

Memorandum

To: Kim Twohig

From: **George Ross**
Assistant Deputy Minister
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Ontario Ministry of Natural Resources

Date: February 3, 2006

Re: **Ipperwash Inquiry**
Questions regarding the Ministry of Natural Resources

This is further to a memorandum of the Ipperwash Inquiry dated August 26, 2005. In that memo the Inquiry referenced the background paper that had been commissioned entitled "The Role of the Natural Resources Regulatory Regime in Aboriginal Rights Disputes in Ontario," by Jean Teillet, and the consultation the Inquiry had hosted about that paper in March 2005.

The Inquiry and consultation participants had a number of questions not answered in the background paper.

In the interests of ensuring the Inquiry has a more complete picture and understanding of the Ministry's general role in resource management, including enforcement of regulatory regimes, the Ministry has prepared a submission that provides that general context and explanation. That submission was provided under separate cover. In its memo of August 26, 2005, the Inquiry posed several specific questions. Answers to those questions, to the extent that they are not addressed in the Ministry's general submission, are addressed below.

We welcome additional questions that may arise.

The Inquiry's specific questions, with the Ministry's response, follow:

1. *Please provide a summary description of MNR, its various branches, activities, priorities, number and location of enforcement officers, recourses, etc.*

The Ministry's submission, "The Regulatory Role of the Ontario Ministry of Natural Resources and the Ministry's Relations with Aboriginal People," will provide the Inquiry with an overview of the Ministry's general organization and activities. More specific information regarding the Ministry's Enforcement Program follows.

The Enforcement Program does comprise its own Branch within the Ministry, reporting to the Assistant Deputy Minister of the Ministry's Field Services Division.

Staffing within the Enforcement Program has been relatively constant for the past number of years. Structure of the Enforcement Program is currently under review with plans for restructuring in 2006.

There are currently 25 District, 3 Lake Unit offices, and 3 Park offices within 3 Regions where Conservation Officer positions are assigned. There is an average of 8 Conservation Officers per field office location. Deputy Conservation Officers, which number approximately 130 throughout the province, are trained and skilled individuals that assist Conservation Officers in carrying out enforcement activities. While precise numbers are subject to change, as of this date, staffing is as follows:

Enforcement Program Staffing (Approx.)	Current Numbers
Conservation Officers in Field	204
District/Lake Unit Enforcement Supervisors	28
Regional Enforcement Coordinators	3
Officers in Branch main office	33
Total Enforcement Officers	268
Agricultural Investigators	5
Administrative Staff	12
Total Enforcement Program Staff	285

The Ministry's various enforcement efforts cover all MNR program areas (as detailed in the MNR submission). In addition, the Ministry currently provides investigation and enforcement support to the Ministry of Agriculture and Food and Rural Affairs, accounting for the Agricultural Investigators referenced above. The enforcement program also maintains specialized units within their existing ranks that support field enforcement. The program maintains 2 Flying Conservation Officers, 4 Canine Officers, and 7 staff dedicated to leading in-house training of Officers.

2. *Does MNR have a protocol for enforcement officers to follow when they are deciding whether or not to charge a First Nation's person?*

MNR employs a protocol, similar to most other jurisdictions in Canada, to guide its enforcement activities with regard to Aboriginal people who may be exercising protected treaty or Aboriginal rights. This protocol is captured in the Ministry's Interim Enforcement Policy. The Policy, and its practical application, is discussed in some detail in the Ministry's submission, "The Regulatory Role of the Ontario Ministry of Natural Resources and the Ministry's Relations with Aboriginal People."

The Policy, which underwent minor administrative amendments in October 2005 (sign-off of recommendations realigned from the Deputy to Assistant Deputy Minister level) is attached for the Inquiry's reference.

3. Does the MNR maintain a record for the number of people charged, the number who are prosecuted and the dispositions? If yes, could we see these statistics for the last five years?

The Ministry maintains a database to record number of field contacts annually and the number that result in charges and their dispositions. Of hundreds of thousands of contacts with individuals each year, less than 8% result in charges. Note that these are charges arising across the spectrum of MNR enforcement activity, from infractions related to fish and wildlife, to forestry, petroleum, aggregates, fire, and so on.

The table attached will give the Inquiry a sense of the scope of enforcement activities undertaken by the MNR. Please note that statistics related to dispositions are constantly changing as the system is updated as cases are resolved.

