

HISTORY OF STONEY POINT AND KETTLE POINT

2.1 Expert Testimony at The Inquiry

Joan Holmes was called as an expert witness in Aboriginal ethno-history and Aboriginal–government relations at the Part 1 evidentiary hearings. She was also retained by the Inquiry to write a report on the history of Kettle and Stony Point¹ First Nation and the related reserves.

By way of background, Ms. Holmes has a master’s degree in Northern and Native Issues as well as a degree in Anthropology. In her twenty-one years of experience, her work has concentrated on the historical relationship between the Crown and First Nations. Ms. Holmes has testified as an expert witness in court proceedings and has acted under joint retainers for First Nations and the federal government.

Ms. Holmes is the author of many historical research studies on First Nations. She has examined the history of the Anishnabek² and Ojibway communities in the areas of Lake Superior, Lake Huron, Bruce Peninsula, and Manitoulin Island. The relationship of these communities with the British Crown before treaties were entered into has been a focus of her studies. Ms. Holmes has also examined treaty negotiations between these First Nations and the Crown both before and after Confederation. The different approaches of the Crown and First Nations people to the treaties, and the reserves that were lost as a result of surrender or expropriation, has been the subject of her work.

Ms. Holmes has studied the legislation prior to the *Indian Act* in 1876. She has also written on the development of the *Indian Act*, as well as the policies and practices of the Department of Indian Affairs.

Ms. Holmes was retained by the Commission to provide historical background on Kettle and Stony Point. She was asked to begin in the pre-treaty period and canvass the major events of First Nations people in this geographic

1 When “Stoney” is used in relation to the Stony Point Reserve, it is spelled with an “e.” When “Stony” is used as part of the name for the *Indian Act* Band Kettle and Stony Point First Nation, it is spelled without an “e.” In this report, “Kettle and Stony Point” refers to the people who resided at the two reserves and their ancestors.

2 Note: Anishnabek is also spelled Anishnaabek, Anishnabeg, and Anishnaabeg.

area. This included the establishment of the Kettle Point and Stoney Point Reserves, the treaties entered into with the government, and the loss of portions of these reserves to the Crown. It also included the appropriation of the Stoney Point Reserve by the Department of National Defence, and the response of the First Nations community to this government decision.

Ms. Holmes examined approximately 350 documents to complete this work. Most of the older documents are located at the National Archives of Canada. More recent material was accessed through the Department of Indian Affairs Central Registry.

Professor Darlene Johnston was also called as an expert witness at the Inquiry on Great Lakes Aboriginal history and traditions. Professor Johnston teaches Aboriginal Law, International Indigenous Law, Law and History, and Property Law at the University of Toronto Law School. Her Master of Laws thesis, “Litigating Identity: The Challenge of Aboriginality,” examined the evidentiary tests in Aboriginal rights litigation. Ms. Johnston received a Bachelor of Common Law (LL.B.) and Master of Laws (LL.M.) from the University of Toronto Law School, as well as a Bachelor of Arts (Honours) in History from Queen’s University.

Professor Johnston is the author of numerous articles and book chapters, the topics of which include Supreme Court of Canada jurisprudence on section 35 of the *Charter of Rights and Freedoms*, as well as the obstacles in using the Ontario *Cemeteries Act* to protect Aboriginal burial sites. She has written on the enfranchisement provisions in the *Indian Act*, as well as the ambivalence of many First Nations people toward the concept of Canadian citizenship. Professor Johnston was a land claims research coordinator for the Chippewas of Nawash and Saugeen First Nations from 1992 to 2001. She made submissions in 1989 and 1991 to the Standing Committee on Aboriginal Affairs at the House of Commons. Professor Johnston has presented papers at numerous conferences in Canada as well as the U.S. on such subjects as “Anishnabek Totemic Identity and Landscape,” and “Traditional Knowledge and Aboriginal Rights.”

Professor Johnston was asked by the Ipperwash Inquiry to provide historical and cultural perspectives on the Aboriginal people of the Great Lakes, particularly southwestern Ontario, and to examine the connection of these First Nations people to their land and burial grounds. She wrote a report for the Inquiry, “Connecting People to Place: Great Lakes Aboriginal History in Cultural Context.” To prepare this paper, Professor Johnston examined archival records, particularly those located at the Department of Indian Affairs. Professor Johnston provided expert testimony at the Inquiry’s evidentiary hearings. She is a descendant of the Great Lakes Aboriginal people.

2.2 The British Conquest and The Royal Proclamation of 1763

Both before and at the time of the British conquest of New France in the mid-eighteenth century, the ancestors of Kettle and Stoney Point were Chippewas³ and Potawatomi living in the area of Lake Huron and the River St. Clair. After the Seven Years' War with New France in 1760, the British Crown became concerned about its relationship with First Nations people in this area. The British were intent on ensuring that the French remained out of this territory, and on securing control of the fur trade. In order to achieve these objectives, the British thought they should establish a co-operative and amicable relationship with First Nations people in this area.

The ancestors of Kettle and Stony Point, however, had more allegiance to the French at this time, whom they thought would eventually regain control from the British.⁴ These First Nations people also believed that the British had been involved in fraudulent land deals. They consequently did not trust them and were concerned about establishing a relationship with the British Crown.

In 1763, King George III made the protection of Aboriginal land an official Crown policy. He issued a Royal Proclamation, also known as the Indian Charter of Rights.⁵ The Proclamation established an "Indian country" where Aboriginal land was protected from encroachment or settlement. The Royal Proclamation established a territory beyond the settled colonies where land settlement was forbidden. This land had to be voluntarily ceded to the Crown before non-Aboriginal settlers could occupy it. The Proclamation was intended to impose the Crown between the settlers and the Indians in order to avoid exploitation.

The area occupied by the ancestors of Kettle and Stony Point lay within protected Indian country. As stressed in the expert testimony, the Royal Proclamation "is a very important document in Aboriginal history." First Nations people consistently refer to the Royal Proclamation and look to it "for their protection, and as a basis for their relationship with the Crown"; "it's a document that is well known, both amongst First Nations and amongst the Crown authorities."

Several important principles are contained in the Royal Proclamation of 1763, the most fundamental of which is that First Nations people are to be treated with honour and justice. As Holmes wrote in her report for the Inquiry, "[t]he British made these rules because they believed that fair and open negotiations

3 Name given to the Anishnabek people by the British.

4 Throughout the French regime in the Great Lakes area, from 1615 to 1670, the Anishnabek and the French were close allies.

5 It is also now referred to as the Magna Carta of the Indians of Canada.

over Aboriginal land would help establish and keep peaceful relations with the Indian nations living under their protection.”⁶

The British created an Indian Department at this time under the guidance of Sir William Johnson. Its purpose was to manage Indian affairs on a uniform basis in conformity with the principles enunciated in the Royal Proclamation of 1763.

2.3 The Treaty of Niagara — The British Offer Two Wampum Belts

Sir William Johnson of the British Indian Department was discharged with the responsibility of circulating copies of the Royal Proclamation to the Aboriginal peoples in the Great Lakes area and of securing an alliance with the Anishnabek people.

In 1764, Sir William Johnson met with more than 1,500 Anishnabek Chiefs and warriors at Niagara Falls. As explained by Professor Darlene Johnston, the Treaty of Niagara was not written in alphabetic form; rather it was done according to Aboriginal protocol with the delivery of speeches and wampum belts.

Sir William Johnson consummated the alliance with the Anishnabek with the delivery of “two magnificent wampum belts” accepted by the Aboriginal people. He offered the “[G]reat Covenant Chain Belt” to the Anishnabek and promised they would not become impoverished and their lands would not be taken:

My children, I clothe your land, you see that Wampum before me, the body of my words, in this the spirit of my words shall remain, it shall never be removed, this will be your Mat the eastern Corner of which I myself will occupy, the Indians being my adopted children their life shall never sink in poverty.

The “Mat” refers to Indian country. The Anishnabek promised in turn to be loyal and to support the King in both peace and war.

The British offered a second wampum belt, the “Twenty-four Nations Belt,” also accepted by the Anishnabek. “The twenty-four human figures represent the Anishnabek Nations drawing a British vessel laden with presents from across the Atlantic and anchoring it to North America.” The Twenty-four Nations Belt contained the following promise:

⁶ Ipperwash Commission of Inquiry Historical Background, prepared by Joan Holmes & Associates, Inc., June 2004.

My children, see, this is my Canoe floating on the other side of the Great Waters, it shall never be exhausted but always full of the necessities of life for you my Children as long as the world shall last.

Should it happen anytime after this that you find the strength of your life reduced, your Indian Tribes must take hold of the Vessel and pull, it shall be all in your power to pull towards you this my Canoe, and where you have brought it over to this Land on which you stand, I will open my hand as it were, and you will find yourselves supplied with plenty.

Professor Johnston explained:

These two belts, and the promises embedded in them, form the foundation of the British-Anishnaabeg Treaty Alliance. Subsequent agreements must be read in light of these original promises of protection and sustenance.

The British distributed presents each year as a symbol of the alliance the British had with the First Nations people.

It is important to understand that “[i]n the customary law of Anishnaabeg, once a promise is confirmed by the delivery of a wampum belt, it becomes sacred and inviolable.” But as the expert witness states in her report, “[a]lthough Sir William Johnson had promised that the English only needed the eastern corner of the Great Lakes Region, their demand for land soon increased, especially following the American Revolution.”

2.4 Burial Grounds and Totemic Identity of the Anishnabek People

Anishnaabeg attachment to lands can be related to a corresponding attachment to the graves of ancestors. Because the Living are obliged to care for the Dead, proximity to family burial grounds is extremely important ... [T]here is a connective force in burial traditions. They tell us much about Anishnaabeg understanding of human beings, their bodies and souls, and their connection to land and their ancestors, both human and other than human.

Samuel de Champlain, who arrived in Georgian Bay in early 1615, made some of the first observations about Aboriginal burial practices. He described Anishnabek

cemeteries and provided details of the tombs of men, women, and children. He also discussed the Feasts held for the Dead.

The Jesuits were also interested in the burial practices of the Anishnabek people and the attachment of the Living to the Dead. The Jesuits observed that the Aboriginal people were buried in their native country, not the place at which they died. Bodies were transported great distances to their native areas if, for example, Anishnabek died during a military endeavour. The Jesuits were also “mystified” by the “ongoing care that the Aboriginal people took of the graves,” and the “attention which Aboriginal people showed towards their Dead.” Professor Johnston said:

In the Christian tradition, the unitary soul separates from the body at death and the body, devoid of spirit, is presumed to return to dust. It became clear to the Jesuits, however, that for Aboriginal people, the remains of their Dead retained a spiritual essence which required ongoing respect.

The “Anishnaabeg believed that some aspects of the person travel to the land of the souls,” but “a spiritual essence ... remained with the bones and with the remains” of the deceased. This created a continuing obligation on the part of the Anishnabek to care for their dead ancestors.

