

SEPTEMBER 6, 1995 — THE UNINTENDED
CONSEQUENCES OF PRECIPITOUS ACTION:
CONFRONTATION BETWEEN THE OPP AND
THE FIRST NATIONS OCCUPIERS

14.1 The CMU Commander and His Team Drive to TOC

Staff Sergeant Lacroix drove to the Tactical Operations Centre (TOC) at the MNR parking lot with Sergeant Hebblethwaite. The night of September 6 was the first time Wade Lacroix was senior commander of the Crowd Management Unit (CMU), it was the first time the newly constituted CMU had been deployed, and it was the first time the CMU's new tactics were used. It was also the first time Inspector Carson had used a Crowd Management Unit, and the first time the CMU and TRU (Tactics and Rescue Unit) were jointly deployed.

On the drive to TOC, Staff Sergeant Lacroix and Sergeant Hebblethwaite heard a number of OPP radio communications. There was a report of First Nations people gathered around a bonfire with bats, clubs, sticks, and other possible projectiles. Women and children were evacuating the area. Officers, including Sergeant Hebblethwaite, believed this was "in preparation" for a "confrontation by the occupiers." They heard that police at the checkpoint at Army Camp Road and Highway 21 had seized clubs, bats, and sticks from the cars of First Nations people accessing the area, and that additional officers had been dispatched to this checkpoint.¹ "It was clear" to Sergeant Hebblethwaite that "in all probability," the OPP was "going to end up in a confrontation that night."

Continued failed communication between the OPP and the First Nations people. As discussed, the occupiers were in fact making "defensive" preparations that night for an anticipated confrontation initiated by the police.

Sergeant Hebblethwaite described the sandy parking lot to the CMU Commander as the two officers travelled to TOC. As mentioned, Staff Sergeant Lacroix did not engage in any preparatory examination of the terrain before September 6, and consequently was not very familiar with the dimensions of the sandy parking lot. The previous day, Inspector Carson had told Lacroix that the CMU would

¹ This was Checkpoint Delta.

not be deployed to Ipperwash. Therefore, the CMU Commander was not conversant with the size of the parking lot that bordered the provincial park, which was important in determining the appropriate formations for the Crowd Management Unit. Generally, a reconnaissance is done before an OPP mission and Wade Lacroix testified that he “would have liked” to “pace it off and walk the terrain.” In fact, the CMU encountered difficulties with the CMU formations that night during the encounter with First Nations people. To compound matters, the OPP had not been successful in installing cameras in the sandy parking lot, and visual intelligence was poor. There was also poor lighting in this area after darkness fell. As Wayne Wawryk, an expert in intelligence, said at the hearings, vision “is paramount” in tactical operations “[b]ecause if you can’t see, how can you put anything into context?”

The CMU Commander was confronted by many surprises that night when he and over thirty of his officers marched in darkness to the park. A question repeatedly asked is what was the urgency for the CMU deployment, and why did the OPP march toward Ipperwash Park in darkness on the night of September 6?

14.2 The Decision to Send the CMU down East Parkway Drive

A combination of factors led Inspector Carson to decide to deploy the CMU to the sandy parking lot outside Ipperwash Park. Unfortunately and tragically, much of the information on which he relied had not been analyzed or verified.

The decision to deploy his officers was based in large part on erroneous information. The OPP’s failure to communicate with the Aboriginal people from the inception of the occupation led the occupiers to believe the large number of police in the vicinity of the park were planning to enter the park, arrest them, and place them in custody. The OPP had a critical opportunity that night to make it clear to the occupiers that they had no such intention. But that did not happen. Poor communication, tragic consequences.

Before the CMU was deployed that night, Inspector Carson continued to mistakenly believe a car driven by a civilian had been damaged by bats, when in fact one occupier had thrown a rock at a car driven by Councillor Gerald George. It was a minor altercation between Aboriginal people. Poor intelligence.

The Aboriginal occupiers had moved the school bus to the park, and there was vehicular traffic between the army camp and the park. Inspector Carson knew the yellow school bus had been used in the occupation of the army camp about six weeks earlier on July 29, when it had been driven into the military Drill Hall. On September 6, the occupiers drove the bus to the park from the built-up area.

John Carson was worried that the school bus could be used for aggressive purposes toward the OPP. Another factor that concerned him were reports from the Oscar team and other ERT officers that the occupiers were outside the park in the sandy parking lot and on the roadway with bat-like objects. Carson did not understand that collecting bats and sticks, driving back and forth between the army camp and the park, and preparing the school bus were actions taken by the occupiers because the First Nations people truly believed the police were determined to end their protest, to physically remove them from the park, and to arrest them.

Inspector Carson was also concerned about the impact of the occupation on cottagers and other members of the community. A/D/S/Sgt. Mark Wright had met with residents at the MNR parking lot earlier that evening and persuaded them not to march to the park to demonstrate their anger and frustration. This was “certainly an issue” for Carson: “[I]f any of these cottages were broken into or damaged ... this issue was going to be most difficult to try and address.” He also testified: “Our credibility would have been absolutely lost” and “the cottagers would have taken it into their own hands quite frankly. I think their confidence level was on edge.”

There was increased activity in the area of the sandy parking lot. First Nations people with baseball bats and similar objects were reportedly near the cottage that bordered the sandy parking lot and also along the beachfront. The OPP mistakenly believed the occupiers had built a fire in the sandy parking lot, and that it threatened the safety of the nearby residents and cottages. This information had been transmitted to the command post by Constable Whelan, who was on the Oscar ERT observation team. The OPP relied on erroneous information in its decision to mobilize the officers that night. The two bonfires were in the park, at the beach and near the turnstile.

A critical factor in Inspector Carson’s decision to deploy the CMU was the inaccurate information that the occupiers had hit and damaged a car with baseball bats. Carson agreed that someone throwing a stone at a car is substantially different than a report that a private citizen’s car has been beaten with baseball bats. The poor intelligence in the police operation led the OPP to make mistakes that had serious and lasting repercussions. John Carson relied on this unauthenticated information in his decision to deploy the Crowd Management Unit to the park that night.

Although Inspector Carson believed there was a possibility the occupiers had firearms that evening, he thought the risk was small. But unfortunately, Acting Staff Sergeant Kent Skinner and his TRU team had a much higher and erroneous assessment of the risk of firearms in the possession of the occupiers at

the park. If John Carson had thought there was a serious danger the occupiers would fire guns on the CMU as it marched down the road to the sandy parking lot, he would not have deployed the CMU that night.

Inspector Carson decided to deploy the CMU and TRU to ensure the occupiers did not move outside the park to the municipally owned parking lot, to the road, or to the privately owned cottages. Again this crucial information was not conveyed to the First Nations people. A critical lost opportunity.

At 10:18 p.m., Inspector Carson contacted Inspector Linton at the command post to find out who lived in the cottage immediately west of the sandy parking lot. He wanted to ensure these residents stayed away from the side of the house bordering that area. About twenty minutes later, Mark Wright informed Inspector Carson that the house was vacant. In fact, this information was also inaccurate — Mrs. Fran Hannahson was in the cottage with her young grandson, who was sleeping.

It was Inspector Carson's understanding that his officers would contact cottagers in the vicinity of the park and advise them to remain in their homes. According to the scribe notes, Inspector Linton contacted the Jago residence. He also called the Hannahson cottage, but there was no answer. But this could not be case. Fran Hannahson did not have a telephone in her cottage.

Inspector Carson knew that deploying the CMU in darkness was not an optimal situation. He would have preferred the deployment to occur in daylight with a helicopter overhead and a video of the area, but he felt events were out of his control. He was off duty at a friend's home for dinner when some of the "escalating" incidents took place — the Stewart George/Gerald George incident, Mark Wright's encounter with the First Nations people at the intersection of East Parkway Drive and Army Camp Road, and Inspector Linton's decision to call out TRU. Inspector Carson said at the hearings, "It was chaos when I arrived back" at the command post. "There was a lot of information, a lot of discussion and a lot of things being shared back and forth." Issues came at him in a "barrage."

Many of the factors that propelled John Carson to deploy the CMU on the night of September 6 were based on unauthenticated and mistaken information. Of critical significance was the belief that a female civilian's car had been damaged with baseball bats. In fact, at 10:44 p.m., about twenty to twenty-five minutes before Dudley George was fatally shot, Detective Constable Dew informed Inspector Linton that one First Nations man, Stewart George, had thrown a rock at the car. But again this information was not communicated to Inspector Carson. Another critical opportunity was missed to allow Inspector Carson to reassess his decision to deploy the CMU and TRU. The consequences were tragic.

It was more than a year later before Inspector Carson learned that the car driven by Gerald George in the early evening of September 6 was damaged by a rock, not baseball bats. OPP press releases issued after Dudley George's death continued to perpetuate this unverified and inaccurate information, this time to members of the public. The continued dissemination of wrong information is discussed in Chapter 19.

14.3 The Incident Commander and TRU Leader Arrive at TOC

Inspector Carson and Acting Staff Sergeant Skinner, the TRU Team Leader, travelled to the Tactical Operations Centre (TOC) in tandem in separate cars. When they arrived at TOC at approximately 9:40 p.m., the officers were dressed in their respective uniforms and were organizing their equipment.

After Constable Zupancic reached TOC at about 9:35 p.m., he set up the TRU recording equipment. It was Rick Zupancic's role that night to operate the recorder and to transmit communications from TRU to Inspector Carson, and from Inspector Carson to the TRU team. Acting Sergeant Ken Deane was generally responsible for this function, but they had switched duties because of Constable Zupancic's back problems.

Constable Zupancic had been to a chiropractor earlier that day for his back, but the pain had become more acute. As a result, he requested lighter duties. In that night's mission, he would be expected to wear his TRU gear and be prepared to jump, run, climb fences, and make arrests, which he did not think he was physically capable of. Earlier that day, he spoke to Ken Deane whose role was to monitor and transmit TRU communications in the TOC. This was a more sedentary position. It was decided that Constable Zupancic and Acting Sergeant Deane would switch roles.

Inspector Carson and TRU Leader Kent Skinner were stationed in the front seat in the TOC vehicle during the OPP operation. There were two radio sets in TOC — one for the CMU on the TAC channel, and one for the TRU team.

It was also Constable Zupancic's role that night to provide cover to TRU medic Ted Slomer if his assistance was required during the deployment. They were instructed to use the Suburban vehicle. Slomer understood his prime responsibility was to provide medical support within the inner perimeter, primarily to police officers, and secondarily to others in the area. He was to provide medical support within the danger zone in which the officers operated. He also understood that he would serve as a liaison between the police and the EMS or medical personnel.

At TOC, Ted Slomer spoke with three members of the ambulance crew. He assured them that they would not be called into a high-risk or dangerous area. He explained that if the scene was not secure, he would enter the inner perimeter, triage, and funnel patients to the MNR parking lot for further assessment and transport to hospital. Further discussions between TRU medic Slomer and the ambulance personnel are discussed in detail in Chapters 16 and 17.

Ted Slomer was assigned the Suburban vehicle to transport injured persons that night, and Constable Zupancic was the designated driver. The paramedic wore the TRU uniform with the words “medic” inscribed on the back and front. He wore a bulletproof vest and a radio headset, and carried a small flashlight. Slomer had borrowed medical equipment from Victoria Hospital Emergency for this OPP operation. He had bandages, dressings, basic splinting materials, and ice packs. He also had intubation equipment to secure a patient’s airway, an oxygen cylinder with masks, and intravenous solutions. Ted Slomer was a volunteer medic for the OPP on September 6, 1995.

14.4 CMU Officers Congregate at TOC to Prepare for Their Deployment

At 9:49 p.m., Constable Wayde Jacklin was told to report to TOC to supplement the CMU arrest team. When he arrived, he was instructed to assemble an arrest team of eight members, which included officers Root, Zacher, Poole, Bittner, Ternovan, Myers, and Aitchison. Constable Jacklin was the group leader.

Constable Jacklin was aware of the 9:39 p.m. transmission from TOC (Lima 2) to the Forest Command Post (Lima 1) that women and children were evacuating the army camp, that the occupiers had a dump truck and “Batmobile” (“OPP WHO” car), and that they had built a large bonfire. Constable Jacklin believed the situation was escalating.

All CMU members were dressed in hard Tac equipment — shin guards, thigh guards, forearm guards, a helmet, and a visor. The arrest team was positioned at the rear of the CMU. They wore the same uniform as the CMU members but did not carry shields.

Constable James Root was partnered with Constable Jacklin. September 6 was the first time Constable Root had been deployed as a member of the CMU.

Prior to the deployment of CMU from the TOC site, Constable James Root was aware of the report from officers that gunfire may have been discharged from the army base or park area.

The CMU officers were instructed to form into their respective squads at TOC. Constable Kevin York was assigned to the front contact squad. His partner

was Constable Sharp. This was also the first time Constable York had been deployed in the Crowd Management Unit.

Sergeant Rob Huntley was the leader of the CMU's right squad on the night of September 6. Constable Christopher Cossitt was also assigned to the right squad that night.

Constable Denis LeBlanc's role was to drive a prisoner van behind the Crowd Management Unit. He was instructed to follow with his headlights off behind the prisoner van driven by Constable Harry Marissen. Constable LeBlanc was responsible for transporting any persons arrested that night to the Tactical Operations Centre.

A number of officers who testified at the hearings described their anxiety regarding their mission and the deployment of the CMU to the sandy parking lot. The darkness caused additional risks and challenges in terms of visibility, which concerned CMU officers. Constable Cossitt described the TOC site as "very dark and ominous." As stated earlier, there was also very little lighting at the sandy parking lot and in the vicinity of the park. Most of the officers did not have night vision equipment. Sergeant Hebblethwaite, the CMU's second in command, "didn't like" the fact that they were marching in darkness. Constable Cossitt was also worried about the potential use of firearms by the occupiers because of the rumours he had heard earlier in the day and recalls "being very nervous."

What was the urgency of the CMU mobilization and deployment to Ipperwash Park in the darkness of the night?

14.5 TRU Officers Assemble at TOC

Before TRU officers left Pinery Park for a briefing at TOC, many believed the First Nations people likely had firearms at the park. For example, Constable Zupancic had told Constable Beauchesne that AK-47s, hunting rifles with scopes, and possibly Molotov cocktails were in the possession of the First Nations occupiers. When the TRU team received their briefing at TOC that night, the possible existence of these weapons was further confirmed.

Ten TRU members were involved in the police operation at Ipperwash on the night of September 6. The TRU Team Leader was Acting Staff Sergeant Skinner, and the assistant team leader was Acting Sergeant Deane. Constables Rick Zupancic, Bill Klym, Kieran O'Halloran, Dave Strickler, Mike McCormick, Glen Kameron, James Irvine, and Mark Beauchesne were on the TRU team. Constable Beauchesne's partner that evening was Constable Klym. Acting Sergeant Deane's partner was Constable O'Halloran.

