CHAPTER 20

THE WEEKS AND MONTHS FOLLOWING THE DEATH OF DUDLEY GEORGE — THE DEVELOPMENT OF A STATUS QUO, BUT NO RESOLUTION

20.1 Change in Police Tactics, Infrastructure, and Priorities after the Shooting

Changes in the OPP approach to policing at Ipperwash Park were swift and dramatic in the wake of the shooting death of Dudley George. They can be summarized under three primary areas. First, the police approach focused on the de-escalation of tensions. This translated into a reduced visibility of police presence, especially in relation to TRU and ERT visibility, a pulling back of checkpoints to expand the perimeter of "containment" (thereby relinquishing the previously all-important sandy parking lot area), and a loosening of restrictions in relation to the movement of Aboriginal people through checkpoints. This change resulted in losing the TOC site (and some OPP and St. John Ambulance equipment and vehicles), and the crime scene for a protracted period of time.

Second, the negotiation mandate was taken away from the Incident Commander and placed in the hands of Chief Superintendent Coles. This effectively isolated negotiations from active police operations "on the ground" and concentrated responsibility in a higher level of command within the OPP. This change facilitated discussions and negotiations at a level removed from the occupiers and the policing operation on the ground (with the possible exception of highly skilled police crisis negotiators). The resulting dialogue facilitated the deployment of unarmed First Nations police officers from nearby Kettle and Stony Point First Nation Police Service, and later on the Anishnabek Police Service, to patrol the perimeter surrounding the park and army camp (including the nearby cottages), a fluid line of communication between the occupiers and the OPP, access to the crime scene in the form of a joint SIU/CIB/First Nations investigation, a return of some of the property removed by Aboriginal persons from the abandoned TOC site, and ultimately the voluntary surrender of several of the occupiers who were the subject of outstanding arrest warrants relating to events that occurred between September 4 and 6, 1995.

The third significant change was the recognition that, with new Incident Commanders coming on board, the intelligence system had to be given its proper priority, in terms of process and resources, and was formalized to improve information flow, efficiency, reliability, and analysis.

The initial steps to implement these changes occurred on September 7. The end result of these three operational shifts was that an extremely volatile situation with the potential for more violence was ultimately calmed and a status quo developed, which, for the most part, has remained in place today.

20.1.1 Change in Incident Command for Project Maple

Following the death of Dudley George, there was a change in the OPP command structure for Project Maple, in which senior officers (superior in rank to the Incident Commanders) became more directly involved in managing the police response. The main oversight responsibility fell to Chief Superintendent Chris Coles, with support from Superintendent Tony Parkin.

The two senior police officers took a more "hands-on" role in providing advice to the new Incident Commanders. Their advice was initially driven by the all-consuming concern of de-escalating the potentially explosive situation. The other key management shift occurred in the form of severing the negotiation and/or communication mandate from the Incident Commander's responsibilities, with Chief Superintendent Coles now taking the lead in negotiations and discussions with the Aboriginal occupiers through intermediaries, and in particular through National Chief Ovide Mercredi, Ontario Regional Chief Gordon Peters, and the well-known Aboriginal intermediaries Bruce Elijah and Bob Antone of the nearby Oneida First Nation. The key policing steps that were successfully implemented were the product of an intense period of negotiation and (local) community management efforts spearheaded by Chief Superintendent Coles and Superintendent Parkin, starting with the late night Pinedale Motel meeting reviewed in the previous chapter.

Coles and Parkin recognized that one of the first tasks to be addressed was to replace the fatigued Incident Commanders. At 9:05 a.m. on September 7, during the course of a telephone conversation, Superintendent Parkin officially appointed Inspector Jim Gordon as the new Incident Commander. Inspector Jerry Thompson took on the role of the alternate Incident Commander, succeeding Inspector Linton. Inspectors Rick Turnbull and Bob Pilon also became rotating Incident Commanders, replacing the Carson–Linton team.

20.1.2 The Changed Role of Inspector John Carson

John Carson described his role when he resumed duties after 9:00 a.m. on September 7 as assisting Inspector Jim Gordon in becoming familiar with the incident. He spoke to Sergeant Brad Seltzer, the OPP lead crisis negotiator, at 11:27 a.m. with respect to Seltzer's ongoing efforts to obtain an intermediary from the Kettle and Stony Point First Nation community the day before to facilitate discussions with the occupiers. Seltzer reported that he had made inroads on September 6 concerning contacts within the military base and had been close to engaging Robert George from the Kettle Point reserve as a person to facilitate discussions between the OPP and the occupiers. Brad Seltzer expressed frustration with what had transpired the night before, because it had appeared to him and his partner, Lorne Smith, that as of 11:00 p.m. on September 6, negotiations appeared probable, meaning a form of facilitated discussion or contact, which is the first step toward meaningful dialogue. Brad Seltzer had reported his view that they would get inside the army camp on September 7 to initiate discussion with the occupiers to John Carson before going off duty at 8:00 p.m. on September 6.

Returning to September 7, just before noon, Inspectors Carson and Gordon discussed moving the TOC away from the MNR parking lot and expanding the perimeter as part of a general plan to pull back the checkpoints in an effort to de-escalate the situation. Unfortunately, events once again overtook the situation, and when the occupiers and their supporters arrived en masse at the TOC, the police had to abandon the premises quickly, leaving behind equipment and vehicles belonging to the OPP and to St. John Ambulance.

Inspector Carson later had a telephone conversation with A/D/S/Sgt. Mark Wright who was in London giving evidence on the injunction application. John Carson's view regarding the injunction was that it was now pretty much a moot point, and was a low priority from the policing perspective. His view was that the OPP no longer needed an injunction as a basis for going into the sandy parking lot area, since it was now a crime scene, and the police had grounds for search warrants. However, the purpose of obtaining an injunction originally was to establish whether or not the occupation was illegal for purposes of potentially removing the occupiers from the park if and when the appropriate time came.[1]

John Carson finished his shift as the "advisor" to the new Incident Commander at 5:00 p.m. on September 7. However, he continued to report for duty on a regular basis in the days immediately following the shooting. Indeed, he continued

1 See section on Injunction Proceedings later in this chapter for a more detailed account.

to be looked at by some of the police officers as the Incident Commander, even though he was no longer so.

20.1.3 Renewed Focus on Resolution through Peaceful Negotiation — De-escalating the Tensions

One of Chief Superintendent Coles' first tasks on September 8, following the Pinedale Motel meeting of the night before, was to direct new Incident Commander Jim Gordon to do nothing to aggravate the situation. All police efforts were to be focused on de-escalation of the existing anxieties and tensions. This meant that no aggressive action would be taken by the OPP, and use of force would only occur in rescue situations. He also informed Inspector Jim Gordon that he had agreed to allow the Kettle and Stony Point First Nation Police Service to take over the patrolling responsibilities of the perimeter of the park and army camp, including the nearby cottages. There would be no visible OPP presence in the immediate vicinity of the park and army camp. Furthermore, Chief Superintendent Coles determined to assume responsibility for direct negotiations with the Aboriginal parties with a view to working out measures aimed at de-escalation and returning the situation to one of calm. For the first time, the all-important negotiation mandate was removed from the Incident Commander.

Chief Superintendent Coles, together with Superintendent Parkin, had another meeting with National Chief Ovide Mercredi at 8:00 p.m. that evening. The key point agreed upon was that the OPP would allow other First Nations policing services, namely, the Anishnabek Police Service to supplement the Kettle and Stony Point Police Service, which already had more responsibility than it could handle. At the same time, Coles agreed to further reduce the visibility of the OPP in the immediate vicinity of the army camp and the park, while maintaining the same number of officers ready on standby, in Forest and at Pinery Park. The decrease in visibility was achieved, in part, by using police officers wearing the common blue uniforms at the pulled-back checkpoints, rather than ERT officers in grey uniforms.

One of the weaknesses of the police operation in the days prior to the death of Dudley George was the inability of the police to communicate their intentions to the occupiers. The necessity of communicating those intentions was identified as an urgent concern in the aftermath of the tragic events. According to Chief Superintendent Chris Coles, it is essential that occupiers be advised of the OPP's peaceful intentions to act as peacekeepers. He agreed that in protest and occupation situations, the police do not want to take the people by surprise, or

otherwise conceal their intentions. Instead, the police typically want to telegraph their intentions to the occupiers or protesters, in order to reduce the possibility of a misunderstanding, which, in turn, could lead to the occupiers misinterpreting police activity as a threat, which could then lead to violence. Coles further agreed with the suggestion that it would be reasonable for the occupiers to misinterpret the intentions of the Crowd Management Unit (CMU) when they were marching in their full hard Tac uniforms with shield chatter at night, in the absence of being told what their intentions were.

Ovide Mercredi initially took on the role of communicating OPP intentions to the people in the park. Chief Superintendent Coles saw this as a positive sign and an acknowledgment that the OPP recognized it needed help, and sought and accepted it.

Chief Superintendent Coles and Superintendent Parkin continued to have meetings as often as needed with Aboriginal leaders with the aim of further de-escalating the situation and bringing some sense of normalcy back to the community while making progress on determining what it was the occupiers wanted. They also became the intermediaries for the Ministry of Natural Resources (MNR) in dealing with logistical matters relating to the park, such as the looming need to winterize the park's facilities.

For his part, the Commissioner of the OPP, Thomas O'Grady, continued to be involved in those matters that required his direct involvement, such as participating in meetings at the Ministerial level at Queen's Park. For example, he sent a letter to Solicitor General Runciman requesting the loan of a light armoured vehicle (LAV) from the Canadian Armed Forces to the OPP for its operation at Ipperwash. He testified that the purpose behind the request was to have the vehicle on hand in the event his officers required a rescue — it was not to be used for offensive purposes. The protocols in place required that the Commissioner make a written request to the Solicitor General, who in turn would make the request to the federal government. In the end, the OPP received an LAV on temporary loan from the General Motors plant in London, through a pre-existing arrangement General Motors had with the London Police Service for temporary loans of these vehicles. While the loan was made, the LAV was never deployed.

Commissioner O'Grady also attended meetings at the Ministry of the Solicitor General's office at Queen's Park in order to brief key members of the reconstituted Interministerial Committee, including Deputy Minister Todres, and representatives from the Ministry of the Attorney General, and the Ministry of Natural Resources. The minutes of the September 18, 1995, Ministry of the Solicitor General meeting referred to the purpose of these meetings as managing the shift

from a (police-driven) tactical approach to a more (government-driven) political approach.[2]

From a policing perspective, another key element in de-escalating the tensions was implementing a strong public relations plan that addressed the fears and concerns of the local Aboriginal and non-Aboriginal community. This was accomplished by having a senior OPP officer attend various community and township meetings. This task largely fell to Superintendent Tony Parkin, though Chief Superintendent Coles initially accompanied Parkin to the meetings. The meetings occurred on a daily basis for approximately eighteen days following September 6, and then every other day until about mid-October. Thereafter, Superintendent Parkin continued to attend meetings of local residents, the Town of Bosanquet, and other community groups into 1996 to answer questions, respond to concerns, and reinforce the fact that the police had things in hand from a public safety perspective.

The senior OPP officers who testified recognized the fundamental importance of Bruce Elijah and Bob Antone in providing continuity in police–Aboriginal relations during the initial period, and assisting in brokering agreements incrementally as between the OPP, the MNR, and the occupiers. Bruce Elijah testified that had anyone asked for his assistance in advance of the incident — the police, the government, the occupiers, or the First Nation — he would have provided it.

Indeed, John Carson lamented this lost opportunity in his testimony. He had been aware that Bruce Elijah and Bob Antone had been at the army base in the summer of 1995 and had conducted a cultural awareness training program in July 1995. He was not sure if he knew at the time that Captain Smith, of the military, had also used their services to facilitate communication between the occupiers and the military at the base. He admitted that using the services of Mr. Antone or Mr. Elijah to establish communication had not been considered, and could not offer any explanation as to why not.

Later on in his testimony, John Carson added: "I would suggest there were perceptions on both sides, and they were probably slightly distorted from reality." He further agreed that those perceptions contributed to the tragedy that occurred on September 6 and that communication would have dispelled some of the misconceptions on both sides.

One must wonder whether an earlier involvement by these two individuals might have averted the decision to deploy the CMU and TRU teams on September 6, merely by facilitating effective communication between the occupiers

2 See Chapter 12, Part II, "Police–Government Relations," for my analysis and recommendations relating to the distinction between police operations and policy, and my proposed new relationship between the two institutions.

and the OPP. It seems that such an approach would have been prudent, given that John Carson was aware of these two individuals by reputation and their successful intervention as intermediaries at the Oka crisis. Both of these individuals resided at the nearby Oneida Reserve, and had had involvement as intermediaries between the military and the occupiers during the spring and summer of 1995, prior to the takeover of the barracks. In fact, Bruce Elijah had visited the occupiers at the army camp as early as 1993, and was familiar with the history relating to the appropriation of the army camp and the Aboriginal peoples' frustration with the lack of progress of the federal government in returning that land to them.

Commissioner O'Grady emphasized the objective of de-escalating tensions at the Ministerial level. At one such meeting of the newly and arguably more appropriately constituted Interministerial Committee, held on September 27, 1995, the Commissioner, with Chief Superintendent Coles, emphasized to Deputy Solicitor General Elaine Todres and the other attendees that there were ongoing negotiations involving various people to try to reduce the tension while at the same time conducting a joint crime scene investigation involving the Special Investigations Unit (SIU), the OPP's Criminal Investigations Branch (CIB) and the Aboriginal representatives.

20.1.4 Repair of the Information Flow and Processing Functions within Project Maple

Not having a "one-stop" intelligence shop, or central repository of information, was a critical vulnerability of Project Maple. In the post-shooting police operation, measures were put in place so that the proper collection, evaluation, collation, and analysis of information occurred, thus preparing the Incident Commander to make appropriate tactical decisions.

The lack of filtering and assessment of intelligence was formally rectified on September 12, when Detective Inspector Hutchison made Detective Sergeant Don Bell the single conduit for all intelligence functions. All raw data from any source was to go through Don Bell, who was then responsible for ensuring that the data was properly analyzed and assessed through the intelligence cycle. Further, a new operational plan from the intelligence side was developed. The accompanying memorandum from Inspector Hutchison stipulated that all information was to be channelled through Don Bell, and provided for an enhanced complement of trained intelligence officers to properly manage this aspect of the police operation. As stated in the memorandum, Inspector Hutchison was named the Officer in Charge for crime, intelligence, technical support, and communications, while Detective Sergeant Don Bell was formally designated with the responsibility of overseeing the intelligence function and personnel.

While there was no formal "changing of the guard" until September 12 with respect to the hierarchy in the intelligence unit, with Detective Sergeant Trevor Richardson having his hands full in terms of the ongoing multiple criminal investigations, an informal reporting relationship took place outside the organizational chart and Don Bell assumed a leadership role in the intelligence component.

In the days and weeks following the death of Dudley George, the main concern identified by the intelligence unit was information coming from a variety of sources that suggested that certain Aboriginal groups or individuals might be planning retaliation strikes against vulnerable targets, such as the propane tank behind the London Police station, and the transformer off of Wellington Road, west of the Regina Mundy school in London. Indeed, the number one threat that Detective Sergeant Bell identified at this point in time concerning public and officer safety was that there might be some type of violent retaliation from Aboriginal supporters of the occupiers. This threat was initially identified on September 7. With the new properly structured and resourced intelligence mandate, Don Bell made a lot of progress collecting, assessing and analyzing data within a short time frame from his sources, contacts, and other intelligence networks (including CSIS and the London Joint Forces Operation).

As the police operation proceeded into the post-shooting de-escalation phase, Don Bell reported this information directly to Inspector Hutchison who, in turn, reported to the Incident Commander, but not before the information had been analyzed and reliability factors attached to it. This was a vast improvement over the process in place under Incident Commander Carson.

As well as implementing an enhanced, organized intelligence process, the intelligence unit acquired a larger dedicated complement of trained personnel. On September 8, 1995, the Director of Intelligence of the OPP, Dave Crane, determined that the intelligence unit needed a more secure and private office for the intelligence officers to work in and a classic analyst trained in intelligence from OPP General Headquarters in Orillia. Ultimately, two analysts were assigned to the police operations at Ipperwash — one for the intelligence unit and one for the criminal investigation branch. Hence, it was recognized that the police operation needed an intelligence unit that was independent from the criminal investigation unit. Under Carson, the intelligence component had been subsumed within the criminal investigation unit under the direction of a non-intelligence officer, Trevor Richardson.

By September 9, Detective Sergeant Don Bell had ensured that all of the information that had been collected since September 4 was catalogued so that he and the other intelligence officers were working from the same database of information, and the analyst could begin his analytical review. This was the first

time a formal analysis had been done of the raw data collected since prior to the occupation of the park.

On September 11, the intelligence unit moved to more private and secure offices at the OPP Grand Bend Detachment, which was also the site of the executive office of Chief Superintendent Coles and Superintendent Tony Parkin. The London Joint Forces Operation took more of a leadership role in the intelligence function under Project Maple than it had in the past. The result was that all information flowed through a single repository through intelligence officer Don Bell, from which written executive summaries were prepared and presented twice a day to the Incident Commander, with the benefit of analysis and a degree of reliability attached to the information. When more urgent matters arose in between reports, they were discussed in person or via telephone by Don Bell and the Incident Commander.

The human resources dedicated to the intelligence function were increased so that the Incident Commander had trained intelligence officers on duty twenty-four hours a day, and seven days a week.

In short, in the post-shooting police operation, measures were in place so that the proper collection, evaluation, collation, and analysis of information occurred, thus preparing the Incident Commander to make well-informed tactical decisions. The tangible result was that while there was a lot of information coming in suggesting aggressive and possibly violent retaliatory plans were being made by external Aboriginal groups, in the end no such threat materialized, and no decisions involving aggressive tactics were made premised on the possible materialization of such a threat. This non-confrontational form of police involvement, in turn, was essential to the overall goal of de-escalation of the tensions that built up in the hours and days following the death of Dudley George.

There can be no doubt that a properly resourced and organized intelligence component to the Ipperwash police operation enhanced the ability of the Incident Commanders to make more astute decisions.

It is only logical to assume that had the information given to John Carson during the early evening hours of September 6 been processed through proper intelligence channels, he would likely not have received the erroneous information, including the error-ridden report relating to Gerald George concerning the allegations that occupiers had guns in the park and that a group of occupiers had randomly attacked a female civilian's car with baseball bats, the totality of which led him to believe that the situation at the sandy parking lot had escalated in terms of risk to public safety (including a possible expansion of the occupation to the sandy parking lot and beyond) to the point where it justified the aggressive police action that followed later that evening.

Dectective Sergeant Don Bell admitted that either he or a trained intelligence analyst would likely have detected the pattern of the occupiers using the yellow school bus (driven by Nicholas Cottrelle into the sandy parking lot) in association with other aggressive manoeuvres, and would have flagged for him the potential risk that the bus in the park facing the sandy parking lot posed to the police that night. Notably, second in command of the CMU, Sergeant George Hebblethwaite, testified that the bus did not cause concern or register as a potential weapon when they initially saw it that night, but he was unaware of the past use of the bus. Such information might have altered the course of events that evening. As it was, the bus was not even considered in the strategy discussions leading to the ultimate decision to deploy the CMU and TRU. Without the benefit of a formal intelligence unit of the type that was implemented immediately after the shooting, John Carson was deprived of the opportunity to make an informed decision based on as accurate and reliable information as possible. Don Bell testified that a trained analyst would have provided John Carson with "one stop shopping" to assist him in taking his tactical priorities forward.

While one cannot know whether with the benefit of the correct information, including the potential threat posed by the bus, Inspector John Carson would nevertheless have sent the CMU into the sandy parking lot that night, it was a critical piece of analysis that he did not have.

Later on, Project Maple was replaced with a new police operation called "Project Bluewater," which was formulated in late 1995 as a contingency plan in relation to a possible takeover by First Nations people of the nearby Pinery Park. Under this police operational plan, the intelligence function was formalized to reflect the same structure, function, and organization as developed under Project Maple after September 6. A new enhanced computer software database program with greater search capabilities was allotted to the Ipperwash policing operation after September 6, which was called White Rose. In addition to the use of the enhanced White Rose database, the OPP acquired the use of the RCMP's Westcam — a sophisticated aerial surveillance device with enhanced capabilities, which it deployed over the park and army camp.

Don Bell remained in his position as the senior intelligence officer for the Ipperwash police operation until June 1998, when he transferred to the biker enforcement unit.

20.2 The Role of the Aboriginal People in De-escalating the Tensions

In the aftermath of the shooting death of Dudley George, prominent Aboriginal leaders came forward to assist with the goal of providing support to the occupiers

as well as to the police. Efforts were also made to provide assistance to the government, though those efforts were not immediately welcomed.

20.2.1 The Role of the Aboriginal Peacekeepers

As indicated earlier in this chapter, one of the first orders of business for Bruce Elijah and Bob Antone in terms of de-escalating the tensions felt by the occupiers and their supporters, on the one hand, and the local non-Aboriginal residents, on the other hand, was to bring in a measure of non-OPP security into the area. For obvious reasons, the OPP were not welcome by the residents of the Kettle Point Reserve or those of the army camp and park. They accomplished this with the assistance of their own First Nation, Oneida, which had received a request for assistance from the occupiers. Initially, Bruce Elijah and Bob Antone were designated by the Oneida Longhouse and Council to give assistance and be present in the army camp and park. Bob Antone took on the role of observer and described his role as a "messenger" between the OPP and the occupiers and the Kettle and Stony Point First Nation. He assumed this role, in part, because the occupiers and the Chief and Band Council of the Kettle and Stony Point First Nation were still not on good terms, though the tragedy of the night before had brought the two communities closer together. Layton Elijah later replaced Bob Antone as the observer.