Professor Johnston explained the connection between totemic identity and the soul that remains with the body. The Aboriginal people in the Great Lakes area have a totemic or clan system that is patrilineal. Children are born into the clan or dodaim of their father. The Anishnabek belong to clans such as the Beaver, Crane, and Caribou. They believe they derive from animals. In Aboriginal culture, there is an “interconnection ... between people and the animals” and “the land.” The dodaim or totemic identity is inscribed on the grave posts rather than the personal name of the deceased. As Professor Johnston said, “[f]or the Anishnaabeg, the Great Lakes region is more than geography. It is a spiritual landscape.”

Anishnabek people have obligations to feed and shelter the dead. There are “very clear rituals” regarding the graves, the location of the cemeteries, and the obligation of the Living to visit and Feast the Dead. Aboriginal children from a young age are taught these rituals and responsibilities to their ancestors. Professor Johnston said in her testimony:

I think that this notion of a soul of the bones is actually the key to understanding Anishnaabeg burial practices and the reverence with which the remains are treated after death, and the abhorrence of grave disturbances which persists among Anishnaabeg people.

Unfortunately, the English settlers did not share the Anishnabek reverence for the gravesites. As early as 1797, colonial officials found themselves in the position of having to take steps to prevent grave robberies of the Aboriginal people. But disturbances of Aboriginal burial sites continued.

2.5 The Huron Tract Treaty

2.5.1 *Early Negotiations*

Indian Nations from the Great Lakes came forward in large numbers to assist the British against the Americans in the War of 1812.⁷ After the War of 1812 in what was then Upper Canada, the British were concerned that the area north of Lake Erie and south of Lake Huron was vulnerable to attack by the Americans. As a result, they wished to bring settlers into this area, in what is presently southwestern Ontario.

In accordance with the Royal Proclamation, the British were required to take cession⁸ of the land from the Aboriginal people in order to bring settlers to this geographic location. Over a nine-year period, there were negotiations that culminated in the Huron Tract Treaty.

In 1818, the Lieutenant Governor of Upper Canada, Sir Peregrin Maitland, designated a block of land to be settled, which he believed was 712,000 acres. This land was along the southeast shore of Lake Huron and the River St. Clair, and it later became known as the Huron Tract. Maitland asked the Deputy Superintendent General of Indian Affairs to obtain information on the Aboriginal people who owned the land and to learn what was necessary to secure a cession of that area.

The Deputy Superintendent General of Indian Affairs sent a message to John Askin, the Indian Superintendent at Amherstburg. Mr. Askin, whose mother was Aboriginal, spoke Adolwal, an Algonquin language. He was born in the Michilimackinac area, near the straits beyond Lake Huron.

Mr. Askin called the people to a Council meeting in Amherstburg in 1818 to discuss the cession of their land. He met with twenty-four Chippewa Chiefs and leaders from Chenail Ecarte, the St. Clair River, Aux Sable River,⁹ the Thames River, and Big Bear Creek.

7 They were led by Chief Tecumseh.

8 Joan Holmes explains that the terms “to cede land,” “land cession,” and “reserves surrender” are terms used to describe an action or transaction by which Aboriginal people have given over certain rights in their traditional lands or reserve lands to the Crown.

9 Later known as Stoney Point Reserve.

After listening to Mr. Askin's request on behalf of the Crown, Chief Chawne, as the representative of the assembled Chiefs, asked to retain specific reserves with the proviso that the land would be increased if the reserve proved to be too small. The Council Minutes state:

And we trust that the reserves now made by us will be augmented at the time the purchase is finally concluded, should our Great Fathers Representatives see that they are insufficient for the whole of our nation now living on this side of the waters to plant corn and hunt, so that we may not be poor and miserable like our Brethren on the American side, who have sold all their Lands and have not made sufficient Reserves for their men, women & children to plant corn.

Compensation in money and clothing as well as the services of a blacksmith and an agricultural instructor were also requested.

It is apparent from these Council Minutes that the Chippewa were deferential to the British and trusted that the government would protect their interests and fairly compensate them for their land. Note in the Council Minutes the Aboriginal metaphor of father and child, founded on a relationship of trust and one in which a father has obligations to his child.

Father We Chippewas have always been obedient children and never refused anything our Great Father has required of us. We are therefore willing to sell our Lands, but we wish to make the following reserves.

Another expression of trust is evident in the minutes of the 1818 meeting at which the Chippewas asked the British to assess the valuation of the tract of land.

Father You will inform our Great Fathers representative that it [*sic*] our wish he himself set the valuation on the Tract required, but that the Payment is to be made annually for 50 years, half in hard money & half in cloathing [*sic*].

2.5.2 The 1819 Provisional Agreement

Mr. Askin met with eighteen Chippewa Chiefs again in March 1819 and a provisional agreement was entered. The land sought by the British was in fact 2.7 million acres, not the 712,000 acres previously estimated by Maitland a year earlier. This was a significant difference. The Aboriginal Chiefs again asked for the following reserves:

- four miles square below the rapids of the St. Clair River, later known as the Sarnia Reserve or Upper Reserve;
- one mile by four miles bordering the St. Clair River, later known as Moore Township or the Lower Reserve;
- two square miles at the River aux Sauble, later known as the Stoney Point Reserve; and
- two miles at Kettle Point Lake Huron, later known as the Kettle Point Reserve.

The 1819 Provisional Treaty was sent to the Imperial government for its approval. It was not granted. The Chippewas had asked for half of their compensation in money and the other half in goods. The British refused to make cash payments, and as a result, the agreement for the Huron Tract cession was not approved.

2.5.3 The 1825 Provisional Agreement

The new Indian Superintendent James Givens, who succeeded John Askin, tried to consummate a second provisional agreement. In 1825, a new provisional agreement was entered into by twenty Chippewa Chiefs at Amherstburg, known as “Surrender 27^{1/2}”. Compensation to the Chippewas was reduced. Moreover, it was stipulated that if the Indian population decreased by half, the amount of the annuity would be reduced by half; the annuity would continue to decrease based on further population declines. But there was no corresponding clause if the Indian population increased in size. The Imperial government approved the 1825 provisional agreement.

Mahlon Burwell was retained to survey the ceded tract as well as the reserves. This was to ensure that when the treaty was signed, it contained a proper description of the boundaries.

2.5.4 The Signing of The Huron Tract Treaty in 1827¹⁰

Two years later the Huron Tract Treaty confirmed the provisional agreement. Eighteen chiefs signed the Treaty in 1827 in Amherstburg. Of these eighteen Chiefs, nine had attended the 1818 Council, ten had signed the 1819 provisional agreement, and sixteen had signed the 1825 agreement.

In the Huron Tract Treaty, the Chippewas ceded 2.1 million acres of land to the Crown. They retained less than 1 percent of land for their exclusive use and occupation. The acreage of each of the four reserves were:

¹⁰ Also known as Treaty 29.

- Mouth of the River aux Sable on Lake Huron (Stoney Point) — 2,650 acres
- Kettle Point on Lake Huron — 2,446 acres
- Upper Reserve or Sarnia on the St. Clair River — 10,280 acres
- Lower Reserve or Moore Township on the St. Clair River — 2,575 acres

The compensation was £1,100 or \$4,400 in goods each year. This was contrary to the initial Chippewa request for half goods and half money. The population of Chippewas at the time of the 1827 Treaty was 440. This worked out to compensation of \$10 per person each year. As Joan Holmes notes, this was two months' salary for an Indian interpreter.

Again, the Treaty stipulated that if the population fell to less than half, there would be a proportional decrease in the annuity. And again, there was no provision for an increase in the annuity if the Chippewa population rose beyond 440. This is because the British Crown believed that the Aboriginal people would ultimately disappear. But contrary to expectations, the Aboriginal population steadily increased.

The annuity in goods was not distributed to each person. Rather the Crown delivered the goods in bulk to the Chiefs each year, who were responsible for distributing these items to their people.

The outcome for the Chippewas of the nine years of treaty negotiations was as follows. The Chippewas received a very small proportion of the land in this area, and less compensation than requested. Moreover, the Crown refused to pay cash for the loss of the land. The Aboriginal people had no assurance that the compensation would not decrease, and to exacerbate the situation, if the Chippewa population grew, the Crown would not increase the yearly stipend to accommodate additional members of these Aboriginal communities. The Holmes Report states:

Finally, after nine years of repeated discussions, the Chippewas of Chenail Ecarte (Walpole), River St. Clair (Sarnia), River Aux Sauble (Stony Point and Kettle Point) ceded an area at first thought to contain about 712,000 acres but actually covering more than three times that amount of land. When they first met in 1818 the Chiefs asked for specific reserve locations which could be enlarged if found too small to support the people; in the final treaty they were left with less than one percent of their traditional territory with no provision for expansion. Furthermore, after surveying the tract, prior to the confirmation treaty in 1827, the acreage of the reserves had been reduced to 75 per cent of the acreage quoted in the 1825 provisional agreement. At the opening of the negotiations in 1818 they asked the King's representative to set the appropriate compensation, trusting in his

good will and sense of justice. The initial offer of £1,375 (\$5,500) was reduced to £1,100 (\$4,400) and the provision of a blacksmith and an agricultural instructor was omitted.

In summary, the Chippewas relinquished to the Crown 99 percent of their traditional territory, retaining only 1 percent of their land.

2.6 The Early Administration of the Huron Tract

After the Huron Tract Treaty was signed in 1827, the British Indian Department became more involved in the administration of the Aboriginal communities. The government treated the Chippewas from the different reserves that had signed the Treaty as one large band that had a shared interest in the four reserves. The Indian Department described it as a common and undivided interest. This meant that each signatory to the Treaty and his descendants had an interest in each of the four reserves. But this created significant problems for the Aboriginal people: “[t]he treatment of these people as a large single band was a source of dispute and contention for almost a century.” Signatories to the Huron Tract Treaty had a right to reside on any of the reserves and equal right to the use of the £1,100 annuity. Although the Chippewas were treated as one band by the British government, they lived in different locations and had different Chiefs and headsmen. At the time of the Treaty, there were eighteen Chiefs for the population of 440 Chippewas.

Beginning in 1836, Walpole Island community wanted to separate from the other Aboriginal communities in the Huron Tract Treaty. From this time, Walpole Island was unofficially separate from and no longer involved with the other reserves. In 1860, the formal separation of Walpole Island from the band became official. The Walpole Island community received its proportionate share of the annuity based on the size of its population.