Ministry of Natural Resources Enforcement Statistics for Fiscal 94/95 to Present								
Fiscal Year	# of C.O.'s	# of Contacts	# of Warnings	# of Charges	Active Charges	Completed Charges	Convictions	Conviction Rate
1994/1995	N/A	227,420	7,858	9,126	427	8,699	7,076	77.54%
1995/1996	N/A	354,092	12,010	8,231	265	7,966	6,838	83.08%
1996/1997	N/A	394,882	14,056	8,544	430	8,114	7,209	84.38%
1997/1998	N/A	402,859	12,235	9,198	236	8,962	7,984	86.80%
1998/1999	N/A	385,284	11,052	9,827	244	9,583	7,949	80.89%
1999/2000	277	402,243	10,738	10,486	241	10,245	8,642	82.41%
2000/2001	272	424,783	11,358	11,183	437	10,746	8,976	80.26%
2001/2002	267	331,537	9,248	9,765	462	9,303	7,605	77.88%
2002/2003	283	296,821	9,295	9,292	427	8,865	7,215	77.65%
2003/2004	215	294,504	10,932	9,635	977	8,658	7,106	73.75%
2004/2005	268	276,931	9,330	8,423	1,703	6,720	5,687	67.52%
Average	264	328,661	10,737	9,428	532	8,896	7,481	79.34%

4. Does the MNR keep statistics or other records that show when they speak to First Nation communities or Chiefs about treaty or aboriginal rights issues related to harvesting, before laying harvesting charges in a region? How often is this occurring?

Pursuant to the Ministry's *Interim Enforcement Policy*, contact with the community Chief or designate is normally required before charges can be considered. An Aboriginal Person Violation Report (APVR) will not be screened or processed without details of the contact, or attempts to contact, and the comments received from the community. The comments form an integral part of the review process. The Ministry screens approximately 180 APVR's annually, and community Chiefs or designates would be contacted, or attempted to be contacted, for each of these. An APVR will be processed absent comments from the community if it is demonstrated that reasonable efforts had been made to obtain comments. Some communities do not respond.

5. *Please describe the scope of discretion that MNR enforcement officers have in their investigations.*

The scope of Conservation Officers' authority and discretion is guided by the varied legislation and regulations they are empowered to enforce, as well as the many policy imperatives developed by the various MNR programs which otherwise implement the legislation.

Discretion is an essential feature of a Conservation Officer's activities. While the ultimate discretion to lay a charge rests with an Officer in enforcing the law, Officers necessarily exercise discretion in deciding when to issue a warning for a particular violation, issue a ticket or summons, or to make seizures in the conduct of an investigation. That discretion is exercised consistent with the purposes of the Act which may have been violated, and consistent with the overall public good and interest.

The scope of discretion flows from the Act being administered and can vary. Part VIII of the *Fish and Wildlife Conservation Act*, for instance, provides detailed direction as to the powers an Officer may exercise in the course of his or her duties, as well as certain guidance as to the circumstances when those powers may be exercised.

Ministry policies also serve to guide or inform Officer discretion in terms of establishing Ministry goals and priorities generally. Ministry policy manuals help to inform and guide Conservation Officers in the interpretation and application of legislation and help to ensure appropriate consistency across the province.

Training of Conservation Officers includes instruction on how to exercise their discretion, informed by the legislative and policy objectives which are also the subject of training. Officers receive instruction on how to review the circumstances of a possible violation against the intent of legislation and policy when making a decision on whether and how to proceed with an investigation.

The enforcement program also provides ongoing guidance and supervision of the exercise of individual Officers' discretion and requires that certain investigations and activities, often being those of a more sensitive or potentially dangerous nature, be reviewed and pre-approved through the Enforcement Branch centrally. The *Interim Enforcement Policy*, discussed above, is also an example of an important policy imperative of the Ministry which guides Officers' discretion with regard to investigations involving Aboriginal people.

The Ministry's submission, "The Regulatory Role of the Ontario Ministry of Natural Resources and the Ministry's Relations with Aboriginal People" provides further detail and examples of the various program policies and imperatives which guide the exercise of discretion in certain circumstances.

6. *Does MNR have a manual similar to the Crown Policy Manual that includes training materials, policies and protocols for officers?*

There is no one manual similar to the Crown Policy Manual that serves to train and guide enforcement officers. Ministry enforcement staff actually rely on many different manuals and directives to train, guide, and inform their activities. Some examples include:

- Enforcement Branch Memos – provide a system to ensure and support retention of institutional knowledge and provide a means to effectively and efficiently distribute updates and direction to field enforcement staff. These are not generally made publicly available due to their often sensitive nature, in that they may contain, for instance, legal advice to the Ministry.
- Enforcement Policy and Procedure Manual – ensure consistent direction and information provided to field staff in their enforcement and compliance activities. Most are generally publicly available; others are ‘restricted’ access as they deal with sensitive operational issues that might compromise officer safety and/or the effectiveness of investigations.
- Forest Compliance Handbook – guides staff in the available of forest compliance remedies and their application pursuant to the *Crown Forest Sustainability Act*.
- Forest Fire Compliance Manual – guides staff in the response to fire investigations and other operational issues pursuant to the *Forest Fire Prevention Act*.
- Fish and Wildlife Policies and Procedure Directives – guide staff in the administration and application of the *Fish and Wildlife Conservation Act*.