Gordon Peters described the role of the peacekeepers as creating a buffer between the people in the army camp and park, and the police. While he did not play any role in their selection, he was very confident in the choice of Bruce Elijah to oversee the Aboriginal peacekeepers.

The peacekeepers were not rigid in their roles. They assisted in acting as "internal" security for the people in the army camp and park in the initial days following the events of September 6. They assisted in conducting an "internal" investigation into those events from the perspective of the Aboriginal people in the army camp and park. They also assisted, from time to time, through Layton Elijah, in facilitating and overseeing the implementation of agreements on small items as between the OPP, MNR, and the people residing in the army camp and park. As an example, the peacekeepers oversaw the implementation of agreements relating to entry into the park, including the entry of the MNR into the park in late 1995 to winterize the park's facilities. The mere presence of the peacekeepers within the army camp and park greatly contributed to calming the fears and anxieties of the Aboriginal people within them.

Layton Elijah, in turn, was designated the head of the peacekeepers in charge of security by Oneida, under the general direction of and reporting to Bruce Elijah. Their assignment was to keep the peace within the boundaries of the

disputed territory (the park and the army camp, and the immediate surrounding area, including the now evacuated cottages directly across from the sandy parking lot, which was now a crime scene). Layton Elijah did this with the assistance of several other designated peacekeepers from Oneida. They were unarmed.

Layton Elijah testified that he was directed by Oneida Council to go to the park with as many men as possible to meet with the occupiers and find out what they needed, where they needed the peacekeepers, and to do the best job they could. He understood his main function as head peacekeeper was to be an observer. He arrived at the park with thirty-six men from Oneida in the evening of September 8, and he stayed in the park until the end of September 2004. His function as head of the peacekeepers evolved beyond observation to setting up internal security on behalf of the occupiers. He set up checkpoints and controls along the perimeter of what he described as the "territory," which included Matheson Drive to the south of the park, and extended beyond the sandy parking lot to the cottages beyond Army Camp Drive and along East Parkway Drive up to, but not including, the MNR parking lot (the former TOC site). The peacekeepers continued their patrols until November 1995, by which time the fears of the occupiers concerning any plans by the OPP to forcibly remove them from the park had disappeared.

At this time, the occupiers also fostered an internal Aboriginal-led investigation into the events of the evening of September 6, 1995. This investigation was separate from the joint SIU/CIB/First Nations investigation that occurred between September 18 and 20, 1995, with Chico Ralf as the lead Aboriginal representative. The primary objective of this internal investigation was to retrieve physical evidence. The items collected (e.g., OPP logs, notes, and maps) were eventually turned over to the OPP. This internal Aboriginal investigation commenced on September 10 or 11 and was led by Layton Elijah, with the primary assistance of Ben Pouget and Martin Doxtator (and others who were in the field). The Aboriginal investigators also found various liquor bottles in the field between the former TOC site and the sandy parking lot, and hypothesized that OPP officers had consumed the contents of the bottles. There was, however, no credible evidence before me to suggest who had consumed the liquor or indeed when the liquor had been consumed, much less to suggest that any OPP officer consumed liquor while in the course of his or her duties.

Layton Elijah also acted as the repository for storing bullet casings and OPP equipment (including broken shields) picked up by the occupiers and their supporters, and he testified that he turned these objects over to the OPP as well.

While Bruce Elijah's role overlapped with Layton Elijah's, Bruce Elijah was only present from time to time, whereas Layton Elijah was at the park on a

full-time basis. Also, as Bruce Elijah's role as an intermediary decreased as 1995 came to an end, Gordon Peters' role as intermediary increased. Bruce Elijah ceased to be formally involved as a designate of the Oneida Longhouse as negotiator and facilitator in the latter part of 1995. Thereafter, the Longhouse designated Layton Elijah as the liaison between the occupiers and the OPP. In 1996, at the request of the Chief and Council of the Kettle and Stony Point First Nation, Oneida formally withdrew the assistance of their peacekeepers from the army camp and park, though Layton Elijah stayed on.

20.2.2 First Nations Investigation Team

Bruce Elijah identified the need to establish a formal First Nations investigation team, which might ultimately work co-operatively with the Special Investigations Unit (SIU) and the OPP. He was aware that the SIU was supposed to come in and undertake their own investigation but as the days went by without any signs of such an investigation, Bruce Elijah became concerned. He believed that by establishing a First Nations investigation team, he would hasten the process of the SIU investigation. He contacted a retired First Nations OPP officer, Chico Ralf, to head up a First Nations investigation team. He chose Chico Ralf because he was a retired officer of the OPP who understood the mechanics of an OPP investigation. Gordon Peters also played a role in the development of the terms and conditions for the joint process.

The mandate of the First Nations investigation team was to determine who did the shooting and where the shooters had been set up. The First Nations investigation team was distinct from the First Nations security team (the peacekeepers under Layton Elijah), which had also been established.

Chico Ralf received the request through the Chiefs of Ontario office. He attended a short briefing meeting at that office in or around September 14 or 15, 1995. He then met with Bruce Elijah at Oneida on September 15, 1995, where he received a detailed briefing on the assignment, and travelled to Camp Ipperwash with Bruce Elijah, where they met with Bob Antone and Regional Chief Gordon Peters. Thereafter, he assumed a leadership role in the ensuing joint SIU/CIB/First Nations investigation of the crime scene.

Chico Ralf also assisted in facilitating the return of OPP and St. John Ambulance vehicles and property removed from the TOC site at the MNR parking lot in and around September 7, 1995.

Bruce Elijah was concerned about the bad publicity the occupiers were receiving in the local media concerning rumours of break-ins by the occupiers into the nearby cottages. To counter the misinformation, he organized a joint OPP–First

Nations investigation team tour of the cottages located within the security area of the First Nations (i.e., bordering the beach between the sandy parking lot and the MNR parking lot). This tour occurred on September 10, and was videotaped, in the presence of Officers Jim Potts and Paul Trivett of the OPP, Miles Bressette of the Kettle and Stony Point Police Services, Marvin Connors on behalf of the Stoney Point security team, Regional Chief Gordon Peters, and Bruce Elijah. This videotaped tour of the cottages showed that there was no evidence of wholesale break-ins or significant damage to property, though the investigation did reveal that one cottage had a broken door jamb.

Mrs. Fran Hannahson owns the cottage that had the broken door jamb. She testified at the hearing that when she and her husband, Robert, returned to their cottage, there were items in their house that did not belong to them, and that their door had a broken jamb. She also testified that on a subsequent visit, she and her husband discovered a pellet gun and a pair of night-vision goggles. However, she also testified that she did not suffer any physical, emotional, or financial stress as a result of the events. Indeed, she confirmed that she had no intention of selling the family cottage, notwithstanding the troubling events of September 6.

Mrs. Hannahson's neighbour and sister-in-law, the late Isobel Jago, told the Commission's investigators that her cottage had also been broken into. Unfortunately, Mrs. Jago died before she could testify at the Inquiry, but her statement to the Commission's investigators was entered into evidence.

20.2.3 Joint SIU/CIB/First Nations Investigation of the Crime Scene

After speaking to the occupiers and gaining their permission to enter the sandy parking lot, the First Nations investigation team negotiated with the SIU and CIB investigation units to attend the crime scene (which was now under the protection of the Oneida peacekeepers) and conduct an official, albeit late, investigation.

A tripartite Memorandum of Understanding executed on behalf of the SIU, CIB and the First Nations investigation team was signed on September 17, 1995. The three parties carried out their joint investigation between September 18 and 20, 1995, and the results of the investigation were documented. Unfortunately, the value of the joint investigation, from an evidentiary point of view, was questionable at best, given that the crime scene had already been physically altered and contaminated by the removal of potential evidence long before the joint investigators arrived on the scene.

On September 19, 1995, a further Memorandum of Understanding was signed between the residents of the former Stoney Point Reserve (the army camp and the

park) and the OPP setting out the conditions for conducting a joint identification of the school bus driven by Nicholas Cottrelle and the Chrysler New Yorker driven by Warren George into the sandy parking lot during the confrontation.

20.2.4 Voluntary Surrender of Certain Occupiers under Existing Arrest Warrants

Bruce Elijah also played a role in facilitating the voluntary surrender to the OPP of those occupiers who were the subjects of outstanding arrest warrants. All twenty-four of these men were charged with forcible entry and forcible detainment (contrary to Sections 72(1) and 72(2) of the *Criminal Code*) relating to their alleged unauthorized entry into Ipperwash Provincial Park. The Crown, who determined, based on the available evidence, that they had a reasonable colour of right defence, ultimately withdrew all of these charges. A colour of right defence means the Crown Attorney must be satisfied that the available evidence would show that the accused had a reasonable belief that they had the right to be in Ipperwash Provincial Park. The withdrawal of the charges does not answer the question of whether the accused has any legal right of possession to Ipperwash Provincial Park. Rather, it indicated that the Crown Attorney did not believe that he had a reasonable prospect of gaining a criminal conviction on those charges.

20.3 Injunction Proceedings

20.3.1 September 7 Court Appearance

Crown lawyers Tim McCabe and Elizabeth Christie drove through the night from Toronto to Sarnia for the hearing of the injunction motion at 9:00 a.m. on September 7 before Justice Daudlin. A motion record containing the affidavit of Les Kobayashi was before the court. Les Kobayashi, on behalf of the Ministry of Natural Resources, was present at court, as was A/D/S/Sgt. Mark Wright, who was to testify from the police perspective.

At the hearing, Tim McCabe elicited evidence from Mark Wright about the events at the Park over September 4 through 6 and about the historical context of the park and the army camp. The evidence contained certain inaccuracies with respect to the events of September 5 to 7:[3]

3 Mark Wright did alert Justice Daudlin to the issue of colour of right, the possibility of a burial ground (though not to evidence of protestors saying that the park was their land), the sacred site within the park, and the co-operation of Aboriginal people with respect to police checkpoints.

- the police "had some information that there were weapons that had been brought into the Ipperwash Provincial Park," when there was only a report of a rifle in the trunk of a car at Matheson Drive, outside the park's boundaries;
- on the evening of September 5 "what were described to [Mark Wright] as boulders, not rocks, but boulders were thrown at the [police] cruiser and the windows were taken out, and there was some damage to the fenders," when only rocks had been thrown;
- on September 5 officers at checkpoints had heard what they believed were automatic weapons fired within the park, when the only report of rifle fire was from within the army camp;
- he was notified by radio that the damage to a vehicle in the early evening of September 6 included a broken windshield, when a windshield had not been broken in this incident;
- the evidence does not include any express reference to the presence of TRU;
- "weapons fire came from the car and the bus at our officers at almost point blank range … I heard [over the radio] weapons fire as [*sic*] the leader saying we're being fired upon, and then there was return fire";
- police officers yelled "Move back … [m]ove back" to the occupiers, when this is not captured in the recording of the commands or otherwise suggested in the evidence before the Inquiry.

To an extent, the inaccuracies are likely a result of Mark Wright reporting to the court on events for which he himself was not present (called hearsay evidence). They can perhaps also be attributed to the fact that when Mark Wright gave his evidence, he had been awake for at least thirty hours, and the last time he had slept, it had only been for three hours. At the hearing Justice Daudlin commented as follows:

> The questioning that I did of the officer this morning could ... by parties who were not here, take on the appearance of an excessively critical examination of events that took place that evening, and I want the officer to know that I'm fully cognizant of the fact that he has been 30 hours plus without sleep, that he has been in the midst of the situation ... and that none of the questioning that the court was doing was meant in any way to be critical of what has happened ... but rather to put a precise point on the information that the court is seeking ..."

Mark Wright acknowledged some of the errors in his evidence at the Inquiry.

At approximately 1:00 p.m. on September 7, Justice Daudlin granted the injunction. However, one of the terms of the Order was that the OPP could not act on the injunction until the occupiers had an opportunity to be heard by the court and potentially persuade the judge to dissolve (or revoke) the injunction. Justice Daudlin ordered that the Order be served on the occupiers by posting the application and Order at the park and by dropping fifty copies of the Order from an aircraft over the park in the area of the occupiers. The latter unusual method of service had not been requested — or suggested — by Tim McCabe, and was not raised by Justice Daudlin during the hearing.

After the hearing, A/D/S/Sgt. Mark Wright called Inspector Carson to discuss the injunction. During their conversation, Inspector Carson said: "I guess it's kind of a moot point whether we get it now or not." In Inspector Carson's view, the areas where the shooting took place were part of a crime scene, and as a result of what had happened, they had sufficient information to apply for the appropriate search warrants that would give them control of the area for the criminal investigation. This investigation was now the priority of the police operation; therefore, the less significant issue of an injunction and title to the property could be put on the back burner. From Inspector Carson's perspective, getting an injunction with respect to the park had fallen in priority.

Tim McCabe, Deputy Attorney General Larry Taman, and Inspector Carson were concerned about the potential for injury and for escalation of the situation should documents be dropped from an aircraft, likely a helicopter. Larry Taman instructed Tim McCabe to tell Justice Daudlin that the service provision of the Order was dangerous and ill advised. Tim McCabe met with Justice Daudlin in chambers to try to persuade him to amend the Order by deleting the provision about dropping the Order from above. Justice Daudlin was not persuaded to change the service provision of the Order.

Larry Taman then suggested that Tim McCabe go before another judge to have the Order changed. The necessary court documents were prepared, and the lawyers arranged to appear before a judge in London the next day. On September 8, Inspector Carson gave evidence about the safety issues raised by the method of service ordered by Justice Daudlin. Justice Flinn made an Order varying the Order of Justice Daudlin, so that service by aircraft was an option available to the OPP, but not required.

The first inkling Tim McCabe had that the OPP had reservations about the injunction was on September 8. At court in London, Inspector Carson advised Tim McCabe about internal deliberations within the OPP with respect to whether they wanted to have anything further to do with the injunction proceeding.

20.3.2 Chain of Events Leading to the Government Decision to Withdraw the Request for an Injunction

Justice Daudlin's injunction Order provided that the parties were to appear again in court on Monday, September 11, 1995. At some point on Saturday, September 9, OPP officers picked up materials that the government lawyers wanted to serve on the people in the park for Monday's proceeding, but the materials were never served. Tim McCabe was working on the application on Sunday, September 10, when he received a telephone call from Larry Taman instructing him to withdraw the motion. Larry Taman does not recall who made the decision to withdraw the injunction or whether he made the decision. At the Inquiry, Tim McCabe read his notes of September 10:

> Shows that we have some empathy. Provides a valuable bargaining chip.
>
> Larry Taman: Very good idea. RFX's ... two (2) points. Take a longer view. This shooting has, I expect, set back relations between the Crown and Aboriginal peoples years. Was no great shakes before, now infinitely worse. And further the moral balance, in the eyes of the public, has, I think, probably shifted in the direction of the Aboriginal peoples. I'm not restricting that to this incident, I mean across the Board.
>
> Coles thought it inappropriate, indeed inadvisable, to serve. Adjournment is the right idea.

Deputy Attorney General Larry Taman may have conveyed to Tim McCabe the OPP's concerns, but not the reason the OPP did not want it to proceed. It seems that on September 10, Chief Superintendent Chris Coles' view that it was inadvisable to serve the injunction played a role in the instructions that Tim McCabe received from Larry Taman. The Attorney General was not involved in the decision to withdraw the injunction,[4] nor was the Minister of Natural Resources (the owner of the park). The fact that Dudley George's funeral was to be held on September 11 also seems to have been a factor in this decision.

Tim McCabe drafted a statement to be read in court on September 11. Larry Taman suggested revisions, which changed the statement from saying that the OPP requested the withdrawal of the application to saying that the plaintiffs did

4 Charles Harnick understood that the recommendation was made that the injunction be withdrawn as a result of the death of Dudley George.

not want the matter to proceed, after receiving the advice of the OPP. The application was withdrawn on September 11 and Tim McCabe read the following:

> Your Honour, I am advised by the plaintiffs that in light of recent events and circumstances, and after receiving the advice of the Ontario Provincial Police, they do not wish this matter to proceed. They have therefore instructed me to withdraw the motion that is before you. The funeral of Anthony O'Brien George, the person who died last Wednesday evening, is to take place later today, to be followed by a period of mourning in accordance with tradition. The withdrawal is made out of deference to that tradition, and a desire to avoid any possible inflammation of the situation at the Provincial Park, and in order to ensure public safety. Accordingly, I am at this time withdrawing the motion. As matters proceed, it may of course become necessary for the Attorney General and the Minister of Natural Resources to bring a new motion at a later date. But it is hoped that that will not be necessary. In light of the withdrawal, the order made by Your Honour on September 7, as varied, will of course expire at 12 noon today.
>
> Included in that expiry will be the publication deferral. The decision not to seek an extension of that part of the order has been made after consideration of the evidence given and the current Supreme Court of Canada authority concerning publication deferral orders.

The statement indicates that part of the reason for the withdrawal was respect for the George family because the funeral of Dudley George was to take place that day. In addition, there was a desire to avoid any "inflammation" of the situation at the park and to ensure public safety. This was consistent with the OPP objective of de-escalating the tensions and trying to open up a line of communication with the occupiers.

After September 11, Tim McCabe continued to be alert to the possibility that there might be another request to seek an injunction. As of September 15, he expected that he would receive instructions to obtain an injunction on notice by the following week. Elizabeth Christie prepared a memorandum dated September 18, 1995, addressing the issue of whether delay on Ontario's part in pursuing an interlocutory injunction against the occupiers of Ipperwash Provincial Park would lead to the relief being denied. On September 21, 1995, Leith Hunter, a lawyer in the MNR, sent a draft affidavit in support of an injunction to Peter Sturdy. Although the lawyers continued to work as though the injunction might be pursued, the government never renewed the application.

A factor that may have militated against the government pursuing the injunction was the fact that it could provide another forum of review for what had happened at the park on September 6, 1995. Tim McCabe wrote a memo to Acting Secretary of ONAS Yan Lazor dated March 5, 1996, outlining factors for the government to consider in determining whether to bring another injunction motion:

> The government will have to decide whether it is willing to risk providing, by means of injunction proceedings, a judicial forum for review of the police operations of last September and the death that occurred on the evening of September 6.

Elizabeth Christie testified that she was aware of concerns many months later among government people that pursuing the injunction might lead to a judicial review of what had happened surrounding the death of Dudley George, and they did not want that. On the other hand, at the Inquiry, former Premier Michael Harris and others from his government denied that the reason the injunction was never pursued was to avoid judicial scrutiny of the government's and the OPP's behaviour. He testified that events such as the funeral of Dudley George and the SIU investigation and other proceedings (coroner's inquest, criminal trial, civil action) intervened. He also noted that public safety was no longer a concern as it had been when the injunction was initially sought.

Regardless of why the government might not have wanted to proceed with injunction proceedings, the police clearly did not see the use of having an injunction to enforce. The enforcement of an injunction would have greatly increased the volatility of an already volatile situation. From at least September 10, 1995, and likely earlier, Chief Superintendent Chris Coles did not want the injunction. He did not think it was an appropriate mechanism of redress because of the funeral, and because it could either hinder discussions or prompt the police to take action, neither of which would help de-escalate the situation. On September 19, 1995, Peter Sturdy noted in an e-mail to Peter Allen: "Injunction is not a preferred route from [Coles'] standpoint. My read is that [Coles] feels this will hinder discussions and/or may require him to take some action." Into October of 1995, Chief Superintendent Coles continued to make known his view that an injunction would be of no value: things had stabilized since the death of Dudley George and the use of an injunction might inflame the situation. On October 3, 1995, Ron Fox updated the re-constituted Interministerial Committee (which was re-named the Support Group as discussed further in the next section) as to a meeting between Chief Superintendent Coles and the three Deputy Ministers. At the meeting, concerns were raised as to the effectiveness of an injunction and the minutes of the meeting note that "Chris Coles felt that an injunction would be of no value."

The use of an injunction as a tool to prompt resolution of these types of First Nations disputes can be controversial, and is not the only mechanism that the government or other legal titleholder can avail itself of. I discuss several policy issues related to the use of injunctions during Aboriginal occupations and protests in Chapter 9, "Policing Aboriginal Occupations," in Part II of my report.

20.4 Government Response to the Events of September 6

20.4.1 Transformation of the Interministerial Committee

The September 7 Interministerial Committee (IMC) meeting was attended by the core of people who had attended the IMC meeting on the previous days: Ontario Native Affairs Secretariat (ONAS) staff, Ron Fox (Special Advisor, First Nations), civil servants from the Ministry of the Solicitor General and Ministry of Natural Resources. The Deputy Minister of Natural Resources Ron Vrancart and Deputy Attorney General Larry Taman also attended. The September 7 meeting brought a significant restructuring of the Committee dictated by the Deputy Ministers: political staff would no longer participate in these IMC meetings relating to Ipperwash. One of the flaws of the earlier constituted Interministerial Committee was that its composition interposed a direct interface of civil servants (without the benefit of a Deputy Minister leadership presence) with political staff, causing tension that was counterproductive.

