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CHAPTER 1

INTRODUCTION

1.1 Purpose of this Volume

In this volume, I begin with an overview of the purposes of public inquiries generally, a discussion of the principles I applied in conducting the Ipperwash Inquiry, and a brief history of how the Inquiry came to be established. I then discuss the strategic, operational, legal, and administrative matters arising in the course of the Inquiry, in some cases offering suggestions on how governments contemplating a future public inquiry, and future commissions, might approach such matters.

This volume is primarily intended to be helpful to governments, commissioners, commission counsel, lawyers, and others who may become directly involved in future public inquiries, but it should also be of interest to the media and the broader public. Ultimately, the taxpayers pay for public inquiries. How and why public inquiries are called and conducted is therefore of public concern.

In approaching the conduct of this Inquiry, I was able to draw upon my prior experience and interest in inquiry proceedings. Some time ago, I acted as counsel for parties with standing in two formal inquiries[1] and I previously served as the commissioner of a public inquiry under the *Police Complaints Act*.[2] Nevertheless, upon my appointment as commissioner of the Ipperwash Inquiry on November 12, 2003, I began my task by reading everything I could about public inquiries and the experience of others in conducting them. I read judicial decisions,[3] texts and articles on public inquiries, and law reform commission reports.[4] I had discussions with

1 Royal Commission into Certain Sectors of the Construction Industry, Ontario, 1974; Royal Commission into Metropolitan Police Practices, 1976.

2 *Metropolitan Toronto Police Force Complaints Project Act*, S.O. 1981.

3 For example, Supreme Court of Canada decisions *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R; *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 [*Westray*]*; Starr v. Houlden*, [1990] 1 S.C.R. 1366; *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada — Krever Commission)*, [1997] 3 S.C.R. [*Blood Inquiry*]; and *Attorney General of the Province of Quebec and Jean Keable v. The Attorney General of Canada and The Solicitor General of Canada*, [1979] 1 S.C.R. 218 [*Keable*].

4 For example, Allan Manson & David Mullan, eds., *Commissions of Inquiry: Praise or Reappraise?* (Toronto: Irwin Law, 2003); A.P. Pross, I. Christie, & J.A. Yogis, eds., *Commissions of Inquiry* (Toronto: Carswell, 1990); D.J. Mullan, in *Administrative Law* (Toronto: Irwin Law, 2001) at 389–97; R.J. Anthony & A.R. Lucas, *A Handbook on the Conduct of Public Inquiries in Canada* (Toronto: Butterworths, 1985); G. Van Harten, "Truth Before Punishment: A Defence of Public Inquiries" (2003), 29 Queen's L.J. 242; Justice Dennis O'Connor, "The Role of Commission Counsel in a Public Inquiry" (Summer 2003) 22 Advocates' Soc. J. No. 1, 9–11; Ontario, Law Reform Commission, *Report on Public Inquiries* (Toronto: Law Reform Commission, 1992).

other judges who had conducted or were currently conducting public inquiries, and I read many inquiry reports.

Despite the considerable volume of literature and other helpful information and viewpoints available regarding public inquiries in general, in my view, there has been less documentation of the strategic, legal, operational, and administrative issues that arise throughout the process.

My colleague Madam Justice Denise Bellamy, commissioner of the recent Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry, identified a need to document the inquiry process. She did so for municipally organized inquiries, which are rare, for the benefit of the mayor, council, and ratepayers of the City of Toronto, and for others with an interest in the process. Associate Chief Justice Dennis O'Connor included a very useful overview of the inquiry process in his report on the Walkerton Inquiry and expanded on it in subsequent writings. Most other commissioners of public inquiries have also included some information about the process in their reports. However, each inquiry, whether federal, provincial, or municipal, is different, and I believe that increasing the body of information about public inquiries in general is necessary and valuable.

1.2 Purposes of Public Inquiries

Under the *Public Inquiries Act*, the Ontario government has broad powers in creating an inquiry. Under this statute, the Lieutenant Governor in Council has the authority to establish an inquiry to investigate matters affecting the good government of the province, the conduct of public business, the administration of justice in the province, or matters of public concern.[5]

In broad terms, there are two types of public inquiries. One is the investigative inquiry, which examines and reports on a specific incident or series of events. Often, an element of public controversy is attached to the matter under investigation. Indeed, calls for public inquiries in the wake of a controversy or tragedy are not uncommon, particularly from opposition parties or groups who do not have confidence in the ability of governments or other public institutions to regulate or investigate themselves. Regardless of the impetus for them, investigative inquiries are established to conduct an independent, comprehensive, and transparent review of

5 *Public Inquiries Act*, R.S.O. 1990. S. 2 states:

Whenever the Lieutenant Governor in Council considers it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein or that the Lieutenant Governor in Council declares to be a matter of public concern and the inquiry is not regulated by any special law, the Lieutenant Governor in Council may, by commission, appoint one or more persons to conduct the inquiry.

the events. The purpose, in general terms, is to find out what happened — to look back. A well-known example of this type of inquiry is the Royal Commission into Certain Deaths at the Hospital for Sick Children (the Grange Inquiry).

The other type of public inquiry focuses on the development of public policy in a specific area of public concern. Often, the need for such an inquiry arises from undesirable events or circumstances. In these cases, the inquiry serves as a means through which the contributing factors can be fully considered. Within that context, the inquiry may make recommendations for measures to prevent recurrence or for systemic improvement — in other words, to look forward. The Romanow Commission on the Future of Health Care in Canada is an example of this type of public inquiry.

Thus, a public inquiry can be an opportunity to look back or to look forward. It can also be both. An inquiry can be called to uncover the truth about a specific matter and, at the same time, to propose policy reform.[6] The Ipperwash Inquiry was established to meet both of those objectives.