The population of the Chippewas in 1845 was:

Walpole Island (Chenail Ecarte) — 319

Sarnia — 259

Kettle Point — 27

Sauble (Stoney Point) (Quaykigouin’s Band) — 49

Sauble (Stoney Point) (Wapagase’s Band) — 35

There were other Chippewas who did not wish to be part of the one large band established after the Huron Tract Treaty. The communities residing at the Kettle Point and Stoney Point Reserves were dissatisfied with the influence of the

Sarnia Reserve. Sarnia had more than twice the population of the other reserves and consequently had more power and influence in terms of decision making. Moreover, the Indian Superintendent was stationed in Sarnia, and all the Council meetings were held on the Sarnia Reserve. In fact, the Department of Indian Affairs referred to the Aboriginal people living at the different reserves in the Huron Tract as the “Sarnia Band.” Beginning in the 1880s, the people at Kettle Point and Stoney Point Reserves agitated to be separated from the Sarnia Reserve.

Indian Department policies at this time heightened tensions between the Sarnia Reserve and the Kettle Point and Stoney Point Reserves. The Indian Department initiated a program designed to encourage the reserves to subdivide their land into separate lots. Individual families would be given a location ticket, which in essence was a permit to use a particular piece of land. The objective of this program was to encourage First Nations to adopt an individualistic lifestyle and to farm — “basically to be like white people.” Professor Johnston described it as “quite an ambitious plan ... ‘to civilize the Indians,’ to get them to become sedentary, live in one place, become farmers, become Christians.” The Indian Department wanted Aboriginal people to relinquish their traditional way of life. The “struggle” of the Aboriginal people is further described by Ms. Holmes:

... people felt that they did not want their reserve subdivided, they wanted to maintain a kind of a lifestyle and a land use and ownership system, which was more traditional to them, and in which individuals had ... a right to go around the reserve land, to use resources, to reside where they wanted to.

So, it becomes, in some sense, a bit of a struggle between maintaining a more traditional approach to land use and occupation, or adopting the Indian Affairs regime of the subdivision of reserve of the ... settling and the location system. So, that’s in part what’s going on ... behind that struggle.

Many First Nations people resisted the subdivision program of the Indian Department. They wished to preserve their traditional lifestyle and land ownership system; to use whatever resources existed on the reserve and to reside where they wished.

Sarnia agreed to have its reserve subdivided and pressured the people at Kettle Point and Stoney Point to do the same. The people in these two smaller communities felt threatened because Indian Affairs considered them all as one band. When the band voted at Council, the Kettle Point and Stoney Point people were greatly outnumbered by the community at the Sarnia Reserve, which had double

the population. Kettle Point and Stoney Point residents felt “overwhelmed and bullied by the people at Sarnia, who want this done”; “they were outnumbered, they could never, in essence, win a vote, if people on the Sarnia Reserve had a different opinion than they did.”

Throughout the 1880s and 1890s, there were petitions from people at Kettle Point and Stoney Point who did not want their land subdivided. There were also petitions asking for the separation of the Sarnia Reserve from the Stoney Point and Kettle Point Reserves.

In September 1885, for example, the Chief of the Stoney Point Reserve, John Johnson, and the Chief of Kettle Point Reserve, Adam Shahnaw, sent a petition to the Superintendent of Indian Affairs. It discusses the friction between the Sarnia Reserve and the Stoney Point and Kettle Point Reserves. It describes the disparity in population and differences in the amount of land between the reserves.

They complain that there had been large expenditures for the Sarnia Reserve in contrast to the Stoney Point and Kettle Point Reserves, which were in great need of roads, bridges, and a schoolhouse. The petition also stresses that the interests of people on the reserve in Sarnia were very different from the interests of Aboriginal people on the Kettle Point and Stoney Point Reserves. Because of the large population in Sarnia, Council decisions reflected the interests of the Sarnia Reserve and did not adequately consider the needs or desires of the Stoney Point (Sauble) and Kettle Point people. The petition ends with this statement:

This petitioner therefor pray that the Kettle Point and Sauble Reserves may be separated from the Sarnia Reserve and that they may have control as one band of all monies to which they are from time to time entitled to from the Crown and their share of any monies now held by the Crown in trust for them.

The following segment of this petition illustrates the perceived inequities between the Sarnia Reserve and the Stoney Point and Kettle Point Reserves:

The Petition of John Johnson Chief of the Sauble Indians and Adam Shahnaw Chief of the Kettle Point Indians and other Indians of the same bands Hereby Sheweth

1. That the Indians of the Sarnia, Kettle Point and Sauble Reserves have been united and treated as one band in any dealings the Department of Indian Affairs from time to time have had with them.
2. The lands of the Kettle Point and Sauble Indians are distant about thirty-five miles from the Council House on the Sarnia Reserve

and the interest of the Indians at Kettle Point and Sauble are not at all identical with those of the Sarnia Reserve.

3. The Sarnia Reserve Indians number about 400 while those of Kettle Point and Sauble number about 188.
4. There are about 8000 acres on the Sarnia Reserve and about 2400 on the Sauble and Kettle Point Reserves.
5. Our Council governs the affairs of the Indians of the three Reserves and heretofore owing to the preponderance in numbers of the Sarnia Indians wherever grants have been voted by the Council to be expended in improvements for the general benefit of all the Indians of the three Reserves it has been ...

... which we would mention the building of Roads and bridges about \$1000 in two years, culvert [illegible] etc a schoolhouse. Two houses for two aged Indians of the Sarnia band costing \$200, the cost of brass instruments for a band and \$150 to a bandmaster none of these expenditures benefited in the slightest extent the Indians of Kettle Point and Sauble Reserves – but being in a minority they could not prevent the expenditures being made.

6. On the Sauble and Kettle Point Reserves no money has ever been expended on roads or bridges nor is there a school house in the Sauble Reserve all of which wants are very seriously felt.
7. Since the year 1869 constant efforts have been made by the Indians of the Sarnia Reserve to have the timber of the Kettle Point and Sauble Reserves surrendered to the Crown so that they might share in the benefit to be derived by the sale of same and in the month of June last at a general meeting of Council it was resolved although strongly opposed by the Kettle Point and Sauble Indians that the said timber should be surrendered to the Crown.
8. There is constant friction and discord between the Indians of the Sarnia Reserve and those at Kettle Point and Sauble and they never have been able to pull together ...

Despite opposition by the Kettle Point and Stoney Point Reserves, the Sarnia Reserve initiated a resolution on the subdivision of the reserves. Council, dominated by the members of the Sarnia Reserve, passed this vote in 1901. It was also decided that fifty acres in the southeast corner of the Stoney Point Reserve would be given to the Potawatomis, the “American Indians.” It was referred to as

the “final gift.” Despite the controversy and opposition by the Kettle Point and Stoney Point Reserves to the loss of the fifty acres, an Order-in-Council was passed that approved this decision as well as the subdivision of the reserves.

The First Nations Potawatomis were sent to the small fifty-acre parcel of land. They felt displaced and isolated according to historical records. As a result, many Potawatomis returned to the United States. A brief history of the Potawatomis in this region follows.

2.7 The “American Indians” Debate

From the 1790s to the 1840s, the British Indian Department invited Indian allies living on the American side of the boundary to move to Upper Canada. The British informed the American Indians that if they did not settle in Upper Canada, they would no longer receive presents from the Crown. Some Potawatomis and Ottawas who immigrated in that period settled amongst the Huron Tract communities. The American Indians were referred to as “Potawatomis.”

As explained by Ms. Holmes, the term “American Indians” is not accurate. It refers to Aboriginal people living on the American side of a political boundary that did not historically exist. The Ottawas, Chippewas, and Potawatomis traditionally lived and hunted on both sides of the border; they moved throughout the Great Lakes region. The boundary was established in the mid-1790s after the American Revolution. The creation of the border resulted in the labels “American Indians” and “British Indians.” But as Holmes says, “in fact, they’re the same people. They just happened to be on either side of a border which was imposed by other government[s].”

By 1840, British officials had become concerned about the number of people immigrating from the American side. S.B. Harrison, the Civil Secretary to the Lieutenant Governor of Upper Canada, writes the following in October 1840:

The attention of the Lieutenant Governor having been called to the fact that a very considerable immigration of Indians into the Province has taken place, and is still continuing has after serious consideration come to the conclusion that it is by no means consistent with the good of the country that a large body of Indian population should take up their residence within it ...

It is clear that by 1840, the government did not want to promote immigration of Aboriginals from the American side.

In 1871, the Department of Indian Affairs issued a declaration regarding those American Indians who were entitled to share in the annuities or the treaty

rights of the Chippewas of the Huron Tract. Aboriginals who had come to Canada on the invitation of the British shortly after the Canada–U.S. border was established were permitted to a share of the annuities and the interest money. Those who had recently immigrated were not entitled to receive treaty benefits and did not have a right to live on the reserve.

In its 1871 decision, the government is declaring which Aboriginal people have particular rights, and those who are not eligible for any benefits or entitlements. Four years after Confederation, the Dominion government is beginning to classify who are and are not Indians, who are and are not governed by the treaties, and who are and are not considered members of a Band. These government decisions and classification created significant tensions in the Aboriginal communities:

... the creation of the these classes of people on Kettle and Stoney Point and Sarnia, in terms of whether they are ... the old guard Chippewa, who have always been on British territory, or if they are people who came from the American side ... that classification is being intensified and brought to the fore, and it's obviously resulting in tensions within the community about what rights these people should have ...

... the categories and the classification of people becomes a major source of discord.

2.8 Federal Government Attempts to Assimilate First Nations People

Like its predecessors, the Canadian government as early as Confederation wanted First Nations people to assimilate into the population.¹¹ As stated in the report of the Royal Commission on Aboriginal Peoples:¹²

The first prime minister, Sir John A. Macdonald, soon informed Parliament that it would be Canada's goal "to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion."¹³

11 Aboriginals did not participate in the Confederation debates: Darlene Johnston, July 14, 2004.

12 Ex. P-10, 1996 Report.

13 Quotation from Malcolm Montgomery, "The Six Nations Indians and the Macdonald Franchise", *Ontario History* 57 (1965), p. 13. Found in Ex. P-10, Royal Commission Report on Aboriginal Peoples.

Through federal legislation, the government “crafted educational systems, social policies and economic development plans designed to extinguish Aboriginal rights and assimilate Aboriginal people.”¹⁴ Through the *Enfranchisement Act* of 1869 and the *Indian Acts* in the 1870s and 1880s, “the federal government took for itself the power to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end — assimilation through enfranchisement and, as a consequence, the eventual disappearance of Indians as distinct peoples.”¹⁵

The government actively encouraged First Nations people to enfranchise. Under this policy, people who relinquished their Indian status were given a portion of the reserve lands.¹⁶ The government hoped that over time, as First Nations people enfranchised, the reserve lands would continually shrink and eventually disappear.

Initially, the early legislation provided for voluntary enfranchisement. The Crown soon became aware that most First Nations people would not willingly relinquish their status. As a result, in 1876, in the first consolidated *Indian Act*, the government introduced involuntary enfranchisement. Indian women, for example, who married non-registered men, lost their status. Also, individuals who had a certain level of education or professional designation, such as doctors, lost their Indian status. These “non-status” persons, as they were called, no longer had a right to reside on the reserve, to take part in band politics, to vote, to run as a candidate in an election, or to be buried on the reserve. This created tension within communities and fragmented families. It had a significant impact on First Nations people.

