

IN THE MATTER OF an Inquiry pursuant to the *Public Inquiries Act* R.S.O. 1990, c. P.41, as amended, into the events surrounding the death of Dudley George and the avoidance of violence in similar circumstances.

SUBMISSIONS OF THE PROVINCE OF ONTARIO

PART 2 – POLICY & RESEARCH

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SUBMISSIONS OF THE PROVINCE OF ONTARIO

The Province of Ontario has standing as a party with respect to both Part 1 and Part 2 of the Inquiry. These submissions are divided into two parts. Part 1 submissions are with respect to the evidence given at the Inquiry, and Part 2 submissions provide some responses to issues raised in the Discussion Papers circulated by the Commission.

PART 2 – POLICY AND RESEARCH

1. During the course of the Inquiry, the Province has provided information to the Commission regarding its current policies and practices, and about ongoing policy development. The Province has also submitted various papers that are now posted on the Inquiry website.
2. The submissions below are intended to supplement the papers and information already provided to the Commission and to respond to some of the issues raised in the Discussion Papers circulated by the Commission.
3. As noted by the Commission, in June 2005 the government released Ontario's New Approach to Aboriginal Affairs. The New Approach affirms the government's commitment to build relationships with the province's Aboriginal peoples and to address issues to strengthen their communities.

The New Approach is based on a new relationship of cooperation and mutual respect, focused on shared goals for long-term positive change. The document outlines the government's commitments to the following initiatives, and sets out strategies to achieve them:

- Implement a new urban/rural Aboriginal children and youth program
 - Champion Aboriginal children and youth issues in Federal/Provincial/Territorial/Aboriginal processes
 - Develop an Aboriginal education policy framework
 - Develop guidelines for consultation with Aboriginal peoples related to constitutionally protected rights
 - Establish a new Northern Table to address the unique challenges to achieving prosperity and well-being in the North
 - Negotiate and implement Métis harvesting agreements
 - Develop an Aboriginal justice strategy
 - Implement a sport and physical activity strategy focused on Aboriginal children and youth
 - Implement an enhanced Aboriginal tobacco strategy
4. Many of the issues identified in the New Approach, such as effective consultation processes and youth and education initiatives, are also of concern to the Commission. The government of Ontario continues to work with Aboriginal groups, and where appropriate, the federal government to address many of these complex and challenging issues.

Treaty and Aboriginal Rights

Land Claims Policy and Issues

5. In its June 2006 Discussion Paper on Treaty and Aboriginal Rights, the Inquiry raised a number of questions it felt would be helpful to concluding its deliberations on matters relating to Part 2 of its mandate – to make recommendations about the avoidance of violence in situations similar to that which led to the death of Dudley George. Land claims policy and practice are among the matters the Inquiry decided to examine in fulfilling this part of its mandate.

6. In May 2005, the Ontario Native Affairs Secretariat (now the Ontario Secretariat for Aboriginal Affairs) presented to the Inquiry, *The Resolution of Land Claims in Ontario: a Background Paper* to assist the Inquiry in its deliberations about land claims in the Province. The paper is posted on the Inquiry's web site and the information contained in that paper will not be repeated here.

7. As the Commission has also noted in its discussion paper, in April 2005, Ontario along with First Nations and Canada re-established an intergovernmental forum to improve relations among the three levels of government. The "Rebuilding Canada-First Nations-Ontario" process is working to address:
 - The development of protocols for working together and clarifying government to government relations;
 - Mandating negotiations, and
 - Developing effective dispute resolution processes.

Ontario remains committed to the renewal of this process and will make every effort to ensure its success for all parties.

8. A theme or concept underlying or embedded in some of the questions in the Inquiry's Discussion Paper on Treaty and Aboriginal Rights is that the use of third parties (and possibly of a third-party institution) may be beneficial to oversee and facilitate the process of resolving land claims in Ontario, and, where necessary, to mediate and/or adjudicate issues giving rise to differences among the parties to a land claim negotiation. Ontario offers the Inquiry these observations on the use of third party intervention in land claims processes.

General Observations

9. Ontario acknowledges that the assistance of third parties can be beneficial in the context of some land claim and related negotiations. Integrity, openness and fairness are important principles to guide the land claims process. These fundamental characteristics lend claim resolutions the attributes of timeliness and balance and that lead people to regard the process as credible and in the public good.
10. On a related note, it is important that any assistance from third parties, and in particular from an institutional third party, be structured so as to address a particular problem or problems.

Particular Observations

11. Based on the Province's long experience with the Ontario Tripartite Process facilitated by the former Indian Commission of Ontario (ICO), and with land claim and land-related negotiations during and following the tenure of the ICO, Ontario offers the following more specific observations and points for the consideration of the Commission:

1) The involvement of a third party institution in land claims can have advantages, possibly in the following areas of the land claims process:

- In promoting transparency and accountability of the overall process.
 - Make the process transparent and accountable as an incentive to greater effectiveness and efficiency among the negotiating parties.
 - The existence of a third party that oversees the claims process might serve to enhance the public credibility of the process.
- As the vehicle for public education about land claims and the claims review and negotiation process. This is also related to the public transparency and accountability of the process.
- In allocating resources to support negotiation activities.
 - A neutral body that allocates funding to a First Nation to support its negotiation activities may avoid the potential for the appearance of conflict of interest when the Crown acts as both negotiator and funding source for its negotiating partner.
- As an agent of capacity building.
 - While First Nations are generally assisted in land claim negotiations by counsel and other advisers, they may benefit from training in the negotiation

and resolution of land claims. A qualified institutional third party might assist in this regard.

