

SEPTEMBER 6, 1995 — GOVERNMENT MEETINGS
TO ADDRESS THE IPPERWASH OCCUPATION

12.1 Seeking Direction from the Attorney General

Prior to meeting with Attorney General Harnick to seek direction on the Ipperwash protest, Julie Jai, Acting Legal Director of the Ontario Native Affairs Secretariat (ONAS), briefed Deputy Attorney General Larry Taman in the early morning of September 6. Ministry of the Attorney General (MAG) lawyer Tim McCabe was present.

Ms. Jai explained to Mr. Taman that the legal sub-group had met to discuss options available to the government and had concluded that a regular and not an ex parte injunction should be sought by the Ministry. There was no particular urgency. It was Tim McCabe's view that the government did not have grounds for an ex parte injunction, an injunction without notice to the occupiers.

At the meeting, Ms. Jai alerted the Deputy Attorney General that there were tensions in the Interministerial Committee (IMC) group; Deb Hutton of Premier Harris's office conveyed the message that the government wanted to move quickly, and considered Ipperwash a more urgent matter than some of the other political staff and bureaucrats at the IMC meeting. The OPP, Ms. Jai said, wanted an injunction but were of the view that the protest should be approached cautiously.

It was clear to Ms. Jai that the Deputy Attorney General did not think this was a case for an ex parte injunction. Mr. Taman did not want to take precipitous action and thought that other legal avenues should be explored.

Mr. Taman says he likely discussed with Ms. Jai the meeting that he and the Attorney General had had earlier that morning with Solicitor General Runciman and Deputy Solicitor General Todres — both the Solicitor General and Attorney General were of the view that it was important to stabilize the situation at Ipperwash and that there was no urgency to quickly address this First Nations protest. Risks should not be taken with respect to people's safety. There was also a consensus at the meeting that it was the OPP's responsibility to deal with law enforcement issues that arose at Ipperwash Park.

Mr. Taman and Ms. Jai then met with Attorney General Harnick. The meeting was held in the Legislative Building before 9:30 a.m. Mr. Harnick had received

in advance the ONAS Briefing Note entitled “Criminal and Civil Proceedings to Terminate the Occupation of Ipperwash Park by the ‘Stoney Pointers,’” which discussed civil injunctions as well as criminal charges available to the police.

Ms. Jai recommended to the Attorney General that the government seek a regular injunction with notice to the occupiers at Ipperwash Park, but that it be sought as soon as possible. Ms. Jai explained that the government did not have much information on the specific grievances of the occupiers, other than that they claimed a sacred burial ground existed in Ipperwash Park. Ms. Jai reported that the occupiers fluctuated from ten to forty people and included women and children. It was a peaceful, non-violent protest, there were no visible weapons, and there did not appear to be any immediate risk to public safety. Nor did there appear to be any land claim or outstanding lawsuits in relation to Ipperwash Park. In Ms. Jai’s view, it was important to open a dialogue and communicate with the First Nations people — seeking an *ex parte* injunction ran contrary to that objective.

Ms. Jai reported that the Kettle and Stony Point First Nation was not supportive of the occupation. The Town of Bosanquet was also concerned, and it had issued a press release and was pressuring the province to take action. The municipality was contemplating seeking an injunction with regard to Matheson Drive.

Ms. Jai explained that the OPP wanted to proceed cautiously and did not consider the occupation an urgent situation. The police thought a court injunction would provide them with the legal means to remove the occupiers from the park, if it were necessary.

The Acting Legal Director of ONAS also discussed with the Attorney General the IMC meeting held the previous day. She said members of the IMC agreed that the goal was to have the occupiers leave the park, but the issue was how best to accomplish this objective. Ms. Jai reported that some of the political staff at the meeting said this would be “a test” of the government’s “reaction to Aboriginal emergencies,” and Deb Hutton said the Premier wanted to take an “aggressive approach” to the occupation.

Ms. Jai discussed the irreparable harm test to successfully obtain a court injunction and the need to establish that reasonable steps had been taken to encourage the occupiers to leave the park. She said that if the government applied for an *ex parte* injunction and it was not successful, it “would really tie our hands and make it more difficult to deal not only with this emergency, but with future Aboriginal emergencies.” According to Julie Jai, Attorney General Harnick was receptive to the recommendation and agreed that a regular civil injunction be sought as soon as possible. Charles Harnick thought the occupation should be

approached cautiously, that there should be continuous efforts to communicate with the Stoney Point people, and that the OPP should exercise its discretion in policing the protest and in laying any *Criminal Code* charges it considered appropriate.

The meeting ended. It was Ms. Jai’s understanding that the Attorney General’s instructions were to seek a regular civil injunction. Ms. Jai left Mr. Harnick’s office to chair the IMC meeting scheduled for 9:30 a.m.

12.2 The September 6 IMC Meeting

When Julie Jai entered the ONAS boardroom at 9:30 a.m. to chair the IMC meeting on September 6, she felt somewhat more comfortable and had a clearer sense of direction than at the IMC meeting the previous day. Ms. Jai had met early that morning with her Minister, Attorney General Harnick, who had indicated the government would proceed with an “injunction in the normal course.”

The September 6 meeting was very tense and the atmosphere was charged. There was “tension in the room from the outset” — “it wasn’t something that sort of developed in the way it had in the meeting of September 5.” The prime reason for the tension was the “differing views as to the urgency” with which the government had to proceed. Deb Hutton attended the meeting and was described by participants as “extremely forceful,” “very assertive in her views,” “adamant,” and a “very ... major presence.”

The IMC meeting had more participants than the previous day. Most of the political staff and civil servants at the September 5 meeting were also present on September 6. Ministry of Natural Resources (MNR) staff Peter Sturdy and Ron Baldwin again participated by teleconference. Others who joined the meeting included Tim McCabe, a senior litigation lawyer with MAG (Crown Law Office — Civil), Scott Hutchinson, a MAG lawyer in the criminal law office, Scott Patrick, an OPP officer seconded to the Solicitor General who reported to Ron Fox, and other MAG and MNR staff. Ms. Jai invited Mr. McCabe because he had significant experience in litigation and, in her view, was the “foremost” government expert in Aboriginal civil litigation.

The IMC meeting began with introductions. Political staff and bureaucrats identified themselves by name, the Ministry with which they were affiliated, and their respective positions. Like the previous IMC meeting, individuals took contemporaneous handwritten notes, the most detailed of which were from Julie Jai, ONAS lawyer Eileen Hipfner, and Anna Prodanou (ONAS, representing her director Janina Korol). Julie Jai prepared a typed version of the minutes later that day.

Ms. Hutton’s objective as she walked into the ONAS boardroom that morning was to seek an option that would result in the removal of the occupiers as quickly as possible — “ending the occupation, removal of the occupiers ... was our goal.” This was the goal of both the Premier and Deb Hutton. It was her expectation that by the end of the September 6 meeting, she would be able to recommend an option to Premier Harris that would result in the removal of the occupiers in the quickest manner possible.

12.2.1 Status Reports from the Ministry of Natural Resources and the Ministry of the Solicitor General

Status reports at the IMC were provided by Ron Fox from the Solicitor General’s office and Peter Sturdy from the Ministry of Natural Resources. Ron Fox considered his role as liaison officer to be a “flow through of information” between the police and the Interministerial Committee.

Mr. Fox had called Inspector Carson at about 7:15 that morning to receive an update on the occupation to be provided to officials at the Solicitor General’s office and to the IMC meeting. Some of the matters discussed by Inspector Carson included damage to police cruisers, the piled tables outside the park, the possibility of fires to adjacent homes, and concern with both police and public safety. There was no mention of reports of automatic gunfire. But based on this conversation, it was Mr. Fox’s impression that the situation was escalating.

Inspector Carson was aware that Mr. Fox would use this information in “meetings that he would be attending” to provide “input into the process.” No restrictions were placed by the OPP Inspector on the information that would be passed on to government officials. Ron Fox said, “The discretion was mine ... in terms of how I would provide that information and what I would do in terms of interpretation.” As I discuss in this report, Ron Fox should not have been communicating with Inspector Carson, the Incident Commander at Ipperwash.

Many people at the meeting knew Ron Fox was a police officer seconded to the Solicitor General, that he was a conduit for police information, and that his status reports were based on information received from the OPP at Ipperwash. His assistant, Scott Patrick, described Mr. Fox’s function as Special Advisor on First Nations as a liaison for police officers on the ground, whose role was to present facts to the IMC from the police perspective. There was no doubt, said Mr. Patrick, that people at the meeting knew they were police officers. This was confirmed by many of the political staff and civil servants who attended the IMC meeting.

Ms. Hutton claimed, however, that she did not realize Ron Fox was an OPP officer seconded to the Ministry of the Solicitor General, and that she was not aware of his liaison role between the OPP and the government. But she

acknowledged that had she known this information, “it would not have altered” her comments at the IMC meetings.

Although Ron Fox was seconded to the Ministry of the Solicitor General from the OPP, his secondment was different from other government officials who moved from their home Ministry to another provincial Ministry for a period of time. This might have caused some of the confusion concerning his role at the Ministry of the Solicitor General. Ron Fox had not worked in the provincial government prior to this secondment. His work at the Ministry of the Solicitor General was for approximately a year, after which time Ron Fox would return to the OPP. While on secondment to the provincial government, he still had an administrative relationship to a senior police officer at the OPP for such matters as attendance and vacation credits. He also remained a member of the Ontario Provincial Police Association during his secondment, and he continued to be a peace officer within the meaning of the *Police Act*. This was also the case for the secondment of officer Scott Patrick. Deputy Solicitor General Todres believed these seconded positions were important “stepping-stones” in their respective police careers.

Mr. Fox reported to the IMC that Bert Manning was the interim spokesman for the occupiers. Police estimated there were from thirty-five to forty occupiers at Ipperwash Park, but these numbers fluctuated as no barriers existed between the army base and the park. They were contiguous. First Nations people went back and forth between the army camp and the provincial park.

A meeting between the OPP and the occupiers was scheduled for noon that day. The demands of the occupiers continued to remain unknown. However, they claimed the park was their land and that a burial site existed in Ipperwash Park.

Mr. Fox also reported that the previous evening there had been a controlled fire on Army Camp Road. When police responded, beer bottles and stones had been thrown at the officers’ vehicles. There were warrants for the arrest of three people for minor offences. The OPP had aerial surveillance of the Ipperwash area, and there were no sightings of occupiers with firearms. At the arranged noon meeting, the OPP intended to find out the occupiers’ demands, to serve them with the trespass notice, and to ask them to leave the park. Mr. Fox also reported that Chief Tom Bressette and the Council of Kettle and Stony Point First Nation did not support the park occupation.

Peter Sturdy then gave a status report on behalf of MNR. The source of this information was Les Kobayashi, Superintendent of Ipperwash Park. Park buildings had been broken into and were being used by First Nations people. Picnic tables from the park had been piled on the road, Mr. Sturdy said, to block access to the beach. There was heavy equipment in the park, and MNR hoped to obtain more detailed information from the aerial surveillance. MNR staff were being

“peppered with calls” from local residents who expressed “concern, fear, anger,” and “anxiety.”

Mr. Sturdy said someone had heard “automatic gunfire.” To his consternation, the OPP had asked MNR staff to wear bulletproof vests. Mr. Sturdy was clearly anxious about the safety of his staff and persons in the community. Park Superintendent Les Kobayashi had relayed this unverified police information to Mr. Sturdy. Mr. Sturdy did not consider the reports of automatic gunfire to be police operational information when he conveyed this information to the Committee. The conveying of this information demonstrates the reasons why MNR should not have been present in the command post. Neither Mr. Kobayashi nor Mr. Sturdy had the expertise to assess the reliability or significance of the reports of automatic gunfire or to place such reports into the full context of police operations. For example, Inspector Carson had not even mentioned the report of automatic gunfire in his early morning conversation with Ron Fox. Inspector Carson also placed the report in a fuller context when he stressed to Tim McCabe that afternoon that no police officer had been threatened with a firearm.

Ron Fox was surprised to hear this information about automatic gunfire from Mr. Sturdy at the IMC meeting. Mr. Fox left the meeting to confirm this report with the OPP in the Ipperwash area.

Peter Sturdy also said that footage of “Natives” approaching a van with baseball bats and OPP drawing their guns would be televised at noon that day. Mr. Sturdy received this unverified information from Daryl Smith, the MNR Information Services Coordinator in Chatham, while he was participating in the IMC meeting by teleconference. Mr. Sturdy acknowledged at the hearings that it was important for accurate and reliable information to be conveyed to the IMC so that the Committee would not make decisions or put forth recommendations on the basis of speculation or rumour.

In fact, members in attendance at the IMC meeting, such as Eileen Hipfner, had the impression “based on what had occurred at the September 5 meeting ... that Mr. Sturdy’s sources of information were proving not to be particularly reliable.” She said at the hearings: “[C]ertainly my own sense was that on September 5, some of the reports that Peter Sturdy had conveyed to the group had proven to be unfounded” — “once Inspector Fox checked with his own sources ... they were never quite as serious as Mr. Sturdy had suggested.” And at the September 6 IMC meeting, Ms. Hipfner thought that until Mr. Fox verified Mr. Sturdy’s report, she was not going to place “too much faith” in this information. Ms. Jai also thought Mr. Sturdy’s report from “second or third-hand” sources should be verified.

Despite Ms. Hipfner and Ms. Jai’s reservations about the reliability of Mr. Sturdy’s information, Mr. Sturdy’s comment about “automatic gunfire” alarmed

several people at the meeting, particularly political staff. Deb Hutton believed the situation at the park had escalated and that public safety was at risk. The police warrants and the request that MNR staff wear bulletproof vests, “coupled with potential for reports of gunfire were of concern”; “it’s very disturbing to hear that civil servants are being asked to wear bulletproof vests.” The Premier’s Executive Assistant (EA) discerned a heightened sense of anxiety on the part of MNR staff participating at the meeting by teleconference.

Mr. Fox considered it his role to filter police information to the IMC, and he was concerned that other people at the meeting were reporting police information. He thought the information conveyed by MNR staff “increase[d] tension in the room,” and clearly “modif[ied] the dynamic.”

Ron Fox reached Inspector Carson by telephone during the IMC meeting. The OPP Inspector confirmed that there had been reports of gunfire during the night and that he had not mentioned this in his earlier conversation with Mr. Fox that morning. However, the police did not know whether the gunfire was from an automatic firearm. Les Kobayashi had learned about the gunfire at the OPP Command Post meeting the morning of September 6, and had relayed this information “up his chain into the MNR side.” As Inspector Carson said at the hearings, Mr. Kobayashi’s report of “automatic gunfire ... certainly created some anxiety” as it went up the MNR “chain.” Chief Superintendent Coles testified that whether the gunfire was automatic constituted information for “the police to consider” — “not some government think tank.”