Although involuntary enfranchisement¹⁷ was finally removed in 1985 as a result of the Canadian *Charter of Rights and Freedoms*, the *Indian Act* continues to retain two categories of status Indians and the concept of non-status persons.¹⁸ First Nations people in Ontario as well as other parts of Canada continue to fear that the status Indian population will decrease over time and that First Nations people will gradually become assimilated into the larger Canadian population.

14 Ibid-Royal Commission Report, Ex. P-10.

15 Ibid-Royal Commission Report, Ex. P-10.

16 Joan Holmes, August 19, 2004, p. 70–73. See also *Report on the Royal Commission on Aboriginal Peoples* (1996), (Vol. 1), Department of Indian and Northern Affairs.

17 Note that in the Supreme Court of Canada decision *Attorney General Canada v. Lavell*, [1974] S.C.R. 1349, section 12 (1) (b) *Indian Act*, the provision on Aboriginal women who married non-Indians was unsuccessfully challenged under the *Canadian Bill of Rights*.

18 For example, offspring from a parent who is a Section 6 (2) Indian and a parent who is non-Aboriginal do not have Indian status.

For more than twenty years, Duncan Campbell Scott was an influential federal official who oversaw and implemented Indian policy in Canada. He was the Deputy Superintendent General of Indian Affairs from 1913 to 1932. One of the main objectives of the Indian Department, espoused by Scott, was to institute measures to ensure the assimilation of First Nations people.

Mr. Scott was the Deputy Superintendent General of Indian Affairs when the Ipperwash parklands were surrendered in 1928. He was also the Deputy Superintendent General of Indian Affairs when the Sarnia Reserve was separated from the Kettle Point and Stoney Point Reserves.

2.9 Separation of Stoney Point and Kettle Point from the Sarnia Reserve

After years of agitation and receiving petitions from the First Nations people, the Department of Indian Affairs finally agreed to divide the Kettle Point and Stoney Point Reserves from the Sarnia Reserve. The Department of Indian Affairs created two *Indian Act* bands: the Sarnia Band, which retained the Sarnia Reserve and a per capita share of the annuity and trust fund, and the Kettle and Stony Point Band, which in turn kept their reserves and their proportionate share of the annuity and trust fund based on their respective population. The creation of these bands was formally approved by Order-in-Council on May 1, 1919.

Why did the government finally consent to the separation of these reserves? The Department of Indian Affairs was interested in obtaining a surrender of part of the Sarnia Reserve for the purpose of expanding the City of Sarnia. It wanted this property for “development purposes.” The government believed this could more easily be accomplished if Sarnia was separated from the other two reserves. In 1919, the Deputy Superintendent General of Indian Affairs wrote:

The attached memorandum to His Excellency in Council is a good advance towards obtaining a surrender of a portion of the Sarnia reserve, which the Department is endeavouring to accomplish. The diverse interests of the two sections of the band prevented a majority vote on any question of importance ...

When the agreement is accepted by His Excellency in Council we will be able to deal separately with the bands, and will, no doubt, in due course obtain a surrender of the Sarnia band of the portion of the reserve which is required for the expansion of the city of Sarnia.

2.10 Land Surrenders at Kettle Point and Stoney Point Reserves

2.10.1 *The Surrender of the Shoreline at Kettle Point Reserve*

Beginning in 1912, there was pressure on First Nations people to surrender the beachfront at the Kettle Point Reserve for recreational development and for settlement.

It was in 1927 that MacKenzie Crawford, a local land developer, indicated to the Indian Agent that he wished to buy part of the beachfront at Kettle Point Reserve. Both the Indian Agent and the Department of Indian Affairs were favourably disposed toward the surrender of this land, which in their view had little value as it could not be used for agricultural purposes.

The Chief of the Band sought the advice of the Department of Indian Affairs as to whether the reserve land should be surrendered. It is also noteworthy that the Chief asked the Department for permission to hold a Council meeting to address this issue. As Holmes commented, “it shows how at this period of time the Department of Indian Affairs has a tremendous amount of influence over what a chief and council might do”; “it shows the degree of control that the Department has in band affairs.” Chief John Milliken, Sam Bressette, and Robert George wrote to the government in February 1927:

We have been anxiously waiting for the decision of the Indian Dept. regarding the sale of the parcel of land applied for by McKenzie Crawford & Son of Sarnia, Ont. Whatever conclusion the Dept. has come to please advise us if you are in favour of the sale of the land. Please give us permission for to hold a general council as soon as possible.

It is also apparent from the documents that First Nations people had very little understanding of their rights. Many did not know the processes involved in the surrender of reserve land: “there was very little education of the Indian population about what their rights were ... and while they were controlled and managed under very strict and specific legislation, there was very little understanding amongst the general population ... of what those things were.”

The following month, an Aboriginal man on the reserve wrote to the Department of Indian Affairs in Ottawa to find out whether the Indian Agent had the authority to call a general Council regarding the surrender of the land. Cornelius Shawanoo was concerned that the Department would compel the band

to sell the land even if the band voted against it. He was also worried that many First Nations people had lost their status, for example, by marrying white people. He also discussed the displacement and plight of the Potawatomis.

Mr. Shawanoo expressed great concern in this March 1927 letter that First Nations people would be paid a sum of money by developer Mr. Crawford to vote in favour of the surrender. In other words, persons on the reserves would be unduly influenced or bribed to support the resolution.

Members of the reserve who voted were in fact paid a “bonus” in cash. Mr. Crawford wrote the following letter to the local MP, Mr. Goodison, after the vote:

I think I forgot to tell you that all the Indians of the band over twenty-one that has a vote will get their bonus just the same as the ones that did vote.

We tried to buy it that day for \$100 per acre but they all said they had to have some money right away. So we agreed to pay them \$85 per acre and \$15. There was nothing under handed everything was [discussed] at the meeting.

The Chief issued a resolution in Council endorsing the surrender. The band sought a cash payment of \$85 for each of the eighty-three acres involved in the surrender of reserve land. The Department then drew up a voter’s list of the people on the reserves who were eligible to vote. Men were required to be twenty-one years or older. Women did not have the right to vote.

Of the thirty-nine individuals eligible to vote, twenty-seven voted in favour of the surrender. There were no votes against the surrender. As Holmes explained, people from this cultural background will often abstain from voting if they disagree with the proposal or the resolution:

They refused to take part in the vote ... people don’t want to say no. So, instead of saying no, the way you say no is to avoid something.

There was a protest against the surrender led primarily by Mr. Shawanoo. It was argued that the vote was obtained through bribery and fraud. A few days after the surrender, a lawyer’s letter was sent to the Superintendent General of the Department of Indian Affairs. The April 4, 1927, letter stated:

RE: KETTLE POINT RESERVE

We have been instructed by Messrs. Shawanoo and others on the Indian pay list of the Kettle Point Reserve, about certain alleged bribery and

fraud in connection with the meeting of the general Council held last week, to vote upon the question of the sale of a portion of the reserve to Mr. McKenzie Crawford of Sarnia, Ontario.

Kindly accept this letter as an application for a stay of the Department's sanction to the sale of any lots in the Kettle Point Reserve to the said purchaser.

We would appreciate the Department's ruling as to whether it will be necessary for us to resort to judicial remedies to stay the sale referred to, or whether the Department has exclusive jurisdiction in matters of this kind and has power itself to order an enquiry upon proper cause being shown.

The purchaser, Mr. Crawford, clearly anticipated there would be objections in the community to the surrender of the reserve land. On April 1, 1927, when Mr. Crawford wrote the letter to local MP Goodison describing the "bonus" to the "Indians," he said:

I am writing you this as I am sure some of the Indians are going to make as much trouble as they can.

The Department of Indians Affairs, after looking into this matter, concluded that the surrender vote was legitimate and that it satisfied the requirements in the *Indian Act*. There was a great deal of friction in the community, as several people believed the reserve land had not been lawfully taken. But despite these complaints and concerns, the Department of Indian Affairs proceeded with the surrender. On May 11, 1927, the surrender was approved by an Order-in-Council:

The Committee of the Privy Council have had before them a Report, dated 28th April, 1927, from the Superintendent General of Indian Affairs, submitting a surrender, given on the 30th day of March, 1927, by the Chippewas of Chenail Ecarte and St. Clair Band of Indians, residing on the Kettle Point Indian Reserve, No. 44, in the County of Lambton and Province of Ontario, of a portion of the above mentioned Indian Reserve, No. 44, containing an area of 83 acres ...

The said surrender has been given in order that the said portion of land may be sold for the benefit of the said band of Indians, in accordance with the terms thereof.

The Minister recommends, as the said surrender has been duly authorized, executed and attested in the manner required by the 49th Section of the Indian Act, that the same be accepted by Your Excellency in Council.

The Committee concur in the foregoing recommendation and submit the same for approval.

The amount agreed to in the surrender was \$7,055, which translates to \$85 for each of the eighty-three acres. The purchaser, Mr. Crawford, however, had difficulty raising this money. Mr. White, who was also interested in this reserve land, joined forces with Mr. Crawford to purchase the shoreline of the Kettle Point Reserve. The effect of the surrender was that the band lost its interest in that portion of the Kettle Point Reserve.

Many years later, the Chippewas of Kettle and Stony Point initiated a court action in relation to the surrender. In 1992, the matter was discussed with the Specific Claims Branch of Indian Affairs, whose role is to examine grievances of First Nations with the Crown regarding reserve land. They hoped to negotiate a settlement of the surrender, but this was rejected by the Specific Claims Branch who did not consider it within its mandate to enter into such negotiations.

The courts also considered the legitimacy of the 1927 surrender in the 1990s. At the Ontario Superior Court Trial Division,¹⁹ at the Court of Appeal, and in 1998 at the Supreme Court of Canada,²⁰ the validity of the surrender was decided against the First Nation. It is important to note that Killeen J. of the Superior Court considered the cash payments and promises made to be “morally” repugnant: “There can be little doubt that these cash payments, and the promises which preceded them, have an odour of moral failure about them.”²¹ The Court of Appeal agreed with Killeen J.’s conclusion.²² The Supreme Court of Canada affirmed the decision of the Ontario Court of Appeal.

At the same time, the Indian Claims Commission also reviewed the legitimacy of the 1927 surrender. The Indian Claims Commission concluded that although the surrender was valid, Canada had breached its fiduciary obligation to the First Nation. It recommended that the government and the Band enter into negotiations. Canada has not responded to the Indian Claims Commission regarding this recommendation.

19 (1995), 24 O.R. (3d) 654 (Gen. Div).