At the meeting, Larry Taman outlined the priorities in the aftermath of September 6: accurate information flow in and out of government, consistent messaging from a single spokesperson, and clear lines of decision-making authority. In his testimony at the Inquiry, Larry Taman described his message to the Committee as follows:

> Well, what I said to the meeting was that I thought the tests of our work would be … [n]umber 1, were we serious about the facts. In the course of the previous couple of days we'd had people say there were guns in the Park, there were no guns in the Park, there were women and children in the Park, there were no women and children in the Park; that it was important to know what was going on.
>
> Secondly, that it was important to be serious about our communications. That we couldn't have everybody in government talking to the First Nations or talking to the people of Ontario. So, that there should be a single spokesperson.
>
> And that we also had to have some order in the interaction between the public servants and the political staff, because if we didn't, we

> were going to be vulnerable to the fact or the appearance or both that the political staff were interfering in the operations or that the operations people were making government policy. And those were both equal risks in my mind.

In an earlier meeting on September 7 between Deputy Minister of Natural Resources Ron Vrancart, Deputy Solicitor General Elaine Todres, and Deputy Attorney General Larry Taman, Taman had decided there would be a separate group comprised of Ministers, Deputies, and the Premier's Office, which would be called the "Nerve Centre." This separate group was meant to prevent the fact or appearance of political staff interfering in operations or operations people making government policy. The Nerve Centre would manage the incident: deal with the politics of the situation, be directly responsible to the Premier, have its own spokesperson, and connect politics to implementation on the ground. The Deputy Ministers brought the authority previously delegated to the IMC back into their own direct personal responsibilities. After September 6, the Nerve Centre met every day for the following couple of weeks.

In the aftermath of September 6, the Ministry of the Solicitor General took a much more active role with respect to Ipperwash, which had previously been a watching brief. The Nerve Centre was run from a boardroom at the offices of the Ministry of the Solicitor General. The Minister of the Solicitor General was the designated spokesperson for events on the ground. By later in the day on September 7, the Communications Branch of the Ministry of the Solicitor General had prepared a crisis management plan in relation to Ipperwash. The goals of the plan were identified:

1. ensure that all decisions and public statements are made from a common and current information base;
2. eliminate errors via miscommunication through rapid dissemination of information, assisting in maintaining/restoring public order and return to normal operations;
3. prevent crisis escalation;
4. rebuild, recover, re-establish public confidence and repair relationships;
5. prevent re-occurrence or development of a chronic crisis;
6. enable the ministry and representatives to emerge with highest possible credibility.

Reporting to the Nerve Centre, the IMC would continue without any political staff. This restructured IMC was eventually called the "Support Group." It was to be kept small, unlike the large and unwieldy former Committee. One of the concerns expressed about the earlier constituted IMC was that its size had made it difficult to get consensus and therefore, it could not act quickly.

The mandate of the new IMC or Support Group was to provide advice to the Deputy Ministers, and to implement direction received from the Deputy Ministers. The professional civil servants would gather information and present various options to Deputy Ministers, who would filter the options and present them to political staff and decision-makers. The Deputy Ministers would act as liaisons between the new Nerve Centre and the Support Group. The Support Group was concerned with managing communications regarding the incident to prevent events from escalating within the park, with developing a preparedness strategy to anticipate and prevent any mirror or other incidents elsewhere in the province by getting a handle on where the possible Aboriginal "hot spots" were, and with providing regular updates to the Deputy Ministers.

The OPP had communication links to both the Nerve Centre and the Support Group: the link to the Nerve Centre was through the Solicitor General, as Minister responsible for the Ontario Provincial Police, and the OPP would continue to exchange information with the Support Group about events on the ground. The change in structure was intended to make transparent how the police connected with the rest of government and to separate political issues from operational issues on the ground. They restructured the Committee to more clearly separate the "political sentiments" from operational matters. Ron Fox, Special Advisor, First Nations, in the office of the Deputy Solicitor General was to be the conduit of any instructions or information that needed to be passed on to the OPP from the Nerve Centre.

One thing that drove the restructuring was a concern that some of the conversation at the dining room meeting had been inappropriate, given the presence of civil servants, including seconded members of the OPP. Strong expressions of political views by some political staff caused Larry Taman and Elaine Todres to caution others to be careful and not to cross the line of giving instructions to police officers. Larry Taman wanted to bring order to the interplay between civil servants and political staff, with a process to put the expression of strong political views in their proper place, away from civil servants. An ONAS Briefing Note prepared by Julie Jai, Acting Legal Director of ONAS, for Larry Taman and dated October 11, 1995, describes the changes that were made:

> Some improvements were made as the process unfolded, such as separating political staff from public servants in the interministerial

> meetings; clarifying that deputies would be the link with political staff and ministers; having joint meetings of the three deputies; creating a smaller group of key public servants to manage the government's response, with a clear lead person for each ministry who could report directly to their deputy; creating a subgroup of the three communications directors to coordinate all government communications.
>
> It was not always clear which decisions could be made at what level, or which ministry had the lead and could make a final decision. Clarification of roles, leads on various issues and decision-making authority would be helpful. It might be useful to set up a mechanism to facilitate consultative decision-making by the three ministers, to ensure coordinated and quick decision-making.
>
> It is suggested that in future, potential emergencies should be coordinated through an interministerial officials group (without political staff) of key ministries (chaired by ONAS), with direct reporting to respective deputies. The procedures for the interministerial group should be reviewed and revised, taking into account lessons learned from this process and input from deputy ministers. Revised procedures could also address issues such as how to handle multiple emergencies simultaneously, how to improve communications with non-Aboriginal and Aboriginal stakeholders, and how to improve coordination with the federal government.

Of critical importance, political staff (such as Deb Hutton and Jeff Bangs) were no longer part of the newly constituted IMC or Support Group. The Deputies felt that a lot of the discussion at the earlier constituted IMC meetings, prior to September 7, had dealt with operational details that should not have been discussed by political staff. The reconstitution of the IMC was meant to demarcate the lines more clearly and keep the politicians focussed on political policy implications. Accordingly, policy discussions were now to occur at the Nerve Centre among political actors, while discussions concerning implementation were held at the Support Group meetings among civil servants.

After September 7, the atmosphere at ONAS changed significantly: there was now an aura of secrecy around anything related to Ipperwash. The civil servant members of the IMC were told that the minutes of the Committee should not be a matter of public record, which they understood to mean that the record of their meetings on September 5 and 6 should not be available to the public. The civil servants felt that they could not say anything about Ipperwash to anyone. They

were aware of the potential for a coroner's inquest, public inquiries, and civil actions and that information therefore had to be carefully guarded. Individuals who continued to deal with this matter as part of their jobs felt isolated: there was no one they could talk to about it, including colleagues, and this unspoken veil of silence caused distress to some of the affected civil servants. Some people did not talk to one another because they were afraid of adverse consequences.

I refer the reader to Chapter 12, "Police–Government Relations," in Part II of my report, where I make recommendations concerning the appropriate mechanisms that ought to be implemented to ensure that there is neither perceived nor actual interference by the government with active police operations. Some of the reforms instituted by the Harris government in relation to the reconstitution of the Interministerial Committee are consistent with my recommendations, though I offer further recommendations aimed at improving the clarity, transparency, and accountability of the government–policing relationship, including the proper role of the Solicitor General in relation to the OPP.

20.4.2 Restricting Information Flow

On September 7 or 8 Chief Superintendent Chris Coles, Peter Sturdy, and Les Kobayashi met in Grand Bend at the request of Chief Superintendent Coles. At the meeting, Chief Superintendent Coles told Les Kobayashi to be very cautious about disseminating information from the OPP Command Post in Forest. Les Kobayashi took Coles' caution as a criticism of his decision to pass along information he had received from command post briefings to Peter Sturdy. Until that point, it had never been clearly defined what information he should or should not report to the MNR when his source of information was the command post. The OPP had not told him whether the information he was receiving was reliable intelligence or un-verified speculation: Les Kobayashi had simply passed on what he thought was important. After Chief Superintendent Coles cautioned him, Les Kobayashi qualified the information he received from the command post as to whether it was intelligence, factual, or unverified before he communicated police information to his colleagues at the MNR.

In the three years following September 6, Les Kobayashi did not receive any direction from any of his superiors with respect to whether he should perform any filtering of the information he received from the OPP with respect to an incident such as Ipperwash. It was his understanding that an MNR liaison person would continue to attend at the OPP Command Post in an incident such as this. Les Kobayashi testified it would be helpful for someone in his position to have direction from MNR: a clear definition of responsibilities and how to do the job.

He thinks it would be valuable to have more specific training on how an MNR person in that situation might deal with a First Nations occupation and protest.

In the days following September 6 Kobayashi had a number of meetings with Chief Superintendent Coles and/or Superintendent Parkin. He testified that their conduct suggested an intention on their part to de-escalate the situation.

Readers are again referred to Chapter 12, "Police–Government Relations," in Part II of my report, which offers further analysis defining appropriate lines of communication between an active police operation and government, and measures to safeguard the integrity of that information flow.

20.4.3 The Official Government Stance: No Negotiations until Occupation Over

On September 7, 1995, Gordon Peters, Ontario Regional Chief of the Chiefs of Ontario, wrote to Premier Harris, urgently requesting a meeting between Premier Harris, himself, Chief Tom Bressette, and Council members of the Kettle and Stony Point First Nation:

> This letter is an urgent request for a meeting with you as soon as a suitable time can be arranged to address the critical situation that has arisen in the territory of the Kettle and Stony Point First Nation at Ipperwash Provincial Park ...
>
> Your direct intervention in this matter is required in order to prevent further injury and bloodshed. You must take immediate action to remove the provincial police force from this area and allow the people of this First Nation to diffuse the situation in a manner satisfactory to them.
>
> This unfortunate incident is a clear indication of the problems that are developing in the relationship between the First Nations in Ontario and the provincial government. It is crucial that we begin a dialogue that will address immediate issues between us and establish a framework for a future relationship.
>
> I believe that there can be more effective and constructive solutions to these matters that are less confrontational than the one that has occurred in Ipperwash Park.

No response to this letter was received on September 7 or the days immediately following. The Chiefs of Ontario office tried without success to contact

people in the Premier's Office to schedule a meeting or otherwise obtain access to the Premier.

Although civil servants at the IMC discussed establishing contact with Chief Tom Bressette of Kettle and Stony Point First Nation, making courtesy calls to Aboriginal leaders, and considering the use of Aboriginal facilitators or Elders, the government did not eagerly pursue any of these options.

On September 7, 1995, Premier Harris said on *The World Tonight*, a televised news program:

> We are very much concerned about safety. We're very much concerned ... for those who are there, and the safety of all concerned. This is a matter with the police and if Ovide Mercredi wishes to discuss the removal of the illegal occupation he should do so with the police.

Consistent with the refusal to communicate with the Aboriginal people while the occupation continued, on September 7, Bill King, Executive Assistant to the Premier responsible for MPP liaison, sent Marcel Beaubien, MPP for Lambton, a fax suggesting a response to an invitation to meet with Chief Tom Bressette:

> Thank you so much for the kind offer I received today to meet with you.
>
> As your MPP, I would be more than happy to meet with you following a peaceful resolution of the current situation now underway at Ipperwash Provincial Park.
>
> Thanking you for letting me know of your desire to work in a co-operative way on issues of mutual interest to the people of Lambton ...

The advice from the office of the Premier was not to engage or appear to engage in negotiations until after the occupation had been resolved.

On September 8, 1995, Gordon Peters, as Regional Chief, Chiefs of Ontario, wrote to Ron Irwin, the federal Minister of Indian and Northern Affairs Canada, to request his involvement in the Ipperwash situation because "some form of senior Canadian political involvement is required [and] so far, Premier Mike Harris has shirked his responsibility."

On September 8, 1995, Solicitor General Runciman participated in a conference call with Chief Tom Bressette, Grand Chief Joe Hare of the Union of Ontario Indians, Regional Chief Gordon Peters, and National Chief Ovide Mercredi of the Assembly of First Nations. The call was organized by the Ministry of the Solicitor General in response to a request for a meeting with the Premier. The

Premier's Office decided that Runciman would represent the government in the call. Regional Chief Gordon Peters described the purpose of the call as "trying to get somebody on the line to … take some responsibility ... trying to get any [p]rovincial Cabinet Minister to have them — have them understand the seriousness of the situation that was going on ... trying to get people to de-escalate the police." During the call, Runciman repeated the message from the Premier's Office that the Premier would not attend a meeting until the occupation of the provincial park was over. Chief Tom Bressette indicated that an injunction was unnecessary and that the idea of dropping copies of the Order from a helicopter was an insult. He did not understand the concern with the park — there was nobody in the park, a life had been lost, and there had always been a concern for the land. National Chief Ovide Mercredi indicated that if the Premier continued to refuse to meet, they were prepared to go to the government offices with media in tow and do a sit-in.

Meanwhile, the Premier maintained his position that there could be no discussions. In comments to the media on September 8, Michael Harris said:

> This is an illegal occupation; they are trespassing on land that belongs to the Crown. This is a matter for the OPP to deal with, so for there to be any discussions over what we all want to be a safe and peaceful conclusion to this illegal occupation, it should be with those in charge of that, and that's the OPP ... I'm not going to discuss [land claims in general and other native issues] while there's an illegal occupation on ... we are not in the position to be asked to come to the table to negotiate while there is an illegal occupation that is on ... I don't know what there is to negotiate. As far as official word that we have, the natives know of — officially from the chiefs, from anything up until this situation developed, there was no claim on this land. There was a clear understanding from the '72 study that there was no burial ground. So I don't know how anybody could have anticipated a shift, or somebody suggesting, when all the studies, all the official word is, there is no claim; there is no burial ground ...

On September 11, there was a telephone call between Regional Chief Gordon Peters and Attorney General Charles Harnick. The two may also have had subsequent meetings over the fall of 1995. Harnick communicated the government's message throughout: until the people were out of the park, there would be no negotiations and there was no role for the government; it was a police matter, not a political matter.

On September 12, the first meeting between the Premier and First Nations leaders finally occurred. Premier Harris, Attorney General Charles Harnick, and Deputy Attorney General Larry Taman met with National Chief Ovide Mercredi,

Chief Tom Bressette, and Grand Chief Charles Fox of the Nishnawbe-Aski Nation. The Premier and his staff were initially reluctant to meet with National Chief Mercredi, lest it appear to be an engagement in negotiations when the government had already said there would be no negotiations regarding the park. When Mercredi's request to meet with the Premier was initially turned down, he showed up at the legislative building as he had promised he would do during the conference call with Solicitor General Runciman. He was accompanied by Grand Chief Fox and Chief Bressette and was determined to stay until the Premier agreed to meet. A swarm of TV cameras and media people around Mercredi effectively blocked passage in a hallway in the Legislative Building. From the hallway, National Chief Mercredi, Grand Chief Fox, and Chief Bressette were escorted into an office and were told that the Premier would not see them. Mercredi said they would stay until he did. Eventually, the Premier agreed to meet with the Aboriginal leaders.

By all accounts the meeting got off to a somewhat tense start. In terms of what was said or discussed, there are some differences in the accounts. Chief Bressette testified at the Inquiry that the Premier "walked in and the first thing he said was, 'Let me be very clear about this, I didn't tell anybody to kill anybody.'" Michael Harris, Charles Harnick and Larry Taman, do not recall this being said. Chief Bressette said that the Premier emphasized that he was not involved in what was happening, that it was a police matter. Ovide Mercredi recalls the following issues being discussed: the use of the term "illegal occupation" by the government; the resolution of the conflict; and the calling for a Public Inquiry instead of an internal investigation. Mercredi hoped to get the commitment of the Premier to engage in discussions with respect to the park — not in terms of an ultimate resolution to the land dispute but in terms of agreeing on a process to be used to reach a resolution of the issue. The Premier recalls expressing support for the return of the army camp to the Aboriginal people, discussion of a potential burial ground in the park, the communication of the government's willingness to look at land claims or the burial ground allegation if the occupation ended, and the government asking for help in ending the occupation.

On September 12, after the meeting, Premier Harris issued his first press release on the Ipperwash occupation:

> Just over a week ago, a group of individuals illegally seized and occupied Ipperwash Provincial Park. At that time, I said the issue was a police matter. That position has not changed.
>
> Earlier today, representatives of the First Nations came to Queen's Park to specifically discuss the situation at Ipperwash.

> I believe First Nations leaders should be treated with courtesy and respect. Therefore, I personally delivered the government's message that we will not discuss the illegal occupation of Ipperwash Provincial Park.
>
> As I have said on several occasions since the Park was seized — and I repeat today — these matters are in the hands of the Ontario Provincial Police and the Special Investigations Unit.
>
> That having been said, there are a great many issues other than the illegal occupation of Ipperwash Provincial Park between the Government of Ontario and the First Nations people. The process over the last many years has not resolved the mutual concerns of natives and non-natives. Our government is committed to restoring hope, economic opportunity and jobs for the First Nations people of Ontario.
>
> The Minister Responsible for Native Affairs and his officials will continue to work with First Nations to address these issues.
>
> It is my hope that the illegal occupation of the Ipperwash Provincial Park will end quickly and peacefully so that the 250 residents evacuated from the area can return to their homes. I have called upon the Chiefs to use their offices to assist the OPP in peacefully achieving that goal.

The press release reflected the government's unmoveable stance with respect to the "illegal occupation." It failed to mention the allegation of the burial ground in relation to which supporting documents had been received from the federal government the day before. Although forced to meet with First Nations leaders, the Premier's resolve remained that there would be no discussions until the occupation was over.

On the same day that Premier Harris was confronted by the First Nations leaders in Toronto, Solicitor General Robert Runciman, Ron Fox (First Nations, Special Advisor, to the Solicitor General), Terry Simzer, a Legislative Assistant in the Ministry of the Solicitor General, and Marcel Beaubien, the local MPP for Lambton, met with local elected officials and residents at Mr. Beaubien's office in Petrolia. The purpose of the meeting was to discuss the concerns of some of the local non-Aboriginal people regarding safety and the relationship between themselves and the First Nations community. The meeting was initiated by Marcel Beaubien to demonstrate to the Solicitor General the seriousness of the issue and the level of tension and frustration in his constituency. Robert Runciman

and the other government officials indicated to the community members gathered there that the government was aware of residents' concerns about their properties, that Mr. Beaubien was keeping the government apprised, that they were doing what they could to calm the waters and ensure that the situation would be resolved, and that the park-area residents could return to their properties at an appropriate time. The Ministry of the Solicitor General issued a press release that day:

> ... "I came here today to assure the people of North Lambton, through their elected representatives, that the government of Ontario is committed to preserving public safety and to ensuring a peaceful conclusion to the illegal occupation of the provincial park," Mr. Runciman said.
>
> Mr. Runciman later met with some of the park-area residents who left their houses after the occupation started.
>
> "I wanted to meet some of the residents of the area to hear their concerns first hand and to assure them that we are doing everything we can to get them home as soon as possible," Mr. Runciman said. "I also wanted to make it clear to them [the residents of the area] that there is one code of law for all Canadians and that this government will not be party to any double standards." ...
>
> "I urged all the residents of the area to remain calm and work together to help the OPP end this incident. I told them [the residents] that the Government of Ontario will support their efforts to have the federal government resolve the Camp Ipperwash issue, which everyone realizes is at the root of the current situation."

The press release repeats the key message of the government with respect to the illegality of the occupation, and is consistent with Premier Harris's message that there would no negotiation as long as the occupation was ongoing. In contrast, First Nations leaders sought open and meaningful discussion with the government to set out a process by which to ultimately reach a peaceful resolution of the occupation.

It was not until September 29 that Premier Harris answered Regional Chief Gordon Peters' letter of September 7:

> As you are no doubt aware, I met with Assembly of First Nations Chief Ovide Mercredi on September 12th, and at that time I reiterated my earlier position that this is a police matter. The province will not nego-

> tiate with the occupiers until they leave Ipperwash Provincial Park. These matters remain in the hands of the police and the Special Investigations Unit....

Chief Peters interpreted the letter as signalling the Premier's intention to cut off communications. The Premier's message was entirely consistent with his earlier position expressed through the media: that there would be no negotiation as long as the occupiers were in the park.

Several general issues regarding negotiations during an Aboriginal occupation or protest are discussed in Chapter 9, "Policing Aboriginal Occupations," in Part II of my report.

20.4.4 "Revelation" of Burial Ground Documents by Canada

On September 11, the Department of Indian and Northern Affairs (DIAND) issued a press release announcing that its Minister, Ronald A. Irwin, had accepted the invitation of Chief Tom Bressette to visit the Kettle and Stony Point First Nation. A meeting was scheduled for September 13. The purpose of the meeting was to clarify inaccurate media reports, and to provide a forum for discussing the transfer of the army camp back to the First Nation. Representatives of the Department of National Defence were also to attend.

On September 12, the federal government advised the province that they had found some archival material showing that the Council of the Kettle and Stony Point First Nation had advised the provincial Deputy Minister of the Department of Lands and Forests (the predecessor to the current Ministry of Natural Resources) in 1937 that there was a burial ground on the proposed site of the park and requesting that the burial ground be preserved, marked off, and fenced. DIAND Deputy Minister Scott Serson sent Deputy Attorney General Larry Taman a letter. To this letter he attached the following: a letter dated August 13, 1937, from the Indian Agent to Mr. MacInnes, Secretary, Department of Mines & Resources, Indian Affairs branch; a resolution of the Council of the Kettle and Stony Point First Nation dated August 13, 1937; a letter dated August 17, 1937, from Mr. MacInnes to Mr. Cain, the Deputy Minister, Department of Lands and Forests for Ontario; and a letter dated August 19, 1937, from Mr. Cain to Mr. MacInnes. Larry Taman's reaction to receiving the documents was the realization that the provincial government now had an important issue to consider. Regardless of whether there was a formal claim from the First Nation, there was an indication of a basis for such a claim.