Kent Skinner had a discussion with Inspector Carson before he briefed his TRU team. The Acting Staff Sergeant understood TRU had two important roles. One role was for the Sierra teams to provide intelligence on activities at the park kiosk, the sandy parking lot, and at the intersection of East Parkway Drive and Army Camp Road. The two Sierra teams were to be invisible. TRU's second role was to provide cover for the Crowd Management Unit when it was deployed to the sandy parking lot.

Constable Zupancic, as mentioned, was responsible for recording TRU's transmissions and was assigned to TOC for the OPP operation. Rick Zupancic was to remain in the TOC with Acting Staff Sergeant Skinner and Incident Commander Carson. As I describe later in the report, TRU transmissions from and to the TRU officers in the OPP operation were not recorded as Constable Zupancic testified he did not press the appropriate buttons on the recording device.

Prior to TRU's deployment, Acting Staff Sergeant Skinner briefed his officers. There were two Sierra teams that night. These officers wore their tactical uniforms and also carried assault weapons. Constables Jim Irvine and Dave Strickler were on Sierra 1, and Constables Mike McCormick and Glen Kamerman were on Sierra 2. Each Sierra team had one piece of night vision equipment.

The TRU Alpha team consisted of four officers — Acting Sergeant Ken Deane, and Constables Kieran O'Halloran, Mark Beauchesne and Bill Klym. They also wore their tactical green uniforms, bulletproof vests, and carried a mixture of weapons, including assault rifles and semi-automatics pistols. Because the OPP had a shortage of night vision equipment, only one Alpha member (Mark Beauchesne) had night vision equipment. Ken Deane was the designated communicator for the Alpha team.²

TRU officers had an elevated and mistaken assessment of the risk that First Nations people had weapons in the park. Poor intelligence in the OPP operation with tragic repercussions.

When Acting Staff Sergeant Skinner briefed the TRU officers, he relayed the inaccurate and unverified information that he had received. He told the TRU team a civilian's car had been trashed by the occupiers with baseball bats, and there was the possibility the occupiers had a number of assault weapons. Ken Deane and the other TRU officers believed that the OPP were facing a situation that evening where First Nations people could be armed with AK-47s, hunting rifles, and Molotov cocktails. Several TRU members including Ken Deane had heard the report (which had not been verified) that fifty to one hundred rounds of gunfire had been discharged the previous night. They were also aware of the increased activity in the park in the late afternoon and evening.

² Ken Deane died shortly before he was scheduled to testify at the Inquiry.

First Nations people with baseball bats had not trashed a civilian’s car. This “broken telephone” message was relayed because of poor intelligence and miscommunication. Stewart George threw a rock at a car driven by Gerald George and no baseball bats were involved. It was simply an altercation between a Kettle Point Councillor and an occupier who was agitated because of a letter Gerald George wrote that was critical of the occupiers to the editor of a local newspaper. The OPP had no verification regarding the discharge of automatic gunfire on the previous night. TRU officers deployed outside Ipperwash Park were operating under wrong information. This continued perpetuation of wrong information and a mistaken perception of risk greatly contributed to the tragedy at Ipperwash on September 6 because it resulted in the deployment of the CMU and TRU.

Ken Deane, who organized the Alpha team, understood that if the Crowd Management Unit were subjected to or were threatened with gunfire, it was the TRU officers’ responsibility to “deal” with the gunfire or threat of gunfire.³

Sierra team 1 — Constable Irvine and his partner Constable Strickler — were instructed to find an observation point on the north side of East Parkway Drive. Constables McCormick and Kamerman on Sierra team 2 were instructed to position themselves on the south side of the road. Initially the Sierra teams were to observe and gather intelligence, but once the CMU was deployed, their role was to protect the CMU officers.

The Sierra teams had been instructed to gather intelligence on activity in the park kiosk and to cover the CMU as they moved down East Parkway Drive toward the park.

Inspector Carson described the TRU team as “the eyes” of the Incident Commander. The TRU team keeps the Incident Commander informed and apprised of events on an ongoing basis in the OPP mission.

At his trial, Acting Sergeant Ken Deane said he thought there was a realistic possibility there might be fire from AK-47s. An AK-47 is a semi-automatic machine gun. Ken Deane said, “[W]e took that intelligence [about firearms] very seriously.” But that information had not been verified by the OPP officers. Acting Sergeant Deane did not know whether the CMU had this information about the AK-47s on September 6. Ken Deane agreed that the Crowd Management Unit was completely ill equipped to deal with AK-47s.

Eight TRU members on three teams were on the ground that night — two Sierra teams and an Alpha team.

³ Ken Deane, transcript of testimony before Fraser J., Ontario Court (Provincial Division), April 8, 1997, pp. 173–174.

14.6 The Sierra Teams Are Deployed

Sierra 1 and Sierra 2 were deployed from the TOC site in the MNR parking lot at approximately 9:37 p.m.

There was a radio transmission that two TRU teams were being dropped off near the park to observe the area. This alerted the ERT Oscar team, which had been deployed to the nearby cottages, that TRU officers were in the vicinity.

The two Sierra teams, as mentioned, were Constables Irvine and Strickler, and Constables McCormick and Kamerman. They were transported part way up East Parkway Drive in a Suburban driven by Ken Deane.

The Sierra teams immediately encountered difficulties. Aboriginal occupiers were searching “for individuals all along the sides of the roadway.” The Sierra teams had difficulty moving into position “to be the eyes.” TRU officers feared they would become visible to the occupiers. Acting Staff Sergeant Skinner acknowledged this was a “tactical error” — the Sierra teams should have been deployed on foot, not in the Suburban. At no time prior to the deployment were the Sierra teams able to successfully move into position to be “the eyes” on the sandy parking lot. Even when the CMU were initially deployed, Constable Irvine radioed the Tactical Operations Centre that Sierra was not in position and did not yet have an eye on the park. Consequently, the Incident Commander did not have the benefit of their intelligence or surveillance on the night of September 6.

As I mentioned in the previous chapter, neither CMU nor TRU officers such as Staff Sergeant Lacroix, Sergeant Hebblethwaite, Constable Beauchesne, or Constable York understood that the CMU would be used as a diversion to allow the Sierra officers to move into position. As Staff Sergeant Lacroix, the CMU Commander, repeatedly said, that would be inappropriate. Had he had such knowledge, he would have “stood down” the CMU. The CMU would not have marched that night toward the park.

According to Acting Staff Sergeant Skinner, the OPP plan needed to be modified because of TRU’s inability to get into position to observe the park kiosk and the sandy parking lot. It was decided that the CMU would move onto the roadway as a distraction to the occupiers to enable the Sierra teams to move into position. As discussed, this was certainly not the understanding of the CMU Commander or his second in command. This would be an inappropriate use of the Crowd Management Unit.

Dale Plain, one of the Aboriginal occupiers, saw the Suburban vehicle pull up and stop. After they were dropped off, Constable Irvine and his partner Constable Strickler engaged in “caterpillar” movements to move forward. Constable Irvine would move forward, observe the area with his night vision equipment, and call

his partner to his position if the area was safe. Constable Irvine saw a man with a “large walkie-talkie hand-held radio,” and something long in his hands — a stick, pole, or rifle. He soon left the area.

14.7 Cecil Bernard George Returns to the Park

It was dark when Cecil Bernard George (“Slippery”) returned to the park that evening. He brought his walkie-talkies and scanner with him. He saw a bonfire burning inside the park as he approached the area.

Cecil Bernard George told the First Nations people at the park that there was a “large amount of police buildup to the west of the park,” and he “just had a funny feeling that something might take place.” He cautioned the occupiers to “be careful.” None of the occupiers had guns.

Roderick George was in the park when Cecil Bernard George arrived. Cecil Bernard gave Roderick his scanner as they talked by the bonfire near the turnstile. Cecil Bernard said he was going down the road to see what was happening. A couple of First Nations people, including Isaac Doxtator, accompanied him. Two fires were burning in the park that evening.

The purpose of the scanner, according to Warren George, was “to monitor the OPP ... to know if they were going to attack us.” Stacey George heard the police reacting on the scanner as the fire grew bigger in the park. He thought the police on the boat on Lake Huron also likely saw the bonfire.

Cecil Bernard George had brought a scanner to the park to pick up police communications. As they listened to the police exchanges on the scanner, Marlin Simon learned of Gerald George’s complaint to the OPP, and that the police were increasing their presence in the area. He also learned about the positioning of some of the officers. He learned that a mobile command centre had been set up in the parking lot off East Parkway Drive.

Marlin Simon also heard on the scanner that night that the OPP were dispatching a TRU team, which he considered to be a SWAT team. This greatly concerned Mr. Simon who felt “something big was ... about to happen.” Marlin Simon noticed there were few First Nations people in the park at the time. He “jumped in the car and went for a ride up to the barracks” to “see if [he] could round up any more people.” He “tried to round up ... as much help as [they] could get.”

Cecil Bernard George did not stay at the park for very long. He wanted to find out the reason for the police buildup and decided to walk down East Parkway Drive. He carried a four-or five-foot stick and one of his walkie-talkies. Two other young Aboriginal men accompanied Cecil Bernard George.

As he walked down East Parkway Drive, Mr. George heard “faint voices” and “sticks cracking.” He radioed this information to the Aboriginal people in the park.

The two Aboriginal men who were accompanying him returned to the park. Mr. George became increasingly anxious as he continued to walk down East Parkway Drive.

Elwood George saw Cecil Bernard George go on a “recon” down East Parkway Drive in a westerly direction to observe the activities of the police. On the walkie-talkie, Elwood heard him say he saw many police officers. Elwood George also decided to go to the built-up area to recruit more Aboriginal people to the park. When he returned to the park, he saw twenty to thirty occupiers. Aboriginal people were walking around with clubs.

John Carson learned after September 6 that Aboriginal people at the park were listening to police communications on the scanner. This greatly heightened the anxieties of the Aboriginal people and was responsible for escalating the tension at Ipperwash Park. Information on the positioning of the OPP officers, intelligence on the occupiers, and tactical decisions of the police is information that the Aboriginal people should not have been able to pick up on their scanner. John Carson said that, in hindsight, it would have been better if the OPP had transmitted information in such a way that civilians could not overhear it.

In my view, the ability of the occupiers to listen to the OPP communications on the scanner significantly heightened the anxiety of the First Nations people. It could have also compromised the safety of the officers. I agree that the OPP should take measures to ensure that communications between officers regarding tactical decisions and intelligence remain within the OPP.

14.8 Briefing before CMU is Deployed

According to Staff Sergeant Lacroix, Inspector Carson gave the CMU Commander his final briefing just before 10:25 p.m.

When he arrived at TOC, Staff Sergeant Lacroix requested an update on intelligence. He was told that although male occupiers had piled rocks in the sandy parking lot, had built a bonfire, and had been seen with sticks, there were no sightings of weapons. Staff Sergeant Lacroix also knew TRU had two Sierra observation teams whose roles were to provide cover for the CMU and to gather intelligence. He knew there was concern about snipers and was comforted that TRU would be “the eyes” in the park area. At that time, he mistakenly believed the two Sierra teams were already in position. Staff Sergeant Lacroix also did not know an ERT Oscar team was out that night. Poor communication within the OPP.

Before the CMU started down East Parkway Drive, neither the leader of the CMU nor his second in command Sergeant Hebblethwaite were told of a report about AK-47s, Mini Rugers, or gas bombs in the park or army camp. Had this information been confirmed as reliable by OPP intelligence, Staff Sergeant Lacroix “would have stood the CMU down.” The CMU deployment would have been cancelled. As he said at the hearings, “[o]nly TRU team have armour that can stop an AK-47 round.” The CMU were equipped with soft body armour and not the ballistic armour worn by the TRU team. The CMU was not equipped “for gunfights”; this was “completely outside” the CMU’s “mandate.”

Before the CMU was deployed, Staff Sergeant Lacroix was also told there was a bonfire in the sandy parking lot. More inaccurate information.

Staff Sergeant Lacroix understood the TRU Alpha team led by Acting Sergeant Deane would accompany the crowd management team.

At the CMU briefing conducted by Staff Sergeant Lacroix at TOC, officers received explicit instructions that under no circumstances were they to enter Ipperwash Park. The CMU’s role was to clear the Aboriginal occupiers from the sandy parking lot and the road intersection at East Parkway Drive and Army Camp Road.

When Staff Sergeant Lacroix briefed his CMU team, he updated the officers on the latest intelligence — fifteen to twenty males had sticks and stones but no weapons. If there was “any indication or sighting of a weapon,” Staff Sergeant Lacroix “would give the order ... to take cover” on the ground. The TRU team would “deal with it tactically,” or CMU would wait until the TRU team gave “the all clear.”

The role of Level II Incident Commander Carson was to define the OPP’s mission and objectives. John Carson was responsible for the overall event. The role of CMU Commander Lacroix was to decide the tactics to employ as he led the CMU to the sandy parking lot.

Inspector Carson’s final words to Wade Lacroix confirmed the CMU mission: “Clear the sandy parking lot. If they go freely, let them go”; if they “absolutely refuse to leave, arrest those that do not leave.” As Staff Sergeant Lacroix said, “And so off we went.”

14.9 CMU March Down East Parkway Drive toward Ipperwash Park

The TRU Alpha team, consisting of Acting Sergeant Deane and Constables Beauchesne, Klym and O’Halloran, was deployed slightly ahead of the CMU. They were instructed to walk ahead of the CMU to assess the area, to “be a set of

eyes in advance” of the CMU and “scope out the area.” The Alpha team had radios and headsets. All the TRU members were on the same radio frequency and could communicate with TOC and with the other TRU officers.⁴

The Alpha team split into two-man teams. Officers Beauchesne and Klym moved to the south or inland side of East Parkway Drive, and Officers Deane and O’Halloran went to the north or lakeside of East Parkway Drive. Mark Beauchesne had night vision equipment. No CMU officer had such equipment.

Staff Sergeant Lacroix received an update from TRU before the CMU left the MNR parking lot at approximately 10:27 p.m. The CMU Commander said: “[G]ood news. They’ve got rocks and sticks piled up and we all know we can beat that [inaudible] ... rocks and sticks that’s in our Bailiwick. All we have to worry about is little brown stocks and black barrels.”

The CMU marched from the MNR parking lot down East Parkway Drive toward the park in box formation.⁵ There were thirty-two officers. An additional eight-officer arrest team was in the rear. Two canine teams and two prisoner vans followed the arrest team.

Staff Sergeant Lacroix and Sergeant Hebblethwaite were in the middle of the contact squad, with the left and right cover squad on either side of them.

Inspector Carson watched the CMU leave the TOC site at the MNR parking lot.