All public inquiries serve a further purpose, however. A public inquiry also informs the public by presenting evidence that, until that point, may only have been given in private, if at all.[7] It provides a forum for citizens and groups to participate in the resolution of issues and the development of future policies and strategies concerning matters and events in which they may have a genuine stake.[8]

Critics of public inquiries have argued that governments sometimes use them as a politically expedient means of deflecting criticism, or even as a means of abdicating responsibility for dealing with controversial or politically sensitive issues. They also point out that the resulting recommendations may not be immediately adopted, and maintain that inquiries are therefore not an effective use of public resources. Conversely, governments may resist the call for an inquiry in favour of internal mechanisms for review.[9] While these concerns should not be ignored, and in fact should be considered before the decision to call an inquiry is made, it is also worth considering the extent to which an inquiry contributes to policy debate and to public education. This can prove to be a catalyst for reform in itself, and only manifest itself in legislative or policy change some time after the inquiry is completed.[10]

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6 Van Harten, *supra* note 4 at 243.

7 Précis of a reflection by Justice S.M.G. Grange on the purposes of the Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children (Grange Commission).

8 *Commissions of Inquiry: Praise or Reappraise?*, *supra* note 4 at 512.

9 Todd J. Burke, "The Role of Public Inquiries in the Development of Public Policy," in *Government Briefing* (Ontario Edition), a client newsletter of Gowling Lafleur Henderson LLP, November 2003.

10 *Ibid.*

In my view, what distinguishes the public inquiry from other types of investigations is that it is truly *public*. It investigates a matter of public interest, in public view, and with the participation of the public. This attribute was at the heart of all my decisions affecting the inquiry process.

1.3 Differences between Public Inquiries and Other Proceedings

Public inquiries are established by government, and their objective is to fulfill the mandate set out in an order-in-council, yet they are independent of government. Their role is also distinct from that of the legislative, executive, or judicial branches. Mr. Justice Cory of the Supreme Court of Canada pointed out that public inquiries, as temporary bodies, "are free of many of the institutional impediments, which at times constrain the operation of various branches of government."[11] He further wrote that

> [i]nquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions of inquiry are, ideally free of partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented.[12]

Despite these institutional distinctions, those observing a public inquiry, and indeed even those directly participating in one, often assume that it is like a trial. This is understandable. Although the specific features of inquiries vary, often the commissioner is a judge, the hearings are usually held in a court-like environment, and evidence is obtained from witnesses who may be examined and cross-examined by lawyers. In the case of the Ipperwash Inquiry, for example, I had powers to summons witnesses to attend, and if necessary to produce documents, and to make findings of misconduct in my report. However, a public inquiry is not a trial, and, generally, a commission is not established to revisit judgments already passed.[13] While a commission may establish wrongdoing or misconduct, it does not find anyone guilty of a crime, nor does it establish civil liability for monetary damages. To underscore this point, I described these limits in my public statements during the Inquiry.[14]

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11 *Westray*, *supra* note 3 at para. 60.

12 *Ibid.* at para. 62.

13 Appendix 1, Order-in-Council 1662/2003. See also Supreme Court of Canada decisions such as *Westray* (*supra* note 3 at para. 121) and *Blood Inquiry* (*supra* note 3 at para. 34). See also *Commissions of Inquiry* (*supra* note 4), particularly Iacobucci, at 26, and MacKay & McQueen, Chapter 9.

14 For example, Appendix 14(a), Commissioner's Remarks at the Hearings on Standing and Funding, April 20, 2004.

Unlike a civil or criminal trial, a public inquiry is more inquisitorial than adversarial, in that the objective of those involved in the process is to uncover the truth rather than to establish liability. Nevertheless, the proceedings can become heated at times. Invariably, a public inquiry involves groups, individuals, or institutions with legitimate and often competing interests that must be explored. And, although an inquiry is not intended to determine guilt or innocence, or fault or no fault, the actions of individuals or institutions may be questioned and misconduct may be found. This, and the fact that the investigation is conducted in public, carries with it the possibility that individual or organizational reputations will be at risk. Counsel have a duty to protect and/or advance their clients' interests, and therefore an adversarial element invariably makes its way into the inquisitorial process. Given this reality, it is imperative that the inquiry process include safeguards that uphold the principles of natural justice and procedural fairness.

Inquiries with both fact-finding and policy mandates also face the challenge of accommodating the sometimes competing interests of lawyers and policy-makers.[15] Lawyers retained by an organization or individual directly involved with or affected by the subject of the investigation are likely to focus only on the interests of their clients. They will therefore support procedural arrangements that afford maximum protection of their clients' legal rights. On the other hand, policy-makers, and lawyers representing parties with a broader policy focus, are likely to seek the broadest possible body of information relevant to the policy debate. They will tend to resist procedural mechanisms that may narrow the scope of the inquiry. The challenge is to put in place procedural and organizational structures that satisfy both fairness in fact-finding and thoroughness in eliciting information to contribute to the policy debate.

Another feature that distinguishes public inquiries from trials is that public inquiries are not strictly bound by the rules of evidence that govern civil or criminal proceedings. Our Rules of Procedure and Practice (the "Rules")[16] stated that "[t]he strict rules of evidence will not apply to determine the admissibility of evidence."[17] The commissioner of a public inquiry may receive any relevant evidence,[18] including evidence that might be inadmissible in a court of law, such as hearsay evidence. However, although hearsay evidence may be admitted at a public inquiry, the commissioner may accord little weight to it.

Academic researchers, law reform commissions, and other observers of public inquiries have noted that the "courts have taken a generally deferential approach

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15 *Commissions of Inquiry*, *supra* note 4, Introduction.

16 Appendix 2, Rules of Procedure and Practice.

17 *Ibid*., Rule 13.