Also on September 12, an official from DIAND in Ottawa telephoned Julie Jai, Acting Legal Director of ONAS, to tell her that they had found documents

indicating that when the park was established in 1937, there was a burial site there. She immediately asked him to send her copies of the documents. He faxed her a number of documents, which were the same as those sent from Scott Serson to Larry Taman. Julie Jai in turn advised Yan Lazor, who was Acting Secretary to ONAS, and the three Deputy Ministers at the Nerve Centre of this information. She also spoke to MNR because the information was related to their park. Responding to the burial ground issue was regarded as MNR's responsibility because it was their park, and they frequently dealt with assertions of burial grounds in provincial parks.

In his testimony at the Inquiry, Premier Harris took a negative view of the manner in which the federal government revealed the burial ground documents. He saw it as a political ploy by the federal Minister, Ronald A. Irwin, to try to divert attention from the federal government's slowness and ineffectiveness in dealing with the return of the army camp. At the time the documents came to light, Minister of Natural Resources Chris Hodgson thought that the federal government should have shared the information they had with the province long before they did. Solicitor General Robert Runciman was also concerned about the way the revelation of these documents was handled by the federal government. However, Harris and Hodgson both said at the Inquiry that had they known of the letters prior to September 7, they would not have taken a different approach to the occupation of the park. No discussions took place between Premier Harris and the federal government or Minister Irwin about the release of the burial ground documents.

On September 14, officials at the Province of Ontario uncovered the same documents in relation to the burial ground. Daryl Smith, Information Services Coordinator at the Chatham office of the Ministry of Natural Resources faxed a collection of historical notes he found in his files related to the "beginnings" of Ipperwash Provincial Park. The historical notes include the August 17, 1937, letter to the Deputy Minister of Lands and Forests and his August 19, 1937, response, which refer to the preservation of "the old Indian cemetery … located within the boundary now being developed as a Park."

On September 13, the federal Minister of Indian and Northern Affairs, Ron Irwin, visited the Ipperwash area and issued a press release. Some members of the Ontario government saw this as an example of the federal Minister not taking care to consult and communicate with the province. Minister Irwin went to the area of a significant event where a death had occurred, for reasons not clear to the province, and without any particular communication to the province, according to Deputy Attorney General Larry Taman.

Chief Tom Bressette was angry that the Minister only came up with the documents after everything had happened and thought that the information about

burial grounds in the park should have been communicated to the provincial government much earlier. Regional Chief Gordon Peters viewed the production of the documents as being in the interests of the federal government in their "back and forth" battle with the provincial government regarding land-related First Nations issues.

The Department of Indian and Northern Affairs entered into a Memorandum of Understanding with the Chippewas of Kettle and Stony Point First Nation on September 13, 1995, as part of Minister Irwin's trip to the area. It provided, in part:

> 1. The Federal Government has proposed that a negotiator directly responsible to the Minister of Indian and Northern Affairs and Minister of National Defence be appointed within one (1) week ...
> 2. The Federal Government is committed to transferring the land in dispute (namely former Camp Ipperwash) to the First Nation people as reserve land.
> 3. The Federal Government is committed to working out a mutually satisfactory environmental clean-up of the property, at the cost of the federal government.
> 4. The First Nation people will be extensively involved in the aftersaid [sic] clean-up including the environmental assessment process.
> 5. Adequate funding and full cooperation will be provided by the Department of Indian and Northern Affairs to the First Nation people to identify and protect the burial sites in the provincial park and the First Nations grievance surrounding the parks creation. In light of documents discovered yesterday from 1937 confirming a burial site, the federal government urges the provincial government to fully review all of its records pertaining to the park.
> 6. The Department of National Defence will consider funding a veterans monument at the lands of Stony Point.
> 7. The Federal Government is committed to providing the resources to work with the First Nations people of Kettle and Stony Point to developing a healing process in the community.

National Chief Ovide Mercredi's viewed the terms of the Memorandum of Understanding as suggesting that the federal government was willing to be helpful, because the terms reflected concerns of the Aboriginal community, such as the environmental cleanup of the army camp. He also thought that the Memorandum of Understanding showed the federal government's commitment

to resolving the land question, and was important in clearing the path beyond the immediate conflict by suggesting a process in which they could engage.

Under the Memorandum of Understanding reached with the federal government, funding was to be provided to the Aboriginal community to verify the burial ground allegation. Although funding may have been provided, at the time he testified Peter Sturdy was not aware that any investigation had been undertaken to resolve the issue of whether there is a burial ground within the park. In the wake of the federal government's revelation of documents and the Memorandum of Understanding, staff of the Ministry of Natural Resources searched their files to try to determine if the documents disclosed by the federal government had ever been seen at the park level. On January 15, 1996, Les Kobayashi and Assistant Park Superintendent Don Matheson met with Marilyn and Bob Dulmage to follow up on information regarding bones found years earlier in the park while Marilyn Dulmage's father had been Park Superintendent. Mrs. Dulmage confirmed that Park Superintendent Arnel had found bones when they were constructing the bathhouse in the park. They took photographs. The Ministry of Natural Resources undertook some further efforts to investigate the burial ground allegation but to date it has not been resolved.

Justice Robert Reid was appointed as a fact-finder in relation to the army camp issues pursuant to the Memorandum, and prepared a report for the federal government in November 1995. Chief Tom Bressette said that the negotiator appointed under the Memorandum was dictated by the federal government, and was unacceptable to the First Nation.

Many OPP officers were given the option of going home either after a briefing about the federal government–First Nations Memorandum of Understanding, given at 12:30 a.m. on September 14, 1995, or first thing the next morning. There were to be no more checkpoints, a reduction in the number of available TRU and ERT teams, and the departure of the helicopter and canine units from the area. Approximately 80 per cent of OPP staff posted to the Ipperwash area would return home.

A feeling persisted within the provincial government that the Government of Canada was going its own way and not paying attention to the interests or concerns of the province. Canada seemed determined to treat the return of the army camp as an isolated issue that was separate from the dispute over the park, even though many, including the occupiers, saw the two pieces of land as being interrelated. On September 29, Deputy Attorney General Larry Taman wrote to DIAND Deputy Minister Scott Serson to raise questions about the Memorandum of Understanding and to emphasize the importance of the federal government consulting with the Ontario government about its intentions in relation to Ipperwash.

Taman's letter, intended to remind Serson of a range of issues in which the province had an active interest, highlights the importance of communication:

> In the MOU [Memorandum of Understanding] the federal government agreed to appoint a negotiator within one week and to develop mutually acceptable terms of reference for the negotiations. The federal government's appointment of the former Mr. Justice Robert Reid was announced late last week. What are Mr. Reid's terms of reference for these negotiations? Is it the federal government's intention to discuss matters involving Ipperwash Provincial Park? As you are aware the Ontario Provincial Police are still trying to deal with an illegal occupation of the park and any negotiations involving the federal government could clearly have an impact on the park occupation.
>
> In paragraphs two, three, and four of the MOU, the federal government discusses the commitments with respect to Camp Ipperwash. Certainly the provincial government supports a speedy resolution of the outstanding issues around Camp Ipperwash as we believe that these problems are at the root of the occupation of the provincial park. The provincial government needs to be kept informed about developments at Camp Ipperwash.
>
> In paragraph five of the MOU, the federal government promises adequate funding and full cooperation with respect to the identification and protection of burial sites in the provincial park.... There is also a reference in the MOU to addressing the "First Nation's grievance surrounding the park's creation." Is the federal government considering accepting a land claim in relation to the provincial park?
>
> Paragraph six of the MOU refers to a veteran's monument at the lands of "Stony Point." Where is this monument to be located?
>
> Another fundamental issue that appears to be at the core of the Ipperwash dispute is a representation issue between the "Stoney Pointers" and the Chippewas of Kettle Point and Stony Point. It would appear that any resolution of this matter will require the federal government to address the issue of representation, and we would appreciate knowing what the federal government's plan is in this regard ...

The Town of Bosanquet, like the province, was not getting any attention from the federal government and issued a press release on September 19, 1995, expressing its frustration with the Government of Canada:

> The Solicitor General was receptive to the recommendations made and gave assurances that they would be given a high priority.
>
> The Federal Government again refused to meet with Town officials and Council is angered and dismayed by this ... On Tuesday, 12 September, the Mayor requested a brief meeting with Minister of Indian Affairs Ron Irwin while he was in the area but was told that the Minister did not have time to meet with him.

20.4.5 Park Management Issues as Winter Approaches

Ipperwash Park Superintendent Les Kobayashi, and to a lesser degree his direct superior, MNR Zone Manager Peter Sturdy, were involved in the negotiations with respect to winterization of the waterlines and buildings in the park. Due to the dynamics of the situation, the bulk of these negotiations were conducted by the OPP on behalf of the MNR. The issue with respect to winterization was the possible damage to park facilities that would likely occur as a result of winterization not being carried out, since MNR did not have access to the park. The estimated cost to replace damaged park facilities if winterization did not occur was around $450,000.

Les Jewell, Layton Elijah, Detective Constable George Speck of the OPP, and Les Kobayashi met on November 25, 1995, to discuss the winterization of the occupied park. On December 2, Chief Superintendent Coles, Superintendent Parkin, Sergeant Hudson, Miles Bressette (Chief of the Kettle and Stony Point First Nation Police Service), Bruce Elijah (negotiator and peacekeeper on behalf of the residents of the former Stoney Point Reserve), Layton Elijah, Les Jewell, and Les Kobayashi met at the Kettle and Stony Point First Nation police station to talk about the winterization process. It was ultimately agreed that winterization, except for the maintenance building, which the occupiers intended to use throughout the winter, would take place on December 3, 1995. The park was winterized in December 1995 and has not been winterized by the MNR since.

With respect to damage to the park, Bruce Elijah directed Layton Elijah to help Les Kobayashi compile a list and costing of all damage. Bruce Elijah said that he would submit the bill to the residents of the former Stoney Point Reserve for reimbursement once the federal government compensated them with respect to the army camp. Les Kobayashi was present in the park for the winterization on December 3, and at that time was able to assess the damage. The park concession building, which housed a store and takeout restaurant, had been burnt to the ground. The damage was estimated at around $750,000.

20.5 Summary of the De-escalation of Tensions and the Development of a Status Quo

In the days, weeks, and months following the events of September 6, 1995, the lines of communication between the OPP and the Aboriginal peoples concerned with Ipperwash developed and proceeded on an open and productive basis. Some progress with the provincial and federal governments occurred, at least in terms of improving the process for responding to the occupation of the park and the army camp. As a result, incremental steps were taken to not only de-escalate the tensions, but also restore a sense of peace, order, and security to those who were most affected: the people in the army camp and park, the OPP, the neighbouring cottagers, the residents at the nearby Kettle and Stony Point Reserve, and the interests of the MNR in relation to the park.

This peacekeeping process was largely effected by the willingness of Aboriginal political leaders such as Ovide Mercredi and Gordon Peters to assist in dealing with a sensitive and complicated political matter. The lack of official *Indian Act* band status of the occupiers contrasted with the status and adverse interests of the official *Indian Act* band, the Kettle and Stony Point First Nation, which had the right to assert claims over the army camp and park. As well, the Chief and Council of Kettle and Stony Point First Nation had expressed public disapproval over the actions of the occupiers, most of whom were, after all, members of the official *Indian Act* band.

This process was further facilitated by the willingness of the superior officers of the OPP to separate the function of negotiations from the Incident Command and to take on this role directly on behalf of the police and, to an extent, the government, in terms of MNR practical interests at the park.

The process was also aided by the presence of experienced Aboriginal intermediaries, who had credibility in the eyes of all of the stakeholders: the occupiers, the OPP, the Chief and Band Council of Kettle and Stony Point First Nation, and national and regional Aboriginal political leaders.

The reconstitution of the IMC at the provincial government level also contributed to the success of the process. Its approach changed from seeking to remove the Aboriginal occupiers from the park as soon as possible through an injunction, to a more sophisticated exploration of political options and a strategy that focussed on de-escalating the tensions rather than heightening them. This was accomplished without sacrificing the government's stated position that no substantive negotiations would occur while the occupation was ongoing.

Several positive steps toward reaching a peaceful understanding (though not resolution) resulted from this integrated peacekeeping process:

1. Police visibility was reduced by pulling back the checkpoints and using blue uniformed OPP officer rather than ERT in grey uniforms without sacrificing public safety interests (September 8, 1995). Officers were "pushed back in the bush" in the sense of staying out of sight, while keeping the same complement of OPP personnel.
2. Patrolling responsibility was assigned to the Kettle and Stony Point Police Service and later to the Anishnabek Police Service, so that public order and safety was still protected to everyone's satisfaction.
3. Access to the crime scene, the school bus, and the car was eventually secured for the CIB and SIU investigations in co-operation with the First Nations Investigation Team.
4. The occupiers who had outstanding warrants for arrest surrendered voluntarily to the OPP.
5. The application for an injunction was ultimately withdrawn, thereby aiding in de-escalating the situation.
6. The funeral of Dudley George was able to proceed with due dignity and respect in the Aboriginal tradition without the visible presence of OPP or the distraction of the government injunction application, which was scheduled to have proceeded the day of the funeral, but was withdrawn by the government, in part as a gesture of respect and good will.
7. A Memorandum of Understanding was entered into by the federal Department of Indian and Northern Affairs, the Assembly of First Nations, and the Kettle and Stony Point First Nation, setting out the process for negotiating the return of the army camp to the Aboriginal people.
8. MNR successfully negotiated access to the park, enabling them to winterize and conduct an inventory of property damage to the park.

The public was informed of the productive nature of the OPP–Aboriginal peoples dialogue through an OPP press release issued on September 10, 1995, by Chief Superintendent Chris Coles, in which he expressed his appreciation to the First Nations' leaders for their co-operation.

20.6 Summary of Related Legal Proceedings

Several legal proceedings resulted in the wake of the confrontation between the OPP and occupiers in the sandy parking lot in the late evening hours of September 6. These proceedings can be categorized as follows:

- criminal proceedings;
- the Special Investigations Unit investigations;
- the Chief Coroner's Investigation;
- civil proceedings.

I will summarize the proceedings in their order of listing and include relevant testimony relating to those proceedings, which I heard during the Part 1 hearings. I have not listed the OPP internal disciplinary proceedings related to allegations of culturally insensitive and racist conduct, as I have devoted a separate section to those.[5]

20.6.1 Related Criminal Proceedings

In this category I am referencing only those matters that proceeded to trial, and not those matters that never went beyond the criminal charge or arrest stage (matters that I have canvassed elsewhere in this report). The criminal charges that advanced to trial involved one police officer (Kenneth Deane), and six Aboriginal persons (Warren George, Cecil Bernard George, Nicholas Cottrelle, David George, Stacey George, and Stewart George). Of these individuals, all charges resulted in convictions with the exception of Cecil Bernard George and Nicholas Cottrelle, who were both acquitted. It is also of note that only Warren George served any period of incarceration.

A brief review of the convictions and acquittals will provide added insight into the events surrounding the death of Dudley George.

20.6.2 R. v. Deane

The highest profile criminal case that went forward to trial involving the events at Ipperwash was the case against an OPP officer and TRU team member, the late Kenneth Deane. Tragically, Kenneth Deane died in a motor vehicle accident just weeks before he was scheduled to testify before the Inquiry. Hence I did not have the benefit of hearing his testimony in person. Instead, I have relied on several documents filed as exhibits to the Inquiry, including the sworn testimony of Kenneth Deane given at his criminal trial, and the reasons for conviction and sentencing rendered by the presiding trial judge.

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5 See section entitled "Cultural Insensitivity" later in this chapter for a detailed discussion regarding the discipline proceedings, and my own analysis regarding the role of cultural insensitivity and arguably racist police conduct as contributing factors to the events surrounding the death of Dudley George.

Kenneth Deane joined the OPP in 1985. He became a full-time member of the elite Tactics and Rescue Unit in 1987. On September 6, 1995, he held the rank of Acting Sergeant. Acting Sergeant Deane was charged with criminal negligence causing death in relation to Anthony O'Brien ("Dudley") George. Ken Deane never disputed the fact that he discharged the fatal bullet, or that he discharged his long gun intentionally in the direction of an Aboriginal occupier, though he did not know at the time that the object of his discharge was Dudley George. In essence, Ken Deane testified that the reason why he discharged his long gun at an Aboriginal occupier in the sandy parking lot area was because he believed the occupier was armed with a gun and posed a risk to the safety of members of the CMU. The trial judge, Judge Fraser of the then Ontario Provincial Court, rejected this aspect of Ken Deane's testimony, favouring instead that of Sergeant Hebblethwaite, who testified that he saw an Aboriginal occupier, whom Judge Fraser found was also Dudley George, at the same time as Ken Deane, but could see that the object in the man's hands was a stick or pole and not a firearm of any kind, even though he was behind Kenneth Deane and further away. Judge Fraser concluded, in rendering his conviction of Kenneth Deane:

> I find that Anthony O'Brien (Dudley) George did not have any firearms on his person when he was shot. I find that the accused Kenneth Deane knew that Anthony O'Brien Dudley George did not have any firearms on his person when he shot him. That the story of the rifle and the muzzle flash was concocted *ex post facto* in an ill fated attempt to disguise the fact than an unarmed man had been shot.

Accordingly, the trial judge rejected Ken Deane's defence, and convicted him on the charge of criminal negligence causing death in relation to the shooting death of Dudley George. Specifically, the trial judge found that Ken Deane did not have a reasonable basis for believing that Dudley George was endangering the lives of any of the police officers when he shot him. On July 4, 1997, the trial judge sentenced Acting Sergeant Deane to a conditional sentence of two years less a day to be served in the community, 180 hours of community service, and prohibited Acting Sergeant Deane from owning or possessing any firearms or other offensive weapons during the term of the sentence.

Ken Deane's appeals to the Ontario Court of Appeal and the Supreme Court of Canada were unsuccessful.

At the Inquiry, Commissioner O'Grady accepted Judge Fraser's conclusion that there was no evidence of firearms in the park.

Ken Deane was also subject to a disciplinary proceeding under the *Police Services Act* in September 2001. At that proceeding he was found to have committed misconduct, flowing from the shooting death of Dudley George, and was ordered to submit his resignation within seven days, failing which he would be dismissed from the OPP.

Some time was spent in the Inquiry exploring the fundraising efforts of the Ontario Provincial Police Association (OPPA) in support of Ken Deane's appeal. The OPPA commissioned a pin that bore Ken Deane's badge number and the OPP emblem. I did not hear any testimony that suggested that the pin was worn on OPP uniforms by officers on duty, or that it was otherwise displayed in any inappropriate manner. Rather it was a private fundraising initiative to provide funds to a fellow officer seeking to advance an appeal, which was within his rights to do. A T-shirt was also produced as a fundraising item for Ken Deane's appeal. Again, there was no evidence that suggested that the T-shirt was inappropriate, provided it was not worn in public by police officers.

Similarly, some time was spent in the Inquiry exploring the use of certain OPP officers to assist Ken Deane's legal defence team as part of their duties. This assistance was short term, as Commissioner O'Grady decided subsequently that the optics of such assistance would not look favourably on the OPP. However, there was no evidence to suggest that the assistance rendered by certain OPP officers caused any interference with the due administration of the criminal justice system in relation to the trial and conviction of Ken Deane. Commissioner O'Grady stopped the assignment of police officers to assist in the defence as part of their official duties, and Commissioner Boniface agreed with that decision on the basis that is was inappropriate for OPP officers to render assistance as part of their official duties. I am in full agreement with Commissioner O'Grady's decision.

20.6.3 R. v. George (Warren)

On February 12, 1998, Warren George was convicted of criminal negligence in the operation of a motor vehicle pursuant to section 221 of the *Criminal Code* and assault with a weapon (a motor vehicle) pursuant to section 267(1)(a) of the *Criminal Code*. Warren George testified before this Inquiry and admitted that he was the driver of the car, a Chrysler New Yorker, which followed the yellow school bus into the sandy parking lot. The Court rejected his defence that he lacked intent to cause contact when he drove from the sandy parking lot and onto East Parkway Drive where he struck certain OPP officers. Judge Pockele of the then Ontario Provincial Court concluded:

> The evidence of the accused is clear, his driving behaviour was the culmination of a series of escalating, violent and assaulting behaviours. Again, he knew the occupation of Ipperwash Park was without consent of the Ministry of Natural Resources, he anticipated a problem with the Ministry of Natural Resources and the police as a result of the occupation, he knew a police scanner was monitoring communications, the occupiers were armed, lookouts alerted of the approaching CMU. He said he wasn't going to let the police push us back or resist, and he wasn't going to let the police take him. He threw sticks and rocks because the police were "trying to intimidate us", not because he feared being touched or hurt by the police.

In Judge Pockele's judgment, the reference to "armed" appears to refer to weapons other than firearms, such as rocks, bats, pipes, sticks, and fire bands (e.g., burning sticks).

Warren George was convicted on both counts and sentenced to six months' imprisonment on each count to be served at the same time, and suspension of his driver's license for two years. He lost his appeal to the Ontario Court of Appeal.

20.6.4 R. v. N.C.

On September 6, 1996, Nicholas Cottrelle was a minor. Hence, his initials were used in lieu of his name in the criminal proceedings that relate to his criminal charges. Nicholas Cottrelle testified as a witness before this Inquiry, and consented to the release of the related criminal proceedings and the publication of his name in connection with the criminal proceedings against him.