Members of the CMU, including Sergeant Hebblethwaite, were not pleased to be marching down the road in darkness. As Constable Cossitt proceeded down East Parkway Drive in the right support section of the CMU toward the sandy parking lot, he was anxious: “I can recall being very nervous as we [were] going down into something that [was] unexpected and not sure what [was] going to be at the end.”

The helmets worn by the CMU officers had speakers inside. They could both hear and transmit information.

The distance from the TOC (Tactical Operations Centre) to the sandy parking lot was approximately 800 metres.

Acting Staff Sergeant Kent Skinner advised CMU it had been “spotted by their forward observers” (First Nations people), who were “retreating.” At this

4 TRU officers were on the TRU frequency that allowed them to communicate with each other and to the TOC. However, to ensure the radio channel was not crowded, one TRU member was assigned to be the communicator with the TOC. Acting Sergeant Ken Deane was designated as the communicator. The other Alpha members would report to him and he would report to Acting Staff Sergeant Skinner.

5 The box formation is used to travel quickly down a road. The contact squad is the first line of the formation, followed by the left cover squad, then the right cover squad, and lastly the arrest team. The officers in this formation are very close together.

point, the CMU had marched about 300 metres down East Parkway Drive. Staff Sergeant Lacroix ordered “dressing shields down,” a command for the CMU officers to put down the face shields on their helmets for protection.

Skinner advised the CMU: “[T]he spotlights are from the occupants and they are roaming wildly.” The TRU leader told the CMU that Sierra 1 and Sierra 2 were “not in position.”

About 500 metres out, Acting Staff Sergeant Skinner radioed: “CMU be advised, party on road may have a weapon in his hand.” Acting Sergeant Ken Deane had transmitted this information to TOC. Kent Skinner was the voice of the Incident Commander in TOC. Inspector Carson and Kent Skinner were in the vehicle together.⁶ A male stood on the edge of the sandy parking lot, “with what appeared” to be a rifle.

With his night vision equipment, Constable Irvine from Sierra 1 saw the same Aboriginal man he had seen earlier with the walkie-talkie and long object in his hands. This man was moving toward the advancing CMU. Constable Irvine knew TRU officers Deane, Klym, and O’Halloran were with the CMU. Constable Beauchesne with his night vision equipment also spotted this Aboriginal man and thought he might be carrying a firearm. Constable Beauchesne had crossed the road to convey this information to Acting Sergeant Deane, who communicated this information to TOC.

The CMU were instructed to stop. Staff Sergeant Lacroix split the formation: from the centre, half of the CMU officers moved right and half went left. They were instructed to kneel on both sides of the road. The sandy parking lot was not yet visible to the CMU. The officers waited for the TRU Alpha team to investigate — “all clear,” it was “a stick.” Constable Beauchesne scanned the area with his night vision equipment and confirmed it was a stick, not a gun. The man carrying the stick was Cecil Bernard George.

Roderick George heard OPP communications over the scanner. He heard one officer say, “[T]here’s one along side of the road,” meaning a First Nations person whom the officer thought had a gun. There was a pause, and then the officer said it was a stick, not a gun.

At that point, Acting Staff Sergeant Skinner advised the CMU Commander: “Alpha and Sierra 2 can cover your position.”

The CMU resumed their box formation and the officers and prisoner vans continued eastward toward the sandy parking lot.

⁶ John Carson was in the front seat of the TRU truck with Kent Skinner where they stayed for the duration.

14.10 Anxiety of First Nations People as They Watch the Police Approach

Cecil Bernard George became increasingly anxious as he continued to walk down East Parkway Drive. He heard “a lot of footsteps ... coming down the road.” Mr. George radioed to the people in the park that “they might be coming this way.” It was dark and he could not discern the figures. But as the footsteps became louder, he saw police officers in formation “completely from one side of the road to the other side” carrying shields. The officers came to a stop and Cecil Bernard heard voices.

As the officers proceeded to march toward the park, Mr. George could see in the moonlight that the police were dressed in “riot” gear, not their usual uniforms. He radioed to the occupiers in the park, “[T]he police [are] coming ... get ready ... It don’t look good.”

As Cecil Bernard walked back toward the intersection of East Parkway Drive and Army Camp Road, he saw some First Nations people in the sandy parking lot. He also saw the occupiers’ spotlights. As the CMU marched closer to the park, Mr. George saw the helmets, face visors, shields, and batons of the “riot police” — he “knew ... it was not good.”

Jeremiah George had walked with Cecil Bernard about half a kilometre on East Parkway Drive to monitor the moves of the police. After waiting for a short while, they saw the officers march shoulder-to-shoulder in their riot gear. Cecil Bernard told Jeremiah to run to the front gate and tell the occupiers to prepare for the police. About twenty-five occupiers were in the park at that time. Jeremiah George, who was highly anxious, ran to the park to the occupiers and then toward the beach, away from what he anticipated would be a police confrontation with the First Nations people.

Isaac Doxtator heard the stomping feet of the police march down East Parkway Drive before he saw the officers. Mr. Doxtator returned to the park and told the occupiers to turn on the spotlights. Two spotlights powered by vehicles inside the park illuminated the sandy parking lot and part of East Parkway Drive.

Cecil Bernard George was nervous. He thought about leaving the area and returning to Highway 21, but decided he did not want to abandon his sister, brothers, and friends in the park. He continued to walk toward Ipperwash Park.

As the police approached the park, Wesley George and the other occupiers saw the OPP dressed in riot gear. They stood shoulder-to-shoulder in rows and stretched across the road. This was a very intimidating sight for the Aboriginal occupiers. The police officers were equipped with bulletproof vests, shields, batons, helmets, and guns. The Aboriginal people had no protective clothing and had sim-

ply stockpiled rocks and sticks and stones on the inside border of the park fence. The Aboriginal people had no body armour or head protection. They also felt greatly outnumbered. As the police officers marched toward Ipperwash Park, the First Nations people were highly anxious and terrified.

When sixteen-year-old Nicholas Cottrelle first saw the CMU, the officers were almost at the end of East Parkway Drive where the road begins to curve. He saw the officers march in sync, dressed in full riot gear. Although it was dark, Nicholas Cottrelle could see the police officers from the reflection of the fire inside the park. “They had those big gloves” that reminded Nicholas of “hockey gloves,” shin pads, full face visors, helmets, shields, and batons. He heard police officers yell commands.

14.11 The CMU Arrive at the Sandy Parking Lot

After Cecil Bernard George communicated by walkie-talkie to the park occupiers that the police were coming, David George and other First Nations people went onto the paved roadway at the intersection of East Parkway Drive and Army Camp Road to watch the OPP approach. David George saw the CMU move toward the park in their grey riot gear uniforms with helmets, visors, batons, shields, and protective pads. As the CMU approached the sandy parking lot in formation, David George shone his spotlight on the officers. The Aboriginal people had two spotlights inside the park near the fence plugged into the cars.

Some of the Aboriginal people in the park included David George’s brother Clayton George; his uncles Roderick George, Stewart George, and Elwood George; his cousins Dudley George, Nicholas Cottrelle, Leland White, and Dale Plain; as well as J.T. Cousins, Kevin Simon, Stacey George, Gina Johnson, Isaac Doxtator, Robert Isaac — his relatives and friends. At the time, the park occupiers were predominantly men, some teenagers, and a few women.

As the police moved toward the park, Gabriel Doxtator turned on the second spotlight, which was hooked to Warren George’s car. He could not see down the road but he could see part of the sandy parking lot and asphalt. There was some light from inside the park store.

The occupiers had built a fire near the park store, the place where most First Nations people had been congregated before the CMU marched down East Parkway Drive. Stones and rocks were stockpiled in preparation for the police. As Kevin Simon said, the Aboriginal people “felt the need to defend [them]selves in some way.”

At no time before night set in did the OPP advise the Aboriginal occupiers that they would not enter Ipperwash Park if the occupiers remained within the park

boundaries. Nor did the OPP, when they arrived at the intersection of Army Camp Road and East Parkway Drive, instruct the occupiers to leave the sandy parking lot and return to the park. Again the opportunity to impart this information to the occupiers was missed.

The First Nations people heard the stomping feet of the CMU officers approach in the darkness. Some of the Aboriginal men ran back to the park, grabbing their sticks and stones in preparation for the police.

They saw OPP officers dressed in grey uniforms, standing in rows with their helmets, pads, and large shields. As they watched the police march down East Parkway Drive in their riot gear, Gabriel Doxtator and other occupiers thought, “[T]hey [a]re going to beat the hell out of us.”

Fourteen-year-old Leland White, son of Stewart George, was at the park on the evening of the police altercation. He saw the police march shoulder-to-shoulder down East Parkway Drive in their riot gear with their shields, bullet-proof vests, and batons. Leland White had great difficulty during his testimony recounting his observations of that very traumatic night. As he said at the hearings, “I don’t want to remember it all ... it’s like a bad dream and I can’t remember.”

In box formation, the CMU continued its march eastward toward the sandy parking lot outside the park. As they marched, Staff Sergeant Lacroix and Sergeant Hebblethwaite stood side-by-side, yelling commands and communicating what they saw as they approached the park. Staff Sergeant Lacroix would yell a command, which was then repeated by George Hebblethwaite, and then by the other members.

Staff Sergeant Lacroix saw people at the intersection of Army Camp Road and East Parkway Drive. The occupiers’ floodlights lit the CMU. Behind the floodlights, an ATV was doing “donuts.”

The CMU continued to march toward the sandy parking lot at a walking pace. Some First Nations people began to back up toward the park. As the CMU crossed onto the edge of the sandy parking lot, only about five or six occupiers remained outside the park near the fence.

As the CMU moved forward toward the sandy parking lot, Acting Sergeant Deane of the TRU Alpha team remained on the left side to cover the officers. Constables Beauchesne and Klym, also of the TRU Alpha team, were on the right side of the CMU and positioned themselves on the grassy hill on which there was a hydro pole just outside an entrance gate to the park on the southeast side of the sandy parking lot. They were elevated and had a good view of the sandy parking lot. Ken Deane positioned himself west of Mrs. Fran Hannahson’s cottage driveway.

At the time, Fran Hannahson was in the white cottage next to the sandy parking lot with her grandson. She was watching television at about 10:30 p.m. when she heard an “extremely loud ... commotion” outside. She ran upstairs from the living room. From a bedroom window, she saw the police in a “very tight knit formation” at the end of her driveway on East Parkway Drive. She saw the police dressed in riot gear, and she heard a lot of shouting. The CMU’s approach to the park was frightening to Mrs. Hannahson and Mrs. Jago, cottagers who watched the events of September 6 from their windows.

It was dark at the sandy parking lot when the CMU arrived. As Constable Root said, other than spotlights and the glow of a bonfire in the area, it was a very dark evening. Constable Root was at the rear of the thirty-two person CMU team as it marched down East Parkway Drive in box formation. As mentioned, this was the first time Constable Root had been deployed as a member of the CMU. He was partnered with Constable Jacklin, the leader of the arrest squad.

Constable Beauchesne and other officers saw about half a dozen Aboriginal people walking in the sandy parking lot. Some carried sticks and baseball bats. Spotlights or headlights shone on TRU officers. Inside the park, Mark Beauchesne saw a fire burning, a stationary bus and car, and at least one all-terrain vehicle. About twenty-five Aboriginal people, many of whom had sticks and clubs, congregated in the provincial park.

Staff Sergeant Lacroix ordered a “cordon formation” as the CMU left the pavement and entered the parking lot. Wade Lacroix manoeuvred the CMU from box formation into the more expansive cordon formation as the officers moved in the sandy parking lot. The CMU Commander realized he was constrained by the size and configuration of the sandy parking lot and would likely encounter difficulties if a confrontation with the First Nations people developed. Wade Lacroix said, “I was limited in my ability to manoeuvre after getting down there because ... there was no wheeled reccy ... [I]t was an extremely risky manoeuvre and I was not fully aware of all the factors.”

Again, had the OPP not been in such a rush to undertake this mission, the CMU Commander would have had the time he needed to prepare for this mission — hasty decisions with unfortunate consequences.

As the CMU approached the park fence, Staff Sergeant Lacroix saw about fifteen to twenty First Nations people around a large bonfire. A picnic table was burning in the bonfire, which he realized was inside the park, and not in the sandy parking lot. The information conveyed to him earlier had been wrong.

As the CMU advanced to the fence line outside the park, the Aboriginal people retreated from the sandy parking lot into the park. The occupiers yelled at

the police, which Constable Beauchesne described as “war cries.” This repeated use of culturally insensitive language and negative stereotypes by OPP officers created barriers and confirmed a lack of respect for the Aboriginal people. Undoubtedly, this created distance and obstacles to communication with the Aboriginal people, and to the objective of Project Maple, which was to resolve the occupation peacefully.

As the CMU came to a halt, the last few occupiers walked through the turnstile into the park. Constable Kevin York, who was in the front contact squad, said the officers were about five feet from the fence. As Michael Cloud said, the occupiers were lined up on the other side of the fence: “[W]e were face to face,” and “they outnumbered us.” The CMU moved up to the fence line and the officers were then ordered to move back toward East Parkway Drive. Staff Sergeant Lacroix thought his “mission to clear the sandy parking lot” was complete.

Sergeant Hebblethwaite radioed to TOC: “Be advised that we’re at the perimeter. The badgers are within the bounds of the park. The badgers are in the park.” In police parlance, “badgers” means “suspects.” Sergeant Hebblethwaite was communicating to TOC that the Aboriginal occupiers had returned to the park.

The occupiers, including Stacey George and Gabriel Doxtator, heard the police on the scanner say, “[T]he badgers are in the park.” As Stacey George said, the occupiers hadn’t “the slightest idea” what this meant.

TRU officers moved with the CMU as it backed onto the paved road at the intersection of Army Camp Road and East Parkway Drive.

At no time did the CMU convey to the First Nations people that if they remained in the park, there would be no confrontation with the police. Nor did they tell the occupiers the OPP had no intention of entering the provincial park. Neither Staff Sergeant Lacroix, Sergeant Hebblethwaite, nor any other officer had a bullhorn or megaphone to communicate these critical messages to the First Nations people. John Carson agreed with the benefit of hindsight that the use of a megaphone could have had “some value.” Nor did the police use their voices to yell this important message to the occupiers. The CMU were busy yelling commands to each other when the officers should have been yelling these crucial messages to the First Nations people.

The occupiers were convinced the police with their riot gear would march into the park and remove and arrest them for the occupation of the provincial park. There was clearly miscommunication on both sides.

The Aboriginal people were at the fence line. The occupiers yelled profanities at the police and said this was their land. There was yelling and swearing by both the police and the First Nations people. Michael Cloud said the Aboriginal

people shouted that the police had no right to be there, and that there was a burial ground in the park. “A lot of our guys kept reminding them that we have ... Native rights, this is a burial ground, and they were told over and over they had no right to be there.”