- As a keeper of sound process and promoter of best practices among the parties, facilitating process and enhancing process improvement as required.

2) Such assistance should facilitate / empower the parties to reach their own settlements, rather than be a surrogate for litigation, imposing process and possibly limiting outcomes.

- Lasting resolutions to claims issues necessitate a high degree of commitment by all of the parties to the proposed solution. To the extent that part of the process, or part of the solution, is abdicated to an outside third party, such as a court or court-like body, the sense of shared purpose that leads to mutually satisfactory settlements is lessened.
- The flexible nature of negotiation processes, agreed upon among the parties, means that the views of other interested parties, such as municipalities, local landowners etc., that may have an interest in the outcome of the negotiation, can be included.
- Party-generated outcomes are usually the easiest, least expensive and most effective to implement.

3) The assistance of third parties in a land claim negotiation should be elective and by agreement of the parties.

- The parties to a claim negotiation need to be able to choose third party intervention because they feel it would be helpful to the particular negotiation in which they are engaged, rather than have it imposed on every negotiation.

4) The issues at play, the process of resolving those issues, and the results of the negotiation should be “owned” by the parties, and should in practice be acknowledged as belonging to them.

- A facilitator should assist the parties to the negotiation, and should not become a “player” advancing its own agenda.

The parties should determine the appropriate role of a facilitator in the negotiation process. The parties should consider whether they need or will benefit from the services of a third party to take minutes of meetings and record undertakings, or to commission technical reports such as loss of use analysis. Each of the parties to a negotiation of a settlement should be part of a collaborative process. The introduction of another party in the negotiation of a settlement should facilitate but not complicate the settlement process.

5) If a third-party institution is to be involved, contemplated or proposed, it should be designed so as to:

- avoid becoming just another level of bureaucracy;
 - be accountable to the parties and generally accountable to the public;
 - be resolutely neutral, and therefore gain the trust of all of the parties;
 - work within a negotiating environment where the content and substance are confidential and without prejudice.
- Its mandate and responsibilities should be focused and clearly spelled out – it should not be “spread thin” by attempting to address too many mandates.
 - Need to insulate a right-based claims resolution process from other agendas.

- The federal government should be involved in its establishment since Canada is an important participant in almost all land claim negotiations to which the province is a party.

Provincial Regulation of Land and Resources

12. The Discussion Paper on Treaty and Aboriginal Rights also invites comment on the issue of provincial regulation of land and resources. Ontario offers some general comment in response to issues the Inquiry has raised, particularly those regarding principles, best practices, transparency, and accountability in improving relations and reaching consensus arrangements or approaches in natural resource management.
13. The Province's previous submissions to the Inquiry made through the Ministry of Natural Resources provide numerous examples of Ontario's efforts and approaches which have proven successful in forging and enhancing relations with Aboriginal people with regard to resource management decisions and enforcement activities generally. (The submissions posted on the Inquiry website are *The Regulatory Role of the Ontario Ministry of Natural Resources and the Ministry's Relations with Aboriginal People* and *Memo from George Ross to Kim Twohig*, Feb. 3, 2006.)
14. The Ministry of Natural Resources has taken many steps and pursued many initiatives to improve relations with Aboriginal communities. Some of the Ministry's initiatives have been noted in the Commission's paper as

- “positive examples” of successfully negotiating and managing natural resources on traditional territories. In addition, at the Ministry of Natural Resources local District level, where most day-to-day contact with Aboriginal communities occurs, the Ministry enjoys many positive and productive relationships. It is at these local levels, where contact is regular and, to an extent, less formalized, that personal relationships can be established and trust and mutual understanding can be built.
15. Some Ministry of Natural Resources District offices have found it helpful to develop communication protocols with local communities, designating individuals as primary contacts, setting up schedules of regular meetings to ensure dialogue and information exchange stays current and timely, and so on. This has not been universally established or institutionalized for various reasons including, for instance, lack of capacity within the Aboriginal community. Where capacity is an issue, efforts are often made to find resources within existing budgets or to bear or minimize the costs associated with such processes. Capacity can be a significant issue for both the Province and Aboriginal communities in these and related efforts.
 16. At a broader level, the Ministry of Natural Resources and the Union of Ontario Indians, for example, have established a Resource Management Council which provides a forum for dialogue on a range of Ministry activities of interest to the Union of Ontario Indians and its member communities. Through such initiatives, communication and transparency

- are improved, relationships are established, and trust, awareness and understanding are built.
17. Efforts continue to establish a similar forum with Grand Council Treaty #3 and the Nishnabe-Aski Nation, as well as at tribal council levels where such an interest has been expressed. The establishment of such a forum requires the commitment of both the Province and the Aboriginal organizations to work together.
 18. The Province of Ontario has also demonstrated its willingness to pursue negotiated resolutions to a wide array of issues of interest to Aboriginal people. Examples are documented in previous submissions to the Inquiry. These efforts have enjoyed most success where the participants are able to transcend entrenched and/or differing positions on jurisdiction or the nature and scope of existing rights and instead focus on the common interests at play as resources are managed. Articulation of common interests and common values, where this can be achieved, leads to greater success and progress. An ability and willingness to focus on seeking practical and realistic solutions in the complex and competitive environment of resource management and development, helps ensure that timely and mutually beneficial decisions and approaches can be achieved.