Nicholas Cottrelle was charged as a young offender in relation to his actions in driving the yellow school bus into the sandy parking lot and into the Crowd Management Unit (CMU). Specifically, he was charged with operation of a motor vehicle in a manner dangerous to the public, contrary to Section 249(1)(a) of the *Criminal Code*, and further with assaulting members of the Emergency Response Team (deployed as the CMU) with a weapon, namely a motor vehicle, contrary to section 267(1)(a) of the *Criminal Code*.

The Court found as an initial step in its analysis that the bus was used for the purpose of threatening or intimidating the police and therefore was a weapon. The Court next found that the actions of Mr. Cottrelle were intentional, in that he intended to charge at the police line and to use the school bus as the instrument for that purpose. Fortunately, Mr. Cottrelle did not strike any of the police officers. Nonetheless, the Court found that Mr. Cottrelle had no intention of stopping

and that he drove the bus intentionally at the police officers without regard as to whether or not they would be struck, and hence in a dangerous manner.

However, Provincial Court Judge Graham ultimately concluded that Mr. Cottrelle's actions were justified insofar as he was attempting to rescue Cecil Bernard George from the beating he appeared to be receiving from the police. The trial judge found that Nicholas Cottrelle witnessed eight to ten people around Cecil Bernard George, hitting him with batons and kicking him. His Honour also found that as Mr. George was being dragged to the rear of the confrontation, that the individuals continued to hit and kick him. Hence, it was reasonable for Mr. Cottrelle to assume that a breach of the peace was occurring and that Cecil Bernard George was being assaulted. The judge also found that the degree of force exercised by Nicholas Cottrelle, namely, driving a bus into the fray to "rescue" Cecil Bernard George, was reasonable in the circumstances and that his "actions would have been senseless, reckless and futile" had he gone into such a confrontation without the protection of the bus.

Ultimately, while the elements of the offence were made out, so was the defence of justification under sections 30 and 37 of the *Criminal Code*. As a result, Nicholas Cottrelle was acquitted of all charges.

20.6.5 R. v. George (Cecil Bernard)

Cecil Bernard George was charged with three offences: assaulting Staff Sergeant Wade Lacroix, a peace officer engaged in the execution of his duty; assaulting Wade Lacroix with a weapon, namely, a metal pipe or bar; and mischief under section 430 of the *Criminal Code* by interfering with the lawful use or enjoyment of property, namely, the public roadway at Army Camp Road on East Parkway Drive. Cecil Bernard George was acquitted without the need to call any defence evidence in response to the evidence led by the Crown (known as a directed verdict). In other words, the Crown did not meet its threshold requirements to establish the basic elements of the offences.

The trial judge held that there was no doubt that Cecil Bernard George had struck police officers during the confrontation and that he also was struck by police officers. However, there was a reasonable doubt as to whether he was the Aboriginal person who came into physical contact with Wade Lacroix. Hence, the matter was decided in favour of Cecil Bernard George on the basis that the Crown had not established a proper identification of the alleged culprit who struck Wade Lacroix. This is ironic given the basis of the finding of the SIU investigation into the alleged police beating of Cecil Bernard George, which, as will be discussed below, was thwarted on the basis of the inability of the SIU to identify the police officers who allegedly struck Cecil Bernard George. It is also notable that in

giving evidence before the Inquiry, Wade Lacroix confirmed that he did not know the identity of the person who broke his shield, and confirmed that at the criminal trial of Cecil Bernard George he testified that he did not know with certainty who assaulted him.

The charge relating to public mischief was dismissed on the basis that there was no evidence that Cecil Bernard George threw any objects onto the public roadway, or that any such objects were thrown beyond the sandy parking lot.

20.6.6 R. v. George (Abraham David) and R. v. George (Stacey)

The Inquiry did not attempt to catalogue all the charges and convictions or acquittals that resulted from the police investigation into the various events of September 4 to 7, 1995, with the exception of the charges resulting from the confrontation reviewed above. However, some of those results came to light during the testimony of the witnesses.

The Inquiry heard evidence from two individuals who were charged and convicted with respect to events over the course of September 4 to 7, 1995, concerning the occupation but not the confrontation on the evening of September 6.

Abraham David George was charged with various offences as a result of the events of September 4 to 7, 1995. These included two counts of assaulting an officer (one with a flare during the evening of September 4 during the initial takeover of the park), two counts of having a weapon dangerous to the public peace, mischief to property (a St. John Ambulance vehicle in the abandoned TOC site on September 7), and theft over $5,000 (OPP prisoner van and St. John Ambulance vehicle on September 7, 1995). He pleaded guilty with respect to the mischief charge, and was convicted of assaulting an officer by throwing a flare at him. The other charge involving assault of an officer was withdrawn. He was also convicted of possession of property obtained by crime under $5,000.

Stacey George was charged with mischief to property and theft over $5,000 relating to the damage of St. John Ambulance and OPP vehicles (jointly with David George), which were temporarily abandoned in the former TOC site at the MNR parking lot on September 7. These charges were dropped. He testified that he was convicted in September 1996 on two counts of mischief relating to the chopping down of an Ipperwash Provincial Park sign along Highway 21.

20.6.7 Special Investigations Unit Proceedings

The Special Investigations Unit (SIU) is an independent unit within the Ministry of the Solicitor General that has the mandate to conduct an investigation into "the circumstances of serious injuries and deaths that may have resulted from

criminal offences committed by police officers" (section 113(5), *Police Services Act*). It is established under Part VII of the *Police Services Act*. This unit is not part of any police services, including the OPP, and is not answerable to any Chief of Police or Police Commissioner. Its investigators are not police officers (though they may be former police officers), but rather are designated as peace officers. An SIU investigation does function like a police investigation, however, and the Director of the SIU can cause informations to be laid against police officers in relation to matters arising from the investigation, and refer the matter to the Crown Attorney for prosecution. The Director reports the results of the investigations to the Attorney General.

As discussed in the previous chapter, the SIU's first involvement in Ipperwash was on September 7, 1995, as a result of the fatal shooting of Dudley George. The SIU's investigation was parallel with the OPP's Criminal Investigation Branch investigation into possible criminal charges against the Aboriginal occupiers, including attempted murder of police officers, assault of police officers, and public mischief arising between September 4 and 7, 1995. The fact that these investigations ran parallel, however, must not obscure the fact that they were independent and that separate subject matter was targeted by their respective investigations.

As discussed in the prior chapter, the SIU was notified in the early hours of September 7 about the fact that a police shooting had occurred, resulting in a fatality. SIU investigator Jim Kennedy arrived at the Forest Detachment at approximately 3:29 a.m., and interviewed Inspector John Carson in the interview room. The Criminal Investigation Branch's chief investigator, Detective Inspector Bob Goodall, also arrived, albeit a few minutes later, and participated in the interview of John Carson. The interview concluded at approximately 4:29 a.m. The SIU interviewed several other officers and several of the occupiers who were present in the sandy parking lot area during the shooting. It compiled a number of interview statements, many of which were the subject of examination during the Inquiry.

On July 23, 1996, the SIU announced that Acting Sergeant Kenneth Deane would be criminally charged in relation to the shooting of Dudley George. As stated in an earlier section, Ken Deane was ultimately charged and convicted of criminal negligence causing death.

Later on in 1995, the SIU commenced a separate investigation into the alleged beating of Cecil Bernard George. The SIU was hampered by the inability of Cecil Bernard George to identify the police officers who struck him, and by the lack of apparent knowledge by the members of the CMU and arrest team as to who, amongst them, had struck Cecil Bernard George, or how he otherwise received the multiple number of blunt trauma wounds and injuries documented by the

medical personnel at Strathroy General Hospital. There was also a question about the extent of Cecil Bernard George's injuries. From these factors, the SIU concluded in its initial report of June 11, 1996, that no assault charges against any officers could be brought.

Commissioner O'Grady testified that he was initially advised by the SIU that their investigation had been completed and that, although there was an apparent excessive use of force by police officers, the inability to identify the officers who administered the blows stymied the efforts of the investigation. Commissioner O'Grady was not happy with this result in light of the SIU's initial conclusion that an excessive use of force had likely occurred, and expressed his concern to the SIU on May 29, 1997. He was not prepared to let this matter rest, and was considering alternative avenues to pursue the investigation. However, when the SIU ultimately renewed their investigation on or about June 17, 1997, Commissioner O'Grady deferred to the SIU's continued investigation.

When the SIU reopened its investigation, it sought production of photographs of the individual CMU police officers involved in the deployment into the sandy parking lot to try to assist in the identification of "subject" officers (a term designated to refer to officers who are the subject of an investigation). The OPP was prepared to co-operate and turn over the photographs to the SIU. However, the OPPA, the body representing the interests of non-commissioned OPP officers, resisted this request, and filed court proceedings to challenge it. The matter was never resolved as the SIU withdrew its request before it reached the courts.

In its final report, dated February 8, 1999, the SIU recommended that no further action be taken in relation to this matter. Director Tinsley concluded that an excessive use of force was not demonstrated, given its description of the context of the confrontation as a "violent battle raging between members of the CMU and various protestors." The Director's Report stated, in part:

> I am of the view that the evidence discloses no reasonable grounds upon which to find that the force used by CMU officers against Cecil Bernard George was so disproportional in relation to the threat as to render it excessive, and therefore criminal, in the circumstances.

It is difficult to reconcile this conclusion with the testimony before the Inquiry. As noted by Superintendent Tony Parkin during the Inquiry, it is indeed "unfortunate" that to this day we do not know who caused any of the blunt head injuries to Cecil Bernard George.

The use of force exercised on Cecil Bernard George required the administering officer(s) to file a use of force report, which is a mandatory statutory requirement under Regulation 926 to the *Police Services Act*, regardless of whether the

force use was or might have been "excessive." The Regulation provides, in the material part,

> 14.5(1) A member of a police force *shall* submit a report to the chief of police or Commissioner whenever the member …
> c) uses physical force on another person that results in an injury requiring medical attention.
>
> (2) The report shall be in Form 1. (emphasis added)

This Regulation was in force in 1995, and continues to be in force today.

No such report was ever filed by any officer, even though Cecil Bernard George's injuries, to the knowledge of the OPP, required medical treatment, thereby falling under this mandatory reporting requirement. The failure of the individual police officers involved to file a use of force report thwarted the purpose of such requirements, namely, to promote transparency in police conduct and ensure accountability in their actions. If police officers refuse or neglect to fulfill such statutory requirements, then a spectre of suspicion is created surrounding the allegations of excessive use of force, whether that suspicion is justified or not. Such a spectre has been created surrounding the allegations of excessive use of force in relation to the blunt trauma injuries sustained particularly to Cecil Bernard George's face and head, inviting an adverse inference to be drawn against those officers involved in the physical detention of Cecil Bernard George in the sandy parking lot on the evening of September 6, 1995. Indeed, some of the officers who testified admitted seeing Cecil Bernard George struck by one or more police officers though none of the five officers who testified could identify any of the police officers administering the force.

This sad state of affairs was not lost on Commissioner Boniface when she testified about her views of the SIU investigation into the beating of Cecil Bernard George. She noted the discontinuity between the statements of the engaged police officers regarding the level of force administered by them and the actual documented injuries, and that none of the police officers could identify anyone who applied any force whatsoever. She concurred with the conclusion of the SIU that there was no point in having a third investigation because of the identity problem.

I acknowledge that it is quite possible that some of the officers who administered some of the twenty-eight or so blunt force blows to Cecil Bernard George may not be able to confirm who it was they hit that night. We heard evidence from both Aboriginal witnesses and police witnesses that there were degrees of hand-to-hand combat, so to speak, between the officers and occupiers during

the confrontation, with both sides doing their share of striking the other. However, Cecil Bernard George was the only occupier who was subdued and arrested during the course of the confrontation in the sandy parking lot. Hence, logically, any officer who realized he had struck the occupier who was subdued and ultimately arrested by the arrest team would have come to know the identity of that occupier as Cecil Bernard George, and further that Cecil Bernard George had been hospitalized for his injuries.

Indeed, Dr. Marr testified that when she examined Cecil Bernard George initially upon his admission to the hospital and further on September 8, there was evidence of injuries consistent with some form of blunt force trauma, several of which were consistent with police batons. As well, she documented several injuries consistent with some form of blunt force trauma to the head, face, and neck regions of Cecil Bernard George. While I have described the extent of his injuries elsewhere, it is important for the current discussion that Dr. Marr observed six separate injuries to his face in and around his mid-forehead, cheekbone, eyebrow, nose, and lip, the latter of which required suturing; two injuries to the back of his neck; and two injuries to the back of his head, one of which was a two-inch laceration requiring metal sutures. She further testified that the injuries that caused her the most concern the night he was admitted into the emergency department were the injuries on the back of his head because they were the likely cause of his impaired consciousness.

There was insufficient evidence to conclude who administered blows to Cecil Bernard George, with the exception of Chris Cossitt who admitted that he made contact with Cecil Bernard George, and likely Wade Lacroix, who testified that he struck the person who struck and broke his shield in the sandy parking lot during the course of the second punchout, leading to the strong inference that he struck Cecil Bernard George, albeit in response to Mr. George striking and breaking his shield with a steel pipe. I acknowledge the context of the violent confrontation in which there were blows occurring both ways, and I further acknowledge Cecil Bernard George's testimony before the Inquiry that he, at least initially, actively resisted arrest and swung his legs and a steel pole at police officers. Arresting Cecil Bernard George no doubt warranted a certain number of defensive blows on the part of police officers attempting to discharge their duty. However, at some point in time along the continuum of events, the number of blows became excessive and, in terms of those blows to Cecil Bernard George's face and head, were in my view unjustified.

It is also worth noting that Cecil Bernard George's testimony before the Inquiry differed somewhat from the testimony he gave in *R. v. N.C.* At the Inquiry, Cecil Bernard George admitted he had a steel pipe in his hand, which he used as

an offensive weapon against police officers, whereas at *R. v. N.C.* he testified he had a stick and that he only used it in a defensive way to defend himself as he was being attacked.

The evidence particularly of the police officers who testified, including Sergeant Hebblethwaite, leads me to conclude that striking a suspect on the face and/or head with a baton is never an acceptable level of force on the part of the police. The head and face injuries sustained by Cecil Bernard George required medical treatment. It is difficult to believe that none of the officers involved in the subduing or arrest of Cecil Bernard George realized they were the one(s) who administered blows requiring hospital treatment nor could they identify any other fellow police officer from their own unit who administered any blows warranting the filing of a use of force report. The fact that none of the police officers admitted striking Cecil Bernard George to the SIU nor would or could identify any other police officer who struck Cecil Bernard George warrants concern in the circumstances. While the Commission did not hear from all members of the arrest team and CMU active in the sandy parking lot, no officer (aside from Constable Cossitt, who testified that he thought his shield made contact with Cecil Bernard George) admitted to having either struck Cecil Bernard George or knowing the identity of any police officers striking Cecil Bernard George. I note that no apology or acknowledgment has been made by the OPP with respect to, at minimum, the multiple head and facial injuries Cecil Bernard George suffered, even after he was acquitted of the criminal charges that were the foundation of his arrest.

I recommend that the OPP issue a public apology to Cecil Bernard George for the excessive force he suffered in the form of blows to his head and face at the hands of one or more unidentified police officers during the course of his detainment and arrest in the sandy parking lot during the evening of September 6, 1995, and which required medical treatment, to be delivered in person by the current Commissioner, or his delegate, and via a press release and conference. I further recommend that improved measures be taken to ensure compliance with the mandatory use of force reporting requirement by requiring witness police officers to file a similar report whenever they witness the use of force requiring medical treatment by police officers on civilians, with corresponding disciplinary repercussions for failure to report. This recommendation should be implemented by an amendment to the Regulations to the *Police Services Act*. Finally, I recommend that the OPP develop further measures to facilitate the identification of police officers to civilians so as to minimize the prospect that SIU and other investigations will be thwarted due to the inability of the alleged

victim to identify his or her alleged assailant police officer. In making this recommendation, I acknowledge Commissioner Boniface's evidence that there are now badge numbers on helmets, and names on uniforms.

20.6.8 The Coroner's Investigation

The statutory mandate of the Office of the Chief Coroner is set out in the *Coroners Act* R.S.O. 1990, c. 37, as amended. The circumstances that caused the death of Dudley George would normally warrant an investigation and then an inquest. While an investigation was carried out, an inquest was not held. According to the submissions of the Office of the Chief Coroner (who had party status at both Part 1 and 2 of the Inquiry), the Chief Coroner determined that it would be more expedient and in the public interest to participate in the Inquiry rather than hold an inquest, which, he submitted, would have been narrower in scope than the Inquiry while being duplicative with respect to its overlapping mandate.

The Office of the Chief Coroner submitted that it would be appropriate, and in the public interest, for me, as the Commissioner, to answer the following questions (prescribed by the *Coroner's Act*, section 31(1)(a) to (e)) in the following manner on the basis that my investigation dealt with these issues to fulfill the Coroner's mandate in the process of discharging my own:

a. identity of the deceased: Anthony O'Brien (Dudley) George

b. when the death occurred: Death was pronounced at 12:20 a.m. on September 7, 1995, at the Strathroy Middlesex General Hospital. However, he appears to have become vital signs absent at least twenty to thirty minutes prior to his arrival at the hospital at approximately 12:00 a.m.

c. where the death occurred: Strathroy Middlesex General Hospital.

d. how the death occurred, that is, the cause of death: Gunshot wound of the upper chest.

e. by what means the death occurred, that is the manner of death: Homicide.

For clarification, the question concerning "by what means" Dudley George died does not import any finding of liability within the meaning of the *Coroner's Act*. Further, "Homicide" for death classification purposes under the *Coroner's Act* is defined as the act of "a person killing another person." I adopt that statutory meaning of these terms for purposes of my findings below.

I am prepared to make the findings submitted on behalf of the Office of the Chief Coroner with two exceptions. First, I cannot approximate the time when

Dudley George became "vital signs absent." In my view it would be unwise to speculate as to the precise time at which Dudley George died, given the lack of precision in the evidence. It also is not necessary for purposes of discharging my mandate. It is clear on the evidence that Dudley George was "vital signs absent" by the time he reached the hospital, and very likely before he reached the hospital. Second, while Dudley George was pronounced dead at Strathroy Middlesex General Hospital, it is likely he died either en route from the park to the hospital, or at the hospital site.

Furthermore, I am satisfied on the preponderance of evidence that, despite the heroic efforts of Pierre George, Carolyn George, and James Thomas Cousins to transport Dudley George to hospital as quickly as possible, due to the nature of the wound inflicted on Dudley George, there was very little chance of his survival, irrespective of the speed at which he might have received the appropriate medical treatment, even under ideal circumstances. This finding, however, does not obviate the need for improvement in the role of emergency medical services in future police operations involving the deployment of specialized police units into high-risk situations, as noted in Chapter 9 in Part II of my report.

20.6.9 Civil Litigation

The Estate of Dudley George brought a civil proceeding claiming damages as compensation for his wrongful death. This lawsuit was ultimately settled on the eve of the 2003 provincial election, when Sam George accepted the government's offer to settle the lawsuit, resulting in the lawsuit being dismissed in exchange for consideration. In so doing, he relied on the election promise of Liberal leader Dalton McGuinty that, if elected, he would call a Public Inquiry into the events surrounding the circumstances of Dudley George's death. When the Liberal party was elected to form the government, the new Premier passed the Order-in-Council constituting this Public Inquiry.

20.7 The Impacts of the Events of September 6, 1995

In a violent confrontation, there can be emotional and psychological injuries sustained apart from the immediately visible physical injuries suffered from physical contact. Those injuries are invisible and are often latent in surfacing, but can have a much more devastating and long-term impact on a person's ability to function than physical injuries. Also, such impacts can be experienced not only by those who are directly involved in the violent activity, but by those who are bystanders and observers of the violent activity. They can also be experienced by the relatives of those who are victims of violence. Finally, there can be

impacts on communities and relationships within and amongst the affected communities. The Inquiry heard a sampling of the emotional, psychological, and community impacts experienced by the direct participants and bystanders alike. The Aboriginal people, police officers, and local cottagers experienced the impacts. They continue to be experienced by some of these people today.

Carolyn George suffered both physical and emotional injuries, notwithstanding that she was not in the park, much less the sandy parking lot, during the confrontation.

In addition to attesting to the visible bruising she suffered as a result of the arrest and detention in the parking lot of the Strathroy Hospital, Carolyn George testified extensively about the emotional impact of her brother's death on her and her family, and of her own experiences of September 6, 1995. She testified that she has an ongoing fear of the police who, she was convinced, followed her whenever she ventured out of the army camp to go to work or on other everyday endeavours. She would be stopped from time to time by police officers who said they did not know who she was, but were just doing a routine stop. She made complaints to the police and to those within the army camp. She stated: "It got to the point [in April of 1996] where I just couldn't make myself go to work anymore." Carolyn George never returned to her job after that. For a while she confined herself to the army camp, and would only go out if accompanied by someone else. She refused to drive her own car due to her fear that she would be stopped by the police.

Even today Carolyn George spends most of her time within the physical boundaries of the army camp. She still does not trust the police, and cannot say whether that trust will ever return. She summarized her fears: "I'm afraid that they [the police] would shoot me anytime too." Regardless of whether this fear is rational, it is real for Carolyn George and will continue to hamper her ability to resume any type of a normal life until it is dealt with.

In speaking about the loss of her brother, she testified that Dudley George had been a mainstay to her family. He had been a source of emotional support to her and her children, and had been there for them when she divorced and when her and Dudley's father died.

Carolyn George praised the Mennonite community who reached out to the people of the army camp in the aftermath of the events of September 6, offering donations and assistance. Their presence in the community made her feel safer. She especially appreciated the support of a young Mennonite student, John, who came to live with her for a while, making her feel safer yet.