In his notes, Sergeant Huntley described the shouting from the First Nations people as “war yelps.” Again the use of such language was culturally insensitive and demonstrated that he may have had a negative stereotype of the Aboriginal people.

No officers saw firearms amongst the First Nations people. About twenty to twenty-five occupiers were in the park at that time. This was intended to be a “peaceful occupation” by the Aboriginal people. The First Nations people threw burning sticks, rocks, and other items at the CMU.

As the police backed up toward the roadway, Cecil Bernard George noticed some officers on the hill to the west of the sandy parking lot. The First Nations people in the park were “angered” by the police presence, their riot gear, and their intimidating actions: “there was really no answers to ... why they were there.” As Cecil Bernard George stood by the turnstile inside the park, his fear dissipated and his anger deepened.

14.12 Cecil Bernard George Walks into the Sandy Parking Lot: “Punchout” by the CMU

After the police retreated from the park fence, Stewart George’s black dog, who was barking at the turnstile, walked into the sandy parking lot toward the officers. One of the officers kicked the dog. David George saw the dog spinning in the dirt. Elwood George heard his brother Stewart’s dog yelping, as did Gabriel Doxtator and the other Aboriginal occupiers. Stewart George became very upset and asked the police who had kicked his dog. An officer yelled back a rude and threatening comment. Fourteen-year-old Leland, Stewart George’s son, heard the officer say: “I did. What are you going to do about it?” Other occupiers heard the same comment.

Cecil Bernard George stood by the turnstile inside the park. The anger began to build. Mr. George decided to try to speak to the OPP. The occupiers began to throw rocks and burning sticks. Cecil Bernard looked around for the Anishnaabeg police, “but they were no where in the area ... there [were] no Indian cops there to help [them to] communicate.” He could not “understand why [the] Native police weren’t involved ... at the beginning” of the occupation.

It is very regrettable that the OPP did not seek the involvement of First Nations police services in the Ipperwash occupation. Nor did the OPP seek the

assistance of First Nations mediators. The OPP knew it was experiencing great difficulties in opening up communication and engaging in dialogue with the Aboriginal occupiers. At this critical time, the presence of a First Nations police service or First Nations officers could have helped defuse the high tension between the OPP and the Aboriginal people. A crucial missed opportunity. Tragic consequences followed within minutes.

Cecil Bernard's anger continued to build:

Mankind then filled me with so much anger at that point ... no one would stop, no one would come out and try to talk to us. I tried talking, but it seemed like they were there to do a job that they were trained to do. No one knew why ... they were there except for they were there to show force. I knew why. I knew something bad was going to happen when that feeling took over me. (emphasis added)

Cecil Bernard George picked up a steel pipe. In emotional testimony, he described how he walked into the sandy parking lot with the pipe in his hands, believing he must defend his family and friends: "Protect the ones you love behind you at any cost." He saw all "these police officers in front" of him. Cecil Bernard George testified:

I tried to keep my anger inside the best I could, and then I told them that our grandfathers were buried there.

Staff Sergeant Lacroix and the CMU had at this time thought their "mission to clear the sandy parking lot" was complete. But as the CMU was about to transmit "they're in the park, mission accomplished," they saw a short "rotund man" come through the turnstile toward the front contact squad, swinging a six or seven-foot pole. They heard Cecil Bernard George and Aboriginal people yell, "[Y]ou're standing on sacred ground," and "[O]ur grandfathers fought for this land," and "[G]et back on the Mayflower." Sergeant Hebblethwaite also heard a "voice" say that his grandfather was buried on the property, and that it was Aboriginal land. That voice belonged to Cecil Bernard George.

Until this time, Staff Sergeant Lacroix did not know the occupiers considered the park sacred ground. The OPP officer commanding the CMU did not understand that this was a reason for the occupation of Ipperwash Park. He did not adequately understand the history and the culture of these First Nations people, and that the tactics traditionally employed on an unruly soccer crowd were not appropriate in an Aboriginal context. He expected the occupiers to react like a soccer crowd. He did not understand the Aboriginal people's connection to the land and the significance of their assertion that burial grounds, sacred sites, were in the

park. Many of the occupiers were related by blood — brothers, sisters, cousins, uncles. Family and friends participated in this occupation, not strangers in a soccer or hockey crowd. The CMU Commander did not understand the context of this Aboriginal protest or the issues confronting the Stoney Point people. Another fatal deficiency in the OPP operation.

Cecil Bernard George entered the sandy parking lot to try to persuade the officers not to confront the occupiers — not to use their weapons on his people. As he said at the hearings: “The first thing I told them was put their guns away.” Cecil Bernard was trying to communicate with the police.

Once again, the OPP did not ask or instruct Cecil Bernard George or the First Nations people to remain in the park. David George said at the hearings, “[W]e assumed they were there to take us out of the park.” Communication by the OPP officers at this critical juncture may have averted the physical confrontation and ultimately the death of Dudley George.

Staff Sergeant Lacroix testified that Cecil Bernard George approached the CMU, “getting very, very close” to an officer on the front contact squad. Wade Lacroix was “concerned” about the safety of his officers. This was a perfect opportunity for the CMU Commander to yell to Cecil Bernard and the other Aboriginal occupiers that the police had no intention of engaging in a confrontation or arresting them as long as they remained in the park. He failed to impart the message at this critical time that the OPP had no intentions of entering Ipperwash Park.

Fourteen-year-old J.T. Cousins and sixteen-year-old Nicholas Cottrelle watched Cecil Bernard George walk out of the park turnstile into the sandy parking lot to tell the police that this was Aboriginal land, their ancestors’ land, and to leave the area. Dale Plain, also sixteen years old, heard Cecil Bernard George yell at the police that they were trespassing “on our grandfathers’ graves.”

Cecil Bernard George was not a resident of the barracks or built-up area. He lived at Kettle Point and was a Band Councillor. As David George explained, Cecil Bernard George had come to the park that night in friendship and to be supportive. Michael Cloud urged Cecil Bernard George to return to the park, but Mr. George unfortunately remained in the sandy parking lot.

The CMU had backed up to Army Camp Road and set up a cordon formation.⁷ Staff Sergeant Lacroix was in the middle of the formation on the pavement on the edge of the park, and the front contact squad was about fifteen to twenty feet

7 The cordon formation is recommended for disorderly crowds. This formation tends to be intimidating because it gives the impression that twice as many officers are present. In the cordon formation, the first line is the contact squad. The officers are in pairs and are spread out ten feet apart from the next pair. The left and right cover squads are approximately twenty feet behind the contact squad on each side and are also spread out. This provides approximately sixty feet of coverage. The arrest squad is centred about twenty feet behind the left and right cover. From an aerial view, the cordon formation looks like an airplane. The contact squad is the nose, the left and right cover are the wings, and the arrest squad is the tail.

into the sandy parking lot. As the CMU formed this defensive position, Staff Sergeant Lacroix noticed a wire fence behind the CMU: “We really had no place to go from where we were.”

As mentioned, the CMU Commander did not have time before the deployment to the sandy parking lot to map out the terrain and dimensions of this area.

The Aboriginal occupiers in the park then heard a voice order “*punchout*,” and the police advanced at a fast pace into the sandy parking lot, beating on their shields.

Cecil Bernard George heard the “punchout” command and saw the police charge forward. Mr. George knew the police “were coming to punch [him] and punch everyone else that was in their way.” As he said, “the Indians had sticks and stones and they had guns.”

Staff Sergeant Lacroix commanded the “punchout” — a tactic in which the CMU officers ran toward the occupiers and yelled with shield chatter, the purpose of which was to intimidate the occupiers and have them return to the park. Inspector Carson explained at the hearings the philosophy of punchouts — to frighten protesters, have them retreat, and arrest any protesters who remain at the site.

On Staff Sergeant Lacroix’s instructions, the CMU ran toward Cecil Bernard George. It was approximately 10:58 p.m. Physical contact was made with the First Nations people.

As Cecil Bernard George swung his steel pipe, he found himself in the middle of a “nightmare.” He heard the “echo” of “glass breaking.” He saw “shadows” around him, “hitting at me, trying to kill me.”

Staff Sergeant Lacroix described a male with a steel pole, about six feet in length, running toward him. The swinging pole made contact with Staff Sergeant Lacroix’s Plexiglas shield, the edge of his helmet, and his shoulder. The Plexiglas shield broke in half. With his baton, Staff Sergeant Lacroix struck the man’s left clavicle shoulder-tip area. The Aboriginal man dropped the pole and fell down. Sergeant Hebblethwaite saw a person on his back on the ground with his arms and legs “flailing.” A group of officers were bent over him. Staff Sergeant Lacroix could not identify the man who struck his shield other than that he was five foot ten or five foot eleven inches — he was a “silhouette.” That “silhouette” was likely Cecil Bernard George.

Constable Chris Cossitt of the right squad testified that he ran toward an Aboriginal man, whom he thought was Cecil Bernard George, and knocked him down with his shield. He said that Mr. George was swinging an object in a forward motion. Constable Cossitt hit Mr. George in the arms and shoulder with his shield, and the two men fell to the ground.

Constable Cossitt carried a clear plastic shield with the word “police” inscribed across it on a diagonal. It was approximately three and a half to four feet in length, about twenty-four inches wide, and about one-quarter inch thick. Constable Cossitt made contact with the full length of his shield. The person he identified as Mr. George fell down on his back and began to kick. Constable Cossitt swung his baton to try and block the kick. Chris Cossitt said he struck at Mr. George’s left leg but is uncertain whether he made contact with him. Constable Cossitt stated at the hearings that he does not know if his baton contacted Mr. George’s body.

Cecil Bernard felt the officers hit and kick him and he believed the police were determined to “kill” him. He tried to get away, but the police continued to hit him. Cecil Bernard found himself on his back and tried to protect his face as he kicked out at the officers in an unsuccessful attempt to escape.

Fourteen-year-old J.T. Cousins and the other First Nations people watched in disbelief as the police charged Cecil Bernard George. Nicholas Cottrelle heard the police order and then saw the officers rush forward in formation toward Cecil Bernard George. He saw them knock Mr. George down with their shields and begin to beat him. About eight officers were involved. Cecil Bernard was curled up on the ground, trying to protect himself. David George also saw Cecil Bernard fall backwards and try to use his arms to protect himself. The officers surrounded Cecil Bernard George and kicked and clubbed him. The First Nations occupiers watched Cecil Bernard being beaten by the police. Elwood George and others saw the police kick and strike him with their batons.

Officers shouted “punchout” and other orders to other officers, but no words were shouted by the OPP to the Aboriginal occupiers. CMU officers again did not yell to the Aboriginal occupiers that if they remained in the park, there would be no confrontation with the OPP. Had the OPP given this warning, the altercation with Mr. George and the occupiers’ subsequent re-entry into the sandy parking lot may have been avoided.

Gina Johnson, Cecil Bernard George’s sister, watched the police beat her brother. She started to scream, “[S]omebody do something. They’re going to kill him. Get out there and do something.” Cecil Bernard George was kicking and trying to “get away” from the police. The Aboriginal occupiers stood inside the park fence watching Cecil Bernard being beaten by the police and quickly decided to heed Gina’s plea.

It was a “split-second” decision when the First Nations people agreed as a group to stop the beating. As Elwood George said, we decided we would go out there and “do whatever we could to try to stop them.” Elwood and the other occupiers felt no one would be able to sustain the “type of punishment or beating”

administered to Cecil Bernard George for more than “a minute or two.” The police kicked and hit him with their batons. As Elwood George said, seeing that made him want to go and help — that was “a natural thing to feel.”

About fifteen occupiers emerged from the park into the sandy parking lot, carrying sticks, clubs, and poles. Their purpose was to rescue Cecil Bernard George from the police beating.

Nicholas Cottrelle ran with approximately fourteen other First Nations people across the park fence into the sandy parking lot to rescue Cecil Bernard George. This is “when we had our first fight with the cops.” The sixteen-year-old carried his baseball bat. People were shouting. Fourteen-year-old Leland, son of Stewart George, did not go into the sandy parking lot during the altercation. He remained within the park boundaries. He decided to go into the school bus with his dog because he “felt safer there.”

Some of the Aboriginal people involved in the altercation were not from Stoney Point. They included Robert Isaac from Walpole Island, Gabriel Doxtator and Al George from Oneida, Les Jewell from the U.S., and Dutchie French from Muncey. Neither the Stoney Point people nor the Aboriginal people from outside the community were armed during the confrontation in the sandy parking lot.

Dudley George was a member of the group that left the park to help Cecil Bernard George.

14.13 Altercation between the OPP and Cecil Bernard George

After carefully analyzing the medical evidence, which I discuss in Chapter 17, the evidence of the police, and the testimony of the First Nations occupiers, I have concluded that Cecil Bernard George was excessively beaten on his head and face by the OPP.

Constable Wayde Jacklin, the leader of the CMU arrest team, saw a person on the ground. He directed the arrest team to move forward into the sandy parking lot.

Constable Root saw members of the contact squad struggling with an occupier. The arrest squad was instructed to proceed to this site and remove the First Nations person. As Constable Root advanced, he saw eight to ten officers from the contact squad standing around the person who was on his back on the ground. The officers were trying to take control and subdue the occupier, who was trying to resist the arrest by kicking and flailing his arms. Constable Root saw one officer strike Cecil Bernard George with an ASP baton as many as two to three times.

Constable Sam Poole, also a member of the arrest squad, saw Cecil Bernard George lying on the ground ahead of him with several officers standing nearby.

As Constable Poole approached, he saw an OPP officer deliver “a kick” to Mr. George’s “mid-section.” Constable Jacklin also saw one of the officers kick Mr. George with his boot. Constable Jacklin was not able to identify the officer at the hearings, but said he carried a shield. This meant he was not a member of the arrest team.

Constable Bittner, another member of the arrest team, also saw Cecil Bernard George lying on the ground in the sandy parking lot surrounded by CMU officers. He saw an officer strike Mr. George with a baton twice in the right shoulder area. Because of the darkness and the fact that no badge numbers were on the helmets, Constable Bittner also could not identify the officer.

Unfortunately, neither the uniforms nor the helmets displayed the officers’ names or badge numbers; therefore, the identity of the officers who kicked and hit Cecil Bernard George with their batons was not easily discernible. It would have been advantageous to have the name of the officer inscribed on his clothing or helmet. OPP Commissioner Gwen Boniface testified that the OPP have made changes in this regard since Ipperwash.

Constable Denis LeBlanc, a driver of one of the prisoner vans, saw an officer administer two motions of the baton in Cecil Bernard George’s direction. He saw the officers fight with Mr. George, jump on top of him, and turn him over to pin him down. It was a physical fight.