In my view, politicians and civil servants at the IMC meeting should not have been privy to this report about automatic gunfire. It was unverified information — the OPP were uncertain whether “automatic” gunfire had been discharged the previous night. This unauthenticated information clearly had an impact on the people at the IMC meeting. It raised their anxiety and propelled some of them to believe that the government should take immediate measures to what they perceived to be an urgent situation.

12.2.2 No Negotiations with the Occupiers

Deb Hutton made it clear to the IMC that the Premier did not want third parties to enter into discussions with the occupiers. Only the OPP and MNR should communicate with the First Nations people:

Premier is firm that at no time should anybody but OPP, MNR be involved in discussions, despite any offers that might be made by third parties (Chief, etc.) because you get into negotiations and we don’t want that.

This comment was perceived by ONAS and other civil servants to limit the range of options that the IMC could contemplate to address the occupation.

Ms. Hutton did not want Chief Tom Bressette to work with the government in attempts to end the occupation. She was concerned that “if Chief Bressette worked with the government [to try] to end this specific situation, that may well put both the Chief and the government in a difficult situation.” The Premier’s EA believed that involving Chief Bressette would confuse or complicate the issue.

Ms. Hutton claimed that she did not know the IMC had the power to appoint a third party to engage in discussions of non-substantive issues with occupiers. The Premier’s EA said she was not aware of the mandate and the powers of the IMC described in the Guidelines for Responding to Aboriginal Emergencies. This was in contrast to political staff, such as Dave Moran, EA to Minister Harnick, who knew the Committee had the power to appoint a facilitator/negotiator to engage in process negotiations.

It was clear to the Chair of the IMC, Julie Jai, and others at the meeting that the Premier remained adamant that the occupation was a law enforcement issue, not a First Nations matter. As Ms. Hutton said, it continued to be the position of Premier Harris that this should be treated as an illegal occupation rather than an Aboriginal issue. The Premier, according to Ms. Hutton, did not want third-party involvement, nor did he support negotiations with the occupiers. It was evident to Ms. Jai that the fact that the occupiers were Aboriginal, that they claimed the land belonged to them, and that a burial site existed in the park, were irrelevant considerations for the government.

12.2.3 Who Will Be the Spokesperson for the Government on the Occupation?

Uncertainty existed at the IMC as to which Ministry should take the lead in responding to the Aboriginal occupation.

The Ministry of Natural Resources clearly did not want to be at the forefront of the government’s response to the occupation. “MNR views this as a police issue — MNR would prefer to take a back seat at this point,” said Peter Allen, EA to MNR Deputy Minister Vrancart. The “change in tone” by MNR officials was discernible from the previous IMC meeting. They seemed somewhat “over their heads” and were reluctant to assume a lead role in responding to the Ipperwash Park occupation.

Jeff Bangs, EA to Minister Hodgson, added, “This is quickly spiralling out of MNR’s hands.” “The way things are escalating, the Minister doesn’t want to carry this, especially with the threat to nearby lands.” In fact, MNR was considering

withdrawing its staff from the Ipperwash area for safety reasons. Mr. Bangs took the position that the OPP should be the spokesperson, not the Ministry of Natural Resources.

Solicitor General Runciman was also reluctant to take an active role in the occupation. It is inappropriate, stressed his EA Kathryn Hunt, for the Ministry of the Solicitor General to be involved in the day-to-day operations of the OPP. Separation between the Solicitor General and the police was stressed. Ms. Hunt felt it was important to raise this with the political staff, particularly those who were vocal at the IMC meeting. Ms. Hunt did not think Solicitor General Runciman should be designated as the government spokesperson for the occupation. The Solicitor General, however, was the Minister with ultimate responsibility for the OPP. His role was to ensure that relations between the police and government respected the operational independence of the OPP. Solicitor General Runciman conducted himself based on his understanding of his role in 1995, and he considered himself an observer throughout the Ipperwash occupation. He believed that a clear demarcation existed between policy making, which was the responsibility of the executive arm of government, and operational decisions, which was the responsibility of the police.¹ As I discuss in detail in Part II of this report, this view of the role of the Solicitor General is too restrictive.

But Dave Moran, EA to Attorney General Harnick, argued that “[we] can’t have OPP speak on behalf [of the] government.” He made it clear that with respect to “public carriage of the issue, we are open to direction from the centre.” “The centre” was a term used by the Harris Government to describe the Premier’s office.

Ms. Hutton responded: “We want to be seen as having control over this — so Ministers can’t duck if scrummed — and the Premier is not averse to this being [seen] as a provincial government action.” IMC members understood this to mean the Premier wanted to be seen by the public as having control of the situation, that he desired a quick resolution to the occupation, and that he was not averse to being visible on this issue. It seemed to Ms. Hipfner that the Premier would be pleased to be seen having control of the situation rather than it being left to be handled by the local police or MNR. Ms. Hipfner considered this “highly unusual” — it “surprised” her because generally “[M]inisters are advised to stay clear of any situation involving the police.”

Ms. Hipfner decided to raise the Oka situation in the context of these discussions. She understood police operations had been directed by bureaucrats

¹ Ministerial Control and the Ontario Provincial Police: A Discussion Paper prepared by Anne McChesney in the legal services branch of the Ministry of the Solicitor General, 1991.

in Quebec City and may have contributed to the tragic death of Corporal Lemay. Ms. Hipfner made the point that, apart from the impropriety of government purporting to direct police operations, it was also not advisable because government officials did not understand police operations or details of the situation “on the ground.” Such direction from government could compromise the safety of both the police and the occupiers. I agree with Ms. Hipfner that governmental direction of police operations has the potential to threaten the safety of both the public and the police and should be avoided.

Ron Fox stressed that the Committee could “provide general direction” but could not “direct how instructions to police are operationalized.” In this comment, Inspector Fox demonstrated a sounder understanding of the appropriate roles of the government and the police. He was aware that, although it is legitimate for the government to provide policy direction to the police, it is the role of the police to carry out their law enforcement responsibilities. The complex topic of police–government relations and the appropriate role of ministerial responsibility for policy and police responsibility for police operations will be discussed in greater detail in Part II of the report.

12.2.4 An Injunction — With or Without Notice to the Occupiers?

Julie Jai reported to the IMC that she had met with Attorney General Harnick and Deputy Attorney General Taman. The direction from the Attorney General was to apply for a civil injunction as soon as possible. Public safety, she said, including the safety of the OPP officers, was paramount. It was within the discretion of the police to decide whether to lay charges under the *Criminal Code*.

Tim McCabe, senior civil litigator at MAG, described to the Committee, many of whom had little or no background in injunctions, the different types of injunctions (ordinary/with notice and ex parte/without notice), as well as the court application process.

Mr. McCabe explained that the park occupation was not suitable for an ex parte injunction and would not likely succeed in court. The park was empty and there was no direct evidence that the occupiers were armed. The threshold for an ex parte injunction was high; it was necessary to establish that the matter was of such urgency that it did not warrant giving notice. Mr. McCabe suggested an application for an ordinary injunction be made with a request to the court for an abridgement of the three-day notice period. Elizabeth Christie would check on the availability of a judge in Sarnia. In Mr. McCabe’s view, the “best-case scenario” was Friday, September 8. MAG lawyers needed to prepare court materials which would include documentation that the province had title to the land in Ipperwash Park.

Ms. Hutton was not satisfied with this time frame and said: “Premier feels the longer they occupy it, the more support they’ll get – he wants them out in a day or two.” This placed significant pressure on the Committee. It was evident from Ms. Hutton’s remarks that the Premier wanted to deal with the occupation as soon as possible. Ms. Hutton was exasperated with the legal advice provided by Ms. Jai and Mr. McCabe. Mr. McCabe replied that a quick resolution was to initiate proceedings under the *Criminal Code*. This was a reference to the laying of criminal charges; law enforcement is the responsibility of the police and lies at the core of police independence from government.

Ron Fox cautioned against such a law enforcement approach. He advocated a measured, slower, longer-term response, and supported the injunction process. “Injunction is preferable,” in a “dispute over land in a closed provincial park,” “imprudent to rush in,” “need to look at long-term solution,” “we need considered action,” he said. “Stoney Pointers” are asserting colour of right² and that “makes it different from someone trespassing” in the park. Mr. Fox stressed the preferred police approach was an application for an injunction.

It was made clear that even if the injunction application was successful, this did not ensure the First Nations people would leave the park. If the occupiers refused to comply, it would be necessary to return to court to initiate contempt proceedings.

Mr. McCabe asked if the names of any of the occupiers were known. Ron Fox replied that police had a list of some of the people occupying the park. When the MAG lawyer asked if Chief Tom Bressette would be willing to provide an affidavit in support of the injunction application, Ms. Hutton made it clear that “we’d like him to be supporting our efforts, but independently.”

In my view, a motion for an injunction with notice could have acted as a catalyst to stimulate dialogue with the occupiers. But this was not discussed as a rationale for proceeding with the regular civil injunction. The primary reason for not proceeding *ex parte* was the likelihood of being unsuccessful on an application without notice. It is most unfortunate that the prospect of enhancing communications with the occupiers was not canvassed at the IMC meeting in the context of the injunction discussions.

12.2.5 Possibility of First Nations Burial Grounds in the Park

ONAS lawyer Dave Carson discussed at the IMC his research on burial grounds; “it is mere conjecture that there are human remains.” Even if human remains

2 A colour of right defence may be available in the context of an Aboriginal occupation or protest where the accused has an honest belief that the land belongs to First Nations people.

were found in the park, title would continue to reside with the Ontario government. The statutory requirements under the *Heritage Act* and the *Cemeteries Act* were briefly discussed, including notice to the local Band Council of “unapproved” Aboriginal cemeteries.

What was central for Deb Hutton was that the possible existence of burial grounds in the park would not affect the province’s title to the land. The Premier’s EA does not “recall thinking” that if there was an issue about burial grounds, there might be strong feelings among the occupiers that may not be connected to the legal title of the land. Her focus in this occupation was the province’s ownership of the land and the statutory provisions of the *Cemeteries Act*, rather than cultural values and personal attachments of the First Nations people to the human remains of their ancestors in the park. Regrettably, Ms. Hutton had little experience in Aboriginal issues, nor did she have a sound understanding of Aboriginal culture, section 35 of the Constitution, or concepts such as colour of right.

Ms. Hutton took the position that there was insufficient evidence of a burial ground in the park. There was lack of proof that the motivating reasons for the occupation were these burial grounds and that these sacred sites had not been protected or respected, and insufficient evidence that the occupiers were frustrated with the inaction of the government over many years. Ms. Hutton agreed that if on September 5 or 6 there had been “ongoing discussion” or evidence “of an ongoing sense of strong feeling and perhaps in that sense, frustration with the Ontario government about this specific burial ground, that would have been a factor in my thinking.”

In my view, Ms. Hutton’s comments at the IMC meeting, her focus on Ontario’s title to the park, and her characterization of the occupation as a law enforcement issue impeded “ongoing discussion” of the burial grounds and the cultural values and attachments of First Nations people to what they claimed were the remains of their ancestors. There was information at both provincial and federal government levels of First Nations concerns for the protection of these burial sites. Had more effort been exerted and more concern been attached by political staff and civil servants to this issue, and had there been due diligence, government officials would have realized that documents stored for decades in the basement of the Whitney Block showed that First Nations people had voiced their concerns about these burial grounds. Instead, the government did not attach sufficient importance to the existence of these sacred sites or to the spiritual and cultural attachment of the First Nations people to these burial grounds.

Daryl Smith, the MNR Information Services Coordinator in Chatham, who e-mailed Peter Study during the IMC meeting about television footage of “Natives” with baseball bats and police with guns, is the same person who in the 1970s found the burial ground documents in the basement of the Whitney Block of

the Ontario government buildings. Mr. Smith had dictated information from a 1937 federal document on the “Indians” of “Kettle and Stoney [*sic*] Point Band” who were “much concerned in the preservation of the old Indian Cemetery” located “within the boundary now being developed as a Park.” This explains why in January 1975, both the MNR District Office in Chatham and the MNR Superintendent in Ipperwash had information on these burial grounds in Ipperwash Park. Yet this important information was not conveyed by the MNR official to Mr. Sturdy, who attended the August 2, September 5, and September 6 IMC meetings on the occupation of First Nations people at Ipperwash of the army camp and the provincial park.

Another missed opportunity. This information substantiated the assertion of Stoney Point people that a burial ground, a sacred site, existed in Ipperwash Park. First Nations people had brought this to the attention of the federal government fifty-eight years earlier in 1937. And the provincial government had this information in 1975, twenty years before the Ipperwash occupation. The failure in communication in the Ministry of Natural Resources between Mr. Smith and Mr. Sturdy regarding the assertion of this burial site in Ipperwash Park by First Nations people is most unfortunate.

12.2.6 Tension in the Local Community

Defusing tension in the Ipperwash area, particularly of the non-Native community, was identified as a “critical issue” at the IMC meeting. Neither local MPP Marcel Beaubien nor the Mayor of Bosanquet were considered suitable to discharge this task. Mr. Beaubien’s acts were perceived to raise anxiety rather than to calm the local people. In a press release, Bosanquet’s Mayor Fred Thomas described the park occupation as a “reign of terror.”

Dave Moran suggested that a list be compiled of individuals and groups who needed to be “calmed down.” At the hearings, he acknowledged that compiling such a list of individuals and organizations in the local community had not been contemplated at the previous IMC meetings on August 2 or September 5, and it would have been helpful to have had a prepared list when IMC members met on September 6. Mr. Moran assumed at the August 2 meeting, “I guess incorrectly,” that steps would be taken to defuse tension in the Ipperwash area after the army camp occupation.

In my view, it would have been both helpful and advisable to have had a communication plan in place well in advance of September 6. I also think it is important for community leaders to know which Ministry to contact in an occupation or other local crisis. Such measures would have fostered a two-way dialogue, which may have defused the anxieties and concerns of the Mayor, local

municipal and provincial politicians, as well as the residents and cottagers in the Ipperwash area. In addition, there ought to have been regular briefings by the government of stakeholders.

12.2.7 Heated Exchange — Separation of Government from Police Operations

A “heated” discussion ensued on the issue of government direction to the police. Deb Hutton felt MNR, as property owner, could ask the OPP to remove the occupiers. MAG lawyer Scott Hutchinson made it clear that, although it was appropriate for the government to “ask” the police to remove the occupiers, “you can’t insist or demand that they be removed.” The province is in no better position than any other landowner. Mr. Hutchinson stressed that the government must remain at arm’s length from the OPP and could not direct or demand that the police take any action. “My difficulty,” Deb Hutton replied, “is not wanting to give political direction to the OPP.” Ms. Hutton suggested a government communication message could be that MNR has formally asked the police to remove the occupiers.

From this discussion, Ms. Hutton understood that the government should not give political direction to the OPP, but it was evident to Ms. Hipfner that Ms. Hutton “felt boxed in by the advice that she had been given.”

Anna Prodanou as well as political staff noticed Ms. Hutton’s frustration at the IMC meeting. Ms. Hutton was also impatient and agitated at the pace at which the Committee addressed the issues — asking questions, examining the issues from different angles, “basically talking about it as opposed to doing something.”