19. Ontario recognizes the need for discussion and resolution of questions about jurisdiction or the definition of the nature and scope of existing rights and believes that the federal government needs to be involved. The need for Federal-Provincial-Aboriginal coordination and cooperation to resolve such fundamental issues has been identified and discussed by various parties' submissions to the Inquiry.

20. The Province, through the Ministry of Natural Resources, has made efforts internally to improve the awareness and understanding of Aboriginal issues by Ministry staff generally. The Ministry's Aboriginal Affairs Unit provides education, advice and support to District and program staff. The Unit has also created an aboriginal awareness training module for delivery to Ministry staff. As documented in previous submissions, Ontario is proud of its ongoing efforts to provide employment and training opportunities for Aboriginal youth at the Ministry Natural Resources. These opportunities serve to further increase awareness and understanding of the myriad perspectives involved in resource management activities.

21. The Ministry of Natural Resources' Enforcement Branch has also continued to pursue opportunities to improve relations with Aboriginal people. As described elsewhere, the Ministry's *Interim Enforcement Policy* has itself resulted in reduced conflict as Conservation Officers and Aboriginal people interact in the field. Implementation of this Policy has

- resulted in greater awareness and understanding on the part of enforcement staff about the constitutionally protected rights of Aboriginal people. The Policy has promoted the pursuit of negotiated resolutions that provide certainty and clarity for all as Aboriginal people exercise their treaty and Aboriginal rights. The Policy has resulted in significant reduction of charges against Aboriginal people exercising their rights, without compromising the Ministry's other resource management objectives such as ensuring public safety and conservation.
22. As of April 2006, the Ministry of Natural Resources has also implemented a new compliance leadership model that provides for a direct reporting relationship of field Conservation Officers to main office Enforcement Branch as one measure to enhance internal accountability for all compliance activities.
23. The Ministry has also established a Corporate Compliance Governance Office. The Office promotes the principles of transparency, accountability and professionalism and a key deliverable of the Office will be to develop a formal public compliant process with respect to the conduct of Ministry inspection, investigation and enforcement staff.
24. The relationship the Ministry has developed with the Union of Ontario Indians through the Resource Management Council has also proved important to enhancing relationships at the enforcement level. The

Enforcement Working Group of the Council has worked together to provide information to UOI member communities about harvesting rights and enforcement activities. Documents they have produced cooperatively, including a pamphlet entitled “Anishinabek Harvesting in Ontario,” contribute to enhanced understanding and improved relations. The Branch sees these as valuable and important venues to establish and maintain dialogue on enforcement issues.

25. The Enforcement Branch of the Ministry of Natural Resources also continues in its efforts to provide and enhance Aboriginal awareness and relations training for Conservation Officers. Equally, the Branch seeks opportunities to liaise with Aboriginal communities and organizations to provide awareness training about the enforcement related activities and practices of Ministry enforcement staff. Awareness and sensitivity have been significant factors in reducing conflict and confusion and enhancing cooperative and mutually respectful relationships. Where dialogue is established, opportunities are also created to discuss issues of concern and find consensus approaches to resolving concerns.
26. Enforcement staff are also committed to seeking opportunities to interact with Aboriginal people generally, not just on issues related to enforcement. For example, enforcement staff have participated in a winter survival workshop for Aboriginal youth in a northern community. These are

- significant opportunities for both the staff and youth to meet one another and understand one another's perspectives and roles.
27. The Province is interested in increasing opportunities for Aboriginal people to get more directly involved in Ministry of Natural Resource enforcement and compliance activities. Where Aboriginal communities have supported that interest, the Ministry has worked with them to find and foster suitable and interested candidates to train as Conservation Officers or Deputy Officers. This program continues today.
 28. The experience of the Ministry of Natural Resources has demonstrated clearly that success and progress are often achieved on a case-by-case basis, dependent on willing participants, and willingness to focus on common interests and values rather than jurisdictional or other issues underlying disputes. Principles and best practices are helpful, but are, more often than not, case and fact specific such that a one-size-fits-all approach may be of limited assistance. Working cooperatively with interested and focused communities to develop a mutually agreeable approach and mutually agreed upon principles or values, has proven most successful in achieving practical and realistic results of benefit to all.
 29. Structures such as those developed in cooperation at local levels or at the political organization level have also proven valuable and successful in ensuring not just transparency of decision-making but actual participation

and input into decision-making. Project specific processes that have been established have also been most successful where emphasis is placed on information exchange and where dialogue can be focussed on finding practical, mutually beneficial decisions or pathways, rather than seeking to define the nature and scope of rights at issue or engaging in jurisdictional debates.