20 *Chippewas of Kettle and Stony Point v. Canada (Attorney General)*, [1998] 1 S.C.R. 756.

21 (1995), 24 O.R. (3d) 654 (Gen. Div.) at 690.

22 (1996), 31 O.R. (3d) 97.

2.10.2 The Surrender of the Shoreline at Stoney Point Reserve

Mr. Scott, a real estate developer and Sarnia politician, approached the Department of Indian Affairs as he wished to buy the entire beachfront at Stoney Point Reserve. He needed a surrender of the land to the Crown in order to purchase this property. There were clearly several similarities between the Kettle Point surrender in 1927 and the Stoney Point surrender in 1928.

The same Indian Agent involved in the surrender at Kettle Point a year earlier is again favourably disposed to Mr. Scott's request for the same reason. In his view, the land is of little value to the Indians, "being white sand, and from an agricultural point of view ... absolutely worthless."

Again the local MP Goodison supported Mr. Scott's application. The Department had advised Mr. Goodison that given the difficulties encountered at Kettle Point the year before, a proper application should be made before negotiations were entered into with the Indians.

First Nations people were under extreme pressure from the Indian Agents to surrender the land on the reserves. Ms. Holmes explained:

... during this time period it was very, very difficult for any First Nation to successfully resist pressure to surrender their land and that's why you see all over Canada that there's barely — I think there's one reserve in Canada — that has never had a surrender of its reserve land.

It is important to note in the context of the surrenders that Indian bands were often "desperate for capital" as there were obstacles to borrowing money:

One of the things that you find frequently with surrenders is that the Band is desperate for capital for some kind of a project. Sometimes it's as simple as putting groceries on the table ... and they're desperate for capital because they, as an Indian Band, they can't borrow money or get money in the way that any other Canadian citizen can.

The Chief of Kettle and Stoney Point passed a resolution calling for Council to consider the application. The voter's list contained twenty-eight band members, twenty-five of whom voted for the surrender; therefore, the band accepted the surrender. Three hundred and seventy-seven acres were taken, which constituted 14 percent of the land at Stoney Point Reserve. It encompassed the entire beachfront of the Stoney Point Reserve. And the compensation was \$35 per acre, by contrast to the \$85 per acre received for the land surrendered at Kettle Point Reserve the year before. On August 7, 1929, the Order-in-Council was passed. The band received \$13,500 for the 377 acres on its shoreline.

In 1930, Cornelius Shawanoo asked the Department of Indian Affairs for copies of the 1927 Kettle Point and 1928 Stoney Point surrenders. As Ms. Holmes points out, “this is just another sort of a general indication or illustration of the way in which land matters were managed at that time period, and the level of information that Band members could or could not obtain, regarding their reserve land.” The Stoney Point surrender was also the subject of a land claim against the Canadian government in 1996.

2.11 Stoney Point Beachfront Purchased by the Ontario Government: Establishment of Ipperwash Provincial Park

Beginning in 1932, local residents pressured the provincial government to create a public park at Stoney Point. A number of petitions were sent to the government. Local residents were displeased that much of the beachfront on Lake Huron belonged to private owners with cottages on this property. Local residents agitated for beachfront accessible to the public.

The Department of Lands and Forests of the provincial government inspected the lots fronting Lake Huron and Stoney Point. It concluded that one lot of approximately 109 acres was suitable for such public purposes. The province approached Mr. Scott and Mr. White, individuals who in 1928 bought 377 acres (four lots) after the land from the Stoney Point Reserve was surrendered.

In 1936, the Ontario government paid Mr. Scott and Mr. White \$10,000 for the one lot. This translated to almost \$100 an acre. It is noteworthy that when these men purchased the 377 acres in 1928, they paid \$35 an acre for the shoreline property at Stoney Point. The December 1936 Order-in-Council authorizing the purchase and the establishment of the public park, which was governed by the *Provincial Parks Act*,²³ stated:

The Committee of Council have had under consideration the Report of the Honourable the Minister of Lands and Forests wherein he states that,

Lot 8, Concession A. of the Township of Bosanquet in the County of Lambton, comprises 109 acres, more or less, and is part of the Stony Point Indian Reserve in the said Township according to registered plan No. 25 in the Registry Office for the County of Lambton. The Minister of Lands and Forests, acting on behalf of the Cabinet pursuant to many

23 R.S.O. 1927, Chapter 82.

representations made by the public in that behalf, including a petition signed by over one thousand petitioners, inspected the said lot for the purpose of investigating the advisability of the Province acquiring the same by purchase for park purposes.

The physical characteristics of the lot are such that it lends itself admirably to park purposes. In the front of and located at about the centre of the said lot is a high beach forming what is known as Stony Point. This Point is composed of rock and the beach in front is covered with stones. To the East and West of the Point are located very fine sand beaches. The balance of the area is varied in character and for the most part it is of a sandy nature covered with small Red Pine.

The fact must be recognized that very few areas along the shores of the Great Lakes in the Province of Ontario can be utilized for the general advantage of the public. Decades ago, when townships were being laid out and efforts made to colonize, scant attention was paid to the future needs of the public from the viewpoint of summer outings, bathing beaches, etc. and these facilities can only be enjoyed and exercised by the public when it has free and uninterrupted access to and from the beaches ...

Having in mind the desirability of acquiring areas contiguous to the Great Lakes which might be held in perpetuity by the Crown for the beneficial use of the general public, The Minister is of the opinion that the Solicitor of the Department should be authorized to complete the conveyance of the said lands from the owners thereof, namely, — William J. Scott, Mary W. Scott, his wife, and John A. White and Lula May White, his wife, all of the City of Sarnia, to the Crown, the said lands, when acquired, to be vested in the Crown and held as a public park under the provisions of The Provincial Parks Act, R.S.O. 1927, Chapter 82.

Mr. Chester Walters, the Controller of Revenue of the Province of Ontario, has indicated that the purchase price of \$10,000.00 which the Vendors agree to accept in full satisfaction, is fair and equitable and my investigations tend to confirm this valuation ...

The Committee of Council concur in the recommendation of the Honourable the Minister of Lands and Forests and advise that the same be acted on.

Soon after the purchase, Ontario's Deputy Minister of Lands and Forests asked the Department of Indian Affairs for its assistance in ensuring that "neighbouring Indians" did not damage timber in the park. The Department undertook to take measures to protect the park property.

2.12 Kettle and Stony Point Band Seek Protection of the Burial Site in the Provincial Park

In 1937, a year after Ipperwash Provincial Park was created, the Chief and Council of the Kettle and Stony Point Band notified authorities of the existence of a burial ground in the park. The Band asked that this site be protected.

The following resolution passed by the Kettle and Stony Point Band asked the Department of Indian Affairs on August 12, 1937,

... to request the provincial Govt to preserve the old Indian burial grounds on the Government park at Ipperwash Beach and have their Engineer mark out and fence off the grounds so that they will be protected ...

The following day, the Indian Agent wrote to the Department of Indian Affairs in Ottawa with a recommendation that this resolution be approved. He suggested the federal department ask the Ontario government to preserve the old Indian burial ground at the new Ipperwash Provincial Park. It was necessary for the Department of Indian Affairs to approve the Band's resolutions in order for them to be acted upon. As Ms. Holmes observed:

... in fact the Chief and Council had a very limited range of items that they could make decisions on ... they always had to go to the Indian Department for approval.

A few days later, the Secretary of the Indian Affairs Branch, T.R.L. MacInnes, wrote to the Ontario Deputy Minister of the Department of Lands and Forests, Mr. Cain. This provincial department had jurisdiction over the parks. He discussed the concern of the Indians at Kettle and Stony Point Band regarding the preservation of the Indian cemetery. He asked the Deputy Minister to comply with the wishes of the Indians and protect the site. The federal official writes:

In connection with the work at present being carried out under the direction of your Department at Ipperwash Beach, near Sarnia, I have to inform you that the Indians of the Kettle and Stony Point Band are

much concerned in the preservation of the old Indian cemetery which, I understand, is located within the territory now being developed as a park.

On the 13th of this month the Council of the Kettle and Stony Point Bands [sic] passed a resolution requesting this Department to bring the matter to your attention with a view to having this old Indian burial ground preserved intact and properly fenced. The request will, I am sure, appear to you as entirely reasonable and I should be glad if you would see that the necessary action is taken with a view to meeting the wishes of these Indians.

I should be glad to have a favourable reply at your earliest convenience in order that the Indians may be so advised.

The Provincial Deputy Minister responded:

Re: Indian Burying Ground, Ipperwash

Not having before me all the facts in connection with the location of this area in relation to our program of works now being carried out, I cannot speak definitely on the matter, except to the effect that I shall do my best to make sure arrangements as will respect the natural wishes of the Indians.

Despite these intentions, it appears that no action was taken by the Ontario government to preserve or protect the burial sites.

In 1950, human remains were found in Ipperwash Provincial Park. The wife of a Park Superintendent took photographs of the burial site.

The provincial government conducted an archaeological survey in 1972. It did not reveal evidence of a burial ground in the Ipperwash Provincial Park. However, Mr. Hamalainen reported in his 1972 investigation that the land had been disturbed. Ms. Holmes explains:

... at the beginning of his report, he prefaces all of his work on the fact that the park had been disturbed, and any archaeologist will tell you that if an area is disturbed, you don't expect to find a lot of archaeological material ...

... when you read his report, you have to be very careful to understand what he's saying about the limitations of the area that he examined, and the limitations of the methodology that he used to examine the park.

Dr. Spence of the University of Western Ontario Department of Anthropology subsequently conducted a study of the burial site from the 1950 photographs. In his 1996 report “The Ipperwash Burial,” Dr. Spence concluded that the skeleton belonged to an Ojibwa child of about eleven years old buried in the 1800s or the early 1900s. His assessment was based on the burial position, the conditions of the bones, and the absence of a coffin.

Dr. Spence was uncertain whether this was a “lone burial” or whether other people were buried in this area. It is “possible,” he says, that the Ipperwash burial was once part of a larger Ojibwa cemetery in the area. Letters between government officials and Ojibwa leaders suggest that there had been an Ojibwa cemetery in the park. In his report, Dr. Spence wrote “rumour has it that a large number of bones were found when the reservoir was built in 1942, and the Ipperwash child was buried quite near the reservoir.”

An archaeologist from the Canadian Museum of Civilization reviewed the Spence Report and the photographs. Dr. J.S. Cybulski supported Dr. Spence’s conclusion regarding the probable ethnicity and age of the deceased child.

It is noteworthy that in his survey in the 1820s, Mahlon Burwell found a burial site in sand close to the shore of Lake Huron and east of the Aux Sable River outside of the Stoney Point Reserve. Ms. Holmes said, “That would suggest to me that a burial inside of what became the provincial park would be consistent with other findings in the area.”

In her review of the documentary material, there were no records to suggest that any steps were taken by the Ontario government before the 1990s to protect in any way the Aboriginal burial grounds described in the Kettle and Stony Point Band’s request of 1937.