Sam George testified eloquently about his brother Dudley George and the impact of the loss of Dudley on himself and his family. He testified that "losing

someone, your brother or your sister, that always has a big impact [on] one's life. It always … breaks your heart when that happens." He testified that losing Dudley George had a big impact on him and his brothers and sisters.

He also testified that he observed that his brother's death had an adverse impact on the children and some of the other families of the community. That there was a lot of fear of the unknown — not knowing what was going to happen next and not knowing whether the police might come into other communities and start to look for people. From his perspective, the whole local Aboriginal community felt like it was under siege for a period of time due to this fear of possible further police action.

He stated before the Inquiry:

> Dudley will always be part of my family. He'll always be in my heart and in my mind. He will never leave there. I hope that in the future my brother will be remembered for what he stood up for and why he stood up for it. He stood up for the rights of our people. He paid the price for standing up for [those] rights. And this is why I say in my objectives, I don't want my brother ever, ever forgotten for what he'd done. He paid that price and I don't think he deserves to be forgotten. He will always be remembered and that's the way I'd like to see it.

Some of the police officers who engaged in the confrontation testified that the events of the evening of September 6 continue to haunt them to this day. Constable James Root testified:

> [The incident of September 6th] had a profound affect on me. I think there's … there's probably not a week or a month that goes by that I don't in some way, shape or form reflect on it.

Wade Lacroix told the Inquiry that he suffers from Post-Traumatic Stress Disorder and took a medical leave of absence as a result of his experiences during the evening of September 6, 1995.

As well as having an emotional impact on individuals, the events of September 6 have also had a negative impact on Aboriginal–police community relations. For example, TRU senior officer James Irvine observed that after the Ipperwash incident,

> … one of the effects has been the loss of trust, I think, from the First Nations communities … There's certainly a reluctance to allow TRU teams to go onto some First Nation territories.

This loss of trust was mirrored from the Aboriginal perspective during the hearings as well. Wesley George, who was fifteen years old at the time of these events, simply stated:

> [I] can't trust the cops no more. Well, maybe some of them, but you never know who was down there, like, it could be any cop … That's just the most [important] impact right, there is just the trust — lost the trust — [in] someone that's supposed to protect you.

There were other young people who were exposed to trauma and violence that evening. Leland White (George), who was also fourteen years old at the time, and a passenger on the school bus young Nicholas Cottrelle drove into the sandy parking lot on a perhaps misguided "rescue" mission, was clearly upset by the events. He testified that when he found out that Dudley George had died, he started crying. On September 7 he discovered that his pet dog, which he had hidden underneath him on the floor of the bus when the shooting erupted, had suffered what he assumed was a gunshot wound through his leg. He believes he continues to suffer from anxiety as a result of these events. He also testified that in the aftermath of this incident, he left school because he no longer felt safe:

> [I felt] like somebody was after me, like the cops or something. I felt unsafe, and like, people were racist towards me …

These are not matters that one forgets easily. They make lifelong impressions.

Another youth, James Thomas Cousins (who refers to himself as "J.T."), who rode in the back seat of the car that transported Dudley George to the hospital, and who applied pressure with his hand to Dudley George's chest wound in a desperate attempt to keep him alive, is another victim of these traumatic events. He continues to have nightmares about his arrival at the hospital with Dudley George. His nightmares have the recurring theme of people standing around and wanting to help but being unable to because they are behind a locked door. He testified that when he went back to his parents' home at the Kettle Point Reserve, he did not feel safe because he felt exposed by virtue of the large bay windows in his family home, so he snuck back to the army camp. He slept very little. He was sad and going through shock. He does not trust police officers any longer. He was afraid to leave the army camp because he feared that the police were going to kill them. It took him a long time to feel safe even within the army camp.

Nicholas Cottrelle was sixteen years old when he drove the bus into the sandy parking lot. He did not return to school in the fall of 1995, as he felt he was

morally obliged to stay at the army camp. He did not leave the army base at all until late November or early December 1995, in part because he feared he would be arrested by police and would never make it back. He lost his ability to trust the police.

When he did attempt to return to the local North Lambton Secondary School in Forest in 1997, he felt ostracized. He testified that he left because he "didn't really feel welcome" at the school. He felt that he was the subject of derogatory comments at the school, so he left after two to three weeks and never returned. He noted that he was never offered any counselling of any kind in relation to the events of September 6 by the school or elsewhere. He also noted that there was never any follow-up by the hospital in relation to any of his injuries or psychological well-being.

The impact of her encounter with the police, in which she was arrested but not charged, has left a permanent mark on Marcia Simon. She testified that she suffered physical consequences as a result of the arrest. She ultimately resigned from her teaching position in London due to the pain and to the unsupportive environment she experienced at her school. She also testified that she was not provided access to counselling at the school in which she taught, even though that was a service that was supposed to be available. She also described the emotional impact of these events on her:

> You can see how difficult it is to talk about that night and it was a long time before I felt safe enough to even come back into the town of Forest. Memories of how I was used in that garage at the police station I don't think will ever go away ... When I see police coming I really have a difficult time with that and I'm working on it. I just had a session last night with my counsellor to help me, this many years later, where I am undergoing counselling to try to cope and I'm getting better.

Gina George, mother of Nicholas Cottrelle and spouse of Roderick George, testified that the events of September 6 have had a lasting traumatic impact on her family. For example, her husband has sleeping problems, and cannot sleep without either a radio or television on.

It became apparent that while the officers who were engaged in the violent confrontation that occurred in the sandy parking lot had fairly immediate access to a psychologist and to peer support services, the Aboriginal people who were also involved in that traumatic event did not have any such access. This lack of available counselling services can only have prolonged and entrenched whatever psychological and emotional difficulties the Aboriginal people have had as a result of being exposed to a traumatic event. It is unfortunate that the school system

did not step in to fill this breach in the fall of 1995 when its Aboriginal students and teacher attempted to return to school. I recommend that crisis counselling services be made available and accessible to individuals who are involved in violent or traumatic events involving police action. The responsibility for provision of the crisis counselling should rest with the provincial government in relation to police conduct that occurs off reserve land, and with the federal government concerning police conduct that occurs on reserve land.

When I refer to the counselling services being both available and accessible, I wish to emphasize that they must be actively offered to the affected citizens in a way that is respectful of their culture, tradition, and special needs. It is not enough to say that, for example, the fact that the Medical Services Branch at Indian Affairs Canada has the discretion to provide funding for crisis counselling to Aboriginal persons in need is sufficient. It is not. There must be a proactive element to the provision of crisis counselling services that is not dependent on a request being made first. It must be offered to the individuals in apparent need. The type of services offered must also be responsive to the type of treatment required, and informed by the cultural and traditional practices and beliefs of the Aboriginal persons requiring the counselling and support. The OPP did not wait for an officer request before sending its psychologist and peer support person. They appeared and offered their services to the police officers. Similarly, appropriate services should be offered to all such victims of traumatic events.

I have noted, with interest, the provincial government's recent announcement to improve the response of the Criminal Injuries Compensation Board in Ontario to fund emergency counselling services for victims of crime, amongst other improvements. While this is laudable, this initiative will not necessarily respond to the circumstances that I am examining. The need for counselling in the context of traumatic incidents may not always involve "victims of crime," and the entitlement to counselling that I have recommended should not be dependent on a characterization of the intended recipient of counselling as a victim of crime. Further, the Criminal Injuries Compensation Board scheme is still dependent on an application being made by the claimant before any such assistance can be offered. In the types of tragic circumstances that presented themselves on the night of September 6, 1995, a call for help should not be a requisite for the help to arrive.

Again I refer the reader to Chapter 12 in Part II of my report for discussion regarding the need for improved emergency medical services and treatment to the participants and bystanders of violent situations that involve a police operation.

Another unfortunate, but foreseeable, consequence of the lack of apparent timely action and response from the federal government during this crisis, in the

time leading up to the occupation of Camp Ipperwash and then Ipperwash Park, is the buildup and expansion of resentment initially directed toward the federal government by the Aboriginal peoples (who had a long track record of protesting to the federal government to no avail regarding their claims regarding the army camp) to the police.

It remains to be seen what form this resentment may take when it comes to the involvement of police forces in situations that cry out for a political, rather than a law and order, solution. For example, the Incident Commander, John Carson, expressed frustration at the inaction of the federal government to the pleas of the occupiers for the return of the army camp land to the Aboriginal people. He placed blame for the tragedy of Dudley George's death on the shoulders of the federal government, and stated his belief that had the federal government dealt with the army camp two years earlier, the occupation likely would not have spilled from the military base into the park and the sandy parking lot.

Other police officers testifying before the Commission expressed similar sentiments.

20.8 Cultural Insensitivities and Racism: Barriers to a Timely Resolution

One of the factors that contributed to the lack of a timely peaceful resolution to the occupation of Ipperwash Park was the element of cultural insensitivity and racism that existed within some of the ranks of the Ontario Provincial Police force. The negative stereotypes held by certain members of the policing operation and certain occupiers of each other, including a demonstrated tendency to think the worst of each other, clearly contributed to an inability to trust and a misinterpretation of the others' actions and intentions over the course of September 4 to 6, 1995. Trust is an essential element in establishing an open line of communication and ultimately negotiating these types of disputes. Without trust, any effort to engage two parties in dialogue and negotiation has little hope of succeeding.

My approach to this issue is to identify barriers that contributed to the circumstances surrounding the death of Dudley George (and, more particularly, to the whole set of circumstances that led to the deployment of the CMU and TRU to clear the sandy parking lot without the benefit of having established a line of communication between the police and the occupiers), and then to determine how such barriers might be removed to avoid similar situations of violence in the future. Evidence emerged from the hearings that required that the potential existence of, and role played by, racism and negative stereotypes of First Nations people in the formulation and execution of police tactics and strategies be

examined. I am focusing my analysis primarily on the police because it is they whom society charges with keeping the peace, vesting use of force in the police where necessary to carry out that professional mandate. Though I am focusing on the police, I am not unmindful of the evidence that suggested that certain of the occupiers also hurled inappropriate comments at the police during the course of September 5 and 6; for example, during the late afternoon or early evening of September 5, when there was an exchange of racist slurs and profanity between certain police officers and certain occupiers in which police called occupiers "wahoos" and "wagon burners" and, during the confrontation on September 6, occupiers invited police to "go back home on the Mayflower" or words to that effect.

Before reviewing the specific evidence that emerged at the hearing relevant to this issue, it is important that a few comments be made concerning my use of language and my framework. I have chosen to use the phrase "cultural insensitivity" to encapsulate decisions and conduct that were misinformed by reason of ignorance or a misunderstanding of Aboriginal culture, traditions, and integrity. Under that broad rubric is a continuum of actions and omissions that reflect the spectrum of negative or prejudicial judgments that may have adversely affected the handling of this operation by the OPP. It deals with conduct that, while unintentional, was offensive and insensitive to the people who would be reasonably affected by it, but not necessarily racist.

My aim is to provide what I hope will be constructive insights into conduct and behaviour that I have identified were barriers to resolving the occupation of Ipperwash Provincial Park in a peaceful and timely manner, with a view to ensuring that such barriers do not exist in future police operations involving Aboriginal issues and persons.

One more word of explanation is required. Certain parties at the Inquiry made a point to distinguish in the evidence between conduct that was, in their view, intentional and that which was, in their view, unintentional. It is clear from the *Ontario Human Rights Code*, and case law decided under the *Code*, that intention is not determinative of whether the impugned conduct is racist. Rather, if a pattern of conduct or behaviour has an unjustified adverse impact on a person, or group of persons, by reason of race or any of the other prohibited grounds, then the conduct or behaviour in question is racist regardless of the intentions of the persons responsible for that conduct. The lack of intention does not make otherwise racist conduct any less so.

The Ontario Human Rights Commission's definition of racism, found in its Policy and Guidelines on Racism and Racial Discrimination, provides further insights into the scope of conduct captured under the rubric of racism:

> Definitions of racism all agree that it is an ideology that either explicitly or implicitly asserts that one racialized group is inherently superior to others. Racist ideology can be openly manifested in racial slurs, jokes or hate crimes. However, it can be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases these beliefs are unconsciously maintained by individuals and have become deeply embedded in systems and institutions that have evolved over time.
>
> Racism differs from simple prejudice in that it has also been tied to the aspect of power, i.e. the social, political, economic and institutional power that is held by the dominant group in society. In Canada and Ontario, the institutions that have the greatest degree of influence and power, including governments, the education system, banking and commerce, and the justice system are not at this time, fully representative of racialized persons, particularly in their leadership.
>
> Racism often manifests in negative beliefs, assumptions and actions. However, it is not just perpetuated by individuals. It may be evident in organizational or institutional structures and programs as well as in individual thought or behaviour patterns. Racism oppresses and subordinates people because of racialized characteristics. It has profound impact on social, economic, political and cultural life.[6]

As stated by the Ontario Human Rights Commission, even where conduct has the unintended consequences of perpetuating negative stereotypes about a distinct group of people by race and/or culture, it is objectionable and will constitute racism. The difference attributed to intention, or lack thereof, to discriminate goes only to what action or penalty might be appropriate to redress such behaviour. Typically, unintentional discrimination (also known as adverse impact discrimination) will attract a lesser form of sanction or redress than intentional discrimination. A finding of unintended discriminatory conduct also tends to attract less of a stigma than does a finding of intentional discrimination. Importantly, intention or lack thereof does not affect the characterization of the conduct as racist if it otherwise fits the criteria set out by the *Ontario Human Rights Code.*

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6 Ontario Human Rights Commission, "Policy and Guidelines on Racism and Racial Discrimination," Part 1, #2.2 at http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy.

Many witnesses in the Inquiry declined to use the terms "racism" or "racist" to describe the memorabilia procured and purchased by certain members of the TRU and ERT teams who were involved in the events leading to the death of Dudley George, preferring instead the phrase "cultural insensitivity." The witnesses seemed to be suggesting, through the use of this term, a lack of intent to discriminate or be racist. While these terms are not identical in meaning, for the reasons stated above, my view is that both can reflect attitudes that can have equally negative and destructive impacts when present during the course of a high-risk police operation like the one under examination. Neither cultural insensitivity nor racism has any place in a police force in a civilized society such as Canada.

Commissioner Boniface agreed that racism within a police force is a very serious problem.

20.8.1 Whitehead and Dyke Commentary

After this Inquiry was called, but before the hearings began, a segment of tape was released to the media via a *Freedom of Information and Protection of Privacy Act* request. It recorded a conversation between two police officers who were working undercover at Ipperwash on September 5, 1995. It came to light when Detective Sergeant Trevor Richardson and Detective Constable Mark Dew were reviewing a series of tapes in response to the *Freedom of Information and Protection of Privacy Act* request in 2003. Upon hearing this conversation between Detective Constable Darryl Whitehead and Detective Constable Jim Dyke, they immediately reported the contents of the tape to their superior officer because "it was offensive … to the First Nations people and something that shouldn't have been said."

This prompted then Commissioner Boniface to launch a complaint, of which she was the complainant. Detective Constable Darryl Whitehead was described as co-operative and identified the other person on the tape as Constable Jim Dyke. On the other hand, Detective Constable Dyke, who, by the time the Complaint was initiated, was retired and beyond the reach of discipline, would not acknowledge his voice on the tape. The tape, the Complaint, and the investigation and report were filed as exhibits.

During the course of playing the tape recording taken by Officers Whitehead and Dyke on September 5, 1995, at approximately 1:43 p.m., John Carson identified Speaker #1 as Jim Dyke, and Speaker #2 as Darryl Whitehead.

One of the more egregious excerpts of that conversation bears repeating:

SPEAKER 1: No, there's no one down there. Just a big, fat fuck Indian.

SPEAKER 2: The camera's rolling.

SPEAKER 1: Yeah. We had this plan, you know. We thought if we could … five or six cases of Labatt's 50, we could bait them.

SPEAKER 2: Yeah.

SPEAKER 1: And we'd have this big net at a pit.

Speaker 2: Creative thinking.

SPEAKER 1: Works in the south with watermelon.

There is no doubt that the comments made by Speaker #1 (Jim Dyke) were racist, regardless of what definition one adopts. They were racist against the Aboriginal people who were under surveillance, and they were racist against persons of colour. Not one witness in the hearing tried to defend or rationalize these comments. The then Incident Commander John Carson described the comments as "inappropriate," unacceptable," and "not to be tolerated."

As a result of the discipline investigation, Detective Constable Whitehead accepted a penalty within the context of informal discipline. Twenty-four hours were deducted from his accumulated credits, and he attended a four-day First Nations Awareness program that was also on time deducted from his credits. This translated into about $2,800 worth of lost wages. The nature of his discreditable conduct was his failure to properly respond to Constable Dyke's comments. Though Detective Constable Dyke was retired by the time of this internal investigation, he was engaged by the OPP on contract. His contract was terminated and not renewed by the OPP as a result of this incident.

What was particularly disturbing, aside from the comments themselves, was the functions that had been assigned to these officers. Jim Dyke and Darryl Whitehead were part of the Project Maple intelligence team under Detective Sergeant Trevor Richardson. Jim Dyke was working in an intelligence function of Project Maple between September 4 and 6, 1995. His background was as a criminal investigator. Darryl Whitehead was working for Detective Sergeant Don Bell's intelligence unit at the London Joint Forces Operation and was an intelligence officer by training. These are individual police officers whose fields of expertise demand that they bring impartiality to their roles and to the often sensitive and crucial information they are processing and filtering for the Incident Command structure.

Don Bell candidly admitted that he was extremely surprised that these officers made these derogatory comments, and that he knew Darryl Whitehead quite well. He also agreed that "it's imperative when doing proper analysis" that

those involved in intelligence approach their job without bias, and that one of the most serious forms of bias is racism. He further agreed that the existence of racism in any intelligence officer would undermine that officer's intelligence functions.

As I have stated, the comments made by retired Detective Constable Jim Dyke are racist. Detective Constable (now Detective Sergeant) Darryl Whitehead is equally responsible for these comments insofar as he made no attempt to admonish Jim Dyke or otherwise express his disapproval during the course of the taped conversation, thereby indicating his agreement or, at minimum, his acquiescence to the racist sentiments expressed. As well, he failed to report this misconduct to his superiors. I question the suitability of dealing with this incident by way of informal discipline with respect to the allegations against Darryl Whitehead. It seems to me that whenever there are credible allegations of racism (including a failure to respond), they ought to be dealt with by way of formal discipline, with all the protections and safeguards accorded by the discipline process. The difference between sending a matter to formal discipline or informal discipline is whether the public will have a right to know about the allegations and the outcome of the disciplinary proceedings. Formal discipline includes the array of sanctions available under informal discipline, including a reprimand. This is the only way that transparency and accountability into this serious issue can be accomplished. See Chapter 11, "Bias Free Policing," in Part II of this report for my analysis and recommendations regarding use of discipline proceedings in relation to allegations of racism within the police force.

20.8.2 Other Offensive and Racist Verbal Communications

During the course of the Inquiry, other offensive communications were revealed in the form of tape-recorded conversations and transmissions involving members of the OPP Ipperwash policing operation during September 5 to 6, 1995. A summary of the audio clips that reflected offensive and, at times, racist communications, was filed as an exhibit. Some of the audio recordings were played at the Inquiry.

Commissioner Boniface readily acknowledged the offensive nature of certain communications that the OPP discovered in the course of preparing for the Inquiry. Their discovery resulted in a further internal Professional Standards investigation into the questionable conduct of the implicated officers who participated in the Ipperwash policing operation. The result was the imposition of informal discipline on four officers who were still active on the force, and who uttered comments that the Professional Standards Bureau determined

amounted to discreditable conduct. Four civilian members received letters of reprimand, four officers were subject to non-disciplinary discussions, and one officer received informal discipline of eight hours.

Some examples of these communications captured on tape and filed as part of an exhibit at the Inquiry are reproduced here.

Sergeant Stan Korosec to Constable Wayde Jacklin on September 5, 1995, at 11:32 p.m.:

> We want to amass a fucking army … [a] real fucking army and do this — do these fuckers big time.

Robert Huntley and Sergeant Brigger on September 5, 1995, at 11:06 a.m. in the context of a discussion about overtime:

> SGT. BRIGGER: "What are you going to do with all your money?"
>
> SGT. HUNTLEY: "Well, give it to the government."
>
> SGT. BRIGGER: "Yeah, of course."
>
> SGT. HUNTLEY: "So that they can give the Indians more stuff. Like you know, all this stuff we keep giving them doesn't come cheap. Somebody's got to pay for it."

Sergeant Huntley agreed that the comments were, in retrospect, inappropriate and did not dispute the assertion that some First Nations people would find those comments offensive. He also agreed that some of his comments indicated a lack of understanding regarding First Nations peoples. I agree and would go further in characterizing these comments as projecting a negative stereotype of Aboriginal people.

The Commission also heard evidence from some of the occupiers as to comments allegedly directed toward them by OPP officers over the course of September 5 and 6, at or near the park. Kevin Simon testified that on September 5, some OPP officers called the occupiers behind the park fence names such as "wagon burners" and "wahoos." The occupiers understandably considered these names as degrading to their ancestry. Several occupiers recalled an incident in the late afternoon or early evening of September 5, 1995. Several members of ERT were present in the sandy parking lot while a number of occupiers were inside the park behind the fence. A verbal altercation took place, no doubt with taunts being issued back and forth between police officers and occupiers. However, several occupiers recalled that one OPP officer made the comment

"Welcome to Canada," amongst other comments and gestures, which they took as an invitation to fight.