Mineral Exploration and Development

30. The Province, through the Ministry of Northern Development and Mines, continues to work co-operatively with the mining sector and Aboriginal communities to promote positive working relationships while advancing environmentally sensitive mineral exploration and development.

31. As part of this effort, Ontario is committed to meeting its constitutional duty to consult on issues involving the *Mining Act*. In March 2006, Ontario's Mineral Development Strategy was announced. It includes a commitment to work with Aboriginal people to develop processes that will ensure mineral development occurs in a manner consistent with the Crown's constitutional obligations. The Ministry of Northern Development and Mines is developing an effective consultation process by focusing on three important areas:
 - better sharing of information with Aboriginal communities and the minerals industry;
 - clearer internal processes that will make our administration of the *Mining Act* consistent and transparent for all concerned;

- identification and adoption of minerals-related “best practices” that will provide guidance to government, industry and First Nations.

32. In addition, the Ministry continues to work on a number of fronts to foster relationships, education and open lines of communication. It has:

- helped De Beers and Attawapiskat First Nation develop a mining glossary and worked in partnership with Eabametoong First Nation to produce a geological and mining glossary to increase community awareness and assist the community in advancing its economic development goals.
- supported Attawapiskat First Nation community negotiations with De Beers on the development of a potential diamond mine site, by investing in an impact and benefits agreement.
- signed a Memorandum of Cooperation with each of Eabametoong First Nation, Webequie First Nation, Kasabonika Lake First Nation, and Neskantaga First Nation to enhance communication and strengthen the relationship between these First Nation communities and the Province. They will also help stabilize the investment environment by ensuring issues are identified and discussed at an early stage.
- produced a video for Aboriginal communities, in partnership with the Federal Government, that will raise awareness and knowledge of prospecting, exploration, and mining, as well as government-funded geological survey activity by examining the six stages of the mining sequence.

33. The Province has undertaken efforts institutionally and on individual staff levels to improve relations with Aboriginal people and to ensure they have greater involvement in matters that directly affect their communities. Trust and respect are essential to this process and, in light of the historic record of Aboriginal-Crown relations and myriad historic grievances, are achieved only over the longer term through patience and commitment. The Province has achieved a great deal in this regard.

34. The Province benefits from the participation and input of Aboriginal people in decision-making and in resource development and management activities generally, and looks forward to continuing, and expanding upon, the positive and constructive relationships that have been forged with Ontario's Aboriginal people.

Aboriginal Archaeological, Burial and Other Sacred Sites

35. On December 8, 2005, representatives from Ontario's Ministry of Government Services and Ministry of Culture gave an oral presentation to the Ipperwash Inquiry at the Consultation and Panel Discussion on Aboriginal Burial and Other Sacred Sites. That forum discussion is referenced in the Inquiry's Discussion Paper on Treaty and Aboriginal Rights.
36. Additional information about burial and other sacred sites and about consultation on the draft Cluster V regulation and proposed amendments to the *Funeral, Burial and Cremation Services Act* were provided to the Inquiry from the Ministry of Government Services in response to questions from the Commission.
37. The information set out below also is a supplement to the oral presentation and is intended to clarify the Ministry of Culture's role in the

protection and preservation of archaeological resources in the land use planning and development process.

The Ontario Heritage Act

38. Aboriginal burial and sacred sites may also be archaeological sites and contain archaeological artifacts. Conversely, an archaeological site may contain Aboriginal burials or sacred artifacts.

39. The *Cemeteries Act* addresses burial sites and is administered by the Ministry of Government Services. Attached to this Submission as Appendix F is a “Burial Sites” chart that provides a summary of the steps taken by the Office of the Registrar under the *Cemeteries Act* when a burial site is discovered.

40. Part VI of the *Ontario Heritage Act* (“OHA”) deals with the conservation of archaeological resources (sites and artifacts). The Ministry of Culture administers the OHA and provides technical advice to stakeholders.

Licensing Archaeological Fieldwork

41. Under Section 48 of the OHA, no person may undertake archaeological fieldwork, alter an archaeological site or remove artifacts from an archaeological site unless that person holds a licence issued by the Minister of Culture under Part VI of the OHA. The provisions of Part VI of the OHA and Ontario Regulation 8/06 define the Ministry of Culture’s role in licensing archaeologists, by:

- setting out licence classes, eligibility criteria and licence terms and conditions;
- setting our procedures for issuing and renewing licences;
- setting out the procedures when necessary, for suspending, revoking or refusing to issue or renew licences (decisions may be appealed to the Conservation Review Board);
- providing for the monitoring of licensees' compliance with the Act, the regulation and their licence terms and conditions.

Preserving the Archaeological Record

42. Section 65 of the OHA permits the Minister to require licensees to file reports of their fieldwork activities and reports of archaeological sites found. The Ministry of Culture's role in reporting on archaeological fieldwork is:

- developing standards and guidelines for conducting and reporting on archaeological fieldwork and sites;
- reviewing reports to ensure fieldwork meets the standards and guidelines and licensees have met the terms and conditions of the licence;
- entering fieldwork reports in the provincial register of reports, which provides public access to the discoveries and contributions to Ontario's archaeological heritage;
- entering archaeological site reports in the ministry's sites database.