As discussed in answer to the preceding question, all of these manuals, and others, would form a part of the materials covered in Officer training with the Ministry. As such, there is no specific, formalized training manual that the Ministry produces.

7. *In enforcement activities, what is the relationship between the MNR and local and provincial police forces?*

For the most part, MNR Conservation Officers work independently of other agencies in their enforcement activities. Occasionally, overlapping or complementary authorities or jurisdictions will require that joint activities take place in order to best ensure an effective, safe, and appropriate investigation or other enforcement operation. Joint or coordinated enforcement operations may be initiated or requested by the MNR or by another agency. Relationships with other law enforcement agencies are governed by various protocols, memorandums of understanding, operational plans, contingency plans, and policies and procedures, depending on the jurisdiction and the operation being considered.

These various protocols, along with the productive and cooperative working relationship the MNR has developed with various other agencies, allow for an effective and efficient “pooling” of resources where and when appropriate or required. Shared resources may include operational dollars, staff, and agency expertise or equipment.

An example of when a joint approach might be initiated includes when an investigation that began as solely an MNR matter involving natural resource violations uncovers criminal aspects, such as drugs. In such a case, other police agencies may be invited to do a joint operation with MNR. At the conclusion of the operation, and as warranted, MNR would lay the appropriate charges for the violations against MNR legislation and the police would lay charges for the criminal violations.

Another demonstration of a positive relationship between MNR and other enforcement agencies is in the sharing of information and joint databases. For example, MNR is a partner in the Mid-Atlantic, Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN), which is a criminal intelligence network that provides training, equipment loans, technical and analytical services and a common criminal intelligence database to its member agencies.

8. *In light of Powley, Haida Nation and Taku River, does the MNR have a consultation policy to ensure proper consultation with First Nation communities when decisions are made or actions taken that impact on First Nations rights?*

MNR is aware of, and committed to meeting, its constitutional obligations, including consultation obligations, where they exist, to both First Nation and Métis communities. While the Ministry currently has no formal policy to guide consultation efforts generally, the Ministry has been engaging aboriginal communities for several years on proposals and decisions that have the potential to impact their exercise of protected treaty or aboriginal rights.

The Ministry's general approach to consultation is consistent with court decisions and guidance, and proceeds largely on a case-by-case basis, appropriate to the particular proposal under consideration, and the needs and interests expressed by the potentially impacted communities. Indeed, many Districts, the levels at which much operational decision-making occurs, have developed or negotiated consultation and communication protocols with local communities to facilitate the process. Although developed prior to the *Haida* and *Taku River* decisions, the Ministry also, for example, agreed to a "Guide to Effective Consultation" with the Union of Ontario Indians, which continues to provide a useful framework for discussions with the 42 UOI communities and beyond.

Ministry policies and procedural guides also continue to recognize the Crown's duty to consult and acknowledge that consultation may be required prior to a decision being made. The Ministry's submission, "The Regulatory Role of the Ontario Ministry of Natural Resources and the Ministry's Relations with Aboriginal People," will provide the Inquiry with further details about the Ministry's approach to consultation generally.

In addition, the Ministry is engaged with the Ontario Secretariat for Aboriginal Affairs (OSAA) as it seeks to implement commitments made in its recently announced "New Approach to Aboriginal Affairs." The New Approach acknowledges the request of Aboriginal leaders to adopt more consistent, effective approaches to consultation government wide. The OSAA has committed to developing draft consultation guidelines and providing opportunity for Aboriginal and non-Aboriginal people to provide input to those guidelines. The MNR looks forward to continuing to work with and support the OSAA on this initiative.

9. *Is there any type of oversight procedure for the MNR and the activities of MNR enforcement officers?*

The Ministry does not currently have an enforcement specific formal oversight or complaint procedure. That said, individual Officers report to Enforcement Supervisors in their District or Lake Unit, who in turn report to local District or Lake Managers and,

ultimately, through the Enforcement Branch and Director of Enforcement. This structure ensures that activities are monitored, and supervision is provided, on an ongoing basis. If and as issues arise, they are identified and addressed, as appropriate, either on an individual level, or through direction or support more corporately.

While the Ministry has not had its own formal complaint process, the Ministry is responsive to complaints received from the public. These usually arise at the discrete local level and are dealt with quite successfully at this level.

Note that as part of planned restructuring, the Enforcement Branch will be implementing a formal complaint process associated with a Corporate Compliance Governance Officer's position.