The Committee developed messages for the Ministers to convey to the public:

1. The Ministry of the Attorney General has been instructed to seek an injunction asap.
2. Police have been asked to remove the occupiers from the park.
3. Public safety and the removal of the trespassers from the park are the key objectives.

Peter Allen made it clear that although Minister Hodgson would take the lead as spokesperson, the Minister was not prepared to discuss any matters concerning the injunction. Premier Harris, Deb Hutton said, was willing to take the lead on this issue. She hesitated and then added, we need to “take this back to Cabinet ... but I suspect the Premier will be pleased to take lead.”

To ONAS lawyer Eileen Hipfner, Ms. Hutton’s comment was “very surprising.” She questioned why a Minister of the Crown would want to “appear to be taking the lead” in what she perceived was a policing issue. Ms. Hipfner further said: “[T]his comment interested me as well, because throughout both of the meetings, Ms. Hutton had been referring to ... the Premier wants this, the Premier says this ... very confidently conveying to us messages apparently from the Premier.”

There was great confusion amongst members of the IMC about the appropriate role of the police and the government regarding the First Nations occupation.

To people who attended the IMC meeting, Deb Hutton clearly spoke for the Premier. Shelley Spiegel, who had served as political staff and a civil servant in the provincial government, was very attuned to the manner of communication and cues when political staff spoke at meetings. She and others were convinced the Premier’s EA was conveying the Premier’s views.

At the hearings, Ms. Hutton confirmed she “would not have said” the Premier would be willing to take the lead on this issue “if [she] didn’t feel that that was the case.” At no time did the Premier subsequently indicate to his EA that this was not the case.

Ms. Hutton considered it her position to forcefully put forth the views of the Premier. She described herself as a no-nonsense, results-oriented person. When she made representations on behalf of the Premier, she was confident she was putting forth his views.

Michael Harris confirmed that Ms. Hutton had the authority to speak on his behalf and on behalf of the Premier’s office at the IMC meetings. In his opinion, Ms. Hutton fairly reflected his views. Michael Harris described Deb Hutton as direct and forthright, a person who expressed her views without hesitation. But neither Deb Hutton nor Michael Harris fully appreciated at that time the power of the Premier and the Premier’s office. They were a new government and did not understand that Ms. Hutton’s forceful personality and her strong statements made on behalf of the Premier at the IMC meetings had the effect of halting the exchange of important ideas and recommendations by other members of the Committee who very much wanted the occupation at Ipperwash to be resolved peacefully.

12.2.8 Facilitator Not Appointed: Reliance on the OPP as the “Communicator” — Another Missed Opportunity

Again at the September 6 meeting, IMC members did not recommend the appointment of a facilitator or a negotiator to initiate and sustain a dialogue with the

First Nations occupiers. As previously mentioned, the IMC had discretionary powers to appoint a facilitator/negotiator, to agree to a negotiating agenda with the parties, to make decisions on third-party intervention, and to involve the Indian Commission of Ontario. Clearly, appointing a negotiator would protract the occupation and was inconsistent with the government's desire to remove the occupiers as soon as possible. It was also inconsistent with the policy decision of the government not to enter into substantive negotiations with the occupiers.

Deb Hutton from the Premier's office made it abundantly clear it was the government's position that the occupiers be removed and that there be no negotiations. Ms. Hutton believed it was important that there be no public perception that the government was working with the First Nations occupiers — this “would have signalled that there was some form of negotiation ... before the occupation ended.” Ms. Hutton made it clear that the “Premier didn't want this viewed as a Native rights issue.” Sending someone from ONAS to negotiate with the “Stoney Pointers” might be construed as giving the occupiers legitimacy in the context of an Aboriginal issue. The Premier's EA made it clear the government did not want this.

There appeared to be confusion, particularly on the part of political staff such as Ms. Hutton, between negotiation and front-end communication with the occupiers. OPP communication with the occupiers did not mean the police were entering into substantive negotiations with the First Nations people. It was important for political staff to understand that, although it would be inappropriate for police to try to negotiate a land claim or a burial site issue, it was important for the OPP and others to communicate with the occupiers, to open lines of communication to try to end the blockade, and to preserve public safety. Indeed, a strict rule that the OPP could not talk to the occupiers would be an interference with the ability of the police to decide the best means to discharge its operational responsibilities.

Communication is an essential component of building trust between the police and First Nations people. As Mr. Fox said, it is important in any kind of conflict situation to keep the lines of communication open, “both speaking and listening.” Another way of building trust is to try to understand the other party's interests, to display patience, and to let the events unfold. Establishing trust was particularly acute, given the perception of First Nations people that they have been subjected to injustice for many generations.

Given that the government wanted to treat this solely as an illegal occupation, the decision was made to have the OPP on the ground serve as the communicator. A meeting with the occupiers had been scheduled for noon on September 6, and Julie Jai and others were hopeful that Inspector Carson and the OPP officers would be able to fulfill that role.

Process negotiations ought to begin quickly after an occupation, and as Ms. Jai acknowledged, “I do think that we should have appointed a negotiator early on.” This did not happen. Instead, Ipperwash Park was occupied on September 4, and on September 6, the IMC was “hoping” the OPP could initiate a dialogue with the occupiers and find out their demands. Ms. Jai agreed it was questionable whether the OPP could secure the trust necessary to build a relationship with the occupiers, given some unpleasant exchanges and altercations between the OPP and the occupiers that had occurred over the past few days, as well as OPP warrants for the arrest of three occupiers.

Because no facilitator/negotiator was appointed, the IMC did not have a communication strategy with the occupiers or a person whose role was to negotiate with the First Nations people. As a result, the IMC placed great importance on the OPP meeting arranged for noon that day. When this meeting did not take place, the opportunity to communicate with the occupiers, to try to build a trust relationship and determine their demands and sources of their discontent, was lost. The Chair of the IMC and Acting Legal Director of ONAS said, “[W]e were relying on ... the meeting, and when it didn’t take place, we then lost the opportunity to gain valuable information.” Ms. Jai further commented: “[H]ad there been somebody in place whose job was to communicate and to be a facilitator or negotiator, I would have expected that person to persevere beyond one cancelled meeting.” The “whole time that this incident was occurring,” there was no clear communication from the occupiers of what they wanted and what their concerns were. Missed opportunities.

Ms. Jai said it is “really important to have open communication about what [the] concerns and grievances are because there are many ways of settling and resolving these issues that do not require resorting to direct action or the use of force.” I agree. As I have said, the failure in communication with the occupiers undoubtedly contributed to the tragedy on the night of September 6.

In my view, the IMC should have appointed a facilitator/negotiator at the beginning of the occupation. This would have given the government valuable information regarding the frustrations, concerns, and demands of the occupiers. An essential component to a peaceful resolution of the protest was communication between the government and First Nations people. A negotiator could also have facilitated communication between the police and the occupiers. As Ms. Jai said retrospectively, the facilitator could serve as a “go-between” for the occupiers and the police, which would have avoided misunderstandings that could result in violence. At the same time, the appointment of a facilitator may have been considered contrary to Ms. Hutton’s statement that the Premier did not want third parties other than the OPP and MNR involved in discussions or negotiations with the occupiers. The government’s decision not to appoint a third-party

facilitator/negotiator at the beginning of the occupation was a decision for the elected government, but it was a decision that had the consequence of lessening the chance for a peaceful resolution of the occupation.

12.2.9 Frustrations and Concerns of the IMC Chair

Chairing the IMC meeting was difficult for Ms. Jai for several reasons. First, the size of the meeting made it “very difficult to manage that large, unwieldy group of people.” It was also difficult to work in a “consensus-based way” with representatives from different Ministries — there were many conflicting views. She worked hard at this meeting to “try to pull together a consensus, or at least what looked like a consensus on the surface.”

Another problem was that the role of ONAS at these meetings was unclear. Because ONAS was the Chair, it was difficult to put forward its point of view. Ms. Jai said, “I was chairing the meeting and we had a coordinating role within government, so we were trying to bring things together and it was not so clear what our voice was or who had the ultimate sort of decision-making authority.”

The separation of the government from police operational decisions needed to be reinforced at the IMC meeting. From the questions and comments made by political staff such as Ms. Hutton, it was evident that some people thought the government might have the ability to direct the police to take particular actions. As Ms. Jai said, everybody around the table did not have the same understanding at the beginning of the meeting that it was inappropriate for government to direct police operations. In addition, MNR staff conveyed some police operational information to participants at the IMC meetings. Clearly, both political staff and civil servants need to receive training and briefings on the importance of the separation of government from police operational decisions.

The inclusion of political staff on the IMC was also problematic. There was a “lack of clarity as to how decisions were made or who was responsible for various things.” There was also, said Julie Jai, the risk of the perception that political staff had “inappropriate influence on civil servants.”

As I discuss in Chapter 20, the Interministerial Committee on Aboriginal Emergencies was restructured the next day. But by this time, Dudley George was no longer alive. He died on the night of September 6 from gunshots fired by the OPP.

It is also worth noting that Ms. Jai had discussions with Ron Fox in August before the IMC meeting as to whether the police should be connected to the IMC meeting by telephone. This was considered a “grey area.” No guidelines stipulated that the police “shouldn’t be connected,” and in fact Ms. Jai said, “they had been

connected in previous meetings.” As the Chair of the IMC acknowledged, this issue lacked clarity and there was “potentially some room for improvement.”

It is important for politicians and bureaucrats to understand that police involved in an operation should not participate in meetings such as the IMC. They should receive training on the appropriate roles of police and government, the fundamental principle of police independence, and the responsibility of the police for law enforcement. As I discuss in Part II of this report, any policy direction from the government to the police should be made in a transparent manner in order to promote accountability. Policy directions should go through the Ministry responsible for the OPP, and the chain of command within the OPP.

12.2.10 Conclusions Reached by the IMC Committee

At the end of the meeting, it was the understanding of IMC members that: (1) the goal was to remove the occupiers from the park as soon as possible; (2) public safety was paramount; and (3) the Crown Law Office — Civil would proceed expeditiously to obtain an injunction. Members were to take these recommendations to their respective Ministers. New information was to be communicated to the Chair, and Ms. Jai would keep IMC members informed of any new developments.

After the IMC meeting formally ended and people were collecting their material to leave the ONAS boardroom, Eileen Hipfner heard remarks from Deb Hutton that made it clear she considered the meeting “useless”: “The room was thinning out and she said to a member of political staff, but within my earshot, and loudly enough that I actually believe the comment [was] intended for my benefit ... ‘This is the most useless meeting I have ever attended. It was a complete waste of time.’ And I remember that because it stung.”

Eileen Hipfner was not the only person who heard Ms. Hutton’s remarks. Anna Prodanou has a clear memory of the statement: “It really stuck in my mind because at that time we were all looking for signals from the government as to what our role would be at ONAS.” Ms. Hutton’s comments saddened Ms. Prodanou: “We knew that that role might be changing. We were looking for signals and to have the work of the Committee dismissed so casually was to me a signal and a very disappointing one.”

Following the meeting, Anna Prodanou walked back with Deb Hutton to their offices. The Premier’s EA continued to express her “frustration and displeasure with the Interministerial Committee.”

Jeff Bangs, EA to Minister Hodgson, did not share the view that the IMC meetings were a waste of time but rather considered them useful information

gathering. But according to Mr. Bangs, Ms. Hutton had made it clear at the end of the IMC meeting that they “would not be having another meeting of this nature, and [they] didn’t.” And, as previously mentioned, the Interministerial Committee was restructured the following day.

When Committee members left the September 6 meeting at 11:45 a.m., they believed the government lawyers were preparing an application for an ordinary injunction, not an *ex parte* injunction. But instructions to lawyers Tim McCabe and Elizabeth Christie changed that afternoon. When Julie Jai prepared the minutes of the September 6 IMC meeting later that day, she inserted the following:

[Note: Following the meeting, Cabinet directed MAG lawyers to apply immediately for an ex parte injunction. Tim McCabe, Elizabeth Christie and Leith Hunter are preparing the application and compiling the supporting documentation.] (emphasis added)

Why did the provincial government decide to seek an injunction without notice to the occupiers? Who gave these instructions and why?

12.3 “AG Instructed by P That He Desires Removal Within 24 Hours”

There was inconsistency in the evidence of Attorney General Harnick and the Deputy Attorney General regarding instructions from the Premier on September 6 on how the government would approach the Ipperwash occupation.

Deputy Attorney General Taman testified that on the morning of September 6, Attorney General Harnick told him that the Premier wanted an injunction immediately and the occupiers out of the park within twenty-four hours. The conversation took place before the Cabinet meeting at 10:00 a.m. No particular type of injunction was mentioned. Inscribed in Mr. Taman’s notes that morning were the following words: “AG instructed by P that he desires removal within 24 hours — instruction to seek injunction.”

Mr. Taman committed this to writing in his daybook because he considered the instruction very significant — he recognized it was important and wanted a written record of this direction.

Mr. Taman quickly understood that Premier Harris’s approach was different from the slow, cautious approach subscribed to by Attorney General Harnick and Solicitor General Runciman. Mr. Taman also realized that MAG lawyers were to immediately seek an injunction. But in his view, the enforcement of the injunction and the removal of the occupiers fell within the discretion of the police.

Charles Harnick denied that this conversation took place between him and his Deputy Attorney General. Mr. Harnick testified that he was never instructed by the Premier and, in fact, had no contact with the Premier or his staff on the morning of September 6 before Cabinet. The former Attorney General also asserted that he had no contact with Larry Taman at that time.

Michael Harris also had no recollection of speaking with Attorney General Harnick on the morning of September 6 about the Ipperwash occupation. The former Premier denied instructing the Attorney General or any government official that he wanted the occupiers out of the park within twenty-four hours.

After listening to the evidence and analyzing the testimony of various witnesses, I believe that Attorney General Harnick did have a discussion with Larry Taman on the morning of September 6. Clearly the directions had changed in the mind of the Deputy Attorney General as a result of this conversation, and Larry Taman committed these new instructions to writing in his daybook. The Premier wanted an injunction to be sought immediately, he wanted the First Nations occupiers out of Ipperwash Park within twenty-four hours, and he wanted the situation resolved quickly. MAG lawyers and the Acting Legal Director of ONAS were soon told the government's directions had changed. It is inconceivable to me that the Deputy Attorney General would have written this explicit statement in his daybook if it never occurred, and I believe Mr. Harnick is either mistaken or has forgotten.

As I discuss below, MAG lawyer Elizabeth Christie had a conversation with Larry Taman in a hallway. The Deputy Attorney General informed her that the government had decided to quickly resolve the Ipperwash Park occupation, and she was instructed to immediately seek an injunction. She relayed these new instructions to her senior lawyer, Tim McCabe, and the government litigators began to prepare an ex parte injunction application. So much changed as a result of this conversation that it simply is inconceivable that the conversation between Attorney General Harnick and Deputy Attorney Taman did not occur.