It is not beyond reason to accept that these types of comments were made directly to the occupiers given the derogatory comments made by police officers that were captured on tape. In light of these types of comments and the belief on the part of at least some of the occupiers that the police officers did not respect Aboriginal people, it is not surprising that the OPP was unsuccessful at opening up a line of communication with them during the course of September 4 to 6, 1995.

Ovide Mercredi agreed that racial taunts by police officers on duty are counterproductive to the goal of non-violent resolution via dialogue. He went on to observe:

> So the primary responsibility of a police officer is peace and harmony. And conflict resolution is about peace and harmony. So … you know how to come there, if you really understand your responsibility as a police officer, you're not going to come there with racial taunts … You're going to come there with a higher principle … the public interest.

I agree with Ovide Mercredi's observation. There is no place for racial taunts or slurs of any type by police officers, whether or not these comments are made in public or in private. Not only are such comments "counterproductive" to the efforts of police officers in their roles as peacekeepers, they are improper, contrary to professional standards, and can lead to violence.

20.8.3 Motion by the OPPA, OPP, and Province of Ontario to Preclude Admission into Evidence of OPP Disciplinary Records Related to the Ipperwash Investigation

The OPP and the Ontario Provincial Police Association (OPPA) brought a motion requesting that I set aside the summons I issued to Commissioner Boniface on June 15, 2005. The summons required Commissioner Boniface to attend before the hearing and produce the following documents in the possession of the OPP:

1. The discipline files maintained by the OPP in respect of the "discredible conduct" of Detective Constable James Dyke and Detective Constable Darryl Whitehead;
2. The discipline files maintained by the OPP in respect of the mugs and T-shirt distributions; and

3. The orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of "informal discipline" including those that would have governed in respect of the informal discipline used under paragraphs 1 and 2.

The OPP objected to the production of the documents identified in paragraphs 1 and 2 of my summons. It argued that section 69(9) and 80 of the *Police Services Act*, R.S.O. 1990, c.P.15 (the PSA) precluded production of these documents into evidence at the hearing, or alternatively created a privilege by statute or at common law. The OPP was joined by the OPPA who argued, in addition, that section 69(10) of the PSA was a statutory barrier to production of these documents at the Inquiry in that the Inquiry constituted a civil proceeding.[7] The Province of Ontario supported the objectives of the OPP and OPPA, but argued that these documents were not relevant to the discharge of my mandate and, in the alternative, were privileged.

Aboriginal Legal Services of Toronto and the Chiefs of Ontario formally opposed the motion.

On August 15, 2005, I released the first part of my ruling, and found that the PSA did not create any statutory prohibition or any statutory privilege. I accordingly ordered, amongst other things, that these documents be produced to Commission Counsel under certain terms to be reviewed for relevance and the claim for common law privilege, which issue I had reserved on pending Commission Counsel's review.

The OPPA then requested that I state a case to the Divisional Court of the Superior Court of Justice, in accordance with section 6 of the *Public Inquiries Act*, to effectively appeal my ruling ordering the release of the subject documents to Commission Counsel, and my ruling that the PSA did not create any statutory barrier (privilege or otherwise) to the production of these documents to Commission Counsel or to their admission into evidence at the hearing.

Before that case was stated, Commission Counsel reached an agreement with the OPP, OPPA, and the Province of Ontario that averted the need to go to court. The resolution allowed all relevant discipline-related documents to be produced and tendered into the Inquiry as evidence.

Commission Counsel was able to propose a resolution that permitted all of the discipline documents to be admitted into evidence at the hearing, subject only to the removal of the names and identifying features of those implicated

7 See my ruling issued August 15, 2005, for a fuller explanation of the grounds upon which the OPP and OPPA and Province of Ontario argued prevented production of these documents at the Inquiry, at Appendix 2 to this volume.

police officers who had no involvement in the Ipperwash police operation between September 4 and 6, 1995, and MNR personnel (also not engaged in the policing operation). The identities of police officers not present between September 4 and 6, 1995, would not assist my inquiry into and reporting on the events surrounding the death of Dudley George and therefore were not relevant to the discharge of my mandate.[8]

The names of all the officers who had any active engagement in the police operation at Ipperwash between September 4 and 6, 1995, were revealed. In addition, the substance of all of the allegations and investigation interviews and documents, together with the conclusions reached and actions taken, were revealed to the public through the Inquiry. As well, the names of other officers who consented, such as investigating officer Staff Sergeant Dennis Adkins and Commissioner Boniface, were also released to the Inquiry and the public.

In my view, this was an example of the co-operation that Commission Counsel fostered with counsel for the parties at the Inquiry. The result of these and other similar efforts throughout the Inquiry was that no contested matter was referred to the Ontario Superior Court of Justice for resolution. This streamlined and expedited our Inquiry, as court interventions on contested matters are costly and can delay Inquiries for months.

20.8.4 Commemorative Mugs and T-Shirts

In the aftermath of successful joint force or large-scale policing operations, a practice had developed amongst participating OPP officers to procure T-shirts and related paraphernalia as a memento or souvenir of their joint involvement. This practice was repeated after the events of the evening of September 6, 1995. Apparently no police officer, including Incident Commander John Carson, gave any thought to the potential upset that the discovery of such souvenirs might have, particularly on the Aboriginal citizens and their families who had been affected by those events. I might add that Aboriginal people are not alone in their dismay at the lack of thought and sensitivity that these offensive items reflected. Any fair-minded person seeing these items, or hearing the comments described in the prior section, is bound to be offended by such conduct, and racism against any group of people is of equal concern to us all.

Furthermore, there was apparently no requirement within the OPP that the approval of any senior officer be sought with respect to either the propriety of such

8 See the submissions of Commission Counsel on February 6, 2006, in the transcripts at pages 8–19 for a fuller explanation of the agreement and the circumstances surrounding it.

a practice in relation to any particular police operation, or even the use of any emblem associated with the OPP in such endeavours.

The existence of certain mugs, T-shirts, and other paraphernalia came to the attention of the OPP when Staff Sergeant Charlie Bouwman notified Superintendent Tony Parkin that an Aboriginal MNR employee at Pinery Park, Stan Cloud, had made a verbal complaint to him. Mr. Cloud is an Aboriginal person from Kettle and Stony Point First Nation. He reportedly told Bouwman that while working at Pinery Park (where the OPP officers were housed during the occupation) he had seen certain items that were, in his view, derogatory and offensive to First Nations people. Mr. Cloud told his boss, Ipperwash and Pinery Park Superintendent Les Kobayashi, that these items poisoned the workplace for him and were out in the open for all to see.

Mr. Kobayashi was disturbed by what he heard, and referred the matter to the OPP. He also assigned Assistant Superintendent Don Matheson to investigate the potential involvement of MNR employees and to take appropriate action.

Superintendent Parkin directed Staff Sergeant Bouwman to obtain a formal written complaint from Mr. Cloud in order to initiate a disciplinary investigation under the *Police Services Act*. However, when Mr. Cloud was reluctant to make a formal complaint, Superintendent Parkin, recognizing the sensitivity around this situation, instigated an internal investigation in which he was the Complainant. Staff Sergeant Dennis Adkin was assigned to investigate the Complaint.

The Complaint was filed as part of an exhibit, and dated October 17, 1995 (the "Parkin Complaint"). The matters that were the subject of the Parkin Complaint were as follows:

1. Two versions of coffee mugs were under investigation. One version exhibited an OPP shoulder flash with an arrow going through it, and on the other side an OPP shoulder flash with the words "Team Ipperwash '95" written below it. The other version was the same except the OPP shoulder flash did not have an arrow piercing it.

2. Inflammatory remarks from OPP officers made to park personnel about First Nations persons in general.

3. An OPP cruiser sitting in the parking lot at Pinery Park with a bull's eye target and an arrow on a suction cup stuck to the door.

4. Chalk drawing of arrows and bombs on a blackboard in a Pinery Park building.

5. Derogatory cartoons posted on a bulletin board in a Pinery Park building.
6. T-shirts that had a feather lying on its side underneath an OPP crest.
7. A Labatt's Blue beer can that had yellow OPP tape wrapped around it, two feathers sticking out the back in sand, and a hole in the front of the can.
8. A Pinery/Ipperwash Park policy that stipulated procedures to be followed specifically aimed at First Nations people perceived to be committing offences in either of those parks issued in August 1995.

In the course of conducting his investigation, Staff Sergeant Adkin interviewed several police officers, Aboriginal persons, MNR park employees, and the designers and manufacturers of the coffee mugs and T-shirts. Staff Sergeant Adkin made the following findings:

1. The police officers assigned to the cruiser that had the bull's eye and arrow on its door undertook this action to relieve stress, which fellow police officers on duty at Ipperwash were feeling in the aftermath of the events of September 6, and that their intentions were harmless in that they intended no disrespect to the First Nations peoples of the area. Furthermore, they were not involved in the Ipperwash policing operation between September 4 and 6, 1995. Notwithstanding the lack of bad intentions, their actions clearly offended Mr. Cloud and, ironically, could have jeopardized officer safety in that such symbolism could have provoked retaliation on the part of First Nations persons. Hence, the actions of these police officers were inappropriate.[9]
2. The identity of the persons who allegedly drew the bombs and arrows on the chalkboard was unknown, and hence no conclusion was reached.
3. A part-time contract MNR employee of Pinery Park was responsible for the posting of the cartoon (obtained from a local newspaper), and police personnel were not involved.
4. The beer can had been procured by two police officers (not involved in the Ipperwash police operation between September 4 and 6) in order to relieve tensions being experienced by Pinery Park staff who, apparently, feared they

9 The names of these two police officers were not made public pursuant to an agreement reached among Commission Counsel and counsel for the OPP, OPPA, and Ontario, on the basis that as these officers were not on duty in relation to Ipperwash at any time over the course of September 4–6, 1995, and therefore their individual identities were not relevant to a discharge of my mandate.

might be taken hostage in the aftermath of the shooting incident. There was no intent of offending or being disrespectful to First Nations peoples. Notwithstanding the good intentions underlying their actions, their actions were inappropriate.

5. The coffee mugs were part of a tradition in the OPP of producing mementoes in the wake of joint operations or an amassing of personnel to reflect the camaraderie and *esprit de corps* of the people involved, and not the incident itself. Accordingly, the police officers acted properly in their actions.[10]

6. The T-shirt, similarly, was "an expected memento of policing involvement in major incidents," and was part of an accepted practice within the OPP with the apparent approval of senior police officers. Hence, these T-shirts fell into the same category as the coffee mugs. Sergeant Adkin's conclusion regarding the propriety of the police officers' conduct in procuring these T-shirts is unclear though it appears from the recommendations that he concluded that no misconduct for purposes of discipline had occurred.

7. The OPP did not establish the Pinery/Ipperwash Park policy (which mandated the reporting by MNR staff of all First Nations people committing any type of offence on park property to the OPP), and hence no findings were required.

Staff Sergeant Adkin made three general recommendations with respect to the appropriate institutional response, none of which required disciplinary sanctions against the individual police officers found responsible. First, he recommended that the OPP investigate and pursue the need for cross-cultural training on Aboriginal issues. Second, he recommended that the OPP consider the merits of the practice of the manufacturing of mementoes in major events, and consider establishing guidelines. Third, he recommended that non-disciplinary discussions occur with the officers involved in the manufacture and display of the beer can and the bull's eye and arrow appliqué.

The Professional Standards Bureau reviewed Staff Sergeant Adkin's report, and pronounced its decisions (accepted by the subject officers):

1. informal discipline be provided in the form of an admonishment in respect of the beer can incident, on the basis that regardless of the intent, the beer

10 Again, the police officers responsible for the creation of these mugs were not involved in the Ipperwash police operation at any time prior to September 7, 1995, and hence their identities were not made public. See my Ruling appended as Appendix 2 to this volume.

can was "offensive, threatening and to one, represented 'drunken Indians' being overpowered by OPP personnel";

2. informal discipline be provided in the form of an admonishment in respect of the bull's eye and arrow incident on the basis that, regardless of the subject police officers' intentions, their actions were "insensitive, unprofessional and offensive, and have brought discredit upon the reputation of the OPP."

The discovery of these mementoes also brought about an institutional response in the form of a new Police Order providing that, "except where authorized by the Commissioner, no OPP image shall be created or released without the written authorization of the respective regional or bureau commander." As well, in July 1996, the OPP and the Ontario RCMP established the Commissioner's Select Liaison Council on Aboriginal Affairs to enhance understanding and relationships with First Nations communities in response to these incidents. In addition, Maynard (Sam) George received a written apology from Commissioner O'Grady with respect to the "inappropriate memorabilia."

Finally, the senior commissioned officers who knew about the mugs and/or T-shirts and failed to take any corrective action were subjected to a "non-disciplinary discussion." This means that they were counselled with respect to their lack of insight and sensitivity in their failure to stop the continued dissemination of the T-shirts and/or mugs. As this did not amount to misconduct, nothing of an adverse nature would be noted on their records. Amongst the four commissioned officers subjected to this discussion was Incident Commander John Carson. According to Tony Parkin, the commissioned officers received the equivalent of an admonishment. The focus of the discussion was the need to be culturally sensitive.

20.8.5 Mugs and T-Shirts (with Feather Symbol)

The fact that a discipline investigation was undertaken does not end the inquiry into what might be taken from the impugned conduct that led to the creation of mugs, T-shirts, the beer can apparatus, the bull's eye and arrow appliqué, and the other objects that were the subject of Staff Sergeant Adkin's investigation. Indeed, Commissioner Boniface was, in hindsight, critical of the narrow focus of the investigation that failed to ask who had purchased the mugs and T-shirts, and the apparent weight placed by the investigator on the lack of malicious intention in judging the nature of the various mementoes. Chief Superintendent Coles agreed that the type of environment he would hope to promote was one in which the first officer who came across an offensive item such as the mug or T-shirt would raise it with his or her superior as a concern, and acknowledged that this did not

happen with these mugs and T-shirts. Insight into the behaviour of the participating police officers might be gained by a closer review of the situation, including who bought these mugs and T-shirts and what the images which they bore meant to those officers at the time of acquisition, and subsequently. This is important for at least two reasons. First, an examination into this conduct is necessary to determine whether, and if so, the extent to which, cultural insensitivity and racism existed within the OPP in the time frame surrounding the events in review. Second, because the views held by those who procured and/or purchased these "mementoes" immediately following the death of Dudley George may be indicators of views held during the course of this police operation, they could give insight into the conduct and behaviour of some officers during the incident.

I reviewed the testimony of those officers who participated in the confrontation on the night of September 6 at the sandy parking lot, and determined that several admitted to having bought or otherwise acquired a mug, a T-shirt, or both, which were the subject of this discipline investigation. Those officers were: Incident Commander John Carson, A/D/S/Sgt. Mark Wright, Constable Sam Poole, Constable Bill Bittner, Constable James Root, Constable Kevin York, Constable Steven Lorch, Sergeant Brad Seltzer, Constable Chris Martin, Sergeant Rob Graham, Detective Sergeant Don Bell, Constable Mark Gransden, Constable Richard Zupancic, Constable Wayde Jacklin, and Sergeant Robert Huntley. What struck me was that, almost without exception, at the time these police officers acquired the mug and/or T-shirt, none thought there was anything wrong with buying a souvenir, notwithstanding the surrounding circumstances of a tragic death, and none of these officers thought anything of the fact that the mementoes bore symbolism associated with Aboriginal culture.[11] According to Constable Wayde Jacklin,

> I'd bought t-shirts before when I was with the U.N. in Cyprus. There was [*sic*] t-shirts … and there wasn't any evil attached to it and this t-shirt … all of a sudden there became some sort of sinister, evil glorification of something gone wrong. And that … was not the intention of it at all and when I found that out, I parted with the t-shirt.

Furthermore, none of these officers appreciated at the time that the image of a feather on its side represented death in the local Aboriginal culture. For the most part these officers did not turn their mind to these issues. Furthermore, all initially believed that these images, and the objects themselves, were benign and

11 Brad Seltzer and Don Bell were given a mug and, in the case of Officer Seltzer, a T-shirt. Both of these officers recognized that these were inappropriate objects and promptly disposed of them.

well intentioned, and hence that there was no inappropriateness in having these objects procured and available to fellow police officers for sale. Indeed, for the most part, these officers only disposed of the T-shirts and mugs once they found out, through the media or otherwise, that the images were in fact controversial, and deemed by some members of the First Nations' community to be disrespectful and offensive in light of the death of Dudley George.

One officer, Sergeant Brad Seltzer, disposed of his T-shirt and mug shortly after being given them, because he did not want to have a memento of a tragic event. He testified, "I do not need memorabilia to remind me of the time."

Both former Commissioner Boniface and Chief Superintendent Coles found the mugs and T-shirts to be unquestionably inappropriate and offensive given the context of the tragedy that occurred during the course of this police operation. In the margins of Sergeant Adkin's report, the then incoming Regional Commander for the Western Region, Gwen Boniface, noted in 1996 that the fact that an Aboriginal person had not been offended by the beer can with the feather sticking out of it was not relevant to determining the appropriateness of the beer can, mugs, T-shirts, and other paraphernalia. She testified at the Inquiry that the T-shirt exhibiting the feather was offensive as a memento of the death of someone and was highly inappropriate, and the feather on its side was, to her, insulting since it signalled death to her. She further testified that the mug with the arrow piercing the OPP crest was similarly offensive and inappropriate.

When First Nations OPP Constable Vince George saw these mugs and T-shirts being openly sold at the OPP Forest Detachment, he found these items to be immediately offensive and inappropriate in light of the death of Dudley George. He told Detective Constable George Speck to remove the items from public display, explaining that it was inappropriate to produce any kind of souvenir following a person's death. They were apparently removed as a result of Constable George's admonitions.

Inspector John Carson heard about the mugs with the arrow through the OPP shoulder flash and advised that they should not be made. However, when he was given a T-shirt with a feather lying underneath the OPP emblem, he did not think anything about it. He subsequently realized that the T-shirts were insensitive to the family. However, he did not appreciate at the time that the white feather lying horizontally signified a fallen warrior.

His conclusion in looking back at these objects was that "[t]he t-shirts are certainly insensitive … The cups are clearly unacceptable and it's just absolutely inappropriate."

A/D/S/Sgt. Mark Wright confirmed that he had purchased a mug featuring the arrow design. When he was originally asked for his opinion on the T-shirt, he deferred to a fellow Aboriginal officer who said he was not offended by it.

However, he agreed that he implicitly approved of the design. A/D/S/Sgt. Wright admitted that he was embarrassed by the fact that it only dawned on him afterward that the mugs and T-shirts were inappropriate. Of significance, Mark Wright, Incident Commander Carson's effective second in command at the command post, advised that at the time the T-shirts were distributed, he had the feeling there was general agreement among the command staff that this was fine "because [he] knew some of the command staff had purchased the T-shirts."

20.8.6 Second T-Shirt (Anvil, Arrow, and TRU Symbol)

There was a particularly revealing moment during the Inquiry of relevance to the current examination. It came during the testimony of Sergeant George Hebblethwaite, the second in command of the Crowd Management Unit deployed to the sandy parking lot on the evening of September 6, 1995. Until George Hebblethwaite's revelation, we thought there was only one version of a "souvenir" OPP T-shirt (the "feather" version), and so did the OPP. However, on May 11, 2006, during the course of examination-in-chief by my counsel, Officer Hebblethwaite displayed publicly, for the first time, a second such "souvenir" T-shirt.[12] This T-shirt was, by all accounts, more disturbing than the first. The image may be described as the TRU symbol (a sword) breaking an arrow in half over an anvil (meant to represent the ERT), and is depicted at the end of this chapter.

It should be noted that George Hebblethwaite voluntarily disclosed the existence of this T-shirt to his counsel, who in turn advised my Commission Counsel, prior to testifying.

Again, it is notable that none of the participating officers had insight into the negative connotations that can reasonably be drawn by others when viewing this image, much less the questionable judgment in procuring commemorative T-shirts of a policing operation that resulted in the death of an Aboriginal person and had such a traumatic impact on all, First Nations, OPP officers and local citizens, alike.

The procurer of this T-shirt model was Constable William David Klym. Constable Klym was a relatively new member of the TRU team on September 6, 1995, when he was partnered on the Alpha team with Constable Mark Beauchesne, and fired his long gun during the confrontation. Constable Klym came forward to the Inquiry voluntarily when he saw a newspaper article depicting this T-shirt in the wake of George Hebblethwaite's testimony at the Inquiry.

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12 Officer Hebblethwaite preserved this T-shirt knowing that it might be required at the Inquiry, once he read about the controversy surrounding the T-shirt bearing the feather in the media.

Constable Klym testified that he was aware of the tradition amongst OPP members to produce T-shirts after successful joint force operations. He himself had acquired a number of such T-shirts. His intention in commissioning this particular T-shirt was "in recognition of the co-operative effort that took place that night between the London TRU team and the various ERT teams that were involved in the skirmish on that particular day." This joint operation was significant to him because a certain amount of tension and apprehension had arisen between the ERT and TRU as a result of the relatively recently created ERT having taken over some of the traditional functions of TRU. Accordingly, he went to a T-shirt shop and asked the shop to design a few images or symbols that might depict the spirit of co-operation between these two police units that had collaborated for the first time on the night of September 6, 1995.