Management of Artifacts

43. Subsection 66(1) of the OHA enables the Minister of Culture to direct that archaeological artifacts be deposited in a public institution, to be held in trust for Aboriginal communities and where appropriate, the people of Ontario.

Designating Archaeological Sites

44. Section 52 of the Act allows the Minister of Culture to designate properties of archaeological significance.

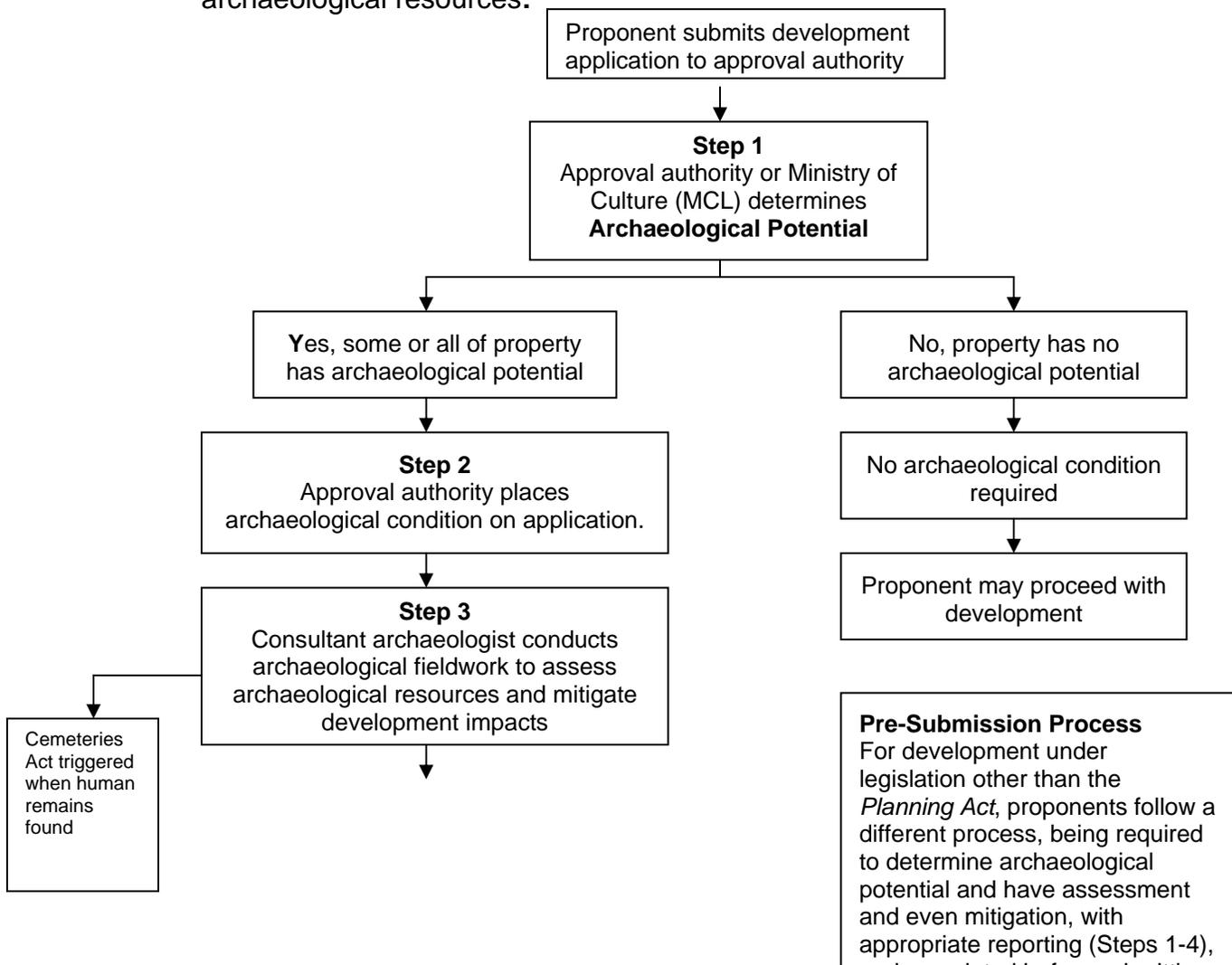
Archaeology and Land Use Planning and Development Legislation