It was also Ms. Jai's understanding that the direction had changed and the government was now seeking an ex parte injunction. As mentioned, she added to the IMC minutes that MAG lawyers had been instructed to apply immediately for an ex parte injunction, and that Tim McCabe, Elizabeth Christie, and Leith Hunter were preparing the application. The Acting Legal Director of ONAS was both "surprised and disappointed." She thought it was important to serve notice on the First Nations people and provide them with an "opportunity for dialogue." She also thought it was unlikely the ex parte application would be successful.

Although it was legitimate for the Premier or other politicians to take the position that it considered the occupiers trespassers, that it wanted the occupiers

out of the park as quickly as possible, and that it would seek an *ex parte* injunction without notice to the First Nations people, it was inappropriate to place a twenty-four-hour time limit on the removal of the occupiers from the park.

It is inappropriate for the government to enter the law enforcement domain of the police. Law enforcement properly falls within the responsibility of the police. To maintain police independence, the government cannot direct when and how to enforce the law. Neither the Premier, the responsible Minister, nor anyone in government should attempt to specify a time period, such as twenty-four hours, for the occupiers to be removed from the park. Whether and when arrests will be made, and the manner in which they will be executed, are for the police to decide. As I discuss in detail in Part II of this report on police–government relations, this is fundamental to preserving police independence.

12.4 The “Dining Room” Meeting

A twenty-minute meeting at the Ontario legislative building attended by the Premier, Ministers, and their staff, has been a subject of controversy. This meeting was held on September 6, 1995, the day Dudley George was shot. Who initiated the “dining room” meeting, what was its purpose, who attended, and why were seconded OPP officers present? Did politicians attempt to direct the police operations at Ipperwash? Were offensive and derogatory statements made about the Aboriginal occupiers? What conclusions were reached at the end of the meeting on how the government would address the occupation? These are some of the questions raised in the eleven years since Dudley George’s death.

The dining room meeting took place before noon after the formal Cabinet meeting. The Ipperwash occupation was not on the Cabinet agenda, nor was it a focus of discussion. It was at Cabinet that Premier Harris informed Solicitor General Runciman and Attorney General Harnick there would be a brief meeting to address the occupation in a room near Cabinet chambers, known as the “dining room.” Solicitor General Runciman thought it was “unusual” that this issue was not discussed within the confines of the Cabinet meeting.

The Minister of Natural Resources, Chris Hodgson, was not present at Cabinet that morning. He did not want to be the government spokesperson on the Ipperwash protest and decided not to attend Cabinet to avoid the media scrum that generally occurs at this time: “I was not going to be the spokesperson on this issue” because “it was not my issue.”

What was also unusual, in my view, is that several people claimed they did not know who initiated the meeting or who summoned political staff and civil servants to the dining room at Queen’s Park. This included the Premier and his Executive Assistant, Deb Hutton. Premier Harris denied it was his decision to convene this

meeting. He claimed he did not know who made this decision, nor could he recall who informed him that the dining room meeting would take place after Cabinet. He surmised that his Executive Assistant might have conveyed this information to him. But Ms. Hutton said she could not remember the circumstances under which this meeting was called.

This differed from the recollection of senior civil servants. Mr. Vrancart, Deputy Minister of Natural Resources, was asked by Rita Burak, Secretary of Cabinet, to attend the meeting with the Premier. It was the recollection of Deputy Attorney General Taman that the dining room meeting was organized by the Premier's office at the request of Premier Harris. Solicitor General Runciman had a similar recollection. And Jeff Bangs, Minister Hodgson's EA, said the Premier's staff "certainly asked us to be there."

It seems clear, despite the uncertainty and lack of recall of the Premier and his EA Deb Hutton, that the Premier's office convened this meeting of Ministers, political staff, and civil servants in the dining room at Queen's Park. It was the Premier and his office who had the authority to call this meeting.

What I also find unfortunate is that there are no notes of this meeting. This contrasts with the copious notes taken at the IMC meeting earlier that morning. Deputy Minister Vrancart assumed that all of the Ministers' executive assistants would record the discussion in the dining room that day. Yet the executive assistants of the Attorney General, the Solicitor General, and the Minister of Natural Resources either did not take notes or notes they made were not retained. In Part II of my report, I stress the importance of transparency in order to promote accountability and public confidence in police – government relations. The dining room meeting was woefully lacking in transparency. This has led to continued suspicions and uncertainty about what actually happened at this meeting.

This meeting took place in a small room, approximately 25 to 30 feet in length and 18 to 20 feet wide. A long, rectangular dining room or boardroom-style table with chairs was in the middle. Additional chairs were placed along the perimeter of the room, as well as a credenza and a desk. The dining room was in close proximity to Cabinet chambers and next to the Premier's office.

People at the meeting included Premier Harris, Attorney General Harnick, Solicitor General Runciman, Minister of Natural Resources Hodgson, and their respective executive assistants and Deputy Ministers. Seated at the dining room table were Premier Harris with Ms. Hutton next to him, the three Ministers, and their Deputy Ministers. Political staff such as Jeff Bangs, Dave Moran, and Kathryn Hunt sat in the chairs on the perimeter of the room.

The Solicitor General recalls that Premier Harris "just sat on the arm of his chair" throughout the brief meeting; he was elevated and "didn't sit down." Attendees, including Deputy Solicitor General Todres, said the Premier chaired

the meeting. This was the first private meeting with the Premier for the Deputy Solicitor General and others. She described the meeting as “highly unusual.” In her many years in various senior civil service positions, Dr. Todres had seldom, if at all, been called to a meeting of this nature.

Although Premier Harris claimed the purpose of this meeting was to seek a “consensus” and for him to be briefed on the current status of the occupation, participants did not understand that this was the reason the meeting had been called. Deputy Attorney General Taman and others thought its purpose was “to make sure that everybody understood what the Premier’s view was,” and to ensure that the public servants clearly understood the government’s expectations. It was to emphasize that there would not be a “go-slow” approach as advocated by some — the government wanted quicker, more aggressive action. A consensus was not sought.

12.4.1 Offensive Comments Heard by Attorney General Harnick

Attorney General Charles Harnick was one of the last people to arrive at the meeting. The Ministers and Deputy Ministers were seated at the table when he entered the dining room. Mr. Harnick testified that when he took his seat, he heard the Premier say in a loud voice: “I want the fucking Indians out of the park.” He testified that there was “complete silence” and then in a “calm voice,” Premier Harris said that once the occupiers were in the park, they could not be removed; “his demeanour changed” and he became quiet.

The Attorney General was “stunned” by the Premier’s “insensitive and inappropriate” remark. It was evident to Mr. Harnick that the Premier knew his comment was offensive; “when his demeanour changed, that was a signal, a very strong signal, that he understood that that was the wrong thing to have said.”

The former Attorney General testified that he was relieved when the Premier changed his tone and seemed resigned that the First Nations people could not be immediately removed from the provincial park. Mr. Harnick was initially worried that the Premier might oppose an injunction as a means of resolving the occupation. The Premier’s change in demeanour was a relief to the Attorney General, as it appeared that Mr. Harris might be prepared to consider an injunction application by the government.

Mr. Harnick believed the Premier made this comment because he was frustrated with the occupation, not because of any animosity he had toward First Nations people. Mr. Harris realized he had “made a mistake” after making the offensive remark.

Mr. Harnick remained steadfast in his certainty that the Premier made this statement. Although his Deputy did not recall the “crude” remark, Mr. Taman

said, “[T]here was no mistaking the Premier’s intention”; the Premier firmly thought that the First Nations people should be removed from the park. “[I]t was clear that he thought this should be dealt with swiftly.” Other people at the meeting also testified that they did not recall the Premier saying these offensive words.

Mr. Harris agreed that when he entered the dining room meeting, his objective was to end the occupation as quickly as possible, and he claimed the people at the dining room meeting largely shared this view. But as we have seen, Deputy Ministers, other senior civil servants, and some political staff clearly subscribed to a “go-slow” approach as a means of achieving a peaceful resolution of the occupation.

Mr. Harris denied he uttered the words, “I want the fucking Indians out of the park,” or “[G]et those fucking Indians out of the park and use guns if you have to.” When presented with these statements at the Inquiry, he said: “I absolutely did not say that or words to those effect or use that adjective at any time during this meeting.”

The former Premier claimed he is “certain” he has “never uttered” the phrase “the fucking Indians,” at any time. Nor did any members of his government, to his recollection, make such comments on September 4, 5, 6, or 7, 1995. Mr. Harris said at the hearings that he considered “I want the fucking Indians out of the park” a racist statement.

The former Premier has no knowledge of any bias Charles Harnick has against him, nor could he think of any reason the former Attorney General would seek to fabricate such a statement.

But Mr. Harris acknowledged that, leaving aside the expletive, he did communicate to the people at the dining room meeting that he wanted the First Nations people out of the park. In the Premier’s view, it was necessary to deal with this urgent issue as promptly as possible.

Mr. Harris admitted that he has used this expletive in social situations and other political settings but not in a formal setting. For example, at the September 2004 Conservative Party Leadership Convention, he ordered a party worker at a polling station to “just give me the fucking ballot,” and then grabbed the ballot. When another party worker intervened, Mr. Harris said, “You can challenge my fucking ballot, you jackass,” and uttered other swear words. Minister Hodgson also heard the Premier use the expletive at political meetings.

A question that arises is why Attorney General Harnick did not disclose this statement until he testified at the Inquiry ten years later. In May and June 1996, about nine months after Dudley George was shot, the Attorney General was asked in the Ontario Legislature whether the statement “Get the — expletive — Indians out of the park” was made by the Premier, Cabinet Ministers, or other politicians. On repeated occasions, Opposition MPPs asked Attorney General Harnick in the Legislature:

Will the minister report to the House on what he has done to investigate who made this offensive remark, if it was made, and when it was made? Whom have you asked? Whom have you checked with? What have you come up with? Why don't you report back?

The Attorney General replied he had no knowledge of such a remark being made. Some of these excerpts from the Hansard Debates follow:

I have spoken to those who I understand attended some of the meetings that have been referred to and I have not found anyone who knows anything about that comment or whether it was made or who made it.

I can tell you I have no information as to the fact that remark was ever made. I have no knowledge that remark was ever made ...

I have made inquiries, as the member has asked me to do. His inquiries were specifically related to finding out who made a particular comment. I have made those inquiries. I have found no one who knows anything about that particular comment. That's all I have to say. (emphasis added)

Despite the Attorney General's understanding that there is a serious obligation to speak the truth in the Legislature, Mr. Harnick chose not to disclose the Premier's statement to provincial legislators and to the public. Mr. Harnick offered "loyalty and friendship" as explanations for the non-disclosure, and said the Legislature is a "politically charged atmosphere, very different than the atmosphere of a Commission or a Court process." Nor did Mr. Harnick disclose the statement in his examination for discovery in the civil action of Dudley George's Estate against the Ontario government in September 2001.

Mr. Harnick agonized over his decision to disclose the Premier's statement to the Ipperwash Inquiry. It was only when he testified at the Inquiry in 2005 ten years later that he made this disclosure: "I'm under oath and I came here to tell the truth."

Mr. Harnick concealed information and misled the Ontario Legislature when he denied Premier Harris had made this offensive and racist remark. On several occasions in the legislature, Mr. Harnick said he had "no knowledge" and "no information" that the remark was made. Charles Harnick concealed this information for a decade. It was only when he gave his testimony in Forest that he decided to disclose the truth about the deeply offensive and racist statement made by the Premier on September 6, 1995.

After carefully assessing the evidence, my view is that Michael Harris made the statement “I want the fucking Indians out of the park.” Former Attorney General Harnick was certain when he testified at the hearings that he heard Premier Harris make this statement. Mr. Harris acknowledged that he could not think of any reason why Mr. Harnick would concoct or fabricate such a statement. Indeed, providing this evidence to the Inquiry was against Mr. Harnick’s own interest because it contradicted what he said publicly in the Legislature at the time, and I can think of no reason why he would testify to this if it did not occur. Mr. Harris has himself acknowledged that he wanted the “Indians” out of the park — he just denies using the expletive “fucking.” In my view, Mr. Harnick’s evidence regarding Mr. Harris’s statement is credible, and I find that Mr. Harris did make this comment on September 6, 1995.

I agree with Premier Harris’s characterization of the statement, “I want the fucking Indians out of the park,” as racist. As I discuss in Part II of this report, this statement is racist even if Premier Harris did not intend to convey a discriminatory remark about “Indians.” According to the *Ontario Human Rights Code*, as well as judicial decisions, intention is not determinative of whether a statement or conduct is discriminatory. If the statement or conduct has an unjustified adverse impact on a person or group of persons by reason of race or other prohibited ground under the *Code*, the statement or conduct is discriminatory regardless of the intentions of the person responsible for the statement or conduct. Lack of intention does not make racist words or conduct any less so.

Although I find Mr. Harnick’s evidence regarding the substance of the statement to be credible, I question the location and time at which Premier Harris made this statement on September 6. It is possible that this comment was not made inside the dining room meeting. Other people who attended the meeting, such as Deputy Attorney General Taman, Deputy Solicitor General Todres, and Deputy Minister Vrancart, testified that they did not hear this statement at the dining room meeting. More than ten years have elapsed since the former Premier made this statement. It is possible that Mr. Harnick’s recollection regarding where in Queen’s Park Mr. Harris made this comment on September 6, 1995, is not accurate. It is possible that Premier Harris’s statement was made just before entering the dining room meeting. However, irrespective of whether Premier Harris made the comment before or during the dining room meeting, there is no evidence that the Premier’s statement had any influence on the OPP operation at Ipperwash on the night of September 6, 1995, when the CMU and TRU were deployed, or was a cause of Dudley George’s death. This is further discussed in the proceeding chapters.

12.4.2 Premier Harris is Cautioned about the Separation of Police and Government

Early in the dining room meeting, Deputy Solicitor General Todres discussed the role of the Solicitor General, the role of the police, and the important separation of government from the operations of the OPP. Dr. Todres felt it was important to “remind” the Premier and political staff that this policy should be adhered to throughout the meeting.

The ground rules for the discussion were very clear to the politicians. The Premier, Minister Hodgson, and other politicians and political staff testified that they were well aware of this principle. Mr. Harris learned as a student “from school,” and “as a teacher,” the principle of separation between politicians and the operations of the police; this was reinforced when he became an MPP in 1981, and when he was the Minister of Natural Resources in 1985. Minister Hodgson similarly said he had learned the principle of the “distinct separation between the police and government” as early as high school or university.

Deputy Attorney General Taman explained to the Premier the use and types of injunctions — with notice and *ex parte*. Most of this discussion, which also involved comments from the Attorney General, focused on the “speedier version,” the *ex parte* injunction: what was the likelihood of success of an application without notice, when would the court decision be served on the occupiers, and the time in which the occupiers would vacate Ipperwash Park. Mr. Taman “thought at the time” and continues to “think now” that “the injunction was not a particularly useful course of action because there was no indication that the Ontario Provincial Police were going to go into the park to take anybody out.”