18 Subject to privilege or other legal restrictions. See *Public Inquiries Act*, *supra* note 5 at s. 11, and Rule 13, Appendix 2, Rules of Procedure and Practice.

to commissions of inquiry and allowed them considerable leeway in determining their own procedures. The courts seem to be aware of the need not to strangle public inquiries with procedures that are more appropriate in a more traditional adversarial setting, such as a civil or criminal trial."[19] This approach puts an elevated obligation on commission counsel to bring forward not only relevant evidence, but also helpful evidence. "Helpful" has a much broader meaning in a public inquiry than "relevant" has in a trial.[20]

19 In *Commissions of Inquiry*, *supra* note 4, MacKay & McQueen at 273–274. See also O'Connor, *supra* note 4.

20 Daina Groskaufmanis & David Butt, "Public Inquiries: A Whole New Ballgame" (December 9, 2006) *The Lawyers Weekly*, at 14.

CHAPTER 2

THE DECISION TO ESTABLISH THE IPPERWASH INQUIRY

2.1 Events Leading to the Inquiry

In September 1995, Ipperwash Provincial Park was the site of an occupation and protest by Aboriginal people. One of the occupiers, Dudley George, was shot by an Ontario Provincial Police (OPP) officer and died of his wounds. Some were of the view that Ontario government officials, including Premier Michael Harris and a number of his Cabinet colleagues, had interfered with the OPP response to the protest. The officials repeatedly denied these allegations. Ultimately, this Inquiry was born of widespread anger and frustration arising from the tragedy and the circumstances surrounding it.

By the time the Inquiry was called, eight years after the death of Mr. George, a great deal had already been written and said about the events at Ipperwash Provincial Park. The Chief Coroner of Ontario undertook an investigation into the circumstances and events surrounding the death of Mr. George, pursuant to the *Coroners Act*[21] of Ontario, including an investigation into the emergency medical services response to the shooting.[22] Ontario's Special Investigations Unit (SIU) also conducted an investigation. The SIU is a civilian agency mandated to investigate all cases of death or serious injury resulting from police actions. It comprises experts in a number of fields (such as forensics) and has the power to lay criminal charges. These investigations deal only with determining whether individual officers are culpable, and not with questions of policy. At the end of its investigation, the SIU announced that OPP Acting Sergeant Kenneth Deane was to be charged with criminal negligence causing death.[23]

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21 *Coroners Act*, R.S.O. 1990, c.C.37.

22 The Chief Coroner made the results of his investigation available to the Inquiry and indicated in the application for standing that "[g]iven the broad mandate of the Order-in-Council creating the Commission of Inquiry, the Chief Coroner may determine that an inquest would be an unnecessary duplication of effort and expense and any benefit that an inquest would provide … have been realized through the Commission of Inquiry."

23 News release, SIU, July 23, 1996. See also Inquiry documents 1003934 and 9000301. Note that s. 113(7) of the *Police Services Act*, R.S.O. 1990, c. P.15 provides that "[i]f there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution."

The trial took place in April 1997. Acting Sergeant Deane was found guilty of criminal negligence causing death. He appealed the conviction, unsuccessfully, first to the Court of Appeal for Ontario and then to the Supreme Court of Canada.[24]

Throughout this period, further questions were raised about the circumstances surrounding the shooting. The individuals and groups who felt that they were not getting answers channeled their frustration into repeated calls for a public inquiry. The original impetus had come from the family of Dudley George, but pressure mounted in the following months and years, even from abroad,[25] as both the provincial and federal governments resisted establishing an inquiry. Municipalities, churches, trade unions, human rights organizations, the media, and the Ontario Ombudsman all voiced support for a public inquiry.

Many of the same parties used the *Freedom of Information and Protection of Privacy Act*[26] to obtain documents relating to the Ipperwash incident, particularly those concerning the possible role of elected officials and their staff in the events. The information obtained in this way was generally made public, in the legislature and/or through the media, in an effort to put pressure on the government to call an inquiry.

The two opposition parties actively carried support for an inquiry to the provincial legislature. On three occasions in the eight years following the incident, opposition members introduced a private member's bill[27] to require the government to establish a commission of inquiry. The proposed legislation was not passed, but the opposition continued to press for an inquiry by other means and to challenge the government's resistance to holding one. Information obtained by Dudley George's family, friends, and counsel bolstered these efforts.

Sam George, Dudley George's brother, started two actions[28] arising from Dudley George's death against Premier Harris, members of his Cabinet, and the OPP. The government maintained that a public inquiry could not be called on

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24 Acting Sergeant Deane was convicted of criminal negligence causing death after a trial by judge alone on April 28, 1997 (His Honour Judge H. Fraser). He was sentenced on July 3, 1997. His appeal to the Court of Appeal was dismissed on May 18, 2000, and his appeal to the Supreme Court of Canada was dismissed on January 26, 2001.

25 For example, the United Nations Human Rights Committee.

26 *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31.

27 (1) Bill 3, *An Act to provide for a public inquiry to discover the truth about events at Ipperwash Provincial Park leading to the Death of Dudley George (Truth about Ipperwash Act, 1999)*, first reading October 25, 1999; (2) Bill 87, *An Act to provide for a public inquiry to discover the truth about events at Ipperwash Provincial Park leading to the Death of Dudley George (Truth about Ipperwash Act, 2002)*, first reading June 11, 2002; (3) Bill 46, *An Act to provide for a public inquiry to discover the truth about events at Ipperwash Provincial Park leading to the Death of Dudley George (Truth about Ipperwash Act, 2003)*, first reading May 22, 2003.

28 *George v. Harris*, Toronto Court File Nos. 96-CU-99569 and 97-CV-123415 (Ont. S.C.J.).

the grounds that court proceedings were pending. Attorney General David Young referred the members of the legislature to section 23(g) of the standing orders:

> In debate, a member shall be called to order by the Speaker if he … refers to any matter that is the subject of a proceeding that is pending in a court or before a judge for judicial determination.