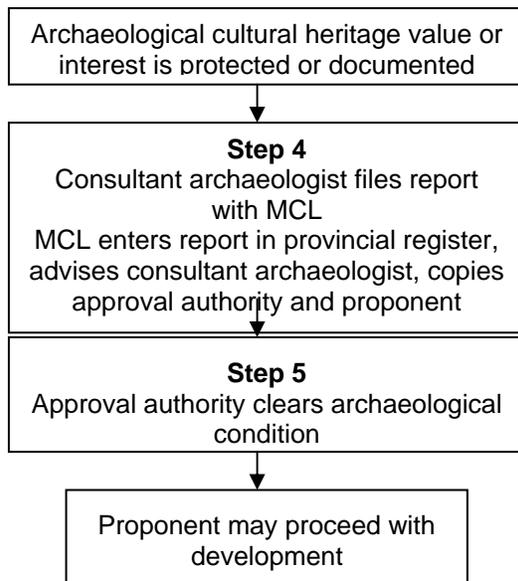
45. Provincial legislation regulating land use planning and development in Ontario identifies the conservation of archaeological resources as a matter of provincial interest. Anyone proposing development activities that may affect archaeological resources must address this provincial interest before the activity can take place.
46. Archaeological conservation must be addressed in development decisions under the following legislation:
- *Planning Act*, administered by the Ministry of Municipal Affairs and Housing
 - *Environmental Assessment Act*, administered by the Ministry of the Environment
 - *Aggregate Resources Act*, administered by the Ministry of Natural Resources
 - *Niagara Escarpment Planning and Development Act*, administered by the Ministry of Natural Resources
47. The approval authority in the planning and development process under these statutes is normally a municipality or one or more of the above-mentioned Ministries. The Ministry of Culture provides advice to stakeholders, monitors archaeological licensees, and manages reports and data gathered.

48. The next three pages provide an outline of the steps and charts pertaining to the Archaeological Conservation Process under the *Planning Act*.

Archaeological Conservation Process under the Planning Act

This flow chart outlines a typical process an approval authority follows when reviewing and approving development applications under the *Planning Act*, to ensure the appropriate identification, assessment and conservation of archaeological resources:





Step 1: Determining Archaeological Potential of the Property

In land use planning and development, the approval authority is responsible for reviewing development applications for any conditions the proponent must satisfy before approving the application. A land use approval authority reviews whether a property planned for development is likely to contain archaeological resources (has “archaeological potential”).

Step 2: Placing a Condition on Development Approval

When the approval authority places a condition on the draft development application, the proponent must hire a consultant archaeologist to carry out an archaeological assessment of the whole property and mitigate adverse impacts to any archaeological resources of cultural heritage value or interest.

Step 3: Archaeological Fieldwork

The archaeological fieldwork process in land use planning and development in Ontario is broken into four stages. The stages may be combined depending on the nature of the archaeological resources and staging of the development project. The purpose of Stages 1 to 3 is to gather information to identify and assess the archaeological resources and recommend the best approach to their conservation. In Stage 4, the consultant archaeologist develops and carries out mitigation strategies, through preservation on site or through excavation and documentation. Not all projects require all stages.

Licensed consultant archaeologists must follow the Ministry of Culture's standards and guidelines for fieldwork and reporting. MCL is updating these with extensive stakeholder input. The *Draft Standards and Guidelines for Consultant Archaeologists* is available on the Ministry of Culture website http://www.culture.gov.on.ca/english/culdiv/heritage/arch_custsvc.htm

Step 4: Archaeological Fieldwork Report

When fieldwork is completed, the consultant archaeologist produces a report. The archaeologist files the report with the Ministry of Culture in compliance with the terms and conditions of the archaeological licence. The ministry enters it in the register of reports and advises the consultant archaeologist in writing, often with a copy to the approval authority and/or proponent.

Step 5: Approval Authority Clearance of Condition

The approval authority may use the Ministry of Culture's confirmation that the report has been entered in the register as an indicator that the provincial interest under land use planning and development legislation has been met. The approval authority may have its own requirements or processes outside the Ministry of Culture's archaeological fieldwork process to ensure the provincial interest is met.

Education

49. The Commission has noted in the Discussion Paper on Treaty and Aboriginal Rights that the Ministry of Education (MEDU) in 2005/2006, implemented a revised curriculum for public elementary and secondary schools. The Province introduced Aboriginal perspectives in grades 1 to 6 as part of a revised social studies curriculum, in Grade 7 and 8 as part of revised history and geography courses, and in Grades 9 to 12 in revised Canadian and World Studies courses. Aboriginal perspectives have been incorporated in the revised Geography, History, Law, Politics and Economic courses.

50. A curriculum resource guide is being developed to assist elementary school teachers in implementing the revised social studies, history and geography programs in Grades 1 – 8 with a focus on Aboriginal perspectives in the curriculum. Provincial implementation training on the full revised curriculum has been completed.

51. The Province is currently revising the English curriculum to include the work of First Nations and Métis writers. It is the intention to include Aboriginal perspectives in other subject areas, where relevant, as they come forward for revision over a seven-year cycle.
52. The Province has consulted with Aboriginal educators and organizations to assist with Aboriginal issues and perspectives.
53. The Ministry of Education will meet with Aboriginal representatives to further discuss curriculum issues and to find ways of addressing the desire for more content about Aboriginal cultures, histories and perspectives in the public school curriculum. It is anticipated that education will be addressed through a separate tripartite working table associated with the Caledonia land dispute that reports to the main negotiating table involving the Honourable Jane Stewart, Ontario's Special Representative.
54. The issue of curriculum is but one of the many initiatives being undertaken with respect to Aboriginal education. Ontario's *New Approach to Aboriginal Affairs* includes sharing a vision with Aboriginal leaders and organizations of a healthy, more prosperous future for Aboriginal children and youth.
55. The Aboriginal Education Office at MEDU will work with Aboriginal communities and organizations and school boards to develop an

Aboriginal Education Policy Framework that will be the foundation for improving the delivery of quality education to First Nation, Métis and Inuit students in Ontario. It will also collaborate with First Nation and Métis organizations, school boards, other Ministries and Indian and Northern Affairs Canada on developing strategies to improve Aboriginal student achievement.