In Mr. Taman’s view, an injunction created the risk of destabilizing the situation, and applying for it *ex parte* created the additional drawback that the First Nations people would not receive notice of the application. However, he did not think with or without notice would make much difference. If it were an *ex parte* application, “a judge would almost inevitably make” the injunction “conditional on giving notice and bringing the parties before the court.” *Ex parte* “might solve an appearance problem of appearing to do something quickly but wasn’t likely to change the substance of the thing because a judge was likely to want to have the parties before her, before making an order.”

Deputy Solicitor General Todres and others detected frustration in the room from politicians who considered the occupation an urgent matter. This was a “new government,” “keen on presenting itself to the public as being on top of issues.” “They wanted it done with, ... they wanted to move on, ... they had a legislative agenda and they wanted this dealt with as quickly as possible.”

The Premier’s anxiety and frustration were also evident to Solicitor General Runciman and Minister Hodgson. Mr. Harris’s comments, his “strong personality” and “body language,” made it apparent he wanted the occupation to end as soon as possible. The Premier was upset that the situation had progressed to this stage — First Nations people were still in the park — and he “wasn’t shy about expressing his concern.” What the Premier communicated to the Solicitor General, other Ministers, and senior civil servants was essentially “I want you to get on with it, whatever legal tools are available to us, we should be utilizing them and deal with the situation.” This had an impact on people in the dining room.

Premier Harris clearly considered the occupation a higher priority than did the Solicitor General. The Premier was filled with a sense of urgency and wanted to deal with the issue as soon as possible. This contrasted with the views of others at the meeting, including the Deputy Solicitor General. Elaine Todres said:

From a political point of view, this was a new government that was keen on presenting itself to the public as being on top of issues. And as time went on, their notion of immediacy was not in synch with the time that would have been associated with negotiations. And they wanted it done with. They wanted to move on. They had a legislative agenda and they wanted this dealt with as quickly as possible and they didn’t want it to linger ...

In her view, a “go-slow,” “steady as she goes” approach was appropriate and there was no urgency for First Nations people to leave the park.

12.4.3 Deputy Solicitor General Hears Offensive Remarks from Minister of Natural Resources

It was apparent to Dr. Todres that the Minister of Natural Resources, Chris Hodgson, was very agitated that the park occupation had continued into September 6. It was after the initial debriefings in the dining room that Dr. Todres heard Minister Hodgson say: “Get the fucking Indians out of my park.” She considered the remark “shocking” and “revealing.” Shocking, because she did not expect a Minister of the Crown to use that language — “it was of deep concern” and “offensive.” And she thought the phrase “my park” was particularly revealing:

... I found that the remark was both difficult to listen to and revealing, it was revealing in the sense that the park was not his park, and it showed to me a [M]inister who was new at his portfolio and frustrated by the

analysis that was being provided about just how difficult it was with all of the extenuating circumstances, to move forward ...

... What that triggered for me was the reaction of a green Minister, a novice, who was placed in a position of an issue for the first time in his mandate, and indeed a government in the first time of its mandate. And the sudden realization that, first of all, for every issue there is not necessarily a quick response or even a response. Not all problems can be fixed.

And secondly, that when a serious issue is put before a government, when you look at Cabinet structure, it's not surprising that there are a whole variety of contextual things that have to be considered. Lawyers have to speak about legalities and ONAS has its own perspective and it isn't a simple snap decision.

And my sense was that as he'd been listening to the briefings and the complexities of injunctions and what could be done and what couldn't be done, that when he said "my park," it was revelatory of, as I say, an unseasoned person who would have liked to have seen quick reaction and was presented with a very complex set of factors.

There was silence in the room after the Minister's comments, said Dr. Todres. Discussion then resumed.

The Deputy Solicitor General considered Minister Hodgson an inexperienced politician who did not understand the complexities of the situation. It takes time, she thought, to work through the legal issues and other areas of concern to First Nations people. The statement, she said, was "insensitive" and "implied speedy action on a file that was one of the most complicated files we'd seen."

Dr. Todres recalled that she sat opposite Minister Hodgson during the meeting.

Other politicians and civil servants at the dining room testified that they did not hear Minister Hodgson make this comment. This included Attorney General Harnick, who, according to Ms. Todres, was seated across from her. An air conditioner in the room was humming, which may have made it difficult for some to hear the remark. Dr. Todres was "straining at the edge of [her] seat to hear what was actually going on" and does not "know what others heard."

Mr. Hodgson denied saying "Get the fucking Indians out of my park," or words to that effect. He repeatedly insisted he "didn't say a word at the Premier's dining room meeting." The former Minister could offer no explanation for Dr. Todres' assertion that he had made such an insensitive statement.

Mr. Hodgson also denied he was concerned about the Premier's perception of

how he was conducting himself as Minister of Natural Resources on the Ipperwash occupation. Mr. Hodgson had made it clear he did not want to be the government spokesperson on this issue, and he decided not to attend the Cabinet meeting. Mr. Hodgson knew the Premier expected Ministers to be present at Cabinet. Yet Mr. Hodgson emphatically denied the statement attributed to him by Dr. Todres, and further denied he was trying to demonstrate to the Premier that he was “onside” with his approach.

Despite Dr. Todres’ view that Minister Hodgson’s statements were egregious, offensive, and insensitive, she did not interpret them as a direction to the Ontario Provincial Police.

Like Mr. Harnick, Dr. Todres did not discuss Minister Hodgson’s statement with others until she testified at the Inquiry. She considered the dining room meeting to be confidential. She knew the expression “Get the fucking Indians out of the park” had been raised by Opposition members in Question Period in the Legislature within a year of Dudley George’s death. Yet for reasons of confidentiality and because she was not asked “directly by anyone until this Commission” about this statement, she considered her “responsibility” to be “discharged,” and she remained silent.

Solicitor General Runciman did not recall either the Premier or Minister Hodgson making egregious or offensive remarks at the meeting. He could not explain “why people have different versions of what they heard and who they heard it from.” Former Premier Harris claimed he did not remember Minister Hodgson speak at the dining room meeting, and has no recollection of hearing the phrase “the fucking Indians” from any member of his government in the September 4 to 7, 1995, period.

I believe the Minister of Natural Resources made the comment “Get the fucking Indians out of my park,” which was a racist statement. Elaine Todres did not disclose this statement made by Chris Hodgson on September 6, 1995, as she considered the discussions at the dining room meeting confidential. Dr. Todres had no motive to fabricate this statement when she testified at the Inquiry. I agree with Elaine Todres that this statement was shocking and offensive to the First Nations people. Despite the fact that Minister Hodgson made this statement in the dining room meeting, this does not mean he interfered with police operations at Ipperwash Park.

12.4.4 Seconded Police Officers at the Premier’s Dining Room Meeting — Was the Premier Critical of the OPP?

Ron Fox was with his assistant, Scott Patrick, when he was paged to attend the dining room meeting. Someone in the Deputy Solicitor General’s office asked

Mr. Fox to go to Queen’s Park immediately after the IMC meeting. Mr. Fox and Mr. Patrick, seconded OPP officers, reported to Dr. Todres, the Deputy Solicitor General.

Both the Solicitor General and his Executive Assistant, Kathryn Hunt, also assumed someone from their Ministry had summoned Mr. Fox to the meeting. Yet Dr. Todres insisted she did not request Mr. Fox’s presence at the meeting, nor was she involved in any decision to have the seconded officers at the dining room. This surprised Solicitor General Runciman.

Premier Harris also assumed Deputy Todres invited Mr. Fox to the meeting — “it was pretty obvious how they got to the meeting; they were seconded to the Ministry of the Solicitor General so the Deputy Solicitor General, I assume, would have invited them to the meeting.” These two seconded police officers, Mr. Harris stressed, had also attended the IMC meeting that morning on behalf of the Ministry of the Solicitor General and they reported to Dr. Todres.

No one seemed to fully understand that although Mr. Fox and Mr. Patrick were seconded to the Ministry of the Solicitor General, they remained police officers. They continued to be peace officers under the *Police Act*, they remained members of the Ontario Provincial Police Association, and they reported to a senior police officer at the OPP for administrative matters.

When Mr. Fox and Mr. Patrick entered the dining room at Queen’s Park, the meeting was in progress. Mr. Taman was educating the Premier on the various types of injunctions. He was explaining that the OPP’s approach in the past, which had proven successful in Aboriginal protests, was to initiate and sustain a dialogue with First Nations people at the same time a court injunction was sought.

A subject of controversy is whether Mr. Fox was introduced to participants at the meeting, and whether the Premier and the other politicians were aware he was an OPP officer, seconded to the Solicitor General’s office.

There was conflicting evidence as to whether Mr. Fox was introduced, by whom, and by what title. Mr. Patrick recalled that David Lindsay, the Premier’s Principal Secretary, in a loud voice introduced him as “Inspector Fox” when he entered the room, followed by a further introduction by Deputy Solicitor Todres. Mr. Fox also remembers being introduced by either the Deputy Solicitor or Solicitor General Runciman, but is uncertain whether his OPP rank was mentioned. Others at the meeting, such as Deputy Minister Vrancart and Ms. Hunt, had no recollection that Mr. Fox was introduced at the meeting.

Mr. Fox, at the request of Deputy Solicitor Todres, was asked to provide an update of what was occurring at Ipperwash.

Premier Harris remembered that a person provided an update of what was happening on the ground from the OPP perspective. Yet he denied this individual was introduced as “Inspector Fox,” or that he knew anyone at the meeting was in

direct contact with the Incident Commander at Ipperwash. But it is noteworthy that had Mr. Harris known OPP officers were in the dining room, he would not have changed or withdrawn any comments he made at the September 6 meeting: “I can’t recall anything that I said at the meeting that I might not have said had there been OPP officers there, save and except I have no reason to understand why they would be there.” In my view, this comment demonstrates a lack of full appreciation of the dangers of either governmental direction of police operations or the appearance of such direction.

Mr. Harris claimed it was only in May 1996, seven months later, that he learned from a newspaper article that a police inspector had been at the dining room meeting. He and Ms. Hutton were “shocked and surprised” that seconded OPP officers attended the IMC and dining room meetings.

I find it difficult to understand Ms. Hutton’s surprise at this information. The Premier’s EA had received the August 2, 1995, IMC minutes. The cover sheet of the minutes, which included Ms. Hutton’s name, also clearly identified Ron Fox as “OPP.” Moreover, she attended the September 5 and 6 IMC meetings with the same seconded police officer; Mr. Fox had provided updates from the Ipperwash site and was obviously in contact with the OPP.

In fact, Mr. Fox had left the September 6 IMC meeting to confirm information with the police in Ipperwash that had been conveyed by MNR officials. Mr. Fox was also an active participant at the IMC meetings who did not subscribe to the “go-fast” approach advocated by Ms. Hutton. I find it difficult to accept that Ms. Hutton, the Premier’s EA, did not know Mr. Fox was a seconded police officer. It was clear to other political staff at the IMC meetings, such as Mr. Moran, EA for the Attorney General, and Mr. Bangs, EA for the Minister of Natural Resources, that Mr. Fox was a police officer.

After the Fox update at the dining room meeting, the Premier conveyed his displeasure that the occupation had not ended. The Premier was disappointed that the OPP had decided to vacate Ipperwash Park after it was occupied on Monday, September 4, and he was frustrated that the occupiers were still in the park two days later on September 6. The Premier said the longer the First Nations people remained in the park, the more difficult it would be to end the occupation. He was upset that the police had relinquished control of Ipperwash Park.

Scott Patrick heard the Premier say police action would be scrutinized at some point in the future. Mr. Fox recalls Mr. Harris saying “it would likely come out in an Inquiry of some form.” Minister Hodgson similarly remembers the Premier saying that if mistakes were made, they would “all come out in an Inquiry.” The Premier was clearly frustrated and spoke in a “loud” and “firm voice.”

Mr. Hodgson “shared” the “same frustrations” as the Premier. The Minister of Natural Resources was also concerned about the situation escalating. He was

worried about the occupation spreading to Pinery Provincial Park and possible blockades on Highway 21.

Mr. Harris agreed he may have said “[S]omebody will review whether the appropriate resources were there, whether more resources should have been there, and whether the occupation could have been prevented”; “that’s all consistent ... with the type of thing I might have said at the meeting.” In the dining room, the Premier had conveyed the “sentiment” that “if there were mistakes that were made that could have prevented the occupation, there would be a time and a place to look at that.” Premier Harris wanted “to understand what actions the OPP had taken to keep the park secure in the first place” — “if the intent of MNR was that the occupiers not come into the park, and if it was the intent of the OPP they not come into the park ... then something went wrong because the occupiers now had the park and the government did not”; “I recall me wanting answers to that.”

In the Premier’s view, the police did not seem to be “as prepared as MNR would have liked them to have been.” Premier Harris “wanted to be able to answer” the question as to “why a park that belonged to the Ministry of Natural Resources was now in the hands of what we deemed to be an illegal occupation.” He wanted to know “how this event took place”; “were the police prepared, should they have been prepared?”

Mr. Fox construed the Premier’s remarks as a criticism of the police. I agree that the Premier’s comments were critical of the police and the fact that they were made in the presence of two seconded OPP officers, one of whom was in contact with the Incident Commander at Ipperwash, created the risk of placing political pressures on the police.

This was a new situation for Premier Harris and his government. He considered it appropriate to ask these questions. Neither in the 1990s nor in 2006 when he gave evidence at the Ipperwash Inquiry did Mr. Harris believe he said “anything at any time that could ever be construed as giving direction to the OPP.”

I note that Solicitor General Runciman, Deputy Attorney General Taman, and Deputy Solicitor General Todres did not construe the Premier’s statements as directions to the provincial police. The Premier was clearly frustrated and disappointed with the OPP’s actions but, in their view, he did not instruct the OPP to take particular actions or interfere with their operational decisions. The Solicitor General said: “[I]f there had been some suggestion of explicit direction to the police to enter the park and remove the occupants, I don’t think there’s any doubt whatsoever that I would have intervened” and “made it clear that that was inappropriate.”

Mr. Taman remembers the Premier commenting that other police forces would have done a better job and had the Aboriginal occupiers out of the park by

this time. The Premier essentially said, “[I]f this were in any other country or any other setting ... the police would have acted more quickly.” The Deputy Attorney General took issue with the Premier’s statement and stressed that, in many situations, the police approach was to exercise patience, try to enter a dialogue, and move at a slow pace with the objective of peacefully ending the protest or occupation. Mr. Taman disagreed with many of the comments made at the dining room meeting, but did not think the Premier crossed the line of giving instructions or interfering with the operations of the OPP. “I heard things I disagreed with but not things I thought were inappropriate”; “I don’t recall the Premier giving any instructions of any kind to the Ontario Provincial Police.”