2.13 The Appropriation of Stoney Point Reserve

During World War II, the Department of National Defence decided it wanted to establish an army training camp on the site of the Stoney Point Reserve. It began to seriously consider this location for military purposes in February 1942. One of the reasons it targeted this location was that the land was undeveloped.

The Department contacted the Indian Agent, George Down. Officials learned that approximately fourteen families lived on the Stoney Point Reserve and that these people belonged to the same band as residents on the Kettle Point Reserve. Military officials wished to know the procedures necessary to acquire the Stoney Point Reserve. Mr. Down explained it was necessary to call a general band meeting to outline the military’s proposition to the Indians, after which band members

would vote on whether they endorsed the proposal. The outcome of the vote would be submitted to the Indian Affairs Branch. If favourably received, negotiations with Stoney Point residents would begin.

In a letter to the Secretary of the Indian Affairs Branch, Mr. Down states that the military wished “to proceed with this scheme as soon as possible.” Mr. Down himself was supportive of the idea for two main reasons: (1) it would centralize the Stoney Point and Kettle Point Indians in one location; and (2) geographically, the reserve was an ideal site for the army camp. In the letter, the Indian Agent writes:

... This site appears to be ideally situated and the contours of the land lend themselves to hutment barracks and manoeuvring grounds, with the open lake as a background for rifle ranges ...

Personally, I think this is a wonderful opportunity to gather a few straggling Indians and locate them permanently with the main body of the Band at Kettle Point. It would solve many problems and dispense with a great deal of expense from both Band Funds and Departmental Appropriations such as schools, roads, visitations, etc. ...

The Secretary of the Indian Affairs Branch responds that the land could be taken by the government pursuant to the *War Measures Act*.

It was clear that by February 21, 1942, the Department of National Defence was anxious to proceed as quickly as possible. It described the matter as “one of some urgency.” The military began an appraisal process to assess the value of the land and buildings on the Stoney Point Reserve.

The appraisal was completed in a very short period. And it is clear from the February 28, 1942, Appraisal Report that the valuation was not made according to standard appraisal practices. The buildings on the reserve were not measured; they were assessed at \$8,000. Also the land was appraised at \$15 per acre, based on the price for which a band member would sell such property to another band member. As Holmes points out, the appraiser failed to distinguish between the sale of land to a fellow band member and the sale of property to a third party:

... what that does not take into account is the fact that when one band member is selling property to another band member, the property does not leave — it’s not alienated from the band. So, that property remains within the control of the First Nation. And only those First Nation members are legally allowed to reside on it.

So, he's using that price as a price for the land when the land is going to be completely alienated from the First Nations. So this is perhaps a lack of understanding on the part of the appraiser for the difference between exchanging land within a First Nation and completely alienating land from a First Nation.

The government appraiser failed to take into account the fair market value of the property, such as the price neighbouring properties would sell for on the open market. The government estimated the expenses that would be incurred to move the people on Stoney Point to Kettle Point was \$3,400.

The following month Indian Affairs gave instructions to the Indian Agent regarding the sale of the Stoney Point Reserve. In a letter on March 24, 1942, it enclosed:

1. Surrender documents and voter lists.
2. The Appraisal Report.
3. The Department record of location tickets on the Kettle Point Reserve.
4. Suggestions in presenting the proposal to the Indians.

The Indian Agent is also instructed to remove “white owners” from the Kettle Point Reserve to make room for the Stoney Point families that would be shortly relocating to Kettle Point. The Indian Affairs Department uses the term “white” for people not recognized as registered Indians under the *Indian Act*. It does not necessarily mean that these people were not Aboriginal. It could include women who had lost their status because they had married non-Indians. Or it could include people of mixed blood who were not Indians within the meaning of the *Indian Act* because their father was white and their mother was a registered Indian. The March 1942 correspondence states:

... With respect to the list of white owners, this would appear to us to be a golden opportunity not only for us to get rid of these white trespassers but to give the said white trespassers an opportunity to sell their interest on the reserve to bona fide band members and get a fair price.

In the judgment of this office considerable pressure should be put on these whites at this time to get them off the reserve, and the room they are taking should provide for at least some of the fourteen families that have to be moved onto Kettle from Stoney.

It is also evident from this letter that the Indian Agent is pressured to arrange a surrender vote as quickly as possible “within a week or ten days.” There is a sense of urgency. The Indian Agent was encouraged to arrange transportation “to Kettle and Stoney Indians working away from the reserve” if, by doing so, he would “insure a favourable vote.”

Once the band voted, the Department of Indian Affairs indicated it would “make immediate plans to get the people off Stoney Point.” The Indian Agent is also told:

If there are any houses that can be moved to Kettle[,] steps should be taken immediately to find a piece of land to put them on and get the movement under way.

As Ms. Holmes commented in her evidence at the Inquiry, the government is making these statements and organizing the removal of Stoney Point people before the surrender vote, before people on the reserve have decided whether they will be dislocated and lose their property:

... [w]hen you ... look at the Agent’s instructions, the instructions that he’s given suggest that the Department is already viewing the surrender as a done deal. (emphasis added)

There were protests from the Aboriginal people. In a March 1942 document, the “Chippewa Nation of Indians” make it clear they do not want to surrender or leave the land at Stoney Point Reserve. They referred to the vow of King George²⁴ regarding the land: “expressly reserving to the said Nation of Indians and their Posterity at all times here after for their own exclusive use and enjoyment.” They state in unequivocal terms they want to retain their reserve:

... So please accept this as our final answer of not wishing to sell or lease the Stoney Point Reservation.

There were further protests from these First Nations people. Members of the Kettle Point and Stoney Point War Workers Organization issued a petition on March 25, 1942, which contained forty-four signatures. The petition describes the allegiance of their ancestors to the British particularly in the War of 1812, and their allegiance to Canada and allied countries including the United Kingdom in World

²⁴ Royal Proclamation issued by King George III.

War II. They describe the ways in which they have assisted in the war against the Nazis, including enlisting in the Canadian Army.

The petition discusses the lack of respect in the failure of the government to consult with the Stoney Point residents. They clearly state:

... it is our desire to have the Department of Indian Affairs call off this General Council and cancel the surrender of this reserve.

... it is not our desire to sell this reservation or lease it so please take this as final. (emphasis added)

Their plea to abstain from selling the Stoney Point Reserve is evident in this petition:

We the undersigned members of the Kettle & Stoney Point war workers organization, in trying to help to defend our country and the allied countries of the United Kingdom from the enemy have been labouring and striving to raise money for the soldiers who are in the army doing all we can to help win this war in the hope of having freedom in our country. We are all working for this one great cause even the children that pick up the odd nickel use it for our defence.

We are also in the hope of giving protection to the smaller nations who are under the cruel laws of the Nazis. We are working for our protection and for the same reason our boys enlisted in the army in that they may help protect their homes and country.

We understand that Stoney Point reservation is being taken over by the military Department without consulting the members and owners of the reserve. What will the boys think who have signed up for active service when they hear that their homes have sold and their lands and find no home and land to fall back on when they return home after the war.

As for us who are at home doing all we can to help win this war could not endure to see our children and relatives taken away from their homes and which our ancestors worked hard to build for them ... which also have been their homes for many years.

Many of us who are members and owners of this reserve are the descendants of those who fought to protect this same country in the year of 1812.

Mr. George Down the ex Indian agent for this reserve also Mr. McCracken the present Indian agent have posted notices at the council house and even at the doors of the both churches, of which no doubt your are aware is not lawful. The people goes to those churches for the purpose they are there for and that is to worship God and not to have their minds occupied on the surrender of their beloved homes and lands.

And it is our desire to have the Department of Indian Affairs call off this General Council and cancel the surrender of this reserve.

Drillers have brought in their machinery and started drilling operations without consulting anyone on the reservation. The Indian agent was notified and he said it was nothing at all. He would not do anything about it ...

We are not against this war. We heart and soul in the work of hoping this war be soon but we hope and desire to hold this reservation which our forefathers fought for and for which our boys are fighting in present war being the second time this reservation is fought for.

Despite the protest, the Indian Agent as instructed called a surrender vote on April 1, 1942. The Indian Agent was clearly aware of the opposition to the surrender.

At the beginning of the meeting, the Chief and Council announced that they opposed the surrender. There were eighty-three eligible voters, seventy-two of whom attended the meeting. Fifty-nine voted against the surrender. First Nations people were clearly not interested in either selling or leasing the Stoney Point Reserve.

Despite the decisive vote by First Nations people, the government pursued its plans to take over the Stoney Point Reserve. The Department of National Defence sought an order from the Privy Council to appropriate the reserve. Two weeks after the surrender vote, Privy Council Order 2913 authorized the appropriation pursuant to the *War Measures Act*. The April 14, 1942, Order-in-Council stipulated that the Department of National Defence required the 2,240-acre Stoney Point Reserve as an advanced military training centre. It stated that negotiations were entered into between the Real Estate Advisor of the Department of National Defence and the Indian Affairs Branch on behalf of the Indian Band. The sum of \$50,000 was considered “fair and reasonable compensation.” This sum included the cost of moving the Indian families — “their buildings, chattels” — off the reserve.

It is acknowledged in the Order-in-Council that the Indian Band voted against the government proposal: “it does not appear likely that the acquisition of the property in question can be effected by way of negotiation.” The Order-in-Council further states it is necessary to acquire that particular site for military purposes and that the *War Measures Act* is invoked:

That, as the establishment of an advanced training centre in the locality in question is a matter of military expediency and as the site in question is the only one suitable for that purpose, it is in the public interest and for the efficient prosecution of the war desirable that the lands in question be acquired and to enable this to be done it is necessary that the provisions of the War Measures Act be invoked ...

It is explicitly stated that if the Department of National Defence does not require the reserve property after the war, negotiations will be entered into to return the land to the Indians at a fair price:

... together with the further condition that, if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

The decision to displace First Nations people and move them from the Stoney Point Reserve to the Kettle Point Reserve met with continued opposition. A lawyer was retained to dispute the acquisition of the reserve. Letters were sent to the Department of Indian Affairs soon after the invocation of the *War Measures Act*, but it was clear that the government had no intention of halting its plan to set up a military camp at the Stoney Point Reserve. In a letter to the Indian Affairs Department on April 24, 1942, Mrs. Beattie Greenbird, an elderly Stoney Point resident, discusses the treaties and undertakings made by the British and Canadian governments. She asserts that the reserve was promised to the Band for posterity. Mrs. Greenbird refers to the Treaty of 1827 and to the 1873 Council resolution adopting the Potawatomis. She also complained that the Band’s young men were fighting in the war while the government was in the process of selling their land. Her letter states:

... The animal has laws to protect them not to be disturbed or molested on the ground. Us Indians has no law we are classed way down below animal ...