Cecil Bernard George testified that the police repeatedly hit and kicked him, and he was convinced they were trying to kill him. He was “pile-bagged” several times — officers jumped on him and held him down.

As the CMU members moved forward toward the park fence in the punchout in which Cecil Bernard George was arrested and the First Nations people came over the park fence into the sandy parking lot, the occupiers and officers made contact and a number of confrontations took place simultaneously.

Kevin Simon had two pieces of firewood in his hands that he threw at the police — one piece hit the helmet of a CMU officer. David George hit an officer’s shield with a baseball bat, and he was clubbed from different angles. He regained his composure and again hit and broke an officer’s shield.

Warren George threw rocks and other items at the police, as did Wesley George, who threw stones and pieces of wood. Elwood George struck an officer’s helmet with a large club in the sandy parking lot. It was a limb from a tree, about four feet long, two inches round. Stewart George hit an officer’s shield and helmet with a pickaxe handle. Stewart George was hit by a police baton.

Michael Cloud took a fifteen-to eighteen-inch burning stick from the bonfire where the picnic table burned and threw it at the police. He also threw a burning broom handle at the officers.

Elwood testified at the hearings, “[W]e were very badly outnumbered. Things weren’t going too good for us.”

Constable Kevin York made contact with a large occupier who struck his shield with a baseball bat. In turn, Kevin York hit the occupier’s knee with his baton.

An occupier’s club hit Sergeant Rob Huntley’s shield. The OPP Sergeant in turn hit the occupier’s leg.

TRU Constable Mark Beauchesne watched the fifteen First Nations people emerge from the park yelling taunts and throwing items. He saw the CMU rapidly advance to the park fence and overrun several Aboriginal people. Constable Beauchesne watched these events from the top of a hill on a grassy dune. He watched the clusters of officers physically engage with the First Nations people. He saw the First Nations people throw objects at the officers. Constable Beauchesne felt somewhat vulnerable because, unlike the CMU, the TRU officers were not equipped with helmets, visors, or shields.

Constable Sam Poole physically moved two officers out of the way in an attempt to get Cecil Bernard George under control to handcuff him.

Constable Root had difficulty placing handcuffs on Cecil Bernard George, who continued to resist the arrest. The occupiers continued throwing items at the officers, one of which hit Constable Root’s helmet and damaged it. Constable Jacklin instructed the arrest team to move Mr. George out of the area. The throwing of projectiles by the First Nations people intensified.

Four officers, one of whom was Sam Poole, each took an arm or leg of Mr. George and moved him out of range of the projectiles. Mr. George was carried to the rear of the CMU and placed near the prisoner van. Sam Poole said Cecil Bernard George was handcuffed with his hands behind his back. Constable Poole thinks his ankles may also have been restrained.

Cecil Bernard George’s body “hurt all over.” He felt pain in his face, head, arms, and legs. He stopped resisting the police. He heard voices and then felt his hair being pulled. Mr. George was moved and placed inside a vehicle.

David George saw Cecil Bernard George go limp. He and other First Nations people saw the officers drag him by the hair. David George thought Cecil Bernard George had lost consciousness.

Constable Poole denied that he had dragged Cecil Bernard George by the hair to the van, nor did he see other officers do this. Nor did Constable Jacklin see any officer drag Cecil Bernard George by the hair.

Constable Bittner was one of the arrest team members who carried Cecil Bernard George to the van that was parked on East Parkway Drive. Mr. George, he said, was carried to the prisoner van face down, his hands and ankles cuffed. Constable Bittner claims he did not see any officer drag Mr. George by his

hair. Constable Bittner had immobilized Cecil Bernard George's ankles while another officer had attached flex cuffs, and Constable Bittner then placed metal handcuffs to Mr. George's wrists.

Constable Jacklin, as well as other members of the arrest team, noticed blood on Cecil Bernard's lips, cuts near his mouth, and swelling on his face. Constable Jacklin did a cursory check of Mr. George's condition, but does not recall checking the back of his head. Nor did he determine whether Mr. George had tender spots on his body. Mr. George's eyes intermittently opened and closed. Constable Jacklin was not sure whether Mr. George was conscious.

Constable Poole said Mr. George stopped struggling and was no longer speaking.

Constable Root observed lacerations and blood on Mr. George's face. The prisoner was subdued. Constable Root was uncertain whether Mr. George was conscious.

Cecil Bernard George was placed face down on the ground outside the prisoner van. Constable Bittner described him as very passive and also did not know whether Mr. George was conscious. One of the officers opened the rear door of the van, and Cecil Bernard was lifted into the police vehicle. After Mr. George was lifted, Constable Bittner noticed a wet spot on the roadway, which he assumed was blood.

Constable Jacklin directed that Cecil Bernard George be placed in the prisoner van in handcuffs. He asked Constable LeBlanc to get an ambulance and medical attention for Cecil Bernard George. Constable LeBlanc made a radio request for an ambulance.

Denis LeBlanc asked medic Slomer to check the prisoner's condition. Constable LeBlanc went to Constable Marissen's van and opened the back doors. Slomer entered the van, examined the patient, and said the prisoner needed to be transported to hospital immediately.

When Constable LeBlanc had opened the prisoner van door, Cecil Bernard George was lying on his side. He had an abrasion above his eye, blood around his mouth, and a swollen and cut lip. Constable LeBlanc did not assess Cecil Bernard George's level of consciousness. Denis LeBlanc went to the ambulance at TOC and told the two attendants to come to the prisoner van.

Constable LeBlanc removed the handcuffs from Cecil Bernard George and helped move him onto a gurney. He instructed the ambulance attendants to transport the patient to Strathroy Hospital. At that time, Constable LeBlanc did not know there was a difference between St. John Ambulance attendants and EMS. He instructed two uniformed officers to follow the ambulance to the hospital and to remain with the patient who was under arrest. Constable LeBlanc did not know

what Mr. George had been arrested for. Cecil Bernard’s trip to the hospital is discussed in Chapter 17.

When TRU medic Ted Slomer asked Cecil Bernard George a question, he did not respond. Constable LeBlanc thought Cecil Bernard was intoxicated. I find this explanation difficult to believe.

Constable LeBlanc admitted that he did not smell alcohol on Mr. George. Constable LeBlanc had seen the motion of two baton strikes toward Cecil Bernard George, he had seen police officers fighting with and on top of Mr. George, and he had seen Cecil Bernard kicking and trying to get away from the police. He also saw the injuries to Mr. George’s face, including an abrasion near his eye and on his lip. Clearly, Mr. George’s behaviour and physical condition were consistent with someone who had sustained trauma to his head. I do not accept Constable LeBlanc’s explanation that he thought Cecil Bernard George was under the influence of alcohol.

In my view, Constable LeBlanc’s assumption was demonstrative of the negative stereotyping of First Nations people. As I discuss in the medical chapter on Cecil Bernard George, the blood tests performed at Strathroy Hospital confirmed that Cecil Bernard George had no alcohol in his blood on the night of September 6. He was unable to respond to questions because of the severe beating he had sustained in the confrontation with the OPP that night.

14.14 The Bus and Car Emerge from the Park

Nicholas Cottrelle was one of the First Nations people who crossed the fence into the sandy parking lot to rescue Cecil Bernard George after the CMU Commander ordered the punchout. His baseball bat broke in half when he came in contact with an officer. The officer, in turn, hit him on the leg. Nicholas Cottrelle returned to the inside of the fence to retrieve some other items, such as rocks, to hurl at the officers.

It was at this time that a First Nations occupier yelled, “[G]et that bus over there. Get that bus out there.” Kevin Simon explained, “[A] lot of us didn’t know what to do”; the First Nations people saw “what [they] were up against.” The decision to drive the bus into the sandy parking lot was made to rescue Cecil Bernard George from the police beating. Roderick George explained that because the Aboriginal people did not have any guns, the purpose of the bus was to “split the police officers up” — to divide the officers. Elwood George was one of the occupiers who yelled for the bus because he wanted to help stop the beating. Elwood George and others thought they were losing their fight with the police.

Nicholas Cottrelle ran to the school bus and climbed into the driver’s seat. As

mentioned, Leland White, who was panicked by the OPP's approach in riot gear, had gone into the bus with his dog because he "felt safer there." Leland White had been on the bus only a short time when his cousin Nicholas climbed in and started to drive it out of the park. The park gate was blocked by a dumpster. Nicholas hit the dumpster that obstructed his way and plowed through the park gate. Trying to find Cecil Bernard George, Nicholas drove through the sandy parking lot in the direction of East Parkway Drive and toward the officers. Nicholas Cottrelle drove through the police line and saw police vans on East Parkway Drive. He saw "cops in the ditches and bushes" as he drove as far west as a driveway on East Parkway Drive (Mrs. Jago's cottage, "6842"). Nicholas Cottrelle testified the maximum speed he travelled was approximately fifteen kilometres an hour. Nicholas did not see Cecil Bernard George.

Roderick George noticed his son Nicholas Cottrelle was driving the school bus. He saw the bus push the dumpster out of the way and travel down East Parkway Drive. He followed the bus, worried it was travelling too far from the park. He saw officers lying in the ditch on the south side of East Parkway Drive.

Staff Sergeant Lacroix and the other officers watched the bus move forward through the sandy parking lot toward the road. They watched the car push the dumpster across the sandy parking lot in the direction of the officers. Staff Sergeant Lacroix yelled, "[S]plit formation," to move his officers off the road to enable the bus to drive through. But the bus drove near the fence where CMU officers were standing. Some officers tried to climb the fence, while others "tried to dive ... back towards the pavement." Sergeant Hebblethwaite was convinced "someone was going to be killed as the bus neared [their] men."

TRU Constable Mark Beauchesne, a member of the Alpha team, also saw the bus leave the park, accelerate through the sandy parking lot, and drive toward the officers on East Parkway Drive. Initially Constable Beauchesne thought the bus driver intended to intimidate the officers but quickly realized the bus was continuing "right through the centre of the road, right through the CMU members."

Constable Beauchesne's initial reaction was to "shoot the driver to stop him," but he "ruled it out immediately ... because the bus was already moving too quickly and it wouldn't have stopped the bus." As the bus approached the police, CMU officers dove out of the way. Constable Beauchesne thought CMU officers had been "run over by the bus."

Staff Sergeant Lacroix pulled out his gun but realized the officers in the ditch were between him and the bus — he did not have a "clear shot." Sergeant Hebblethwaite also drew his pistol but concluded it was not safe to fire as he feared he would hit one of his officers.

Constable Jacklin, who was at the prisoner van with Cecil Bernard George, heard a commotion and decided to join the rest of the CMU. He saw officers diving out of the way of the school bus and jumping into the ditch as the bus moved toward them. He was convinced the driver was trying to “take [the] officers’ lives” on the road. In an attempt to disable the bus, Constable Jacklin activated his pepper fogger. The bus eventually stopped, and Constable Jacklin saw a male teenager — it was Nicholas Cottrelle.

Constable Root saw the yellow school bus emerge from the park and approach them westbound on East Parkway Drive. The bus was being driven erratically. Constable Root sought cover in a ditch with Constable Ternovan. Constable Bittner was another officer who jumped from the roadway into a ditch to avoid being struck by the bus.

Denis LeBlanc was at the prisoner van on East Parkway Drive when he saw the school bus exit the park and drive toward the CMU officers. Silhouetted by the headlights, he saw officers diving and running out of the way of the bus. There was a lot of commotion. Constable LeBlanc thought the bus might have hit the officers.

Ken Deane claimed that as the bus drove past him on East Parkway Drive, he saw a muzzle flash originate from the interior of the bus. He claimed the muzzle flash originated half to three-quarters from front to back on the right side of the bus. He did not shoot at the bus. He thought the occupiers were trying to shoot at officers on East Parkway Drive, and he considered it attempted murder.

As Nicholas Cottrelle testified, “there w[ere] absolutely no firearms in the park” that evening — “it was a peaceful occupation.” Leland White also said it was not possible that someone shot a gun from inside the bus.

It is my view that the muzzle flashes Acting Sergeant Deane claimed he saw did not originate from the interior of the bus. No other officer saw muzzle flashes emanate from inside the bus. The only two people in the bus were sixteen-year-old Nicholas Cottrelle and fourteen-year-old Leland White. Neither teenager was in possession of guns on the night of September 6.

Shortly after Nicholas Cottrelle started to drive out of the park toward the sandy parking lot, Warren George ran to his car inside the park. Gabriel Doxtator was aiming the spotlight at the officers at that time. Warren George drove to the sandy parking lot “to try and help Slippery ... get away from the police.”

Gabriel Doxtator left the spotlight because Warren George needed to pull his car out and he lost his battery source. Gabriel Doxtator assumed Warren George would use his car to push the police back. With a six-foot stick in his hand, Gabriel went into the parking lot to confront the police. He hit their shields. He followed the bus and car as they drove west on East Parkway Drive.

Stacey George also thought the bus and car emerged from the park to rescue the occupier who was being beaten in the sandy parking lot. At the time, he did not know it was his brother Cecil Bernard George.

Warren George followed the bus through the gate to East Parkway Drive. He drove at the same speed as the bus, which he estimated was less than twenty kilometres an hour.

Fran Hannahson, who was in the white cottage with her grandson next to the parking lot, heard the bus engine and something loud being pushed. It was the dumpster. She saw the bus gather speed as it left the park, and she saw figures running next to the door-side of the bus. She also saw the car drive from Ipperwash Park and thought that if the police did not jump out of the way, these vehicles would hit them. The bus and car disappeared from her sight. Mrs. Hannahson was in a state of panic. She went to her grandson's bedroom and stood by the window.

In his peripheral vision, Staff Sergeant Lacroix saw the four-door car travel on the lake or north side of East Parkway Drive in a westerly direction. It suddenly swerved toward about ten CMU officers. Staff Sergeant Lacroix saw three of his officers hit by the front of the car:

I [saw] one officer try to jump up and I think he thought he was going to use a shield to buffet himself, but the shield kind of folded and I saw his face-shield kiss the hood. It kind of just crumpled up in the hood. I saw another one get hit and sent flying backwards. I saw his arms go out and he landed on another couple of public order members that I think knocked them down. He ended up on the ground — what appeared to me [to be] his legs underneath the hood. There was another of them struck by — he kind of went off the edge of the fender.

Constable York also saw the car hit three to five CMU officers, some of whom fell on the hood of the car and some to the ground.

Constable LeBlanc saw the bus pass his prisoner van before it came to a stop. He looked into his rear-view mirror and saw the car driving through the sandy parking lot. As he said at the hearings, it looked like it was “coming straight at me.” The car made a sharp right turn toward officers on the side of the road. Constable LeBlanc saw an officer on the hood of the car, and it appeared the car bumper also hit several officers.