In my view, although Premier Harris was critical of the police, I do not find that he interfered with or gave inappropriate directions to the police at Ipperwash. The Premier conveyed his displeasure that the police had relinquished control of the park to the First Nations people on September 4, 1995. He also said he did not think the OPP had adequately prepared for the occupation. Moreover, the Premier expressed his displeasure that the occupiers were still in the park two days later on September 6. He was undoubtedly critical of the OPP.

However, the Premier did not inappropriately direct the OPP on its operations at Ipperwash or enter the law enforcement domain of the police. Although one may disagree with his view, it was legitimate for the Premier to take the position that the First Nations people were illegally occupying the park, and that he wanted them out of Ipperwash Park as soon as possible. He did not give directions on the manner in which the OPP should enforce the law; how, when, and what arrests should be made; tactical decisions; or other actions that should be taken by the police to end the occupation. In my view, the Premier did not give instructions to or interfere with the OPP’s operations at Ipperwash in September 1995.

12.4.5 Seconded Police Officers at the Premier’s Dining Room: Perception of Political Interference in Police Operations?

The presence of seconded OPP officers in the Premier’s dining room was clearly problematic for the Solicitor General, the Attorney General, and the Deputy Attorney General.

Deputy Attorney General Taman and others subscribed to the view that the appearance of political interference in police operations is of as much concern as the fact of political interference. It was clearly “one of the concerns ... arising out of the dining room meeting.”

It was Larry Taman’s view that it was appropriate for the Premier to make a policy statement that he wanted the occupiers out of Ipperwash Park. The government can legitimately take the position that it has “zero tolerance” for persons

illegally occupying a provincial park, and it is appropriate for the Premier to have these discussions with his Ministers and Deputy Ministers. But the danger of having these conversations with seconded police officers in the room, said Mr. Taman, is that “in the heat of the moment, there’s a risk that it could compromise the operational independence of the police” or create the appearance of political interference with police operations. The exchanges between the Premier, Mr. Fox, and others prompted the Deputy Attorney General to issue a caution against “crossing the line” and instructing the police to take particular actions. Mr. Taman was “uncomfortable” having the discussions with the “OPP officers in the room.” In hindsight, he thought Mr. Fox and Mr. Patrick should not have been present at the dining room meeting.

Both Solicitor General Runciman and his Deputy, Elaine Todres, knew Mr. Fox held the rank of OPP Inspector. They understood that the problem with having the Premier in the same room as the seconded police officers was Mr. Fox and Mr. Patrick’s interpretation of the Premier’s comments. The Solicitor General agreed that Premier Harris should not have been in the dining room with Mr. Fox and Mr. Patrick. There was “no buffer” for the information from the police on the ground to the Premier and the Ministers, or from the Premier and Ministers to the seconded police officers. In other words, it was a problem, both for the information going up to the politicians and for the political opinions coming down to the police.

Mr. Runciman agreed there was transmission of information from outside the Solicitor General’s reporting system. This was a “product of a new government” and a “new Deputy”; “under other circumstances and with a little more experience under the belt ... I don’t think it would have been handled in the way it was handled.” The Conservative Government had been in power for only two months.

Perhaps the Solicitor General should have intervened when Mr. Fox entered the dining room or when the Premier expressed his displeasure that the police had allowed the park occupation to occur. Solicitor General Runciman knew Mr. Fox was a seconded OPP officer, and he understood the protocols, the importance of buffers, and the dangers of the perception of political interference in police operations. He did not think the Premier should have been in the same room as the two seconded police officers. Yet he considered himself an “observer” at the dining room meeting. If Mr. Runciman thought that Mr. Fox’s presence was a result of his new Deputy inviting him to the meeting, then perhaps he should have taken issue with Mr. Fox’s presence at the dining room meeting. The Solicitor General was the Minister with the ultimate responsibility for the OPP, whose role was to ensure relations between the government and the police respected the operational independence of the police.

Dr. Todres agreed that having Mr. Fox and Mr. Patrick at the dining room meeting without the buffers and reporting requirements was a problem both for the information going up from the police and for the opinions that might come down from the politicians. Dr. Todres also acknowledged in hindsight that the proper procedures should have been adhered to. As seconded OPP officer Mr. Patrick said, “we were there, we shouldn’t have been.” The attendance of Mr. Fox and himself at the meeting was not within the normal structure of how communications were to take place.

Although Mr. Harnick does not recall seeing Mr. Fox at the meeting, he does remember the Premier expressing dissatisfaction with the OPP’s performance in permitting the Aboriginal occupation to occur, and that “once in the park, there was no way to get them out.” Had the Attorney General known OPP officers were in the room, he would have been concerned that this was inappropriate language for the Premier to use; “I don’t believe that police officers should have been involved in these discussions.” Although the former Attorney General is confident that comments in the dining room had “no influence, in terms of actions that the OPP may have taken,” he believes that the perception of interference was a concern. Mr. Runciman agreed.

Mr. Taman’s concern at the meeting that “political expressions not cross the line” and constitute instructions to the police in operational matters, as well as his view on the need for transparency, prompted the Deputy Attorney General to introduce changes the following morning.

In my view, Mr. Fox and Mr. Patrick should not have been in the dining room meeting with the Premier and Cabinet Ministers. Discussions on the manner in which the government would address the Ipperwash occupation and the politicians’ views of the protest should not have been shared with the seconded OPP officers. It was outside the proper reporting system and communication channels of the Ministry of the Solicitor General. The appropriate buffers were not in place. Mr. Fox was privy to the Premier’s criticism of the OPP in the dining room. The problem was exacerbated by the fact that Ron Fox was in direct contact with the OPP Incident Commander at Ipperwash during the occupation.

There was a danger in these circumstances, both with the transmission of information from the Premier and Ministry to the provincial police and with the transmission of police information to the politicians. Even though there may not be actual interference by politicians in police operations, the public’s perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to.

There did not appear to be any written rules or protocols on the appropriate role of police officers seconded to the Ministry of the Solicitor General. I recommend

that written protocols clearly delineate the appropriate functions of police officers seconded to provincial Ministries. In addition, politicians and civil servants should be briefed on the appropriate role of seconded officers such as Mr. Fox and Mr. Patrick.

The Premier did not disclose the dining room meeting in Question Period in the Legislature after Dudley George's death. On May 29, 1996, MPP Bud Wildman questioned the Premier:

Can you make it very clear? Did you give any direction or express any opinion about how the situation should be proceeded with to your staff, to the OPP, or to government officials after the occupation of Ipperwash Provincial Park?

Premier Harris replied:

By way of preamble, the member talks about a meeting taking place in advance of a very unfortunate shooting incident at Ipperwash. I don't know if you are implying that there was a meeting that took place to plan this or to talk about this.

Mr. Wildman pursued the question and specifically asked whether the Premier had attended any formal or "informal meetings" on Ipperwash:

The information in the press this morning indicates that the parliamentary assistant to the native affairs minister was present at the meeting, which is quite unusual. Your press secretary is quoted as saying, "The Premier was never directly involved in formal meetings on Ipperwash." There have been all sorts of rumours about statements made regarding getting the "expletive — Indians out of the park."

Why will you not clarify your role in this affair and clear the air? Were you involved in any informal meetings where any informal opinions or directions were expressed about how this matter might be dealt with in order to ensure that the Ipperwash Provincial Park occupation did not continue?

Premier Harris responded:

Was I involved in informal meetings? I don't know what an informal meeting is. When I go to bed at night, is that an informal meeting? When I sit and talk with people, is this an informal meeting? I clearly

understand the role of the separation between politicians and the police, and at no time did I give direction to staff to give direction, or did any of my staff give direction, to the best of my knowledge, to any member of the police, the OPP, at any level of any category as to how they should carry out their job. That is not our role and I can assure you that did not take place. (emphasis added)

The Premier did not reveal the occurrence of this meeting that took place the day Dudley George was shot when questioned in the Legislature in 1996 and 1997. It was only in the context of the civil litigation between the family of Sam George and the Ontario government in 2000 that the dining room meeting became public.

The Premier was not responsive to Mr. Wildman's questions in the Legislature. The dining room meeting may not have been a formal Cabinet meeting, but, nonetheless, it was a meeting that he convened for Cabinet Ministers and senior civil servants. Had Michael Harris been forthright from the inception about the dining room meeting, he would have greatly dissipated the suspicions surrounding the meeting and the allegations of improper political interference with police operations. In my view, it would have been better if Mr. Harris had revealed the dining room meeting in response to Mr. Wildman's questions, as it would have promoted the important principle of transparency. I discuss this in further detail in Part II of my report.

12.4.6 Exchange between Minister Hodgson and the Secoded Police Officers

The Premier left the dining room, and the meeting came to an end. Small groups of people clustered to talk informally about what had transpired in the dining room. It was at this point that there was an exchange between the Minister of Natural Resources and Ron Fox.

When Mr. Fox suggested the government consider a co-management arrangement with First Nations at Ipperwash Park, Minister Hodgson replied with a comment to the effect that "we have just been told that we can't direct the police, so you don't bother worrying ... yourself ... with politics." In other words, since it had been made very clear at the meeting that politicians could not direct the police, Minister Hodgson was also making it clear that it wasn't the role of Mr. Fox to provide politicians with political advice. This reaction by the Minister of Natural Resources was unfortunate as co-management was a suggestion worthy of consideration. I discuss co-management in greater detail in Part II of this report.

Scott Patrick observed this exchange. He heard Minister Hodgson say MNR officials had been assured by the OPP that the park occupation could be prevented. The Minister was agitated. Mr. Patrick also heard the Minister say “he was the property owner, that it was his park, and that he wanted it back.” He also heard his comment to Ron Fox that the Minister was “not in a position to direct the police, so don’t presume that you can proffer political advice.” These statements are not only indicative of Chris Hodgson’s inexperience as a Minister, but also demonstrate that he knew Ron Fox was a police officer.

Mr. Patrick thought the Minister’s comments were inappropriate. Minister Hodgson was criticizing the actions of the police to seconded OPP officers. Although Mr. Fox was clearly upset by the Minister’s comments, he did not construe them as a direction or instruction to the OPP.

Mr. Hodgson recalled an exchange with Mr. Fox but believes it occurred at the end of the September 6 IMC meeting, not at the dining room meeting. However, other witnesses did not corroborate Minister Hodgson’s attendance during or at the conclusion of the IMC meeting. Nor did Minister Hodgson’s name appear as an attendee in the September 6 IMC minutes prepared by Julie Jai.

Mr. Hodgson agreed he told Mr. Fox it is easier to prevent an occupation than to remove occupiers from occupied property. Mr. Fox’s response, he said, was that “a thousand police officers linked arm to arm around the park wouldn’t have stopped the occupation.” Mr. Hodgson was “surprised” Mr. Fox “gave a policing answer” to his comment.

Yet Mr. Hodgson maintained he did not know Mr. Fox was an OPP officer or that Mr. Fox was in contact with the OPP Incident Commander at Ipperwash. Had he known Mr. Fox was a police officer, Mr. Hodgson claimed he would not have expressed a concern about the police inaction in preventing the Ipperwash Park occupation: “I wouldn’t have talked to the police. I was pretty clear on the distinction between police and elected politicians on operational matters.”

The Minister agreed that he told Mr. Fox not to be concerned with political aspects of the occupation.

Mr. Hodgson knew Mr. Fox was on secondment to the Ministry of the Solicitor General at the September 6 dining room meeting, but claimed he did not know he was an OPP officer. Prior to this meeting, Mr. Hodgson claimed he was under the impression Mr. Fox was a civil servant at ONAS and the Chair of the IMC. Frankly, I do not understand why Mr. Hodgson had this impression, particularly because his EA Mr. Bangs had attended both the September 5 and 6 IMC meetings and clearly knew that Mr. Fox was an OPP officer. Mr. Bangs briefed his Minister after the IMC. Also, his statements to Mr. Fox in the dining room meeting demonstrated that Mr. Hodgson knew Ron Fox was a police officer.

Mr. Hodgson insisted he “didn’t say a word at the Premier’s dining room meeting.” This was contrary to the testimony of Dr. Todres, Mr. Fox, and Mr. Patrick. In fact, after the dining room meeting, Mr. Fox had a telephone conversation with Julie Jai, whose notes of this call follow. The reference to “Cabinet” is the dining room meeting:

... he was called into Cabinet — Larry Taman was also there & was eloquent — he cautioned abt rushing in with ex parte inj — & can’t interfere w police discr. — *but Prem. & Hodgson came out strong ...*
(emphasis added)

I find that Mr. Hodgson had this exchange with Mr. Fox in the dining room. The Minister of Natural Resources expressed to the seconded police officer his displeasure that the occupiers were still in the park. I do not accept that the Minister remained silent in the dining room and did not convey his agitation and frustration about the First Nations occupation. However, I do not consider Mr. Hodgson’s comments as interference with the police operations at Ipperwash Provincial Park.

12.4.7 Was There a Comment about the Holocaust and, if so, in What Context?

Both Ron Fox and Scott Patrick testified that they heard the Premier make a comment about the Holocaust. Others at the meeting did not recall such a statement.

There were clearly people in the dining room who would be sensitive to a comment about the Holocaust, the decimation of Jewish people by the Nazis in World War II. They would have remembered such a reference. The Deputy Solicitor General is the daughter of a Holocaust survivor, and the Attorney General was on the Canadian Board of Yad Vashem, the Holocaust Memorial Society. Did the noise of the air conditioner in the room prevent others from hearing this comment? Why was this statement only audible to two people in the dining room?

Mr. Patrick tried to explain the context of the Holocaust comment. The Premier said the occupation was a test for the new government. It was after the statement about the government wanting to be seen to act decisively that the Holocaust was mentioned.

Mr. Harris has no recollection of making a reference to the Holocaust at the meeting. The Premier was also on the Board of Yad Vashem at that time, and travelled to Israel with the Holocaust Memorial Society. Whether or not Mr. Harris made a statement regarding the Holocaust, there is no evidence to

suggest that the comment was made in relation to the Ipperwash occupation, or in a disparaging manner regarding Jewish people.

12.4.8 What Was Decided at the Dining Room Meeting?

People at the dining room meeting had different interpretations of what was decided and the way in which the government would proceed in resolving the Ipperwash Park occupation. These differing interpretations may reflect in part the regrettable fact that no minutes or notes were taken of this meeting.

Deputy Attorney General Taman, whose Ministry was responsible for preparing the court injunction, thought the Premier had communicated the following:

1. The Aboriginal people were in the park illegally, and the Premier wanted them off provincial property as quickly as possible;
2. Public servants were to use their professional judgment and expertise in discharging these instructions.

Mr. Taman knew that lawyers in the Crown law office were in the process of preparing documents for an injunction application. Whether the injunction was with notice to the occupiers or *ex parte* was a technical issue for the government lawyers to resolve, not a matter the Deputy Attorney General thought he should decide. Mr. Taman said no direction was specifically given at the dining room meeting to apply for an *ex parte* injunction.