The Attorney General also expressed the government's position that a public inquiry was not the best course of action, in any event, by comparing the processes of civil litigation and public inquiries:

> Under the terms of the *Public Inquiries Act*, a public inquiry is normally launched only … when there are broad systemic issues that are involved, issues that transcend the conduct of individuals. For situations where the conduct of individuals is questioned, the civil and criminal courts of this province are well equipped to find the truth.
>
> [A] public inquiry is based on terms of reference that are usually handed down by the government; whereas a civil proceeding has its parameters set, its boundaries set, by the plaintiffs, who issue a statement of claim, who set out whatever issues they believe need to be resolved in the court.
>
> An important difference in outcomes between an inquiry and a court action is that an inquiry cannot make a finding of civil or criminal liability … It is true that an inquiry can, after giving due notice, include in its report, what is analogous to a finding of misconduct against one or more individuals, but it cannot find them liable in a civil or in a criminal sense. In fact, under the *Public Inquiries Act*, evidence given to an inquiry cannot be used in a civil or criminal court of law … Even if an inquiry finds that misconduct occurred, the aggrieved party cannot collect damages on the basis of that finding. A civil proceeding … can clearly assign blame and impose binding consequences upon those involved.[29]

Subsequently, Sam George wrote to Premier Harris on behalf of the George family, informing him that the family was willing to drop the lawsuit if the government would commit to a full public inquiry into the death of his brother; that

29 Young, David. "Opposition Day." In Ontario. Legislative Assembly. *Legislative Debates (Hansard)*. 37th Parl., 2nd Sess. (May 14, 2001) (Online). Available: http://www.ontla.on.ca/hansard/hansardindex.htm.

is, the civil suit would be held in abeyance during the inquiry and formally terminated upon release of its final report.[30] The government's position did not change.

Opposition members emphasized other differences between civil litigation and the public inquiry process in support of their position in favour of an inquiry. Speaking in the Legislature, Michael Bryant, the Liberal Party's justice critic at the time, quoted Professor Patrick Macklem of the University of Toronto Faculty of Law:

> Professor Patrick Macklem … had provided a legal opinion as to whether there ought to be a public inquiry in Walkerton based upon any alleged legal obstacles … Professor Macklem … writes: "[P]ublic inquiries are often able to investigate, inform and educate in ways superior to those available to the judicial and legislative branches of government. The judicial process … tends to assign blame by fragmenting issues into a limited set of categories established by existing norms, whereas a public inquiry enables a broader examination of social causes and conditions … [T]he civil litigation process will determine rights as between parties, the civil litigation process may result in determining who owes what in terms of damages, but a judge … cannot make any recommendations for the future, as a public inquiry can. A judge is constrained by the legal and evidentiary rules …"[31]

Adding to all that had already been written and said, a book by Peter Edwards, a journalist with the *Toronto Star*, was published in 2001. *One Dead Indian*[32] explored some of the unanswered questions surrounding the shooting of Dudley George and called attention to the need for a public inquiry.

2.2 Commission of Inquiry Established

In November 2003, pursuant to an election campaign promise, the newly elected government of Premier Dalton McGuinty established a commission of inquiry under the *Public Inquiries Act*.[33] Attorney General Michael Bryant issued a news release: "[W]e are fulfilling our long-standing commitment to have a full and

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30 Bryant, Michael. "Private Members' Public Business." In Ontario. Legislative Assembly. *Legislative Debates (Hansard)*. 37th Parl., 2nd Sess. (June 14, 2001). (Online). Available: http://www.ontla.on.ca/hansard/hansardindex.htm.

31 *Ibid*.

32 Peter Edwards, *One Dead Indian: The Premier, the Police, and the Ipperwash Crisis* (Toronto: Stoddart, 2001).

33 *Supra,* note 5 at c. P.41.

independent public inquiry … I look forward to receiving recommendations that will help us learn from the past and help promote peaceful resolutions in the future."[34]

As reflected in the Order-in-Council,[35] the Ipperwash Inquiry was to have the dual mandate of investigating the events surrounding the death of Dudley George and recommending ways to avoid future violence in similar circumstances. In other words, the inquiry was to be both an investigation and an examination of policy.[36]

2.3 Two Additional Goals: Public Education and Healing

Although my explicit and primary goal was to fulfill the two-part mandate set out in the Order-in-Council, I hoped to achieve two additional goals through the Inquiry. The first was to further public education and understanding regarding the issues surrounding the shooting death of Dudley George. The second goal was to contribute to the healing of those affected by the tragedy. I talked about the broader goals of contributing to restoring good relations among the people affected, and to restoring their faith in the institutions of government and of democracy, in my first public statement as commissioner.[37]

To further public education and understanding, we created a website and posted as much information as possible, throughout the Inquiry, including research papers commissioned by the Inquiry, submissions by the parties and the public, and summaries of consultations and panel discussions. The website had a link to teaching resources, and the Inquiry also made presentations to students and teachers about the Inquiry and the educational potential of the research gathered.

At the beginning of the hearings, the Inquiry retained two experts to testify on the long and complex history of the Aboriginal peoples in the Ipperwash area. I began the public hearings with this overview to provide context for the investigation of the facts and circumstances that was to follow and to serve as an appropriate starting point for the parties and the public. In my view, the Inquiry had an obligation to acknowledge that systemic or historic circumstances may have contributed to the actions and decisions under investigation. Although many of these

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34 News release, Ontario Ministry of the Attorney General, November 12, 2003.

35 Appendix 1, Order-in-Council 1664/2003.

36 On June 28, 2005, one of Dudley George's brothers, Pierre George, brought a motion in the Ontario Divisional Court for an order directing the Commission to state a case to the Divisional Court on jurisdiction arising from an alleged conflict between the Order-in-Council creating the Commission and s. 109 of the Constitution Act, 1867. By order dated September 5, 2006, the proceeding was dismissed by the registrar of the Divisional Court.

37 Appendix 14(a), Commissioner's Remarks at the Hearings on Standing and Funding, April 20, 2004.

circumstances pre-dated the events that gave rise to this Inquiry, or could have appeared to fall outside its jurisdiction or mandate, they served to shed light on why those events happened. That is what is meant by context.[38] The challenge was to find a balance between context and focused fact-finding. That challenge arose frequently, in all areas of the Inquiry's work.

