be reduced to writing and, where possible, publicly available; (para. 187)

31. That the OPP Commissioner may ask that government direction be reduced to writing in the form of a Ministerial directive; (para.187)

32. That, after a critical incident, the OPP brief affected communities on the decision-making process. Such briefings must be practicable, and done in a manner that complies with the law, and recognizes overriding interests such as public safety, privacy, preservation of ongoing investigations or confidential sources, and not prejudicing ongoing court proceedings; (para. 187)

33. That the Inquiry support the development of the policy proposed by the OPP on the presence of politicians and other non-police personnel in an operational Command Post; and that OPP officers be trained respecting that policy, including the concerns that explain it; (paras.191-193)

34. That an OPP Community Liaison Officer be utilized, where needed and in the discretion of the Incident Commander, as a buffer between the Incident Commander and third parties, including politicians; (para.198)

SUBMISSIONS ON THE EVOLUTION OF OPP EMERGENCY RESPONSE SERVICES, PUBLIC ORDER UNITS, AND INTELLIGENCE SERVICES

205. The OPP has some brief additional submissions that are not directly responsive to the issues raised in the three Discussion Papers.

206. Through the OPP Part II materials, the testimony of Commissioner Boniface, and the OPP Incident Simulation and Orientation, the evolution of the OPP Emergency Response Services, Public Order Units and Intelligence Services from 1995 to 2006 has been documented.

207. Significant changes are outlined in three documents:

- OPP Part II materials, Tab 4 (OPP Emergency Response Services: A Comparison of 1995 to 2006). The key changes are highlighted at 39-41, and in Appendix B (Summary of Changes to Integrated Response 1995-2006);
- OPP Part II materials, Tab 5 (OPP Public Order Units: A Comparison of 1995 to 2006). The key changes are highlighted at Tab 6 (Summary of Changes to POU 1995-2006);
- OPP Part II materials, Tab 7 (OPP Intelligence Services: A Comparison of 1995 to 2006). The key changes are highlighted at 23-29 and in Appendix A (Summary of Changes to Intelligence 1995-2006).

It is unnecessary to duplicate those summaries here.

208. The OPP respectfully submits that the evolution of the OPP emergency response, POU, and Intelligence Services should be acknowledged as best practices by the Inquiry that collectively contribute to reducing the likelihood of future violence.

209. In addition, Commissioner Boniface, during her testimony at the Inquiry, adopted two suggestions arising out of the OPP Incident Simulation and Orientation: first, that the factors to be weighed in determining whether the POU will be deployed should be reduced to writing as OPP policy; second, that POU Commanders and ERT members, in addition to the training currently undertaken, should specifically be instructed on the special considerations and unique responses involving an Aboriginal blockade, occupation or land dispute. The first is being worked on, and the second will be incorporated into training of POU Commanders and ERT members by the end of 2006. These initiatives will again contribute to reducing the likelihood of future violence. The OPP policy will also enhance transparency of

decision-making.

Summary and Conclusion

210. These submissions generate the following proposed recommendations:

35. That the Inquiry identify the evolution of the OPP emergency response, POU and Intelligence Services as best practices that collectively contribute to reducing the likelihood of future violence; (paras. 206-208)

36. That the Inquiry support the development of a policy proposed by the OPP articulating the factors to be weighed in determining whether the POU will be deployed, and training proposed for ERT members and POU Commanders on the special considerations and unique responses involving an Aboriginal blockade, occupation or protest; (para. 209)

211. After the OPP reviews the written submissions of other parties, additional recommendations may be forthcoming.

212. These submissions end where they began. The death of Dudley George was tragic. It would be tragic if lessons were not learned from it. Much has been learned; more is left to do. The OPP looks forward to Commissioner Linden's recommendations.

Mark J. Sandler
Andrea E.E. Tuck-Jackson
COOPER, SANDLER & WEST
Barristers & Solicitors
439 University Avenue
Toronto, ON
M5G 1Y8

Tel.: (416) 585-9191
Fax: (416) 408-2372

E-mail:
msandler@criminal-lawyers.ca
atuckjackson@criminal-lawyers.ca

Counsel for the Ontario Provincial
Police & its Senior Officers