Constable Beauchesne's attention was also diverted from the bus to another vehicle “coming out of the sandy parking lot area.” The car drove to the side of the road toward six or eight CMU officers. Constable Beauchesne saw officers fall

onto “the hood of the car” and heard the noise of their equipment as it hit against the vehicle. Constable Beauchesne thought the car had “run over” part of the CMU team. He saw the silhouette of one person, the driver of the car. Mark Beauchesne decided to shoot the driver “if he made one move again towards the officers.”

14.15 The OPP Shoot at the Car

After the car came in contact with the officers, it reversed, its tires squealed, it lurched, and then it slammed into drive. Warren George said that as he headed toward a crowd of officers, “an officer stepped in front of [him] and pointed a gun at [him]. [He] turned the wheels to the right and stepped on the brakes.” The reason Warren George stopped and “cranked” his wheel was to avoid being shot. The officer “started shooting at [him].” Warren George knew he had “hit a number of officers and knocked a ... few of them down” with his car. He said he travelled to about the second driveway on East Parkway Drive (Mrs. Jago, “6842”). As he backed up his car, Warren George heard “a lot more shots go off.”

The shots fired at his car shattered the window while he was reversing. Warren could see the muzzle flash of the officer who pointed his gun at him and fired. Warren George did not have a firearm in his vehicle. He did not see any firearms in the park that day nor had he seen any since September 4, 1995, when the First Nations people had occupied the park. He said gunshots were fired when he started to back up the car after knocking down three or four officers. A few officers clubbed his car with batons.

Wesley George also saw an officer point his weapon at the car and heard three or four gunshots.

Staff Sergeant Lacroix testified he was fifteen to twenty feet from the car with his weapon drawn. He was determined to “stop” the driver of the car. He ran toward the car, trying “to get in close” because he “wanted to fire down ... to make sure there was no ricochet.” Wade Lacroix fired “two to three rounds” down “into the driver’s compartment.” He did not see any passengers in the car.

Constable Beauchesne testified that he “fired two rounds in very rapid succession” with his rifle at the driver. The driver was about twenty metres away. The vehicle stopped. Constable Beauchesne did not see a firearm in the car, nor did he see any other occupier with a firearm the night of September 6. It was after Constable Beauchesne fired his gun that he heard other gunfire, which he believed to be police gunfire.

George Hebblethwaite fired four rounds at the right front corner of the car, hoping to disable the car or the driver. He missed the car.

As Wade Lacroix was firing, he heard other gunfire, and saw two to three muzzle flashes. The car backed away immediately. At no time did Staff Sergeant Lacroix see any firearms in the car, nor did he see any First Nations person in possession of a gun that evening.

Constable York drew his firearm after the car reversed. He heard gunshots prior to discharging his gun. He shot into the windshield of the driver's side but was uncertain if he struck the vehicle. It was Constable York's "intention ... to stop the vehicle and the only way to stop the vehicle from driving forward twenty feet and potentially killing officers was to shoot the driver." Like Staff Sergeant Lacroix, Constable York saw no firearms in or protruding from the car, nor did he see any firearms in the possession of any First Nations people that night.

Nor did Acting Sergeant Deane, who was on the north side of East Parkway Drive, see any muzzle flashes from the car. He had seen the car travel down East Parkway Drive, veer sharply to the right and strike approximately three to four CMU members. He saw one CMU member fall on the hood of the car and then roll off. As the car reversed, Ken Deane walked forward on the lake side of East Parkway Drive.

Denis LeBlanc was at the prisoner van on East Parkway Drive when he saw muzzle flashes in line with the driver's door and in front of the car. Constable LeBlanc was only able to identify the location of the muzzle flashes, not their source. It is possible, he said, that the officers' guns were the source of the flashes. He did not see a weapon during this entire incident.

By contrast to the other officers, Constable Chris Cossitt claimed he saw a barrel come out of the car. He claimed the barrel was consistent with a 12-gauge shotgun. He said he was twelve inches from this barrel when it was discharged. He claimed he could see muzzle flash from it and could feel the heat. He said that as the barrel came out of the open window of the car, it was twenty to twenty-four inches from him, and that he feared for his life when the gun was discharged. He said he did not shoot at the driver because he felt his life was in jeopardy, he had to leave the area, and he could not access his weapon quickly enough.

I do not accept Constable Cossitt's evidence that a shotgun was in the car or that it was discharged. Other OPP officers who were close to and who shot at Warren George's vehicle did not see any firearms in the car. Warren George also testified that he did not have a firearm in his vehicle as he drove out of the park, through the sandy parking lot, to East Parkway Drive.

Fran Hannahson, who had watched both the bus and car drive out of the park and into the sandy parking lot and then disappear from her sight, was in a high state of anxiety. She was at the window in her grandson's bedroom. She heard the gunshots. She stood next to her grandson who was asleep on the top bunk bed. She

placed her hand on his head, “wondering should [she] be pulling him off [the] bed or what should [she] do.” As mentioned, Mrs. Hannahson did not have a telephone in her cottage.

14.16 The OPP Shoot at the School Bus

Sixteen-year-old Nicholas Cottrelle and fourteen-year-old Leland White and his dog were the only occupants on the bus on the night of September 6. After Nicholas stopped the bus on East Parkway Drive, he tried to shift the gears into reverse and the grinding of gears could be heard. As he was backing up in the direction of the park, he and Leland heard “gunfire,” bullets hit the bus, and a “window shatter.” Nicholas saw police and guns and felt a “burn on [his] back.” He told Leland he thought a bullet had hit him but that he was able to continue to drive the bus. Leland White was crouched on his knees and his dog was barking. He was worried about the safety of his dog whom he wanted to protect. He was concerned his dog might be shot, and that he too might be shot. He placed a laundry basket at the rear of the bus at the window to prevent the police from entering the school bus.

Constable Kevin York watched his partner Constable Sharp fire at least one round at the bus as it was reversing. When Constable York saw the bus reverse, he realized his safety was in jeopardy and he jumped into the nearest ditch. At no time did Constable York see any firearms in or protruding from the bus. Nor did he see firearms in the possession of any First Nations person that night.

Constable Jacklin saw a muzzle flash as the bus was reversing but could not identify the source of the muzzle flash. He did not see any gunfire emanate from the bus, and he assumed the muzzle flash was from a police officer’s firearm. He did not see any First Nations people in the vicinity of the muzzle flash. Throughout the entire confrontation that night, Wayne Jacklin did not see firearms in the hands of any First Nations occupier.

Mrs. Jago, who lived at 6842 East Parkway Drive, passed away before she was scheduled to testify at the Inquiry.⁸ From her cottage, she could see the yellow school bus and the car. She saw the OPP officers in grey uniform, and heard “screaming and shouting.” She also saw the bus go into reverse at the end of her driveway. She heard gunfire. She moved back from the window because of the danger.

Despite the injury on his back, Nicholas Cottrelle crouched low and continued to drive the bus toward the park. Warren George backed his car toward the park. He could feel his car tire going flat. He knew he had to “get back into the park.”

⁸ Mrs. Jago’s statement was filed as an exhibit as she died before the time she was to testify at the Inquiry.

Acting Sergeant Ken Deane, who was on the north side of East Parkway Drive, walked in the direction of the park.

14.17 Dudley George is Shot

Acting Sergeant Deane of the TRU Alpha team considered the use of the school bus and car by the First Nations occupiers as acts of aggression. He and the other OPP officers did not understand that the First Nations people had resorted to those vehicles as a means of rescuing Cecil Bernard George from the beating by the police.

As the school bus began to travel in reverse toward Ipperwash Park, a succession of gunfire was heard. Constables Beauchesne and Klym, members of the Alpha team, were on the south side of East Parkway Drive at the time, and Acting Sergeant Deane and his partner Constable O'Halloran were on the north side of East Parkway Drive. Mark Beauchesne heard what he believed was police gunfire to his left, where Acting Sergeant Deane was positioned.

At 11:03 p.m., the words “[S]hots fired, shots fired,” yelled by the CMU Commander Lacroix, could be heard over the radio transmission. Constable LeBlanc, who was in the prisoner van, inscribed “heard gunshots,” and “rapid fire” after this succession of shots was heard. Just prior to this, Constable LeBlanc had requested an ambulance for the Aboriginal man who had been arrested and carried to the police van — Cecil Bernard George. But when he heard these gunshots, LeBlanc radioed, “hold the ambulance.” He thought it was too dangerous for an ambulance to enter the area: “I didn’t want an ambulance pulling into the middle of what essentially was a gunfight in the middle of the street. It would have been hazardous ...” Constable LeBlanc knows he cancelled the ambulance but is uncertain if this transmission was actually relayed on the radio system. He thinks he might have accidentally “clipped” the communication because he did not pause before speaking into the microphone, which was required for the radio system to make a connection.

When Ken Deane testified at his trial,⁹ he claimed he saw two muzzle flashes coming from the bush area. Because these alleged muzzle flashes were close in sequence, Deane believed they were from one gun. Acting Sergeant Deane could not identify a human form of a person. He claimed that all he saw were two distinct muzzle flashes pointing toward OPP officers. He considered this a threat of firearms to officers in the Crowd Management Unit.

⁹ Ken Deane died in a car accident shortly before he was scheduled to testify at the Ipperwash Public Inquiry. He testified before Fraser J. in April 1997 and was convicted of criminal negligence causing the death of Dudley George.

Deane shot at these muzzle flashes. He then moved forward approximately ten metres and saw a person leave the general area of the muzzle flashes. He saw a person walk onto the roadway with what he perceived was a firearm, and thought this person was possibly responsible for the muzzle flashes. The man who walked onto the roadway was Dudley George.

Ken Deane claimed Dudley George shouldered a rifle in a half-crouched position and scanned the police officers. Deane claimed the gun was pointed in the direction of at least three OPP officers, on the inland side of East Parkway Drive, and that Mr. George's right hand was "up at the trigger group." Ken Deane testified that he believed Dudley George was "a millisecond away from shooting one of [the] officers." Acting Sergeant Deane discharged his semi-automatic gun. He fired three shots in rapid succession at Dudley George.

Ken Deane saw Dudley George falter, fall on one knee, spin to his right, and then spin to his left. He claimed Mr. George threw his rifle down in the area. Deane saw First Nations people come to Dudley's rescue and assist him back to the park. Constable Irvine, a member of the Sierra team, also saw First Nations people carry "a body" into the park. He thought this person was seriously injured and in need of immediate medical attention.

Acting Sergeant Deane radioed for an ambulance after he fired his gun at Dudley George. Acting Staff Sergeant Skinner instructed Constable Zupancic to accompany Ted Slomer to the site in the Suburban, which the medic had prepared as a makeshift ambulance. But shortly after these instructions, Ken Deane radioed to disregard the ambulance request — the injured individual had returned to the park. Constable Zupancic and Ted Slomer were not deployed in the makeshift ambulance to provide first aid to the Aboriginal man shot by the police.

Inspector Carson heard the gunshots on the radio in the TOC with the almost instantaneous transmission: "Native shot — ran into park." Carson inscribed those words in his notebook, closed his book abruptly, and threw it onto the dash of the TOC vehicle. Inspector Carson knew the police had "just lost control of this event." As he said at the hearings, the OPP had been

[t]rying to contain this situation, wait for the injunction the next morning, try to get some negotiations going, [all] were all going to be for not because at this point in time now with shots fired and by the sounds of it, somebody being struck. This whole event was going to take an absolute right turn, and this was a moment in time when this whole event changes ... [T]he aggression had generally been with the military and there was an issue with the park. But for the most part, other than the minor altercation we had on September 4,

from here on, my view was the attention would be turned towards the police ... (emphasis added)

In about one and a quarter hours, Inspector Carson learned that this First Nations person, Dudley George, had been fatally shot.

Sergeant George Hebblethwaite, second in command of the CMU, was standing nearby when the shots were fired at Dudley George. After watching the bus move in reverse toward the park, Hebblethwaite “saw a figure, a man, at the elbow of the road fall to his right knee in a spinning motion.” At no time did Sergeant Hebblethwaite see a firearm carried by Dudley George; in fact, at no time during the entire confrontation did Sergeant Hebblethwaite see any Aboriginal occupier carry a firearm. As Hebblethwaite later inscribed in his notebook, the man on the road — Dudley George — “appeared to be holding a stick or a pole and my first thought was that he had been shot, but he seemed to stumble away back towards the park fence line, and I believed he only stumbled in haste to retreat.” Sergeant Hebblethwaite later learned this man was Dudley George and that he had died from the shots discharged by Acting Sergeant Deane.

Ken Deane claimed that Dudley George’s gun fell to the ground after he shot him. Deane testified that he did not attempt to retrieve the rifle. The TRU officer claimed the rifle was on the ground at the intersection of Army Camp Road and East Parkway Drive, yet he left the rifle on the road. Nor did Deane attempt to tell TRU Constables Klym and Beauchesne, members of his Alpha team, that they were approximately twenty metres from the rifle allegedly carried and dropped by Mr. George, the man he just shot.

Based on the testimony at the Inquiry, there is no evidence to depart from Justice Fraser’s finding in the trial of Ken Deane in 1997 that Mr. Deane’s assertion, that Dudley threw his firearm on the ground, lacked credibility.

I would have expected Acting Sergeant Deane to retrieve the rifle allegedly in Dudley George’s possession to ensure other occupiers did not threaten the OPP officers with this gun. Nor did Deane say over the police communication system that a rifle was in the area that could constitute a threat to the OPP officers. Deane simply radioed Acting Staff Sergeant Skinner that an individual was down and an ambulance was needed. Ken Deane did not recall transmitting to TOC that a man with a long arm was trying to shoot at the police officers. Acting Sergeant Deane claimed he “did not think of the rifle at that time.”

Constable Irvine, a TRU officer on the Sierra team, did not see any muzzle flashes nor any First Nations person with firearms during the entire confrontation that night. One of Constable Irvine’s responsibilities as a TRU sniper was to ensure there was no threat of firearms in the area. Constable Irvine was scanning

the middle section of the sandy parking lot and the park that night, and at no time did he see firearms in the possession of the occupiers. Nor does Constable Beauchesne recall Ken Deane telling him that evening that he saw muzzle flashes. And Acting Staff Sergeant Skinner also does not remember Ken Deane mentioning muzzle flashes when he returned to TOC to inform him that he had shot an Aboriginal occupier.

After analyzing the evidence very carefully, I am confident that Dudley George did not have a gun on the night of September 6. Ken Deane's assertion that Dudley threw his rifle on the ground is implausible. Deane claimed that he did not retrieve the gun because he "did not think of the rifle at that time." Clearly, if Dudley George had a gun and threw it to the ground after he was shot, Deane would have considered it a threat to the other OPP officers. Another First Nations person could have retrieved the gun. Also, if the gun was on the ground, one would have thought Ken Deane would want the gun as evidence that a weapon had been in the possession of the First Nations occupiers that night. Dudley George did not have a rifle or firearm in the confrontation with the police on the night of September 6, 1995.