Furthering public education was one of my continuing objectives, but educating myself and all of the participants in the Inquiry was also important. Early in the Inquiry, we held an Indigenous Knowledge Forum for all parties participating in the hearings. Commission counsel and counsel for the parties with standing thus gained some awareness of Aboriginal views and beliefs, and some of the ways they differ from those held by non-Aboriginals. To further enhance understanding, we opened the evidentiary hearings and other Inquiry events with traditional ceremonies conducted by Elders.

Healing is a less tangible goal than education, and perhaps it is more difficult to achieve. Yet, in the words of Mr. Justice Cory, a public inquiry

> can serve a type of healing therapy for a community shocked and angered by a tragedy. It can also channel the natural desire to assign blame and exact retribution into a constructive exercise providing recommendations for reform and improvement.[39]

Our hope was that the Inquiry process itself would contribute to healing for those whose lives were affected by the events of September 1995, and that it would help them move forward. Throughout the Inquiry, sentiments would be expressed and clarified, questions would be asked, and answers would be given. Facts would be brought to light about what went wrong. Points of view would be shared, sometimes for the first time and sometimes with great emotion. New insight and new understanding would inevitably follow. In my view, that would be, at least, a foundation for healing.

I was encouraged by the response to the Inquiry. From time to time, witnesses conveyed their appreciation for the opportunity to testify. Many of the people affected by the events expressed hope for a better future. Before the end of the Inquiry, some parties had already taken steps toward that end, and I am optimistic that relationships among the parties and the circumstances of those involved will be better than they were at the outset of the Inquiry.

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38 *Ibid.*

39 *Westray*, *supra* note 3 at para. 117.

CHAPTER 3

PRINCIPLES GOVERNING THE INQUIRY

Before I could start to make decisions regarding the inquiry process and structure, I needed to consider the principles that would govern decision-making and inform the design of the process. The principles I identified were by no means unique to this Inquiry, and were similar to those Associate Chief Justice O'Connor and Madam Justice Bellamy articulated:[40] thoroughness, expedition, openness to the public, and fairness.

As I said in my opening remarks at the hearings for standing and funding, natural justice and procedural fairness require that due process safeguards be in place and observed by the commission. We incorporated these safeguards in the Rules, but the principle of fairness also applied to all of my decisions throughout the Inquiry.

A key function of public inquiries is to shed light on events or decisions, not only to provide answers, but also to inform the public and restore public confidence. To inform the public, the inquiry must be conducted in an open forum to the fullest extent possible. To restore public confidence, it must be conducted in a manner that is transparent and open to public scrutiny.[41] All of this requires, therefore, that the public have access to the story as it is told. Our website, live webcast, and measures to facilitate media access all contributed to public accessibility.

To get at the truth, and to meet the tests of impartiality and independence, a public inquiry must be thorough. It must investigate thoroughly, leaving no doubt that all issues relevant to its mandate have been fully explored. My commitment to a thorough investigation of the events surrounding the death of Dudley George, considered from every necessary perspective, was reflected in my decisions with respect to granting standing, witness selection, and consultation.

Each of the principles I have already mentioned — thoroughness, openness to the public, and fairness — had to be weighed against the need to be expeditious. In my periodic statements throughout the Inquiry, I repeatedly emphasized that time and expense must be considered in conducting a public inquiry; both must be

40 Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry (Bellamy) and Walkerton Inquiry (O'Connor).

41 The Honourable Dennis R. O'Connor, *Report of the Walkerton Inquiry,* Part 1, at 473 (Toronto: Queen's Printer for Ontario, 2002).

justifiable and neither is unlimited.[42] Ultimately, this Inquiry would be measured by its success in meeting its dual mandate of fact-finding and making recommendations for the future. However, it was also inevitable and even justifiable that the assessment would take into account the time taken and the costs incurred.[43] A public inquiry is a publicly funded process, and it is in the public interest to contain the costs, to the extent possible, while satisfying the need to fulfill the mandate of the inquiry thoroughly.

These principles were my guideposts. They influenced my decisions about the inquiry process, some of which I will discuss in more detail in later sections of this volume. I hope they will also serve as standards by which the Inquiry is evaluated.

42 Appendix 14(h), Commissioner's Remarks, September 12, 2005.

43 *Ibid*.

CHAPTER 4

EARLY DECISIONS

4.1 Two-Part Process

The Walkerton Inquiry also had a two-part mandate. It was therefore an appropriate reference point, and I benefited immeasurably from the experience of my colleague, Associate Chief Justice Dennis O'Connor. The Walkerton Inquiry and the Ipperwash Inquiry were both called to investigate specific incidents, and both were required to make recommendations designed to prevent recurrences. It seemed to me that Justice O'Connor's decision to conduct his inquiry in two parts to reflect the two-part mandate made good sense for the Ipperwash Inquiry as well.

"Part 1" of my Inquiry would follow the evidentiary hearing model. It would be the fact-finding phase, through which I would make findings regarding the events surrounding the death of Dudley George. "Part 2" would be a policy-based review to fulfill the broader part of the Inquiry's mandate: to make recommendations on measures to avoid violence in similar circumstances. My recommendations would be based on research commissioned by the Inquiry, on the parties' projects or research, on extensive consultations, and on investigation of the underlying or systemic factors that might have contributed to the events investigated in Part 1.

It was a challenge to conduct the two parts of the Inquiry simultaneously, to maintain the separation necessary to achieve separate objectives while deriving the benefit available from allowing the fact-finding to inform the policy review and vice versa. A related challenge was simply a practical one. With the Part 1 hearings under way in Forest, commission counsel and I were sometimes not available to participate in unscheduled meetings in Toronto on Part 2 matters. We scheduled regular meetings for non-hearing days and we did our best to be available at other times when direction or decisions were required.