Police and Policing

56. Two of the Commission Discussion Papers dealt with police and policing. The first considered police/government relations and the second examined policing aboriginal protests and occupations. Ontario's response to some of the issues raised in the Discussion Papers is set out below.

Police/Government Relations

57. The *Police Services Act* (PSA) establishes a general governance framework that enables government to establish high-level policy goals for policing in Ontario, while at the same time, giving government the ability to provide advice with respect to the management and operation of police forces when necessary.
58. With the approval of Cabinet, the government has the ability to establish regulations to formalize government expectations for police in particular policy areas. The Solicitor General and Minister of Community Safety and Correctional Services is provided authority within this framework to further

- clarify government policy objectives by issuing directives/guidelines to police services. While government is not restricted in issuing directives/guidelines that are in the public interest, guidelines issued to date have a general, province-wide application for all police services, and are rarely used to guide or direct a specific police service.
59. Examples of how directives/guidelines can be communicated are found in the All Chiefs of Police Memoranda (See Appendices A, B, and C at the end of these Submissions). All Chiefs of Police Memoranda are distributed to Chiefs of Police and the Ontario Provincial Police (OPP) Commissioner, when there is a need to communicate various information including legislative or policy requirements.
60. The Ministry also provides police services with a *Policing Standards Manual* which contains guidelines to assist police services with the implementation of the PSA and its regulations. Additional policy/administrative direction from government to the OPP usually comes from the Deputy Minister of the Ministry of Community Safety and Correctional Services. To support this relationship, an OPP liaison officer works within the Deputy Minister's office but reports to a Deputy Commissioner in the OPP. A job description for this position is provided for information (at Appendix D).

61. Processes exist within the Ministry for police services to provide their recommendations on policy objectives for all police in Ontario (i.e., Policing Standards Advisory Committee); however, police services in the end have considerable autonomy in directing their resources to respond to government policy directives.

62. The Ministry conducts regular audits to ensure police services are meeting prescribed standards relating to adequacy and effectiveness. In the event the Minister becomes aware that police services are falling short of the prescribed standards, the Minister may advise the Ontario Civilian Commission on Police Services (OCCOPS) that a municipal police service is not complying, at which point OCCOPS may take action. At any time, the Minister may request that OCCOPS investigate the general administration of a municipal police service and the manner in which municipal police services are provided.

63. The PSA only governs police services in Ontario. Conservation Officers from the Ministry of Natural Resources are not subject to directives/guidelines issued under this legislative framework.

64. First Nations Police Constables are also not subject to the PSA but are instead governed by tripartite agreements established between the federal government, provincial government and the First Nation community.

However, these require First Nations police services to operate in a manner that is consistent with the principles of the PSA .

65. To support First Nations policing, the Ministry employs a First Nations Provincial Negotiator with responsibilities that include negotiating and monitoring policing agreements and amendments with respect to the 9 self-administered First Nations police services and the 19 OPP administered police services. A more detailed position overview is attached (Appendix E).

66. The government is able to establish policy initiatives that support unique issues associated with First Nations, such as providing basic training at the Ontario Police College for recruits employed by self-administered First Nations police services. The OPP also has the flexibility of offering various programs to support First Nations policing. For the 19 OPP administered First Nations police services, and the 18 First Nations that are policed directly by the OPP, the OPP offers various programs/services such as the Native Awareness Training and the Nishnawbe-Aski Police Service Investigation and Support Unit.

Policing Occupations and Police/Aboriginal Relations

67. The *Police Services Act* gives police services in Ontario considerable autonomy to establish operational practices that best serve their communities. Police services also share experiences with other police

- services that allow for broader learning opportunities to take place with other law enforcement professionals. An example of this is through their voluntary participation in the Ontario Association of Chiefs of Police (OACP) which allow police services across Ontario, including the Ontario Provincial Police, to share perspectives, best practices and common issues. OACP membership also includes four of Ontario's nine self-administered First Nations police services.
68. Within the OACP organizational structure, a Diversity Committee has been established with a mandate to monitor and identify current and emerging diversity issues which impact police, and to develop tools and resources with regard to race relations and other diversity issues. A First Nations Police Service – Mnjikaning Police Service – is listed as a member of this committee.
69. Police services possess considerable freedom and flexibility in directing their resources to implement operational practices, programs and services. They may also independently seek advice and counsel from other police services and civilian experts. As part of their ongoing commitment to community policing, police services develop working relationships with various communities including First Nations to better appreciate different cultures and customs that exist in the areas they police.