We don't side up Hitler and his heartless aids all we [would] like to keep Stoney Point for our descentent[s]. There is a lot of land four or five miles east from Stoney Point ...

P.S. As the Reserve is sold already I suppose we have a very poor chance to cut some timber for building purposes and fence post[s] as we were told that we can cut timber any time even if the Reservation is sold. We need 506 hundred fence post[s] at Kettle Point. We were just starting to cut them when the blow hit us.

I'm the oldest and have rights to say something about our poor children's inheritance.

In his reply to Mrs. Greenbird, the Superintendent General of Indian Affairs minimized the legal obligations to the Indians at Stoney Point under the Treaty. He took the position that people at Stoney Point had been treated "fairly and generously" for more than 100 years. One of the rationales used by the Department to appropriate the reserve is that its residents did not cultivate their land. As Holmes commented, "this is a very common attitude expressed in the Department of Indian Affairs, that if lands were not cultivated as farms, that they were unproductive, that ... the Department saw very little value in any other use of the land." An excerpt of the federal government's reply to Mrs. Greenbird follows:

The Indian people at Stony Point are Canadians and loyal subjects of His Majesty. As such, and in accordance with their rights as Canadian citizens, and quite regardless of any so-called treaty obligations, you have been treated fairly and generously for upwards of one hundred years ...

I am sure the Chippewas of Stony Point and Kettle Point are no exception. Two thousand acres of your land, the greater part of which you have chosen to leave unproductive, was ideal for the purpose and urgently required for the accommodation of thousands of troops whose training in arms is urgently and desperately needed for the defence of our shores. As Superintendent General of Indian Affairs I have seen to it that you will be adequately compensated. As Superintendent General of Indian Affairs I will see to it, as will I assure you my successors in office, that your band and your returning sons will be fairly treated in the period of readjustment which must inevitably follow the successful issue of the struggle in which Canada is engaged.

A lawyer on behalf of the Band wrote letters to the Minister of National Defence, the Prime Minister, and the Governor General. The appropriation was described as a violation of the treaty rights of the Band. Yet the government refused to change its position.

The government proceeded with the appropriation. The maximum compensation of \$50,000 was to be apportioned as follows:

Land Value:	\$33,600.00
Appraisal of Buildings:	\$ 8,000.00
Moving Costs and Compensation for Dispossession (as required not to exceed):	<u>\$ 8,400.00</u>
TOTAL:	\$50,000.00

There was no compensation to “white tenants” and to owners of unimproved lands. Nor was compensation made to the Band for its interest in the reserve. There were sixteen families at Stoney Point deemed by the government as eligible for moving expenses.

Stoney Point residents were relocated to small lots on the Kettle Point Reserve. Some of their homes were transported to Kettle Point. Prior to the relocation, they had lots of approximately forty acres. But after the appropriation, many were placed at Kettle Point on lots of only two to three acres.

The impact of the appropriation on the Band was significant. The acreage had been reduced from 5,096 acres at the time of the Treaty to just over 2,000 acres. Moreover, the population had greatly increased. According to census data, the population of Stoney Point and Kettle Point in 1839 was under fifty, but by 1944, there were three hundred and seventy-one people on the reserve. Holmes testified:

... the population has grown exponentially and the amount of land is less than half the land. So it just helps you to understand ... the impact of completely losing one of their reserves and trying to put all those people, all that population, in one location.

Helen Roos in her master’s thesis “It Happened as if Overnight: The Expropriation and Relocation of Stoney Point Reserve #43, 1942” also discusses the serious ramifications of the appropriation:²⁵

25 Helen Roos, “It Happened as if Overnight: The Expropriation and Relocation of Stoney Point Reserve #43, 1942”, M.A. Thesis, University of Western Ontario, May 1998, in Holmes Report.

The change from forty acre parcels to two acres severely impeded farming efforts, particularly on the swampland on the 14th Concession. Removal onto new land in the midst of the growing season prevented the families from growing needed winter food. In addition, the distance from the established clientele for the craft industry, and from local farmers who were employers, reduced the opportunity to make money. Within the first year of removal, many families were forced onto welfare or off-Reserve in order to survive.

Another consequence of the 1942 government decision was the friction it caused between the former Stoney Point and the Kettle Point residents. As previously mentioned, the acreage on which these First Nations people were compelled to live was greatly diminished. Residents from Kettle Point were not anxious to have the Stoney Point people share their limited reserve property. These problems were evident to the Indian Agent who wrote this letter to the Secretary of the Department of Indian Affairs in June 1942:

The Indians of Stony and Kettle deeply resent the fact that their Reserve has been taken from them. It appears as though the Kettle Point Indians are not eager to have the Stony Indians take up residence at Kettle. Some of the Stony Indians visiting Kettle recently in search of locations are called “refugees” by the Kettle Point Indians. The Band still have hopes that a lawyer whom they have consulted in Toronto will be able to prevent the use of their Reserve for military purposes. Delegations reportedly financed by private subscriptions and headed by one “Beattie Greenbird” have visited the lawyer on at least two occasions. Generally speaking, however, the Indians of both Kettle and Stony are, at least outwardly, resigned to the fact that their Reserve is gone as far as they are concerned.

As Ms. Holmes emphasized, the divisions caused by the 1942 forced relocation continue to permeate the Kettle and Stony Point Band. Members of the Kettle and Stony Point Band in the Part I hearings describe the significant impact of the 1942 appropriation on their lives and on the lives of their parents and other relatives.

The expert witness concludes from her review of the historical documents that the Department of Indian Affairs did not adequately fulfill its role as “trustee of the Indian people” in the government’s decision to appropriate the Stoney Point Reserve:

... the mandate of the Department of Indian Affairs was to be the trustee of the Indian people ...

And I think that they could have done a better job at getting them a better deal ...

As Holmes said, “it was extremely distressing for the people that had to move; they felt very dislocated.” In her view, the Department of Indian Affairs welcomed the opportunity to consolidate the two communities into one geographical area. And it also wanted to co-operate with the Department of National Defence:

... When I look at the documents that I dealt with in my report, it’s clear from the documents around the time of the land being expropriated that people were extremely distressed at being displaced.

The things that they talk about are their attachment to the land, their sense of history, the importance that as Elders, we heard in some of the petitions ... the responsibility to look after that land, to guard that land. That it was their sacred heritage.

In the defence of the military, local Indian agents and senior officials in Indian Affairs fail to scrutinize the details of the report and purchase price. Throughout the early period, Indian Affairs disregarded both the letter of the procedural requirements, as well as the spirit of their profession. Clearly the military and Indian Affairs seriously betrayed the residents of Stony Point. The community was excluded from the process, when the military withheld plans to purchase the land or establish their camp. In addition, Brigadier General Macdonald left the band out of any negotiations regarding the sale or purchase price. However, the brunt of historical judgment rests with Indian Affairs, and the mismanagement of the Stony Point surrender and sale.

While the Indian Agent strongly supported the sale [at] the outset, his motivations were not based on the war effort. Rather, Indian Affairs saw an easy opportunity to dispose of an administrative and financial burden.²⁶ (emphasis added)

26 Helen Roos, M.A. Thesis, p. 161, quoted during Joan Holmes’ testimony.

In Ms. Holmes' view, the human cost to the First Nation people, in forcing them to relinquish those lands, was not weighed as heavily in the balance as the political and financial inconvenience to the federal government of acquiring other lands.

In 1944, the Department of National Defence acquired the remainder of the Stoney Point waterfront lots from private owners Messrs. White, Scott, and Wright. The Department claimed that the reason for this appropriation was because land acquired for Camp Ipperwash did not provide sufficient depth to safely accommodate the necessary firing ranges.

2.14 Desecration of the Burial Site at Stoney Point Reserve

After they returned from the war, Aboriginal soldiers from the Stoney Point Reserve were deeply upset and alarmed at the damage to the Stoney Point cemetery at Camp Ipperwash. They were also devastated to learn that the federal government, on the initiative of the Department of National Defence, had appropriated the Stoney Point Reserve. They were deeply upset that their community at Stoney Point had vanished. As Professor Johnston explained:

The trauma of loss of ancestral lands can, at least in part, be attributed to the enforced separation from the graves of one's ancestors. This loss cannot be fully understood without an appreciation of the relationship between the Living and the Dead among the Anishnaabeg.

And she further said:

I understand the attachment of Aboriginal people, Anishnaabeg people, to lands as also being part and parcel of an attachment of the Living to the Dead ... [a]nd that proximity to the graves of one's ancestors, in fact, is one of the most powerful forces in the world view of Anishnaabeg people.

Both the Department of National Health and Welfare and the Indian Affairs Branch pressured the Department of National Defence after the war to take measures to protect the cemetery. In a letter in October 1947, the Department of National Health and Welfare discusses the removal of tombstones and the presence of gunshots in the remaining few tombstones. The poor maintenance of the cemetery area is described as well as the deep concern of Stoney Point residents for the "vandalism and disrespect" of their sacred site. Responsibility of the

federal government to the Indian people, whose military activities were likely responsible for some of the damage, was stressed. Department of National Health and Welfare representatives who were shown the cemetery by Robert George described their observations and urged attention to this issue of great importance to First Nations people:

... An Indian, Robert George, presently of Kettle Point who, I believe, previous to the war lived at Stony Point and with the transfer of the reserve area to the Department of National Defence was moved with the other Indians to his present abode. *Mr. George was greatly concerned about the state of the Indian cemetery at the former Stony Point Reserve. He told us that when the Indians were moved from the reserve that the National Defence Department promised not to have any damage created to the Indian cemetery.* At that time, or shortly after, the cemetery ground was fenced and the tombstones were left in good repair.

He took us to the cemetery and showed us that only two tombstones were remaining on the grounds and that these were marked with shell shots. I noted one red granite marker had two distinct marks of being hit a glancing shot by a high caliber rifle bullet. A second stone, white marble, was broken and a considerable distance displaced from its grave position. Mr. George pointed out that a great number other tombstones had been moved. He also pointed out that the fence when they had left the property was in good repair and now that the front of it was torn down. The gate is of wood construction and has suffered considerably due to the elements of weather and some amount of damage has been created by other forces.

It would appear that the Stony Point Indians are greatly concerned about the vandalism and disrespect shown to the resting place of their ancestors and in this instance are very anxious to have some restitution made by the Department of National Defence. The burial ground has not been kept trimmed and bushes, poison ivy vine and wild hay overrun the entire area. I do not believe that there was any particular instance of desecration. However, certainly some individual or parties have disturbed the previous arrangement of tombstones and may have caused the collapse of the front fence. I am not prepared to say it is the fault of the Department of National Defence though it is quite likely they may have some responsibility inasmuch as their basic

training camp was nearby and their rifle range adjoined the cemetery. (emphasis added)

Similar sentiments are conveyed a few months later by the Indian Agent to his superiors in Ottawa at the Department of Indian Affairs; the unfulfilled promise made by the military to protect the burial grounds at Camp Ipperwash. Mr. McCracken writes in December 1947:

... At the time of the expropriation I recall that the military definitely promised to respect the cemetery at all times and everyone assumed that the military would protect the burial grounds by erecting a strong fence or some similar device. This was not done. (emphasis added)

As Holmes stressed, “[t]he lack of protection and respect for burial grounds was deeply offensive and became symbolic of their loss of ancestral territory and their inability to maintain significant connections to their cultural heritage.”