Despite the challenges, the two processes came together in a number of successful initiatives. One of these was the information sessions for commission counsel and staff, such as the one on Emergency Medical Preparedness, which the Inquiry sponsored jointly with the Chief Coroner of Ontario. Another was commission counsel's participation in the Part 2 consultations, including a Youth and Elders Forum on Aboriginal/Police Relations. Throughout the Inquiry,

the policy team followed the Part 1 testimony and often proposed questions to commission counsel to assist with eliciting evidence on systemic issues. Commission counsel also considered the research commissioned by the Inquiry in preparing to examine witnesses and, at the same time, the evidence brought out in the hearings guided the policy work.

4.2 Report Structure

I also needed to consider a number of questions regarding the structure of the report, long before the writing began. These included the possibility of issuing an interim report, the merits of a single volume to report on both parts of the Inquiry mandate versus addressing them separately, and the benefits and drawbacks of releasing multiple volumes sequentially or simultaneously.

Given the two distinct elements of my mandate, and the discrete yet simultaneous process established for each, one of my early decisions was to issue only a final report, with separate volumes on each part of the mandate, released simultaneously.

4.3 First Key Members of the Inquiry Team

Upon my appointment, I required immediate assistance with five major components of the Inquiry: the administrative organization, the fact-finding effort, the analysis of a great volume of evidence, the policy review, and the management of communications with the public and the media. Accordingly, my first recruitment efforts were directed to finding a chief administrative officer, lead commission counsel, a senior legal analyst, a director of policy and research, and a media and communications advisor.

A public inquiry is a temporary body, and this in itself presents a significant challenge in recruiting qualified people with appropriate experience. Moreover, when an inquiry is called, the commissioner is under enormous pressure to get the inquiry under way as quickly as possible, and at least some positions must be filled immediately. The positions exist for a limited time and they are often of uncertain duration. Finding highly qualified people, available at the right time for a short-term assignment, is a significant hurdle for any commissioner of a public inquiry. Given these difficulties, I was very fortunate to have been able to assemble a superb team.

4.3.1. Chief Administrative Officer

From my own experience in putting organizational structures in place, I knew that the first tasks for the Inquiry would be necessarily administrative. These first

tasks included securing office space (and perhaps hearing space), tendering contracts with suppliers, arranging for technology infrastructure, establishing a website, and many others. Therefore, my most urgent staffing priority was to find a senior administrator.

Fortunately, I was well acquainted with Dave Henderson, an experienced Ontario public servant, recently retired, who had launched a second career as an advisor to commissioners on the administration of inquiries. At the time, he was engaged in that capacity by Justice Bellamy[44] and Justice Campbell,[45] and he had recently provided the same service to Associate Chief Justice O'Connor.[46] His experience with inquiries and knowledge of the expenditure and other administrative guidelines of the Ontario government was invaluable. He also shared my commitment to financial responsibility and accountability. Regrettably, he was only available during the early stages of the Inquiry and on a part-time, as-needed basis. Nonetheless, Mr. Henderson was of great assistance with some of those first tasks.

My executive assistant, Debbie Strauss, assumed the additional responsibilities of a chief administrative officer for a number of months; however, as the Inquiry progressed, it became apparent that I required a full-time administrator to manage the many operational matters that continued to arise and the myriad administrative tasks that had to be carried out routinely. Most of my time was devoted to presiding over the hearings in Forest, but our main office was in Toronto. This added a further element of complexity to the administration of the Inquiry and I decided to have a full-time, experienced administrator. Having worked with Maureen Murphy for many years, most recently in the Ontario Court of Justice, I knew she had the necessary qualifications for the job.

4.3.2 Lead Commission Counsel

The newly appointed commissioner of an inquiry is naturally eager to get on with the work assigned — to "plunge into the meat of it."[47] In my case, there was a further reason for urgency. The events at the heart of the Inquiry had taken place eight years before I was appointed, and it was important to get the Inquiry under way before the investigative trail grew even colder. I therefore moved quickly to retain my lead counsel.

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44 Commissioner, Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry.

45 Commissioner, Commission to Investigate the Introduction and Spread of Severe Acute Respiratory Syndrome (SARS).

46 Commissioner, Walkerton Inquiry.

47 George K. Bryce & Patrick Lewis, "Basic Questions for Commissions of Inquiry" (1996) 2 Administrative Agencies 85.

Within one week of my own appointment, I appointed an experienced and highly respected civil litigator and Law Society of Upper Canada bencher, Derry Millar, to lead the legal team. I had the pleasure of working with Mr. Millar on the board of Legal Aid Ontario (LAO) and knew that, in addition to being a skilled litigator, he had exceptional administrative and organizational skills. These proved to be even more important than I could have foreseen. His ability to balance multiple pressures and disparate personalities was of great assistance. What occurs in the hearing room is only one part of the investigative process. He marshalled the evidence, but equally, he managed the sometimes competing interests and demands of counsel for the parties through countless emails and meetings. Throughout, he was a diplomatic and patient steward of the hearing process. He was able to facilitate the resolution of most issues outside the hearing room, thereby minimizing delays and avoiding derailment of the progress of the Inquiry inside the hearing room.

Commission counsel's primary responsibility is to represent the public interest at the inquiry and to ensure that all perspectives bearing on the public interest are brought to the commissioner's attention. Associate Chief Justice O'Connor characterized this as a "coincidence of roles," in that commission counsel also assists the commissioner in carrying out his or her mandate and acts on behalf of and under the direction of the commissioner.[48] It was imperative, therefore, that we be in agreement on the approach, tone, and general conduct of the Inquiry. Initially, of course, we were both more familiar with the traditional relationship between a judge and a lawyer than the altogether different relationship between a commissioner and counsel, but I believe we made the transition successfully. Given the span and intensity of the time we spent together, I was grateful for the excellent relationship I enjoyed with Mr. Millar from beginning to end.