Mr. Taman did not attach much importance to the type of injunction the provincial government would seek because the resolution, in his view, would essentially be the “same in either case”: “the judge was not going to make an important order that was going to stick for any period of time without hearing from the parties.” In Mr. Taman’s view, it was a “distinction without a difference;” the type of injunction is “really lawyer’s technicalities that I didn’t take any great interest in at the time.”

Mr. Taman considered the Premier’s instructions “fair” and “appropriate.” The Premier had strongly articulated the government’s policy that First Nations people were not legitimately in the park and that he wanted them off provincial property as quickly as possible. But Premier Harris expected civil servants to discharge his instructions responsibly and in accordance with appropriate principles. Separation of the government from the operations of the police was made clear to the Premier in the dining room by the Deputy Attorney General and the Deputy Solicitor General. These senior civil servants did not construe the Premier’s comments as instructions to violate this important principle.

Attorney General Harnick similarly thought no decision was made in the dining room meeting that the government would apply for an ex parte injunction. The Premier's instructions were to seek an injunction as soon as possible, and the Attorney General expected Mr. Taman to instruct the Crown lawyers accordingly. It was not the Attorney General's function to monitor the mechanics of obtaining an injunction, which in his view properly fell within the domain of the legal expertise in the Crown law office.

But there were those at the meeting, such as Solicitor General Runciman, Minister Hodgson, Deputy Minister Vrancart, as well as Mr. Bangs, Mr. Moran, and Mr. Fox, who thought the decision was made to proceed with an ex parte injunction without notice to the occupiers. Mr. Fox in fact called Ms. Jai after the meeting and reported that the direction was to seek an ex parte injunction.

It is evident that the Premier made it clear at this meeting that it was his view that First Nations people were illegally occupying Ipperwash Park, and he wanted them off provincial property as quickly as possible. I believe too much emphasis has been attached to whether the Premier directed an ex parte injunction, rather than an injunction with notice to the occupiers. As I indicated earlier, and as I discuss in detail in Part II of this report, provided there is transparency in government decision making, which includes a written record of decisions made, and provided the government does not step into the law enforcement domain of the police, in my view, it was not inappropriate for the Premier to direct the Ontario government to seek an injunction as soon as possible.

The dining room meeting came to an end. The Solicitor General, his EA, and the Deputy Solicitor General continued to consider the Ipperwash file a "watching brief." When Dr. Todres walked into the dining room meeting, she had assumed the government's approach to the occupation was "slow and steady," but it became quickly apparent that the government subscribed to a "go-fast" approach. The Premier's goal was to have a vacant park as soon as possible. The Ministry of the Attorney General was responsible for seeking the injunction, and the provincial park was within the responsibility of the Ministry of Natural Resources.

Ron Fox was deeply concerned about the government's approach to the Aboriginal occupation as he left the Premier's dining room. He thought the politicians viewed the occupation simplistically. They were either not aware of or chose not to consider the complexities involved in this First Nations occupation.

Mr. Fox was frustrated as he walked out of the Ontario Legislative Building. He decided to share his agitation about what transpired at the Premier's dining room meeting with Inspector John Carson, the Incident Commander at Ipperwash.

12.5 Mr. Fox Shares His Views of the Premier’s Dining Room Meeting with the OPP Incident Commander

12.5.1 Ron Fox Calls Inspector Carson at the Command Post

When Mr. Fox called Inspector Carson at 2:00 p.m. on September 6, both he and the Incident Commander had no idea their conversation was being recorded. Although Mr. Fox was embarrassed at the hearings by some of his coarse language, he maintained that the content of the call, such as his description of the IMC and the dining room meetings, was an accurate reflection of what had transpired that day. Had Mr. Fox known the conversation was being tape-recorded, his “language would have been chosen much more carefully,” but “the substance of my message would not have changed.”

This telephone call took place less than one and a half hours after the dining room meeting with the Premier and Cabinet Ministers. The memory of the meeting in the Legislative Building was fresh in his mind. Mr. Fox was clearly upset with the government’s position on the Ipperwash occupation and had no reservation about sharing his frustrations with the Incident Commander. Questions that arise are: Should Mr. Fox have communicated the Premier and Cabinet Ministers’ views of the First Nations protest, particularly the politicians’ perceptions of how the OPP was handling the occupation, to the Incident Commander? Should Mr. Fox, as First Nations liaison in the Ministry of the Solicitor General, have been in direct contact with the Incident Commander?

The main reason for Mr. Fox’s call to the OPP Command Post in Forest was to discuss the injunction with Inspector Carson. At that time, Chief Superintendent Coles and Superintendent Parkin were meeting with John Carson in the command post.

Mr. Fox explained to Inspector Carson that Tim McCabe, a lawyer at the Ministry of the Attorney General, was in the process of preparing the government’s injunction application. It was an *ex parte* injunction and the First Nations occupiers would not receive notice of the court application. Inspector Carson learned that for the government to be successful, “emergent circumstances” needed to be demonstrated; it was necessary to prove that the “exigencies of the situation” were “increasing exponentially.”

Mr. Fox explained the injunction application was more likely to be successful if the OPP were prepared to give “*viva voce*” or oral evidence at the hearing, rather than simply filing an affidavit describing the events at Ipperwash from a police perspective. Mr. Fox told the Incident Commander “the political people are really pushing”; “they’re pushing to get this done quick,” “[they’re] lining up a judge ... tonight” or “tomorrow.”

Inspector Carson was prepared to give evidence in court on the injunction application as long as OPP Chief Superintendent Coles and Commissioner O’Grady “don’t have a problem with that.” He thought an ex parte injunction was necessary, given the events of the past two days: “a confrontation when the occupiers came into the provincial park,” “an altercation through the night with the cruiser windows being smashed,” “picnic tables on the sandy parking lot,” “gunfire that was heard back in the military base through the night,” “cars being driving in [an] erratic manner inside the park” — “when you put all those factors together, there’s such a progression of events that, hopefully, you would have enough ... for an emergent order.”

Inspector Carson thought there were grounds for an ex parte injunction and did not want to wait the estimated two weeks for an ordinary injunction with notice to the First Nations occupiers. The Incident Commander sought a determination from the court as to whether the “property was in rightful ownership of the Ministry of Natural Resources” and “some direction” with regard “to the occupiers who were on that property. I just wanted the legal support to plan whatever next steps might be necessary.” Inspector Carson and the OPP were “not prepared to act” until a court injunction was obtained. Although Inspector Carson was committed to resolving the occupation peacefully, he thought two weeks was too long.

Mr. Fox shared with Inspector Carson his perceptions of the government from the IMC and dining room meetings he attended earlier that day: “John, we’re dealing with a real redneck government ... [T]hey are fucking barrel suckers, they just are in love with guns.... [T]here’s no question they couldn’t give a shit less about Indians.”

By “redneck government,” Mr. Fox was trying to explain that politicians were taking the position that there was “one justice for all,” with no differential treatment of First Nations people. The comments “barrel suckers” and “in love with guns” were references to the IMC meetings where some political staff seemed to be preoccupied with the possibility of firearms in the park and army camp, and believed that a way for the government to solve the problems at Ipperwash was through the exercise of force. Mr. Fox was frustrated with what he perceived to be a lack of concern and insensitivity by the provincial government to First Nations issues.

Although Inspector Carson responded to Mr. Fox’s comments, “They just want us to go kick ass,” the Incident Commander made it very clear that the OPP were “not prepared to do that yet.” Inspector Carson stressed to Inspector Fox that “despite the various opinions that may be at play here,” the OPP have “no intention of going into that park.” Until they “had received the appropriate

injunction, that simply wasn't going to happen" — "the injunction approach ... is the way we deal with these kinds of issues."

Inspector Carson understood from this conversation that the government was taking an aggressive approach to the occupation. He did not construe Mr. Fox's strong language about what transpired in the dining room as statements that the Premier and his Ministers were a racist government.

Mr. Fox relayed the comments of the Premier and Ministers at the dining room meeting, to which he had been summoned. The Premier "is a redneck from way back" who "came right out and said, 'The OPP, in my opinion, made mistakes — they should have done something right at the time ... that will, I'm sure, all come out in an Inquiry some time after the fact.'"

The Premier, Mr. Fox continued, believes the OPP did not take adequate measures to prevent the Aboriginal occupation; the Premier "believes that he has the authority to direct the OPP." Inspector Carson responded, "I hope he and the Commissioner have that discussion."

John Carson was very aware of the separation between police operations and the provincial government. He knew that under the *Police Services Act*, "the Commissioner is responsible for the operations of the Ontario Provincial Police," and that as an OPP Inspector, he took his "direction through the chain of command from the Commissioner's office." Inspector Carson "certainly wasn't pleased" the Premier had expressed this opinion but did not seem too bothered by his comments. John Carson said the following at the Inquiry:

... it's simply that; it's his opinion. I'm a police officer. I'm not a politician. I have to work within the boundaries of the legal framework, and I have to work for people that I report to. As long as my commanders that I report to are satisfied with the direction I'm taking, the political opinion is simply that. I would have much preferred that he thought we were doing a great job, quite frankly, but that may have not been the case. (emphasis added)

The Premier, Mr. Fox continued, "makes a couple wild ass comments, gets up and leaves the room." One of the comments to which he was referring was the alleged statement about the Holocaust.

Mr. Fox then described to Inspector Carson his unpleasant encounter with the Minister of Natural Resources in the Premier's dining room. In response to questions, Mr. Fox had told Minister Hodgson that shots heard overnight could have been from a semi-automatic gun, but emphasized that no weapon had been pointed at anyone. He had stressed to the Minister that the park was closed for the

season, and this was a complicated property dispute. Minister Hodgson did not want any advice. “You know what the prick says to me?” Mr. Fox recounted, “Well, I’ve just been told that I can have no influence over the police doing their job so I’m suggesting you let me worry about the political ramifications.”

Mr. Fox continued: “I said [to Minister Hodgson] perhaps we can survive the political backlash. I said it may be that John Carson and his people will be able to work magic and these people will simply walk away and abandon their position.” To which John Carson replied: “That ain’t gonna happen.” Mr. Fox continued:

And I said, “[M]y guess is we’re going to get a bloody nose, or somebody is,” and I said, “[A]t the end of the day, if you’re prepared, that’s up to you. I’m not making a political statement. I’m giving you a bite of reality.” ...

He looked at me, and I thought you prick, fuck ... John, I couldn’t believe it. Like I mean ... you don’t back away. Let’s just do the bloody job right.

John Carson agreed.

The reference by Mr. Fox to a “bloody nose” was to the application of force. Inspector Carson understood Mr. Fox had warned the Minister of Natural Resources it was dangerous to take precipitous action against the occupiers. It was evident that Minister Hodgson, like the Premier, was upset that the police had not taken measures to stop the park occupation by the First Nations people.

Chief Superintendent Coles was in the command post listening to Inspector Carson’s responses in his call with Ron Fox. He was concerned with some of the exchanges and decided to caution Mr. Fox about the information flow to the government. What prompted Chief Coles to become involved in the call was that what he heard “led [him] to believe ... operational matters ... were being discussed ... at the Ministry level,” and he was concerned “why they would have been talking about automatic weapons.” The call between Inspector Carson and Mr. Fox ended.

Chief Superintendent Coles immediately spoke to Ron Fox and cautioned him:

I’ve got a concern that we want to be careful what we’re doing here, that we don’t give them, the people you’re talking to ... information too fast ... The problem with that, Ron, is if you’re not careful, you’re gonna run the issue there as opposed to ... myself and the Commissioner running it here ...

Chief Superintendent Coles warned that, because Mr. Fox was communicating with Inspector Carson, which he had no objection to, Mr. Fox was the “fastest source of information” for politicians at Queen’s Park. The Chief warned: “[W]e’re going to end up running it politically, and I don’t want that.... It’s dangerous if you think about it ... sometimes too much information is a dangerous thing.”

Mr. Fox made it clear to Chief Superintendent Coles that he “wasn’t the source of the errant information flow” to the government. Most of this information was making its way to the IMC from MNR officials; Peter Sturdy is “getting fed” information such as the automatic weapon fire by MNR staff at Ipperwash. “That’s the trouble,” said Chris Coles, “they’re going to react to that kind of stuff ... [T]here’s conversation going there that’s operational” and “it’s gonna get dangerous cause now that’s dangerous to have that happen.”

Chief Superintendent Coles was quite properly concerned that operational information had been discussed at the IMC meeting. He was also concerned about the report of automatic gunfire to the IMC. He wanted the situation “to be run from that incident room” in Forest, not from Toronto. Whether the gunfire was automatic or semi-automatic was a decision for the Incident Commander and the OPP, not for politicians, political staff, civil servants, or “some government think-tank.” Chief Coles also had concerns about the safety of his officers. He instructed Mr. Fox to “downplay all the heavy weaponry”; it is important to be “very careful with raw information, raw data,” information that has not been authenticated.

Chris Coles knew from previous experiences that the Ministry of Natural Resources operated differently from the police. As he said to Mr. Fox, “I feel no obligation, when I’m given information to go up the chain. If it’s my responsibility, I accept the responsibility and I’ll handle the situation; that’s the way policing occurs.” But “in the Ministry of Natural Resources, things seemed to go to the higher echelons a lot faster.” It became clear to the OPP Chief Superintendent during the telephone call that MNR Park Superintendent Les Kobayashi was the source of police operational information to provincial government officials. Mr. Kobayashi had attended the briefings of the OPP officers.

Chief Superintendent Coles appreciated that Mr. Fox was in a “delicate” position as the liaison between the police and the provincial government. But he was worried that people who did not have a police perspective might blow the information out of proportion and this might cause unnecessary anxiety. He also did not want the Incident Commander distracted by these issues and was adamant that the Ipperwash occupation be directed solely by the police at the Forest Command Post.

Ron Fox understood his superior's concerns; "in terms of operational information being provided to either bureaucratic or [a] political arm of the government," Chief Coles felt that was "dangerous" and Fox "agree[d]." Information related to the tactical decisions of the police clearly should not be conveyed to the IMC or to the politicians; "information with respect to what we're going to do — and I'm saying that as a police officer — and when we're going to do it, has to fall to us." The liaison officer also thought too much time and energy was spent "run[ning] down rumours" — information that was not accurate or well sourced.

Inspector Fox decided to convey to Chief Superintendent Coles his perception of the Premier's comments at the dining room meeting:

The Premier is quite adamant that this is not an issue of Native rights and then his words ... "we've tried to pacify and pander to these people for too long. It's now time for swift affirmative action." I walked in the tail end, Chris, with him saying things like, "well, I think the OPP have made mistakes in this one. They should have just gone in." He views it as a simple Trespass to Property, that's in his thinking. He's not getting the right advice or if he is getting right advice, he's certainly not listening to it in any way, shape or form. (emphasis added)

Although former Premier Michael Harris testified he did not use the words "we've tried to pacify and pander to these people for too long," he did believe that his government should not treat the illegal occupation any differently from other illegal occupations in the province. When Ron Fox told Chief Coles "the Premier is quite adamant that this is not an issue of Native rights," Mr. Harris agreed this was accurate and reflected "my viewpoint." Regarding the comment "it's time for swift affirmative action," Premier Harris on September 6 believed the government "should be moving quickly to end the occupation."