70. In responding to occupations and protests, police services are responsible for determining operational strategy and implementation. Police services would also be responsible for any ongoing review and assessment of such practices.
71. While there is currently no provincial legislation, regulation or policy that either permits or prohibits the collection of race-based statistics, the Ontario Human Rights Commission published a report in 2003 that encouraged police services to implement data collection programs. The *Ontario Human Rights Code* permits the collection and analysis of data based upon enumerated grounds as long as it is for a legitimate purpose and not contrary to the *Ontario Human Rights Code*.
72. It is the responsibility of police services to ensure that there is no racial profiling by their officers. Also, it is a Code of Conduct offence under the *Police Services Act* for police to engage in any racist or discriminatory behaviour. A formal public complaint process also exists where a complaint can be made about the policy/services of a police service and or the conduct of a police officer.
73. In April, 2006 the Province introduced new legislation, Bill 103, the *Independent Police Review Act* which, if passed by the Legislature, would create a new Independent Police Review Director that would enhance civilian oversight of policing and improve the public complaints process.

74. Through the provincial government's support of the Ontario Police College (OPC) formal avenues also exist to provide specific training in race relations. Since 1992, OPC has incorporated anti-racism training into all of its programs. Anti-racism training includes both classroom instruction and practical exercises, with a focus on community policing.
75. Self-administered First Nation policing has been established through the use of tripartite agreements between the federal and provincial governments, and the First Nation community. The agreement of all three parties would be required for the introduction of any significant new initiative for this area of First Nations policing or for changes to the organization and funding of First Nations policing.
76. The provincial government is able to establish policy initiatives that could support unique issues associated with First Nations. In terms of inter-ministerial contact, the Ontario Secretariat for Aboriginal Affairs' chairs an Assistant Deputy Ministers' Committee on Aboriginal Affairs as well as a staff level Interministry Committee on Aboriginal Policy (ICAP). ICAP includes the Ministry of Community Safety and Correctional Services, and the Ministry of the Attorney General.
77. The primary purpose of these committees is to support the sharing of policy initiatives/issues that may directly affect Aboriginal peoples. These

committees discuss high-level, strategic policing issues and would not be used as a conduit to share any police operational issues.

78. Ontario is also able to share Aboriginal policing and justice issues at a national level through its participation at the Federal-Provincial-Territorial Committee meetings for Ministers and Deputy Ministers Responsible for Justice.

Ontario Aboriginal Justice Strategy:

79. In April 2004, the Attorney General and the then Minister Responsible for Native Affairs committed to working with Aboriginal organizations in order to develop a comprehensive Aboriginal Justice Strategy for Ontario that not only addresses the over-representation of Aboriginal persons within the criminal justice system, but also recognizes the specialized needs of Aboriginal communities.
80. The Ministry of Community Safety and Correctional Services is represented on the working group and is working with members to address concerns about policing and correctional services.

Federal/Provincial/Territorial (FPT) Aboriginal Justice Working Group

81. At the meeting in January, 2004 of Deputy Ministers Responsible for Justice, Saskatchewan raised the need for an FPT Working Group devoted to Aboriginal issues, citing:

- Lack of coherence between existing initiatives;

- Lack of staff time devoted to Aboriginal issues; and,
- The need to take a more strategic approach to Aboriginal justice issues.

82. The Working Group was asked by Deputies to focus on five policy areas:

- Community Justice;
- Aboriginal Policing;
- Aboriginal Youth Issues;
- Interpersonal and Family Violence; and,
- Aboriginal Corrections Issues.

83. The Ministry of Community Safety and Correctional Services represents Ontario on the FPT Aboriginal Justice Working Group.

Conclusion

84. The policy and research phase of the Inquiry has examined a myriad of important issues as part of its mandate to make recommendations aimed at avoiding violence in circumstances similar to those that occurred at Ipperwash on the night of September 6, 1995.

85. It is evident from the Inquiry meetings, symposia and training sessions and from the Discussion Papers and the research papers prepared for the Commission that the issues are numerous and extremely complex. Ontario is already undertaking actions to address many of the issues discussed and recognizes that the Commission faces a difficult challenge in developing its recommendations.

86. The Province of Ontario looks forward to receiving the Commission's recommendations as part of its commitment to address issues of fundamental importance to Ontario's Aboriginal communities

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

June 28, 2006

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Susan Freeborn

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APPENDICES

Appendix A – All Chiefs of Police Memorandum Re: ‘Option Four’ Traffic Offender Diversion Programs

Appendix B – All Chiefs of Police Memorandum Re: X26 TASER Pilot Test with attachment, “Less-than Lethal Conducted Energy Weapons”

Appendix C – All Chiefs of Police Memorandum Re: Approval of Conducted Energy Weapon Technology (TASER) for use by Preliminary Perimeter Control and Containment Teams, as well as Front-line Supervisors or Designates Acting on Their Behalf with attached guideline, “Preliminary Perimeter Control and Containment”

Appendix D – MCSCS OPP Liaison – Position Overview

Appendix E – First Nation Provincial Negotiator – Position Overview

Appendix F – Burial Sites Chart

**PDF versions of appendices attached
with electronic copy of this Submission**