4.3.3 Senior Legal Analyst

I knew that, at the conclusion of the evidentiary hearings, I would have a considerable volume of testimony to review. To make it possible to issue a timely report, I again followed the approach of Associate Chief Justice O'Connor and Madam Justice Bellamy[49] by hiring senior legal analyst, Ronda Bessner, to oversee the tasks of summarizing and organizing witness testimony as soon as the hearings began. Throughout the process, Ms. Bessner assisted me with analyzing the evidence

48 O'Connor, *supra* note 4.

49 Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry (Bellamy) and Walkerton Inquiry (O'Connor).

and preparing the Part 1 report. Her experience as a law professor and with other public inquiries made her a highly valued member of our team.

4.3.4 Director of Policy and Research

During my tenure as chair of LAO, I had the good fortune to work with, and highly respect, its policy director, Nye Thomas. I was grateful that LAO's chief executive officer was prepared to allow him to be seconded to the Inquiry to oversee the policy (Part 2) phase.

Mr. Thomas's legal credentials, his knowledge of the workings of government, and his significant experience in research, policy development, consultation, and report-writing (notably, the skill and experience he gained in crafting the 1999 blueprint published by Professor John McCamus on the future of legal aid in Ontario) were ideally suited to shaping and executing the Inquiry's policy research agenda. His skill and energy allowed him to "hit the ground running" to move the Inquiry forward.

4.3.5 Communications Coordinator/Media Relations Officer

Peter Rehak came to the Inquiry having worked in the media for many years, and subsequently on a number of public inquiries. He had excellent contacts with the media. As the communications coordinator/media relations officer, his duties included writing our press releases and ensuring that the media representatives assigned to cover the hearings and policy events had the information and facilities they needed to file their stories. Mr. Rehak was also responsible for working with our webmaster to design and maintain our website, and with the companies engaged to tape and webcast the proceedings. His experience with inquiries, his relationship with the media, and his skill in addressing the range of daily telecommunications challenges were invaluable assets, all of which contributed to ensuring open media access to the proceedings.

CHAPTER 5

RULES OF PROCEDURE AND PRACTICE

Subject to fairness considerations, a commissioner has considerable discretion in conducting an inquiry in a manner that best meets the mandate. This discretion extends to defining the rules that underlie the conduct of the inquiry.[50] Typically, these rules, commonly known as rules of procedure and practice, are developed early in the inquiry process so that the public and participants will know the "rules of the game."[51] They address procedural matters such as the granting of standing and funding for interested parties, the disclosure of documents, and the calling of witnesses. The rules may also address practical matters such as the location and schedule of inquiry hearings and other activities. We modeled our Rules on those of similarly structured public inquiries and in keeping with the principles I had articulated for the Inquiry. Commission counsel invited the parties with standing to comment on the draft Rules and we posted the final version on our website. The Rules were not formally amended over the course of the Inquiry. Occasionally, however, it was necessary to relax or modify them slightly to deal with unforeseen circumstances**.** For example, on occasion I determined that it was reasonable to relax the "twenty-four-hour rule."[52] In each case, I was mindful that any adjustment to the Rules should not compromise or prejudice any party's participation or give any party an unfair advantage.

50 For example, *Public Inquiries Act, supra* note 5 at c.P.41.s.3.

51 *A Handbook on Public Inquiries in Canada, supra* note 4 at 69.

52 Rule 38 (Appendix 2, Rules of Procedure and Practice) stipulated that parties were required to provide Commission counsel with any documents that they intended to file as an exhibit or otherwise refer to during the hearings no later than twenty-four hours prior to the day the document would be referred to or filed.

CHAPTER 6

ADMINISTRATIVE INFRASTRUCTURE

Although inquiries are temporary bodies, they nevertheless require solid administrative structures and procedures. The government sets no restrictions on the system of administration and provides very little assistance. For this Inquiry, the Order-in-Council set out some very general guidelines for budgeting and procurement:

> Within an approved budget, the commissioner may retain such counsel, staff, investigators and expert advisors it considers necessary in the performance of its duties at reasonable remuneration approved by the Ministry of the Attorney General.
>
> The commission shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods it considers necessary … unless, in the commissioner's view, it is not possible to follow them.[53]

Administrative management can be a significant factor in the success or failure of an inquiry in fulfilling its mandate. At every stage, there are competing objectives to be weighed and decisions to be made.

As the Inquiry progressed, an administrative liaison developed with the Ministry of the Attorney General. Ministry staff made every effort to assist when asked, but my staff did most of the administrative groundwork. We obtained some guidance from the SARS Inquiry, which was still under way, but for the most part, we relied on our own public administration experience. In many ways, as we discovered, each public inquiry has to reinvent the wheel. Looking forward, I believe that much could be gained by establishing a permanent secretariat or repository of administrative best practices, somewhere within the government, to minimize the need to start from scratch each time a new public inquiry is called.[54]

53 Appendix 1, Order-in-Council 1662/2003.

54 See section 15 herein, Inquiry Process Recommendations.

6.1 Location for Evidentiary Hearings

The principle of public accessibility informed one of my earliest decisions regarding the Inquiry: where to hold the evidentiary hearings. The locations I considered most seriously were Toronto and the Ipperwash Provincial Park area. Commission counsel and I examined the factors to be considered in determining the place of a trial, as set out in the Rules of Civil Procedure. These include the interest of a particular community in the subject of the proceeding and the convenience of the parties, witnesses, and the court.[55] We also considered relevant decisions,[56] and the factors set out by the Court of Appeal in cases involving *forum non conveniens* (inconvenient forum) such as the locations of the majority of parties and the key witnesses. We also took into account the preferences of the parties with standing in the Inquiry.

The opinion of Justice Borins with respect to the location of trials is, arguably, even more applicable to a public inquiry:

> Litigation that directly affects the community should be heard in the court that serves the community. The interests of justice require that all parties be able to attend at the trial without unnecessary expense or inconvenience.[57]

In the end, having examined all the options, and with the benefit of input from commission counsel and staff, I decided to begin the hearings in Forest, a town near Ipperwash Provincial Park.