2.15 Attempts at the Return of the Stoney Point Reserve

It was the expectation of former residents of the Stoney Point Reserve that the federal government would return the land at Camp Ipperwash shortly after the war. The Order-in-Council signed in 1942 specifically stated that

... if, subsequent to the termination of the war, the property was not required by the Department of National Defence, negotiations would then be entered into to transfer the same back to the Indians at a reasonable price to be determined by mutual agreement.

Returning First Nation soldiers from Stoney Point were “shocked to see their community destroyed.” As discussed, they were devastated to learn that the reserve land had been expropriated by the Canadian government, that their community no longer existed, and that the Stoney Point cemetery had been desecrated.

After World War II, the Department of National Defence (DND) seemed prepared to return the Stoney Point Reserve and lease back areas still required by the government for military purposes. In a May 1946 letter the Deputy Minister of DND responds to the request of the Department of Mines and Resources, of which the Indian Affairs Branch is part, to enter into negotiations with the Indians for the return of the Stoney Point Reserve. Although DND acknowledges it may be unjust and a violation of the treaty rights for the government to retain

ownership of the land, it wants to continue to use it for military training purposes. The Deputy Minister of DND writes:

Confirming conversation your Mr. W.S. Arneil and Brigadier G. Kitching of this Department, 14 Feb 47, it is agreed that the following action will be taken in respect of the above Camp.

- a. All of the land owned by the Department of National Defence, shown on Plan No. 64-1-13 attached hereto, less that portion hachured in yellow, is to be returned to the Department of Mines and Resources.
- b. Buildings outlined in Purple to be reported surplus on request from your Department for re-allocation by Crown Assets Allocation Committee.
- c. Department of National Defence to be given a lease on the property to be transferred for a period of 99 years for a rental of \$1.00 per annum.
- d. Department of Mines and Resources, Indian Affairs Branch, to be permitted to authorize the local Indian Tribe to carry on cultivation of the land in all areas except those outlined in Red and Blue. It is understood that the Department of National Defence is prepared to make good any losses sustained through damage to crops as a result of the carrying out of Military exercises in the area.
- e. The area outlined in Blue is a safety zone in connection with the Rifle Range, and the Department of National Defence must be empowered to clear the area of all persons, animals or equipment during periods of firing practice.

The Judge Advocate General's Branch of this Department has been requested to draw up a draft form of Agreement which will be submitted to you for your approval within the next few days.

No agreement was reached between the Indian Affairs Branch on behalf of the First Nation people and the federal government. By May 1948, "the military completely backed away from negotiations, and decided that they wanted to keep the entire camp ... as a cadet training camp." In the 1960s, there was again an attempt to negotiate the return of the Stoney Point Reserve. However, DND did not vacillate from its previous position that it needed the camp for military training. The Department made it clear the land would not be returned in the foreseeable future.

In the early 1970s, Jean Chrétien, then the Minister of Indian Affairs, made a concerted effort to push DND to return the Stoney Point Reserve to the Aboriginal people. In January 1972, Donald Macdonald, Minister of National Defence, told Mr. Chrétien that “after consultation with departmental officials and with the Members of Parliament of the area, I feel that the Department must retain the property at Ipperwash.” In April 1972 correspondence to Mr. Edgar Benson, Minister of National Defence at the time, Mr. Chrétien explains the history of the Stoney Point Reserve including the Huron Tract Treaty of 1827, the 1942 acquisition by the federal government of the land under the *War Measures Act*, and the attempts by the Department of Indian Affairs and the Band since 1946 to have the land returned. He argues that “the Indian people involved have a legitimate grievance.” Mr. Chrétien also argues that the return of the land is necessary as a means of improving the Band’s “social and economic position.” He urges the federal government to take immediate action as the patience of the Band was waning. Also, there was concern that the government could receive adverse publicity for its lack of attention to this matter. A portion of Mr. Chrétien’s April 17, 1972, letter reads:

The traditional stance of your Department has been that, only when these lands are no longer required for training purposes, will it be ready to negotiate the return of the lands to the Band. The letter to me from your predecessor, the Honourable Donald S. Macdonald, dated January 28, 1972, reaffirms this stand. But he also indicated that the major factor standing in the way of returning the lands taken in 1942 is the problem of clearing them of unexploded munitions. Based on a study by your officers and those of Justice, it seems that the cost of clearing the total Camp area of 2,477 acres, which includes the 2,211 acres appropriated in 1942, is estimated to be anything from 18 to 30 million dollars ...

I had hoped that a possible compromise might be the return of parcels of land to the Indian people, which they could develop to provide income for their Band without seriously impairing the training capacity of Camp Ipperwash. Some of the beach property, and the 350-yard strip near Highway 31 are examples. But this again raises the problem of clearing such parcels of unexploded munitions.

An alternative would be to purchase an equivalent amount of land in the area, for the use of the Kettle Point Band, but the question of who would pay the cost has not been explored.

It seems to me that the Indian people involved have a legitimate grievance. They did not agree to surrender the land in the first place, but it was appropriated in the national interest prevailing in 1942. It is now 1972, and they have not got it back. Yet they desperately need it to improve the Band's social and economic position. In addition, there is their deeply rooted reverence for land and their tribal attachment to it. Stony Point Indian Reserve No. 43, now Canadian Forces Base Camp Ipperwash, was established in 1837 for the Chippewas of Kettle and Stony Points [sic]. It was one of three areas reserved by the Chippewa Nation of Indians when they surrendered a tract of land in the Western and London Districts of Upper Canada, on July 20, 1637 [sic; 1827], containing some 2,200,000 acres.

They have waited patiently for action. There are signs, however, that they will soon run out of patience. There is bound to be adverse publicity about our seeming apathy and reluctance to make a just settlement. They may well resort to the same tactics as those employed by the St. Regis Indians at Loon and Stanley Islands in 1970 — to occupy the lands they consider to be theirs. And as you know, Mr. George Manuel, President of the National Indian Brotherhood, is interceding on their behalf — he wrote to you on March 14 and sent me a copy.

Even though I can foresee these difficulties as quite likely to occur, my main concern is to see that a just settlement is secured for the Kettle Point Band. I wish that we could meet to discuss possible solutions. (emphasis added)

Contrary to Mr. Chrétien's expectations, the Department of National Defence did not seem interested in resolving this issue.

In what appears to be an exasperated letter to the Minister of Defence in December 1972, Mr. Chrétien discusses the moral responsibility of the federal government to these Aboriginal people. He states that for twenty-six years attempts had been made by the Department of Indian Affairs to address this issue with DND, which had not met with any success:

I feel very deeply that somehow we must find a solution to this problem. If the Kettle Point Indians are not to have the Camp Ipperwash lands returned to them, then it seems to me there is a moral responsibility on the Government's part to acquire an equivalent amount of land and sell it to them "at a price to be mutually agreed upon."

I would be grateful if you would study this whole matter personally, and then perhaps we could meet to discuss possible solutions. (emphasis added)

After the failed attempts in 1972, the Band decided to become more directly involved in the negotiations. In 1973, the National Indian Brotherhood, a national association of Chiefs, together with the Band, began to negotiate with the Department of National Defence. The Department of Indian Affairs, encouraged by these negotiations, advanced \$66,000 to the Chippewas of Kettle and Stony Point to enable them to purchase land next to the reserve. This money was an advance against the compensation the Indian Affairs Department believed the Band would receive from its negotiations. However, it was not until 1980 that a proposal was put forth.

The 1980 proposal, voted on in 1981 by the Kettle and Stony Point Band, contained these provisions:

1. All of Camp Ipperwash is included and not just that part taken from us in 1942.
2. We will receive approximately \$2,490,000.00 representing additional compensation, interest and expenses.
3. Mines, minerals and timber rights will be transferred to Indian Affairs now for our benefit.
4. When not required by Defence parts or all of the Camp will be returned to us at no cost.
5. No part of the Camp can be sold without Indian Affairs approval.
6. At regular intervals Defence will reconsider its needs to continue its use of all or any part of the Camp.
7. We will have a designated contact with Defence to see if jobs are available for Band members.
8. This proposal deals only with the Band's interest: The vote to be held is not a surrender vote: Locatee claims for those who were moved are not being affected.

The land included not only the former Stoney Point Reserve that was appropriated in 1942, but also the beachfront property that had been purchased by the government in 1928. Eighty percent of the Band voted in favour of the proposal. An amount of \$2,490,000 was proposed. An evaluation report prepared at the time the National Indian Brotherhood was negotiating with the government in

1974 concluded that the 1942 compensation to the Band for the Stoney Point Reserve was well below market value.

The federal government passed an Order-in-Council in 1981 approving the agreement. The agreement was not in fact signed until 1985. It is noteworthy that the agreement stipulated that “[t]he Burial Yard is, and will remain, out of bounds to any and all military personnel.”

Yet again the land is not returned. The agreement did not specify a date for the return of the reserve. Rather, it states that DND will assess its position every four years:

The Department of National Defence shall assess its relative needs at least every four years regarding the continued use and maintenance of its facility in such location.

Friction between the Kettle Point community and the former Stoney Point residents and their descendants deepened. In the 1980s, former Stoney Point residents and their descendants established the Stoney Point Steering Committee, which later became the Stoney Point Community Association. Their two objectives were: (1) to educate the Kettle Point community and the public at large that the Stoney Point group had different interests and were in fact separate from the Kettle Point community; and (2) to lobby Indian Affairs and the other federal departments to ensure that they were “recognized as the legal heirs and negotiating body in any return of Camp Ipperwash.”

No action appears to have been initiated by the federal government in the late 1980s regarding the return of Camp Ipperwash. In 1990, the Stoney Point group was granted permission by the Department of National Defence to bury one of its people, Dan George, at the Stoney Point cemetery. This raised the hopes of the Aboriginal people that the federal government would soon return the land. The Parliament’s Standing Committee on Aboriginal Affairs also supported the Stoney Point group: “The government [must] rectify a serious injustice done to the Stoney Point First Nation ... by returning the land at Stoney Point to its original inhabitants and their descendants from whom the land was seized.”

And as Ms. Holmes wrote in her report for the Ipperwash Inquiry, “[a] round of active political protest at Camp Ipperwash began about July 1990.” Three years later, exasperated with their failed attempts to have their reserve returned, the Stoney Point people decided to occupy the military range at Camp Ipperwash.