14.18 First Nations People Run to Dudley George after He is Shot

First Nations occupiers heard gunshots as the bus and car began to reverse toward the park. Gabriel Doxtator saw a police officer holding an assault rifle and saw muzzle fire from that direction. Bullets began to fly and Gabriel ran into the park. The Aboriginal people were in a state of panic. Michael Cloud described his high state of anxiety: "[A]nother bullet went right by my ear ... literally right through my hair ... I was terrified." He ran back to the park as fast as he could. "There was just a hell of a lot of shooting." He heard the garbage bin and trees being hit by bullets. Michael Cloud knew a shot had hit a body. He said, "There was no mistaking it ... I've hunted deer all my life. I know what it sounds like when ... something gets hit with a bullet."

After the gunfire subsided, Gabriel Doxtator ran toward the sandy parking lot "to make sure everyone was all right." From inside the park, Gabriel Doxtator saw Dudley George, who appeared to be injured, stumble toward the park. Dudley held his chest and said, "I think I'm hit." He saw Dudley fall to the ground.

David George noticed someone lying on the ground out of the corner of his eye — it was Dudley. He saw blood on Dudley's chest near the area of his right shoulder. Dudley's eyes were glazed, and he was motionless.

Fourteen-year-old J.T. Cousins also saw Dudley fall to the ground at the edge of the paved road at the intersection of East Parkway Drive and Army Camp

Road. Dudley struggled to rise. J.T. Cousins had hidden behind a cement pillar when he heard the gunshots. The bullets ricocheted off the cement pillar. J.T. thought, “[W]e’re all going to be shot ... they’re going to kill us all.” As J.T. approached Dudley, he saw “Dudley’s blood all over the place.”

From inside the school bus, Leland White also saw Dudley lying on the ground with blood on his shirt. Leland was on his knees in the bus, looking out the rear emergency door window. Fifteen-year-old Wesley George also witnessed Dudley fall to his knees and to the ground and saw his blood-soaked shirt.

Jeremiah George, who had headed to the beach before the confrontation, heard yelling, then quiet for a short while, followed by a few shots, and then a “lot of shots.” He thought the last shots might have been from an automatic weapon. He was terrified because he was by himself and his “brothers were in the area where the shots were being fired. So after I heard the shots, the only thing I could do was try and find cover.”

This was a terrifying sight for these teenagers and all the First Nations people at the park, several of whom were immobilized by their state of shock. OPP officers were also extremely surprised and upset that a First Nations person had been shot.

Elwood George was about fifteen to twenty feet from Dudley when he heard Dudley say he had been hit. Elwood ran to Dudley, put his arm around him, and tried to help him move toward the park fence. Dudley George took two or three steps, became limp, fell to the ground, and collapsed. Elwood George yelled for help. David George and other First Nations people ran to assist.

Stewart George helped move Dudley inside the park boundaries. The First Nations witnesses were adamant that they did not see any firearms in the vicinity of Dudley George. All Marlin Simon, Stewart George, and the other First Nations people saw in the area were broken bats, broken shields, and helmets. As Stewart George said, none of the occupiers had firearms in the park. This was intended to be a “peaceful occupation” and “no firearms” was “one of the things that was agreed upon.”

I accept the evidence of the First Nations people that the occupiers did not have guns at the park during the confrontation with the police. This was corroborated by the many CMU and TRU officers who testified at the Inquiry other than Ken Deane who claimed Dudley George carried a rifle and Constable Cossitt who claimed a gun was in Warren George’s car. Other OPP officers at the site of the confrontation on the night of September 6 did not see any firearms in the possession of the First Nations occupiers.

Many First Nations occupiers were paralyzed with fear when they saw Dudley on the ground. Marlin Simon was “just kind of in shock watching what was going

on.” Stacey George sat in the sand and prayed for Dudley. Stacey George saw a group of people pick up Dudley and carry him inside the park.

David George talked to Dudley in the park — “Dudley, you got to stay awake. Don’t go to sleep ... try and fight it.” Blood spread across Dudley’s chest, and he did not respond. The “OPP WHO” car pulled up, driven by Robert Isaac. J.T. Cousins climbed into the back seat of the car, and other First Nations people lifted Dudley into the vehicle. They drove towards the army camp. This was the last time David George saw his cousin Dudley.

There was a commotion as the Aboriginal people ran around to see if anyone else had been shot or seriously wounded.

The First Nations people could not understand and were deeply disturbed that the OPP did not offer first aid or an ambulance for Dudley George. Dale Plain and the other occupiers were “angry” that an ambulance did not arrive to “help Dudley”:

I was angry because the police done what they done, shooting at us unarmed people just trying to protect our grandfathers’ graves and grandmothers ... [a]nd uncles and aunties and little babies buried there.

David George called 911 and told the operator, “Somebody got shot.” The operator asked him to identify the wounded person, which he did. The operator then asked who had shot Dudley, and David responded, “Your guys shot him.” One of the occupiers pulled the phone from David George’s hands and the call ended.

John Knight was the dispatcher at the Wallaceburg Central Ambulance Communication Centre that night. He testified that there was a 911 call for an ambulance at 9780 Army Camp Road, the park store. At the OPP’s request, the police were notified of this call. Mr. Knight testified that the police “didn’t want us to respond” to the call from the store and, consequently, an ambulance was not dispatched at that time to the park store at Ipperwash Park.

Dudley George was transported in a car by his brother and sister to Strathroy Hospital. This harrowing experience is described in detail in Chapter 18.

First Nations people sat by the fire at the park store, “waiting for a word about Dudley.” The occupiers could not believe what had happened. They used the park phone to try to find out where Dudley was. Later that night one of Dudley’s relatives gave them the devastating news — Dudley George was dead. The uncontrollable tears of the First Nations people flowed in Ipperwash Park.¹⁰

¹⁰ The impact of his death and the confrontation with the police as described by First Nations witnesses is described in Chapter 20.

14.19 Officers Ordered to Return to TOC after Dudley is Shot

After the bus and car retreated toward the park, Staff Sergeant Lacroix ordered a cease fire. He instructed each squad leader in the CMU to conduct a casualty count, convinced he had “lost officers.” All CMU members were accounted for. Staff Sergeant Lacroix was in a state of disbelief and asked the squad leaders to repeat the count:

I asked them to account for everybody; they say they’ve got everybody. I have a hard time believing that. I tell them to do it again, just because of the amount of violence, the amount of action that had taken place ... the bus, the car, the bus again, the gunfire. I didn’t believe it myself.

Staff Sergeant Lacroix asked the TRU team to check the ditches, fearful that there were casualties of either officers or occupiers. There were no casualties amongst the OPP, nor were there broken bones or serious injuries. Staff Sergeant Lacroix radioed Acting Sergeant Skinner:

We took gunfire from a car. A bus tried to run us over. We returned fire. We have no casualties that I can count for, everybody seems to be accounted for.

Inspector Carson instructed the CMU to return to the TOC site. The TRU team covered the CMU officers who, in box formation, turned around and at “high trot” returned to TOC at the MNR parking lot.

The First Nations occupiers watched the CMU officers depart from the area. As the CMU retreated down East Parkway Drive, Stacey George, an Aboriginal man, yelled at the police that they had shot an unarmed man. Constable Irvine, a member of the TRU Sierra team, walked backwards down the road, keeping an eye on the occupiers to ensure they did not pursue the officers. He heard someone shout “Murderers,” which confirmed for him that a person had been very seriously injured. That person — Dudley George — died that night.

14.20 CMU and TRU Return to TOC

Staff Sergeant Lacroix addressed his officers in the Crowd Management Unit on their return to TOC. The Staff Sergeant asked each officer who had fired his weapon to step forward as there would be a Special Investigations Unit (SIU) investigation. Three CMU officers — Sergeant Hebblethwaite, Constable Sharpe, and Constable York — had fired their guns, as well as Staff Sergeant Lacroix.

Staff Sergeant Lacroix told Inspector Carson that he and three ERT officers had discharged their firearms. He told Carson the CMU had fired a number of rounds into the school bus and car, and someone likely hit had retreated to the park. It was Inspector Carson's understanding at the time that occupants in the car and bus had fired upon the police.

The TRU officers reported to Acting Staff Sergeant Skinner when they returned to TOC. Three TRU officers on the Alpha team — Ken Deane, Mark Beauchesne, and Bill Klym — reported that they had discharged their guns. Constables Beauchesne and Klym had fired at the car in the sandy parking lot.

Acting Sergeant Deane told Acting Staff Sergeant Skinner that he had seen a person emerge from the sandy berms behind the parking lot, cross the roadway by the intersection, and scan the CMU with a long gun. Deane reported that he had fired three rounds and that he saw the person stagger. Deane had radioed for an ambulance but then saw some occupiers carry the injured person into the park. Aside from Ken Deane, no other TRU officers who testified reported seeing occupiers with guns. Nor did any TRU officer report that they saw muzzle flashes from a gun carried by an Aboriginal occupier when they returned to TOC. Acting Staff Sergeant Skinner does not recall any mention by Deane of muzzle flashes at TOC that evening.

This was the first and only time Acting Staff Sergeant Skinner experienced use of lethal force by one of his team members.

Acting Staff Sergeant Skinner informed John Carson that three TRU officers had discharged their firearms — Constable Klym, Constable Beauchesne, and Acting Sergeant Deane. Acting Staff Sergeant Skinner did not seize at that time the weapons discharged by these three TRU officers, as they had no weapons to replace them and the TRU team was still operational. It is OPP policy that in an operational situation, weapons are not taken from the officers unless there are replacements. The guns discharged by the CMU officers were also not seized at that time. There were not an additional seven weapons at TOC that evening.

At the TOC site, Inspector Carson instructed the officers to remove their equipment, go to their hotel rooms, and await further instruction. As I discuss in further detail in Chapter 20, the OPP did not control the scene after the confrontation. Also, the officers did not receive a debriefing of this confrontation with the First Nations people.

Inspector Carson left TOC and returned to the command post at 12:02 a.m. At approximately 12:20 a.m. John Carson learned Dudley George had died from shots discharged from a gun by an OPP officer.

14.21 Call between Ovide Mercredi and Mark Wright

At approximately 11:40 p.m., Ovide Mercredi, the National Chief for the Assembly of First Nations, called the OPP Command Post. He told A/D/S/Sgt. Wright he had received a disturbing call from Chief Tom Bressette’s wife and that Tom was on his way to the park. Ovide Mercredi had heard there were thirty police cruisers, ambulances, and canine units proceeding to the park. Ovide Mercredi wanted to know the OPP’s “intention,” and he wanted to speak to the Incident Commander. He told Mark Wright: “I’m very concerned with what you’re doing. I’m concerned about people’s lives.”

When Ovide Mercredi testified at the Inquiry, he explained the purpose of his call to the Incident Commander:

... the conversation was ... to try to determine whether in fact they were moving into the park for the purpose of moving people at night time. And *to try to impress upon them to delay that action until the morning and not to do this in the night time ...*

... my first thought was to try to stop it, I mean, that’s why I asked for the Commander, *I wanted to talk to the Commander; I wanted to go to the top of the line of authority and try to persuade that person to reconsider whatever decision was being made*, because it was quite clear in Tom’s view, that some decision had been made, and that the police were now moving towards the park ... So I made that call to the command centre, with the hope that I might be able to talk to the senior Commander, and persuade him not to do that at that time. (emphasis added)

It is clear from this conversation that the National Chief was not aware an altercation had taken place between the OPP and the First Nations people and that Dudley George had been shot. Ovide Mercredi asked whether the OPP planned to go into the park and tried to persuade the police not to act precipitously: “What’s the rush? Why don’t you wait until tomorrow after you’ve talked to them?”

Ovide Mercredi gave A/D/S/Sgt. Wright excellent advice — communicate with the First Nations occupiers, and do not act precipitously. Unfortunately and tragically, it was too late. The OPP did not contact Ovide Mercredi on September 4 when the park was occupied or at any time before it marched down East Parkway Drive. In fact, the OPP did not rely on any First Nations negotiators or First Nations police to try and open up a dialogue with the Aboriginal

occupiers. As Ovide Mercredi wisely said in his advice to A/D/S/Sgt. Wright, there was no rush for the police to confront the occupiers in the dark on the night of September 6.

A/D/S/Sgt. Wright wanted to know on whose behalf Ovide Mercredi was speaking. He asked if Ovide Mercredi spoke on behalf of Chief Tom Bressette. Ovide Mercredi replied: “I’m the Grand Chief. I’m speaking in that capacity ... I’m concerned about Indian people. I represent them, wherever they may be.” Ovide Mercredi believed the OPP officer was questioning the legitimacy of his representation.

At no time did Mark Wright disclose to the National Chief that there had been a confrontation between the police and the First Nations occupiers, that shots had been fired by the OPP, there had been injuries, and that one Aboriginal person may have been fatally shot.

Ovide Mercredi gave A/D/S/Sgt. Wright his telephone number and said he would “wait for the call” from the Incident Commander. Inspector Carson did not return the call.

As the National Chief for the Assembly of First Nations said:

But that call never came. I waited for that call, that call never came. So, then I went to bed and four o’clock in the morning the phone rings. I pick up the phone and on the other side is [Chief Superintendent] Cole[s] and he proceeds to tell me that there has been a real tragedy in Ipperwash ... [T]he essence of the conversation was there was a death, someone got shot and killed and that there was a few other people injured.

And to this day, Ovide Mercredi as well as many others do not understand why the OPP made the decision to confront the occupiers on September 6 in darkness:

... it doesn’t make sense to me — it didn’t make sense, it makes no sense to me now, that the police would go about doing that work at night time, when danger is increased for them as well ... [I]t makes more sense for me for the police to enter into a dialogue with the individuals, and maintain that dialogue and those open communications than to move in ...

14.22 No TRU Transmissions of the Confrontation

Valuable information on the TRU officers’ observations and transmissions to TOC were not available for me to analyze at the Inquiry. Constable Rick

Zupancic was responsible for recording the TRU communications on the night of September 6.

When Inspector Carson, Acting Staff Sergeant Skinner, and Constable Zupancic were at TOC that night, the vehicle stalled and the power went off momentarily. In order for the TRU communications to reactivate, it was necessary to press the “play” and “record” buttons simultaneously. Unfortunately, Constable Zupancic did not push the “record” button.

After shots were fired and an ambulance was requested, Constable Zupancic was directed to leave TOC and take medic Slomer to the sandy parking lot area. As they proceeded toward the park, they were told an ambulance was not required and to return to the Tactical Operations Centre. It was at this time that Constable Zupancic realized the TRU transmissions were not being recorded. His best estimate is that it was about 11:30 p.m. He told Acting Staff Sergeant Skinner about the malfunctioning of the recording device. This was after the CMU and TRU had returned to the MNR parking lot.