Chris Coles suddenly ended the telephone conversation and told Ron Fox, "I gotta call you back from another line."

The Chief Superintendent left the command post where he and Inspector Carson had been speaking to Mr. Fox and he walked to the police detachment. Neither Chief Superintendent Coles nor Ron Fox could recall at the hearings whether the second conversation took place. Nor could Chief Coles remember why he decided to end the call at the command post. He surmised that it may have been because he did not want to interrupt the work of the OPP officers in the command post, he was concerned others would overhear the telephone conversation, or perhaps he simply needed to go to the washroom. The telephone call took place in a small trailer about forty feet in length, approximately six feet of

which was dedicated to telecommunications and other equipment; it was “fairly close quarters.”

It is most unfortunate that neither the OPP Chief Superintendent nor Ron Fox could remember why the call abruptly ended at the command post or whether a second conversation took place. As a result, much speculation and skepticism has surrounded the exchange between Chief Superintendent Coles and Ron Fox. In order to promote the objectives of transparency and accountability, which I discuss at length in Part II of my report, there ought to be a written record or a recording of the conversations that took place.

Chief Superintendent Coles had made it abundantly clear to Mr. Fox that information to the politicians and bureaucrats was to be limited.

As Inspector Carson listened to Chief Superintendent Coles’ comment to Ron Fox during the telephone call in the command post, he knew his superior was anxious about the flow of information, particularly from MNR staff to the government. The discussion at the IMC meeting about automatic gunfire was clearly a serious concern for the Chief. It was John Carson’s understanding that Chris Coles no longer wanted Mr. Fox to call the Incident Commander to confirm the veracity of information received by government officials; it was “very disruptive” and also he “didn’t want this competition for information at the Ministry level.” He thought future calls from Mr. Fox would be directed to Chief Superintendent Coles rather than to himself; “it was clear from that point that I wouldn’t be getting calls from Ron Fox.”

In fact, Chief Superintendent Coles did not intend to halt communication between Inspector Carson and the seconded OPP officer. What he was trying to emphasize to Mr. Fox was that the liaison officer should exercise a high degree of discretion in deciding what information to disclose to political staff as well to bureaucrats at the IMC. His concerns were that the information was going up too fast and that it was operational.

Chief Superintendent Coles also did not want the OPP to be in a position of responding to pressure to take quick action as opposed to following the conventional OPP approach in such situations of moving slowly, methodically, and logically.

In my view, Mr. Fox, seconded to the Ministry of the Solicitor General, should not have communicated directly with Inspector Carson or other officers at the Ipperwash command post. As an OPP officer seconded to the Ministry of the Solicitor General, Mr. Fox was outside the OPP chain of command and should not have had contact with police involved in the operation. Information and decisions should have been conveyed to the Deputy Solicitor General who, in turn, would decide which information was appropriate to transmit to the OPP Commissioner.

Contrary to the views of Chief Superintendent Coles and Superintendent Parkin, I do not think it is appropriate for OPP officers seconded to the government to have direct contact with Incident Commanders during a police operation. This is fundamental, not only to avoid political interference in police operational decisions, but also to prevent the perception of political interference. The need to follow proper ministerial lines of authority and the OPP's regular chain of command is also important to ensure accountability.

OPP Commissioner Gwen Boniface, who testified in the last weeks of the hearings, agreed it “would have been much better for [Ron Fox] not to have made the call direct to the command post.” She thought information from Mr. Fox should have been communicated to Commissioner O’Grady’s office. There should have been an interface — the OPP Commissioner’s office — between Ron Fox and the police at Ipperwash.

12.5.2 The Effect of the Call on the Incident Commander

It was apparent to Inspector Carson that Ron Fox was frustrated with the exchanges he had had with politicians and political staff in the Ontario government. He had learned from the telephone call that the Premier was not pleased that the OPP had lost containment of the park on September 4.

Inspector Carson did not think it was Mr. Fox’s “job” as Special Advisor, First Nations to the Deputy Solicitor General to convey the thoughts of the Premier, the Minister of Natural Resources, and other politicians to the Incident Commander: “he certainly shared his thoughts with me, but that certainly wasn’t his job to do that.”

Yet Inspector Carson maintained that Mr. Fox’s comments had “no [e]ffect on [his] actions other than working towards the injunction” and “attempting to get Mark Wright prepared to attend the application process for the next morning.” His plans for the OPP in the Ipperwash occupation did not change: “Nothing I had in place was changed whatsoever” — “the use of the CMU [Crowd Management Unit] had absolutely nothing to do with this telephone call or any other telephone call with Ron Fox.”

John Carson repeatedly said that the views of the Premier and his Cabinet Ministers had no effect on him. Rather, it was the assessment of his OPP superiors, Chief Superintendent Coles, Superintendent Parkin, and the OPP Commissioner, that Inspector Carson considered important:

If the Premier or anybody else of that level has any concerns, then their concern[s] needed to be taken up with the Commissioner of the Ontario Provincial Police. As an Inspector, I clearly have a chain of

command that I have to satisfy and it may not always be in keeping with other people's opinion, including political folks.

It was also evident to Ron Fox, after he shared the Premier's views with Inspector Carson, that the Incident Commander would not deviate from or change the OPP's approach to the First Nations occupation. Inspector Carson clearly knew the Premier had no authority to direct the OPP in operational matters. Ron Fox thought Inspector Carson had no intentions of succumbing to political pressure:

What I took was that Inspector Carson had a course of action set out and he wasn't going to move from it. If there was to be a deviation from his course of action, that direction would have to come from his ultimate superior, that being the Commissioner of the day.

At the time of this incident, Ron Fox had known John Carson for over twelve years and he respected his judgment and skills as an OPP Inspector and as an Incident Commander. Mr. Fox was also aware that John Carson was sensitive to First Nations issues. Chief Superintendent Coles and Commissioner O'Grady shared these views. Inspector Carson's superiors did not think the Incident Commander was pressured from the calls to change his approach to the occupation.

As I conclude in the next section of the report, Inspector Carson's decision to mobilize and deploy the CMU and TRU on the night of September 6 was not a result of political direction or interference by the Ontario government. From the conversations Inspector Carson had with various police officers, Mr. Fox, his superiors, and others, it is evident John Carson understood the separation of government from police tactical decisions, and he attached little importance to the comments conveyed by Mr. Fox to him on the government's view of the Ipperwash Park occupation. He also remained committed to the objective in Project Maple of negotiating a peaceful resolution. Inspector Carson demonstrated considerable integrity in resisting the political pressures conveyed to him by Mr. Fox. A less experienced officer may have been influenced by news of the Premier's displeasure and expectations that the occupiers be removed quickly.

The Incident Commander also had no intentions of allowing his officers to enter the provincial park. Inspector Carson was waiting for the injunction application to be made to the courts before the OPP made any decisions regarding the occupiers at Ipperwash Park. As will be evident in the following pages, even on the night of September 6 when Inspector Carson deployed the CMU and TRU, his instructions were clear that the police officers were not to enter the park.

The Premier's opinions and comments should not have been communicated by Ron Fox to John Carson.

12.5.3 Ron Fox is Chastised by His Superiors for Inappropriate Language and Criticism of the Government

In July 2003, almost eight years later, Deputy Commissioner Pilon and Superintendent Parkin met with Ron Fox to discuss the language used in his tele-phone conversations with Inspector Carson on September 5 and 6. The tapes of Mr. Fox's conversations with Inspector Carson were played. Mr. Fox was chastised by his superiors for using language inappropriate for a commissioned officer of the OPP, as well as for his criticism of government officials. Ron Fox agreed with this assessment and apologized. His behaviour, however, was not considered "misconduct" by the OPP.

Deputy Commissioner Pilon wrote:

I counselled Superintendent Fox, indicating we'd naturally looked at these from a discipline point of view and while they fell short of misconduct, the language and criticism of government officials was not consistent with our expectations for officers, and particularly senior officers.

When Superintendent Parkin listened to the taped conversations, it confirmed for him that OPP Incident Commander Carson had not taken direction from the government in connection with Ipperwash. This was the most important consideration, he believed, in determining political interference, as the Incident Commander is the person in the field who makes the decisions as to the conduct of the OPP. In his view, Inspector Carson made it clear in these calls with Mr. Fox that he would continue to follow the OPP approach and would not succumb to the opinions of others, including the views of politicians at Queen's Park.

Like Chief Superintendent Coles, Superintendent Parkin had no problem with communication between Ron Fox and Inspector Carson during the Ipperwash Park occupation. They took the position that discussing the injunction application for the following day was clearly appropriate. It was important there be some exchange between the liaison officer and the OPP at Ipperwash. But it was critical that the seconded police officer not convey to political officials any operational information and, conversely, that the views of the politicians on police operations in the Ipperwash occupation not be transmitted to the Incident Commander or other police officers involved in the Aboriginal occupation.

Dr. Todres, the Deputy Solicitor General, expected proper protocols to be followed in conversations between Mr. Fox and Inspector Carson. In her view, it was inconsistent with the protocol for Mr. Fox to convey to the Incident Commander that the Premier was critical of the way in which the OPP was handling the Ipperwash occupation. The Deputy Solicitor General thought Mr. Fox had had a “lapse in judgment” in conveying the discussions in the Premier’s dining room to Inspector Carson; “the lapse of judgment” was not solely the intemperate language, it “was the phone call itself.” The fact is that no written protocols existed in the Ministry of the Solicitor General regarding the appropriate role of Mr. Fox. Had such written protocols existed and had Mr. Fox been briefed on these protocols, such exchanges between the seconded police officer and the Incident Commander likely would not have occurred.

Deputy Attorney General Larry Taman believed that Ron Fox’s role as liaison officer was to communicate with the OPP in Forest. As previously mentioned, Mr. Taman did not “have [a] problem with the Premier wanting to pursue a policy,” nor did he “have a problem with what the Premier said” in the dining room meeting. Whether the Deputy Attorney General or others agreed with the policy is “immaterial” — “he’s the Premier; he’s entitled to set policy.”

What concerned Deputy Attorney General Taman was “the alarming way that policy statement seems to have found its way directly to the front line, oddly enough by the person who described himself as the buffer.” He stressed that the “political side of government needs to be able to discuss its policies, its problems, its reservations, without having the discussion find its way to the Incident Commander.”

There was, Mr. Taman said, “a clear leaking over of political conversation into the operational domain and I don’t think this is good practice” — “it wasn’t appropriate to pass on to officers on the ground what the Premier had to say ... I doubt very much that it was his intention that that should happen in that way, but in any case it happened and, in my view, [it] shouldn’t have happened.”

In my opinion, what was not adequately stressed in the discussion between Mr. Fox, Deputy Commissioner Pilon, and Superintendent Parkin was the inappropriateness of conveying the politicians’ views of the OPP to the Incident Commander. The OPP Deputy Commissioner and the Superintendent should have emphasized to Mr. Fox that in conformity with the important principle of separation of government from the operations of the police, the comments as well as criticisms of the police at Ipperwash by Premier Harris or Cabinet Ministers should not have been communicated to the OPP Incident Commander. Mr. Fox should

not have been in direct communication with Inspector Carson, the Incident Commander of the Ipperwash occupation.

Superintendent Parkin was not aware of any written rules or protocols that govern information that seconded police officers, such as Mr. Fox, could appropriately convey to the government and, conversely, information that the liaison officer could communicate from dealings with government to the OPP. As I mentioned earlier, written protocols should be prepared on the appropriate role and channels of communication of OPP officers seconded to the government. I discuss this issue in Part II.

12.6 Christie–Taman Exchange — Instructions to Proceed Immediately

Elizabeth Christie recalls having an “unusual” discussion with Mr. Taman in a hallway on the 11th floor of 720 Bay Street. Ms. Christie, whose office was on the 8th floor, was on her way to the 11th floor to the Deputy Attorney General’s office specifically to talk to Mr. Taman. She was working on the injunction and wanted to know if there was anything new happening.

During this discussion, Deputy Attorney General Taman instructed Ms. Christie to proceed with an injunction as quickly as possible. He thought there might be a rule of procedure by which it was possible to apply for an injunction that afternoon in Toronto. Although Mr. Taman did not specifically mention an ex parte injunction, Ms. Christie concluded that if the injunction would be heard that afternoon, it would be ex parte as there was insufficient time to draft and serve notice on the First Nations people in Ipperwash Park.

Ms. Christie noticed Mr. Taman was “quite anxious” and somewhat agitated during their hallway discussion. She thought this was because the Deputy Attorney General believed that proceeding quickly on an ex parte basis was not the best course of action. But “we were counsel to the Crown and we had to follow our instructions.”

Although Mr. Taman had no specific recollection of this conversation, the former Deputy Attorney General did not dispute Ms. Christie’s evidence that he spoke with her around the lunch hour on September 6. He testified that the information he conveyed to Ms. Christie was consistent with the instructions he had received earlier that day from Attorney General Harnick.

Tim McCabe was soon made aware that government lawyers needed to proceed immediately with an injunction. In the early afternoon of September 6,

Elizabeth Christie conveyed the instruction she had received from Mr. Taman to the senior MAG litigation lawyer — to seek an injunction as soon as possible and to try to schedule an injunction hearing that afternoon in Toronto.

When Mr. McCabe left the IMC meeting on September 6, his intentions were not to prepare an *ex parte* injunction. However, once he heard the new instruction from Ms. Christie that involved this accelerated court appearance, he knew it was necessary to prepare an *ex parte* application to seek an immediate injunction.

Although Mr. McCabe did not think this was the best way to proceed in the Ipperwash occupation, the government lawyer did not think there was anything wrong or reprehensible about proceeding under the *ex parte* rule.

In accordance with her instructions from Mr. Taman, Ms. Christie contacted the trial coordinator in Toronto who said it was not possible for the injunction application to be heard that day. She was advised to contact the trial coordinator in Sarnia or Windsor. Ms. Christie was told Mr. Justice Daudlin could hear the motion in Sarnia the next day and she was asked to provide the Registrar with faxed materials as soon as they were prepared. The Registrar would retrieve the documents from the court office and deliver them to the judge at home that evening.

MAG lawyers were under extreme pressure to prepare the *ex parte* injunction application — the notice of motion and the affidavits. They also had to arrange for the *viva voce* or oral evidence from a witness who would testify on the court application. Mr. McCabe and Ms. Christie worked intensively that afternoon and late into the night preparing the materials.

In my view, Premier Harris's comments in the dining room, and generally the speed at which he wished to end the occupation of Ipperwash Park, created an atmosphere that unduly narrowed the scope of the government's response to the Aboriginal occupation. The Premier's determination to seek a quick resolution closed off many options endorsed by civil servants in the Ontario government, including process negotiations, the appointment of mediators, and the opening up of communication with the First Nations people. His narrow approach to the occupation did not enable the situation to stabilize at the park. Premier Harris had made it clear he wanted the occupiers out of the park as quickly as possible.