Before settling on the anvil and arrow design, Constable Klym consulted a number of OPP officers, though he accepted ultimate responsibility for the selection. While expressing his regret in retrospect for choosing this particular design, he explained that the image "was not meant to signify the death of Dudley George or the breaking of the First Nations community but rather to show the co-operative effort of TRU and ERT for the first time operating in a crowd management function together." He testified that he sold between twenty to thirty T-shirts bearing this image, but only to members of the TRU and ERT who were engaged in the confrontation. He further testified that he never wore the T-shirt publicly, and has since disposed of it since the T-shirt no longer held the significance it once had. He added that he disposed of it after he left the TRU, implying that it no longer held significance for him because he was no longer part of the TRU.

As a result of this revelation during the Inquiry, the OPP launched a Professional Standards Bureau investigation into police conduct relating to this T-shirt.

Constable Klym admitted that, while at the time he authorized production of these T-shirts he did not appreciate the impropriety of creating this T-shirt, he now does. He now understands that there are many interpretations of his T-shirt that can be taken in a negative manner by First Nations people.

In particular, it was suggested to him that the image of an arrow, broken by the tip of the TRU sword symbol, over the anvil (intended to represent ERT, which did not have its own symbol yet) could reasonably be interpreted as representing the breaking of the First Nations occupiers, if not the First Nations community. While denying the latter, Constable Klym readily admitted the former interpretation was a reasonable one, though not the one he had intended to convey.

His interpretation of the image when he approved it, however, was as follows: "The broken arrow was to symbolize the occupiers that violently clashed with the ERT and TRU members that were on [the] ground that evening."

Other members of the TRU team engaged in the confrontation bought these T-shirts.

ERT/CMU member Constable Mike Dougan admitted he purchased a T-shirt but later regretted having purchased it, and then disposed of it.

Sergeant George Hebblethwaite insisted that to him, the imagery reflected by the arrow being broken by the TRU sword symbol against the ERT anvil was not intended to be racist or negative. He testified, "[I]t was a symbol … of an evening that was quite traumatic and a difficult time in my life." He further stated: "It was never intended to be a representation or represented as something with malice, and hatred and racism … [T]o me, it's a personal item that reflects that I survived, as did my co-workers, a very significant confrontation." On the other hand, he admitted:

> I once suggested, from my vantage, that it represents all of the First Nations. To me it represented those persons that we had this confrontation with on the night of September 6th … I understand how it is offensive today, and if I haven't said it clearly, and I believe I have, I am sorry to Mr. George that this has been taken this way, I really am. It wasn't my interpretation of it then, and it's not the way I felt about the shirt or feel about the shirt; even 'til today it doesn't represent that to me …

Constable James Root, a member of TRU that evening, testified that when he bought one of these T-shirts, he interpreted the broken arrow and anvil and TRU sword as indicating a conflict between TRU, ERT, and the Aboriginal occupiers, but never saw it as indicating that TRU and ERT had won. He later realized that the logo was inappropriate in light of Dudley George's death.

Constable Mark Beauchesne rationalized the arrow as indicating "violence" rather than the occupiers. Officer Beauchesne stated that the arrow was a symbol of an Aboriginal weapon or violence that the police broke.

Constable James Irvine saw the broken arrow as symbolizing the police having "repelled" the occupiers who "were attacking us." He rationalized the use of the broken arrow symbolism in the following terms: "[T]o me that meant that people were trying to do harm to us and I guess the arrow can represent that that is the harm; it's a weapon." Later in his testimony, he expanded upon his rationalization of the use of the TRU sword as a symbol breaking the arrow against an ERT anvil:

> To me, it's not about respect or lack of respect there; that symbol is the survival thing. And … I don't know if you've ever been involved in a fight, but when you're dealing with so many people trying to do harm to so many police officers, that was just unprecedented in my world. And we survived that.

Whether the broken arrow was intended to symbolize a segment of the Aboriginal population or the entire Aboriginal community or the breaking of a symbolic Aboriginal weapon is beside the point. The use of broken arrow imagery in the wake of the Ipperwash incident was ill-advised, at minimum, and targeted a distinct group of people by their race through the use of stereotypical violent imagery. The fact that Constable Klym did not seek the official approval of any commissioned officers is little comfort. Similarly, the fact that this T-shirt was "private property" and not worn in public does little to address the concerns underlying such use of imagery by members of the OPP who were on the "front lines" during the evening of September 6, 1995. It is significant that, but for the Inquiry, this T-shirt, and its violent imagery publicly identified with Aboriginal peoples, would have escaped the notice of the public and the OPP.

Sergeant Brad Seltzer agreed that, given the full details of the event as he knew them, Sam George might be forgiven for thinking that people who received the T-shirts showing the TRU breaking an arrow over an ERT anvil did not feel the same sense of tragedy he felt.

The imagery on this ill-advised T-shirt represents the use of a negative stereotypical symbol that targets Aboriginal people within the context of the TRU and ERT teams deployed that evening exercising power of superiority over the Aboriginal occupiers in the form of the (Aboriginal) broken arrow shattered by the combined strength of the (TRU) sword and the (ERT) anvil. From this perspective, these T-shirts contain racist imagery, notwithstanding the lack of intention by the implicated officers in procuring and buying them. Also problematic is the fact that, at the time of acquiring them, none of the officers who testified gave any thought to the insensitivity of making and obtaining souvenirs of an event that resulted in a tragic death. Indeed, I was disturbed by the ongoing defence of the T-shirt by certain officers who testified, conceding only that they could see how such a T-shirt might offend the victims of this tragedy.

20.8.7 Conclusion — The Racist and Culturally Insensitive Comments and Memorabilia

The tragedy behind the inappropriate memorabilia procured by certain members of the OPP in the wake of the death of Dudley George and the offensive comments uttered by certain police officers lies in the lack of thought and insight by those

officers as to how those who belong to the affected Aboriginal community, and particularly those who were affected by the loss of Dudley George, might reasonably react to those words and images. This conduct reflects a fundamental lack of sensitivity, in both the cultural and humane senses, by professional police officers. We, as a society, are reliant on the use of good judgment by professional police officers to do everything in their power to contain and de-escalate highly tense situations. The failure to exercise good and sensible judgment by the implicated officers between September 5 and 6 and the days following the death of Dudley George, when tensions and fears were very high, may reveal something about why the OPP was unable to resolve this matter in a timely and peaceful manner consistent with the stated objectives of Project Maple. If this lack of sensitivity was prominent in the days immediately following this event amongst those officers who participated in the event, it is reasonable to infer that these officers went into the confrontation with the same lack of sensitivity. At the very least, both the post-shooting conduct (as manifested in the mugs, T-shirts, beer can symbol, and the bull's eye and arrow appliqué,) and the racist and culturally insensitive comments made during the course of the police operation on September 5 and 6, 1995, are suggestive of an invisible barrier that prevented a timely, peaceful resolution to the occupation by reflecting an "us versus them" mentality, and caused the Aboriginal occupiers to maintain their preconceptions about the police in terms of their attitudes toward the Aboriginal occupiers and the motives underlying the actions of the occupiers.[13] The discovery of these comments and the memorabilia after the fact of the shooting may also impair future dialogue in other high-tension Aboriginal disputes as they seemingly justify a belief held by some Aboriginal peoples that some members of the OPP look upon them in derogatory, if not dehumanizing, ways. All this is counterproductive, to say the least, to the initiation of productive dialogue built on mutual trust and respect, which, as I suggested at the outset of this section, is the cornerstone of productive and peaceful negotiations.

As Chief Superintendent Chris Coles agreed during the course of his testimony (before the revelation of the broken arrow T-shirt), the mugs, T-shirts, and the beer can with the feather are red flags for a manager since "[t]hey're a window in[to] the minds of some people in the organization." He further agreed that he would want to promote an environment where the first officer who comes across such items of memorabilia denounces it and raises it with his or her

13 Commissioner Boniface expressed a similar sentiment, justifying the launching of an internal investigation by the Professional Standards Bureau.

superior. He further acknowledged that in the case of the memorabilia, that clearly did not happen.

It is important to acknowledge that since this tragic event, the OPP have taken many positive steps toward promoting cultural sensitivity and eliminating racism within its own organization and building a constructive relationship with the First Nations communities, as discussed in Part II of this report.

Some of the recommendations that I have made in this chapter regarding the discipline regime, and in Part II of the report, are aimed at achieving these objectives.

20.8.8 MNR Ipperwash/Pinery Park Policing Policy

In July 1993, Les Kobayashi altered Ipperwash Park's Enforcement Plan. He put in place a procedure to deal specifically with incidents involving First Nations people at the park. He stated that it was instituted in response to an "escalation" in occurrences at the park and the surrounding areas after the occupation of the army camp.

In the summer of 1994, the park witnessed a further increase in the number of incidents involving park users and First Nations people, prompting Les Kobayashi to meet with the OPP Forest Detachment Commander. At that meeting, he agreed that his Ipperwash Park staff would effectively become the "eyes and ears" of the OPP.

At the outset of the 1994–95 park season, a status quo security enforcement procedure remained in place; namely, the park staff would deal with minor infractions and occurrences, and would refer more serious complaints to the OPP, regardless of who the offender and/or instigator was.

That procedure changed in August of 1995. By memorandum to all Park Wardens, dated August 18, 1995, entitled "Procedures Dealing with First Nations People," the MNR instituted an enforcement policy that only applied to Aboriginal people:

> (6) When Park Wardens Observes First Nations People In the Park:
>
> If a Park Warden observes a First nations person in the Park they shall record it in their notebooks.
>
> 1. What campsite they are going to?
> 2. What they were wearing?
> 3. If they were wearing any colours or usual clothing.
> 4. What times they were observed.

Someone astutely queried in notations handwritten beside this article whether this procedure applied only to those First Nations people observed in the course of committing an offence, or whether it applied to all First Nations people merely by their attendance at the park. A park employee authored it with copies to Don Matheson, Les Kobayashi, and Staff Sergeant Charlie Bouwman of the OPP Grand Bend Detachment.

On August 28, 1995, the MNR issued a second memorandum to all Park Wardens entitled "Procedures Dealing with First Nations People" in which Article 6 of the August 18 memorandum was amended. It read, in the material parts, as follows:

> (1) First Nations Persons in Contravention of a Law
>
> Park Wardens are to be the eyes and ears for the O.P.P. When a First Nations Person has contravened the law, Park Wardens shall contact the O.P.P. immediately and advise the officers who are dispatched what offences can be charged and direct the O.P.P. constables to lay the charges
>
> (6) Offence Reporting
>
> If a Park Warden observes a First Nations Person who is committing an offence or has committed a contravention of the Federal or Provincial Statutes in the Park, they shall record it in their notebooks, complete an occurrence report about the incident and contact the O.P.P. to investigate and lay the necessary charges.

This was a departure from previous practice, in which Park Wardens or park security officers or conservation officers would only contact the OPP in the event of "the major Criminal Code issues" that were beyond what could be reasonably handled by MNR employees. Further, and more importantly, it was a departure from previous practice insofar as it explicitly targeted a segment of the population by their race; namely, First Nations people. Again, the memorandum was copied to Don Matheson, Les Kobayashi, and Staff Sergeant Charlie Bouwman at the OPP Grand Bend Detachment.

Again, the impetus for this and the predecessor policy was a perceived increase in tensions between park users and First Nations peoples. Mr. Kobayashi testified that the Senior Park Warden wanted to ensure that the appropriate procedures were in place to deal with any problems associated with Aboriginal people in the park. Mr. Kobayashi confirmed that his staff agreed to be the eyes and ears for

the OPP in terms of particular occurrences or incidents that involved campers and First Nations people.

In his discipline report, Staff Sergeant Adkins found that this was an MNR policy and had not been the product of any OPP officer, and left it at that.

However, Staff Sergeant Charlie Bouwman had admitted that he had played a role in the design of this policy. This led Superintendent Tony Parkin to agree that the MNR policy addressed special policing of First Nations people and, as such, was unacceptable.

Commissioner Boniface echoed a similar condemnation of this policy, agreeing that it was not permissible in our multicultural society to have special policing of any particular ethnic group.

This policy is an example of inappropriate race-biased policing, which is unacceptable in our society. Its discovery after the events of September 6 nonetheless serves as another example of a barrier that may alienate First Nations people from the OPP as well as the Ministry of Natural Resources. Hopefully, both the MNR and the OPP have learned that such policies are unacceptable as acknowledged by Commissioner Boniface.

20.8.9 OPP Response to Culturally Insensitive and Racist Conduct

As stated above, the OPP initiated internal discipline investigations to inquire into the T-shirts (both versions), mugs, the beer can with feather and OPP tape, the bull's eye and arrow appliqué, cartoons (determined to be the responsibility of an MNR worker), the Whitehead and Dyke exchange, and various tape-recorded comments made by police officers assigned to Project Maple. Some resulted in informal disciplinary measures, while others resulted in a finding of no police misconduct. Still others were without any substantive sanction due to the retirement of subject officers. One investigation (the arrow and anvil T-shirt) was, as at the closing of the evidentiary hearings, ongoing. None of these incidents went to formal disciplinary proceedings, meaning that none of the police officers in question have a permanent record of misconduct. Also, but for this Public Inquiry, many of these examples of racist and culturally insensitive conduct would never have been brought to the public's or to the government's attention.

The OPP also responded at an institutional level. It amended police orders to require that, except where authorized by the Commissioner, the use of OPP official images be approved by the Commissioner or a Regional or Bureau Commander. It enhanced its Aboriginal awareness training program. A Commissioner's Select Liaison Council on Aboriginal Affairs was struck. It

issued a written apology to Sam George and his family (relating to the initial Parkin Complaint incidents). Also, four commissioned officers, including John Carson, were the subject of a non-disciplinary discussion regarding their failure to recognize the offensive nature of the "memorabilia" of which they had knowledge. Indeed, Superintendent Parkin testified that the fact that the Incident Commander had a T-shirt and had not seen any problem with it was "a concern" because in the circumstances, "it was clearly inappropriate and ill advised … to be making mementos."

During the course of the hearing, Commissioner Boniface also repeated the apology conveyed by her predecessor, Thomas O'Grady, to Sam George and his family:

> Firstly, I want to re-iterate my predecessor, Commissioner O'Grady's, deepest apology and sympathy to you and your family for the loss of your brother Dudley … T-shirts, mugs, inappropriate comments, more T-shirts, I know have caused you further pain and I deeply regret that.

During the course of the evidence, however, some legitimate criticisms were raised with, and accepted by, some of the witnesses. One example was the apparently narrow scope of the investigation into the T-shirts and mugs. Commissioner Boniface accepted the proposition that all of the police officers who were significant players in the enforcement initiative on September 6, and who had purchased or acquired T-shirts, should have been interviewed as a matter of proper investigation protocols. Another example was the apparent emphasis the investigator, Staff Sergeant Adkin, placed on a lack of intent to be offensive or culturally insensitive on determining the character of the conduct (as opposed to informing the appropriate penalty or sanction).

A moment of embarrassment to the OPP was occasioned by the late, mid-Inquiry, discovery of the disturbing anvil and arrow T-shirt. Through her counsel, Commissioner Boniface responded to this event by stating that she was "shocked and appalled."

Another shortcoming of the discipline investigation process was revealed in the failure of those officers who were aware of the existence of the second T-shirt (bearing the symbols of the ERT anvil, TRU hammer and Aboriginal broken arrow) to report its existence to the investigating officer so that the investigation could be expanded to include a review of this further item of memorabilia.

This type of post-shooting conduct is relevant to my examination of the events surrounding the death of Dudley George and my recommendations regarding the prevention of similar acts of violence in the future because it reflects the kind of stereotypical attitude that undermines the efforts of the policing operation

to initiate dialogue by undermining the credibility of the OPP as a neutral policing organization. While this T-shirt was made after the death of Dudley George, it again reflects a disturbing attitude on the part of certain officers that may serve to validate the perceptions of certain Aboriginal people that the OPP does not respect them, and undermine legitimate efforts by the police to initiate communication. As observed by Ovide Mercredi, creating these types of commemorative items "does nothing to restore normal relations between the Aboriginal community and the police. It does the opposite."

20.8.10 MNR Response to Culturally Insensitive and Racist Conduct

Peter Sturdy became aware of the mugs, T-shirts, cartoons, and other items from Ipperwash and Pinery Park Superintendent Les Kobayashi. He understood that a Pinery Park First Nations employee, Stan Cloud, initially raised his concern about the items. Mr. Cloud advised that these various matters poisoned his workplace environment. In so doing, Mr. Cloud's complaint raised the branch of adverse impact racial discrimination (as opposed to overt racism) discussed at the outset of this section.

Mr. Sturdy further understood that the OPP was conducting an internal investigation into whether any MNR employees had played any role in these incidents. Ultimately Mr. Kobayashi informed him that the OPP had determined that a park kitchen contract employee had posted the cartoon, and that that was the extent of MNR involvement. He agreed with Mr. Kobayashi's conclusion that the cartoon was posted with "no discriminatory intent" and was meant to be a joke for the OPP (to calm tensions that were extremely high in the days following the shooting death of Dudley George).

Mr. Kobayashi testified that when Stan Cloud advised him of the mugs, T-shirts, cartoons, beer can, and other items, he was distraught and brought it immediately to the attention of the OPP. He took this matter to the OPP in light of its seriousness, and the fact that TRU and ERT teams were housed at the Pinery Park facility, thereby leading him to suspect that certain members of the OPP were responsible for some or all of these items. He asked his Assistant Park Superintendent, the late Don Matheson, to conduct an internal investigation to determine the extent of any possible MNR employee involvement.

Mr. Matheson determined that a temporary female kitchen worker was responsible for posting the cartoon. Mr. Matheson did not discipline her, but did speak to her about the inappropriateness of her actions, and ensured that the cartoon was removed. Mr. Kobayashi was content with that response.

Mr. Kobayashi sent a report to Mr. Sturdy reporting on the outcome of the investigation.

In retrospect, Mr. Kobayashi agreed that Mr. Matheson should have detected some or all of these items before Mr. Cloud raised the complaint. In light of that likelihood, and Mr. Matheson's failure to respond prior to the complaint, Mr. Kobayashi agreed that Mr. Matheson was likely not the right person to have investigated the incident.

Furthermore, he was concerned that no other MNR employee had taken the matter up with any superiors given the discriminatory nature of the items. He also agreed that under "normal circumstances," a more severe penalty would likely have been warranted against the kitchen worker. He believed, however, that the high degree of anxiety and tension pervading the atmosphere at Pinery Park justified the lax response so as not to inflame the situation.

20.8.11 The Political Response to Cultural Insensitivity and Racism

The Minister of Natural Resources, Chris Hodgson, was never told about Stan Cloud's complaint. He testified that while normally employment-related matters would be handled through the Deputy Minister's officer, and not him, in these particular circumstances he should have at least been apprised of the situation. Hence he did not know that one of the Ministry's employees had raised a concern about the existence of a poisoned work environment on the basis of adverse impact racial discrimination or the existence of the memorabilia, or the role played by the MNR kitchen worker regarding the posting of the cartoon, or the existence or outcome of the OPP's internal investigation. He agreed that if he had been alerted to the fact of the complaint, and the apparent lack of response by any of the MNR employees working at the Pinery Park to seeing these objects, that would have alerted him to the possible need for an institutional response such as further education of park employees from a policy point of view.

On the other hand, the then Solicitor General, Robert Runciman, was aware of the existence of the memorabilia and the resulting OPP internal investigation in a general way. However, the Solicitor General plays no role in specific disciplinary matters within the OPP. Hence, he was not apprised of the specifics of the investigation. Nonetheless, he was "upset and shocked" by the revelation about this memorabilia, "because of the fact that this had occurred shortly after the death of Mr. George and the insensitivity to the loss of a member of their family." He agreed that this factor made the memorabilia a matter of serious misconduct.

Mr. Runciman characterized the mugs and T-shirts as insensitive and inappropriate but did not believe them to be racist. He accepted the OPP's conclusion that at the root of the paraphernalia was a systemic problem of cultural insensitivity amongst police officers that required an institutional response. He agreed

that certain comments made in the exchange between Detective Constable Dyke and Detective Constable Whitehead crossed the line from being culturally insensitive to racist.

Mr. Runciman agreed with the following positions during his cross-examination:

1. If there is racism among police officers, it is a very serious matter, because police officers have a great deal of power and they exercise force.
2. If police officers have racist attitudes, and they have that power, and they are dealing with people who are members of the group against whom they have racist attitudes, that could be very serious.
3. Further, if police officers have racist attitudes in these circumstances, it can lead to injury and even death.
4. It is very important that police officers be made aware of the fact that racism on a police force will not be tolerated.
5. In his role as Solicitor General, one of his responsibilities would be to ensure that there are policies in place to make certain, as best as he and his Ministry can, that police officers are made aware of the intolerance of racism on a police force.

I am in complete agreement with these positions.

As I state in Part II of my report, in Chapter 11, "Bias-Free Policing," I was disturbed by the manner in which the OPP dealt with the tape-recorded racist remarks uttered by police officers as described earlier in this chapter. One of the disturbing aspects was the decision to allow the Darryl Whitehead complaint to proceed to informal discipline. I also discuss the appropriateness of informal discipline to address allegations of culturally insensitive or racist behaviour by police officers in Chapter 11 of Part II. As well, I discuss the role of the new Independent Police Review Director that will be created once Bill 103, the *Independent Police Review Act*, is passed into law. Whenever there are allegtions of racism against the police, in order to ensure transparency in the disciplinary process and accountability in terms of the outcome, the allegation must be available for public scrutiny. Once in the public forum of the formal discipline process, such complaints will be available to the Minister responsible for the OPP so that he or she can determine whether appropriate changes at a policy or legislative level are required in order to properly respond to these types of serious allegations. I expand upon this recommendation in Part II of my report.