Acting Staff Sergeant Skinner did not examine or listen to the tape to ensure that, in fact, no TRU communications were recorded, nor did he take custody of the tape. The tape remained in Constable Zupancic’s possession.

Some time between 1:00 a.m. and 5:00 a.m. on September 7, Constable Zupancic tried to determine whether some information was captured on the tape but found nothing. Constable Zupancic took possession of the tape and placed it in his locker at the TRU office. Constable Zupancic did not turn over the tape to the SIU until the night before he testified at Ken Deane’s trial in April 1997, over one and a half years after the confrontation at Ipperwash Park. The OPP policy on logger tapes is that anything on tape accompanies the operational report.

Acting Staff Sergeant Skinner did not know how long after the September 6 events Constable Zupancic had listened to the tape.

In my view, it would be good practice if an officer wrote notes during an OPP operation in the event that the recorder malfunctions or for some other reason fails to record the communications between OPP officers. Also, it is inappropriate for an officer responsible for recording the communications to take custody of the tape after the operation. It is fundamental that appropriate procedures be established and enforced by the OPP to ensure that the tapes of a police operation are preserved in a safe location for an indefinite period of time. This promotes the twin objectives of transparency and accountability in police operations.

Note-taking by officers of the events at Ipperwash was also in need of improvement. The OPP officers often did not complete their notes until many hours had lapsed. At times, they did not write their notes before they went off duty. For example, Constable Beauchesne did not write his notes of the confrontation until the evening of September 7, 1995. Similarly, Kent Skinner’s notes of

September 6, 1995, were not recorded until approximately twelve hours after the events.

It is essential that officers record events in written form as soon as possible. If it is not feasible to make a written record of events at the time, officers should ensure that they are completed before they go off duty. OPP Commissioner Gwen Boniface agreed that the longer the information sits, the greater the risk of contamination: “[t]he fresher the information the better.” This is fundamental, both in terms of transparency and accountability in OPP operations. I understand that the OPP have made changes in this regard since Ipperwash. I commend these and other changes that will promote the twin objectives of transparency and accountability in OPP operations.

14.23 An Aboriginal Protest is Different from a Soccer Crowd: Lack of Understanding of Aboriginal History and Culture

CMU Commander Staff Sergeant Lacroix was surprised at the occupiers’ response to the “punchout” that night. He believed the occupiers would simply “run away” and “when that didn’t happen it was a surprise” — they “actually ended up colliding full speed.”

Staff Sergeant Lacroix had not been trained and did not appreciate that a First Nations protest is different than other crowds or groups. As he acknowledged at the hearings, the fact that it was Aboriginal people “from one community,” many of whom were “related” and who had a “common purpose, a common belief, an emotional belief,” had an effect on the reaction of “that crowd.” He agreed that “the tactics did not have the effect on the Aboriginal community that they do on coal strikers in England ... or a soccer crowd” or even a crowd at Nathan Philips Square in Toronto. The tactics “sure didn’t work this night.”

The Aboriginal people at Ipperwash Park were a different crowd. As Staff Sergeant Lacroix later learned, the First Nations occupiers “firmly believed that they were on sacred ground, they were of one mind, they were committed, they were family,” and this crowd “reacted very explosively very quickly.” It was only in hindsight that Wade Lacroix understood some of the “precipitating factors” were “historical,” “political,” and “racial.” Staff Sergeant Lacroix had no idea the occupiers thought the CMU would evict them from the park that night.

It is important to understand that the context of an Aboriginal protest and occupation is fundamentally different from non-Aboriginal protests and occupations — the psychology, the composition of the people, and their behaviour. Aboriginal people will likely respond differently to police actions and tactics than non-Aboriginal occupiers. For example, a group of soccer fans may disperse when confronted by police. Aboriginal people, who historically have considered

the site of their protest to be their land or to contain sacred burial grounds, may react differently.

As I discuss in detail in Part II of the report,¹¹ Aboriginal protests and occupations require unique police resources, strategies, and responses. The objectives of the police during Aboriginal protests and occupations should be to minimize the potential for violence and to facilitate constitutionally protected rights, including treaty and Aboriginal rights and the right to peaceful assembly. It is essential that police officers receive training in Aboriginal history, culture, and law. It is also very important that First Nations police services be involved in First Nations protests and occupations.

OPP officers at Ipperwash did not have an understanding of the fundamental differences between Aboriginal and non-Aboriginal protests and occupations. The CMU Commander and his officers had little understanding of Aboriginal history and culture or that the behaviour and reactions to OPP tactics would not be the same as with a soccer crowd, hockey fans, or other non-Aboriginal protests or occupations. Marching down East Parkway Drive in riot gear with helmets, shields, batons and guns, approaching the fence of the park a few feet away from the First Nations occupiers, and other intimidating tactics such as shield chatter did not have the desired or expected effect on the Aboriginal occupiers. These police strategies and tactics did not work on the Aboriginal group. An understanding of the history and culture of the First Nations people and the presence of First Nations police services would undoubtedly have helped the OPP understand that the Aboriginal occupiers were not like a soccer crowd. The use of First Nations police services and mediators would have been more effective than the strategies, or what First Nations people described as “scare tactics,” employed by the CMU on September 6. This was another significant failing at Ipperwash.

Staff Sergeant Wade Lacroix learned Dudley George had died in the confrontation on the morning of September 7. He was convinced the man in the car (Warren George) was dead and was shocked to learn Acting Sergeant Ken Deane had shot a First Nations person standing on the road. Staff Sergeant Lacroix believed he might have fatally shot the driver of the car in the altercation with the First Nations people on the night of September 6.

14.24 Responsibility for the Decision to Deploy the CMU and TRU

John Carson took personal responsibility for the decision to deploy the Crowd Management Unit and the Tactics and Rescue Unit to the sandy parking lot on the night of September 6. He had unverified and inaccurate information about the

¹¹ Chapter on Policing Aboriginal Protests.

damaged car and other incidents earlier in the evening. He also mistakenly thought there was a fire and vehicles in the sandy parking lot.

Inspector Carson's approach to the occupation, from its inception, was to move slowly — to inform the occupiers they were trespassing on provincial property, to try and negotiate with the occupiers, and to wait for MNR to seek an injunction. This was in conformity with the objectives in Project Maple.

When the Incident Commander left the command post that evening to go to a friend's home for dinner at approximately 7:00 p.m., he believed the situation was stable at Ipperwash Park. Inspector Carson was hopeful the injunction motion in Sarnia the following morning would resolve some of the issues surrounding Ipperwash Park.

But under Inspector Linton's command that night, the situation at the park was perceived to be escalating — Mark Wright's encounter with the First Nations people, the Gerald George/Stewart George incident, the occupiers' preparation of the yellow school bus, the increased vehicular traffic, the movement of women and children out of the park, and the belief that a fire was burning in the sandy parking lot. When John Carson was contacted at his friend's home that evening, he tried to halt what he perceived to be Dale Linton's precipitous decision to call out the TRU team. Inspector Carson immediately returned to the command post, despite Dale Linton's view that this was unnecessary.

When Inspector Carson returned to the command post that evening, "it was chaos ... There was a lot of information, a lot of discussion and a lot of things being shared back and forth." Inspector Carson decided that night to mobilize the CMU and use TRU to observe and provide intelligence, and to cover the CMU.

In my view, the OPP acted with undue haste when it decided to mobilize and deploy the CMU and TRU in darkness on the night of September 6, 1995. The necessary time should have been taken to allow Constable Poole's written statement of his interview with Gerald George to reach the command post. This would have cleared up the confusion and refuted the inaccurate report that the Aboriginal occupiers had beaten a female civilian's car with baseball bats. Time should also have been taken to authenticate the unconfirmed report of Gerald George that there were guns in the park. And time should have been taken to verify whether there was in fact a fire built in the sandy parking lot.

John Carson described the TRU team as the eyes of the Incident Commander. As he said at the hearings, the TRU team keeps the Incident Commander informed and apprised of events on an ongoing basis. But a problem on the night of September 6 was that the TRU Sierra teams had difficulty moving into position "to be the eyes."

Prior to the deployment of the CMU, the Sierra teams were not able to successfully move into position to be “the eyes” on the sandy parking lot. Even when the CMU was initially deployed, one of the officers on the Sierra team alerted the Tactical Operations Centre that Sierra was not in position and did not yet have an “eye” on the park. Yet the CMU officers proceeded to march down East Parkway Drive to the sandy parking lot.

The OPP should have considered other options while it waited for confirmation reports of the Gerald George and the other incidents. For example, cottages in proximity to the park could have been evacuated while the OPP waited to authenticate reports concerning the activities of the occupiers, or to wait until daylight.

In my opinion, the inaccurate and unverified information received by Inspector Carson was responsible in large part for his decision to deploy the CMU and TRU. Had John Carson received better intelligence in the police operation, and had the police had better communications with the occupiers, the decisions made that night in the command post may not have occurred and the tragedy may have been averted.

The First Nations people did not understand that the OPP had no intention of entering Ipperwash Park that night. At no time did the OPP use a bullhorn or post written material outside the park or on the park fence to communicate this message to the occupiers.

There was a perception by the First Nations occupiers of increased police presence on September 6, 1995 in the Ipperwash Park area. The boat surveillance on Lake Huron, and the low-flying helicopter surveillance caused agitation and anxiety amongst the First Nations people. This caused the First Nations people to engage in preparations for the OPP approach — they collected rocks and sticks, gassed up the school bus, and some suggested that women and children leave the park. On the scanner, they overheard the police communicate that they planned to march to the park that evening.

The OPP’s decision to march down East Parkway Drive in darkness on the night of September 6 was precipitous. Based on unauthenticated information, they mobilized and deployed the CMU and TRU teams.

Inspector John Carson was a conscientious and competent Incident Commander at Ipperwash during the September 1995 events. He is a man of integrity who clearly wanted the Aboriginal occupation to be resolved peacefully. But on the night of September 6, 1995, I believe it was a mistake to deploy the CMU and TRU down East Parkway Drive toward the sandy parking lot before the information he had been given, could be verified.

CMU officers, dressed in hard Tac equipment with their helmets and shields, marched shoulder-to-shoulder in formation toward the park. There were thirty-two officers, an eight-man arrest team, two canine teams, and two prisoner vans. Several CMU officers were “nervous” as they marched toward the park in darkness. TRU officers walked ahead of the CMU with assault rifles and semi-automatic pistols, providing cover. The CMU leader yelled commands to his officers as the police marched toward the sandy parking lot. The Aboriginal people were terrified as they saw the officers dressed in “riot gear” marching toward the park. The Aboriginal occupiers were not armed.

The OPP’s plan to have the occupiers leave the sandy parking lot or to remove them if necessary, seemed to work, at least initially. As the CMU advanced to the fence line outside Ipperwash Park, the First Nations people retreated from the sandy parking lot into the provincial park. As the CMU came to a halt, the last few occupiers walked through the turnstiles into Ipperwash Park. Sergeant Hebblethwaite radioed to the Tactical Operations Centre that “the badgers are in the park.” The CMU Incident Commander, Staff Sergeant Lacroix, thought the CMU’s mission was complete.

The OPP’s plan seemed to work, but only momentarily. An Aboriginal man subsequently identified as Cecil Bernard George, whose fear of the police had turned to anger, walked into the sandy parking lot waving a steel pipe. He yelled that the park property was Aboriginal land, and that his grandfather was buried on this land. CMU officers had backed up at this time to Army Camp Road. The CMU Incident Commander yelled “punchout.” CMU officers ran toward Cecil Bernard George and a confrontation ensued between the OPP and the First Nations occupiers. The police fired their guns during the altercation, and Dudley George, a thirty-eight-year-old occupier, was shot and killed.

Deploying the CMU was an offensive not a defensive strategy. It was a show of force. It was designed to clear occupiers or protesters from a particular area. If the strategy does not work, the potential for violence increases. Using the CMU was a calculated risk that was within Inspector Carson’s authority to make. The use of any force must be to ensure public safety. Based on the information that he had, Inspector Carson made a decision to use the CMU to clear the sandy parking lot. In his view, public safety required it. As I have pointed out, the information upon which Inspector Carson made the decision was wrong. If Inspector Carson had the correct information, I believe that he would not have made a decision to deploy the CMU. Inspector Carson should have waited before deploying the CMU until he had received the report of Constable Poole with respect to the incident involving Gerald George. He should have waited until

the TRU Sierra teams were in position and reported back to him on what was happening in the sandy parking lot and the kiosk. He would have learned that there was not a fire in the sandy parking lot. He would have learned how many people, if any, were in the sandy parking lot and whether they had any weapons. He would have had better information upon which to make his decision. One of the problems that he had was that there was not an appropriate intelligence system in place to verify the information about guns that had been provided to him. In my view, Inspector Carson should also have considered using a bull horn to inform the occupiers that the OPP had no intention of entering the park and that the OPP simply wanted them to leave the sandy parking lot and stay out of it.

Moreover, the decision to deploy the CMU and TRU in this way, as a show of force, was not in keeping with the peaceful approach called for in Project Maple and did not adequately contemplate the characteristics of an Aboriginal protest. Further, this level of response to a perceived escalation of activity increased the potential for violence. Given the heightened tension created by this situation, one could have, and in my view should have, contemplated that *any unexpected occurrence* — such as Cecil Bernard George walking out of the park turnstile into the sandy parking lot — might set off a confrontation. This is exactly what happened.

In view of Inspector Carson's years of experience, he should have realized that sending a large number of officers in darkness, with helmets, shields, and guns to confront the First Nations occupiers could have easily erupted and resulted in a confrontation between OPP officers and the occupiers. Inspector Carson thought that he knew the occupiers. He did not believe that they would use violence against the OPP. Except for isolated incidents involving the military, the occupiers had not used violence. And until September 4 and 5, the occupiers had not resorted to violence against the OPP. In making the decision to deploy the CMU, Inspector Carson relied too heavily on information that was inaccurate and unverified. He also misjudged and did not anticipate the reaction of the occupiers to the excessive force used to arrest Cecil Bernard George.

As I have already noted, this was the first time that the CMU and TRU had been deployed together in this manner to address an Aboriginal occupation, and, in my view, the OPP officers had insufficient experience with this approach. In addition, as we have seen, they had little and sometimes conflicting information about what they were about to confront. Acting Sergeant Deane and Inspector Carson are not the only ones who need to take some responsibility for what occurred. Notwithstanding the many progressive reforms undertaken by the OPP in recent years in relation to policing Aboriginal occupations, I believe the OPP, as an institution, also needs to be accountable and take some responsibility for the

tragedy that resulted on September 6, 1995. The OPP should have ensured that Inspector Carson had a robust intelligence capability to help him assess the situation quickly and accurately.