The local communities were likely to have the greatest interest in attending the hearings. Thus, holding the hearings in Toronto would have considerably compromised access for the members of the public most concerned in the matter. As I said on the first day of hearings,[58] I also believed that close proximity to the site of the events under investigation would benefit both Inquiry participants and the broader public by heightening their awareness and understanding of the local circumstances.

Nevertheless, during the early months of the hearings, I was prepared to reconsider; in fact, the Rules explicitly stated that, at times, the public hearings might be held in Toronto.[59] The Estate of Dudley George and the George Family

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55 Rule 13.1.02(2), Rules of Civil Procedure (Ontario).

56 For example, Mr. Justice A. Campbell in *First Real Property Ltd. v. Hamilton (City)* (2002), 59 O.R. (3d) 477 (Div. Ct.).

57 *Chippewas of Sarnia Band v. Canada*, [1996] O.J. No. 627, per Borins J. at para.14.

58 July 13, 2004.

59 Rule 2, Appendix 2, Rules of Procedure and Practice.

Group formally requested that I move part of the hearings to Toronto, but they later withdrew the motion in light of strong local support for keeping the hearings in Forest.

Once we had decided to conduct the hearings in the Ipperwash Provincial Park area, our next task was to find a suitable facility. We needed an appropriate hearing room, large enough to accommodate counsel for the parties granted Part 1 standing, commission counsel, the media, the court reporter, and the public. Although most of the hearing preparation work was done in our Toronto office, we also needed some office space and meeting rooms at the hearing site. The facility had to have appropriate entrances, to the building and to the hearing room itself, and the necessary public facilities.

The options were limited, but we were fortunate that the Municipality of Lambton Shores was prepared to make available Kimball Hall in the Forest Memorial Community Centre. We had a rental agreement, periodically renewed as hearing days were added, giving us access to the auditorium as needed and sole and unrestricted access to a small boardroom. The community centre contains a hockey arena, and we had access to the arena viewing room for media needs that could not be accommodated in Kimball Hall.

It was no small task to convert a community centre into a suitable site for a public inquiry. With the exceptional resourcefulness of my counsel and staff, and with willing cooperation and assistance from the community centre staff and the Municipality, the building was transformed into a well-functioning public hearing auditorium and office. It would have been a challenge to do it once, but the community centre staff and our technicians set up the hearing room at the beginning of each hearing week and then dismantled it at the end of each hearing week to make the auditorium available for community events. I am very grateful to everyone who worked for and participated in the Inquiry for their contribution to making the arrangements work as well as they did, and for their patience and understanding when conditions were less than ideal. Most of all, I am grateful to the people in the Forest area for accommodating the Inquiry in a building that is normally a focal point in their community activity.

6.2 Principal Office Space

For administrative purposes, it made sense to establish the Inquiry's principal offices in Toronto. An Ontario government department had office space under lease, no longer required and by then vacant, in downtown Toronto. The space needed some alteration, such as additional interior walls, telephone and computer lines, and furniture and equipment. Although we did our best to forecast

office space needs by estimating our likely complement of lawyers, investigators, policy analysts, and administrative support staff, we occasionally adjusted the space to accommodate unforeseen functions. We had originally reserved the space adjacent to our office as a possible hearing room, but when it became apparent that the hearings would continue in Forest, we converted that space into additional offices.

The Ministry of the Attorney General supplied the initial information technology (IT) infrastructure, but the Ministry had limited capacity to provide the necessary ongoing technical support. Despite the government's best efforts and intentions, technology-related difficulties sometimes hampered the Inquiry's activity. Many of these were related to the government's information security procedures and protocols and to limited Ministry staff resources for technical support. Two working locations, one of which was remote from the server and local network, amplified the IT challenges. Documents stored on our Toronto server could not be accessed electronically from off-site locations, including Forest. This challenge was mitigated, to some extent, by providing a CD containing the entire database, or by downloading the Inquiry document database to the stand-alone computers of commission counsel and counsel for the parties.

6.3 Financial Administration

Making some broad assumptions regarding the course of the Inquiry, and initially relying on the considerable experience of my chief administrative officer, Mr. Henderson, we developed budgets for each fiscal year. Mindful of the need to balance thoroughness with cost-efficiency, I closely monitored the Commission's actual expenditures against the forecast as the Inquiry progressed.

The Inquiry regularly submitted budgets and expenditure reports according to the government's planning and reporting cycle. Given the need for transparency in the stewardship of public funds, I welcomed scrutiny of these reports and I am pleased that the Commission stayed within its projected budget.

The costs of the Inquiry generally fell into two broad categories. One was the costs over which I had direct control, including my commission counsel, staff, investigators, and experts. It also included the overhead for the Toronto and Forest locations, costs associated with the hearing process (such as document management, hearing room facilities and staff, and the webcast of the proceedings) and certain costs related to the policy process (such as commissioned research and community meetings and symposia).[60]

60 Appendix 17, Inquiry Statistics.

The second category was the costs incurred by the Ministry of the Attorney General, which included the fees and disbursements of counsel for parties with standing in Part 1 for whom I recommended funding. To avoid any perception of my having a conflict of interest, I had no involvement in reviewing or approving these costs. Instead, the Ministry of the Attorney General and I jointly retained an independent assessor to review the billings of counsel for the parties for conformity with the Ministry of the Attorney General's fee schedule for outside counsel and with the criteria and guidelines for disbursements established by Management Board of Cabinet (and used by the Ministry) and to authorize payments by the Ministry. The Ministry also approved funding for research and participation in policy consultations for parties with standing in Part 2, case by case, upon my recommendation, which was based on a careful review of each funding application by my staff.

I was always conscious of the fact that an inquiry is publicly funded, and I regularly urged the parties with Part 1 standing, and their counsel, to be mindful of the cost of their participation and to contribute to efficiencies where possible. I reminded them that the public had a right to expect us to undertake our work not only with thoroughness, but also with economy and efficiency in mind.[61]

6.4 Staffing and Procurement

As the work of the Inquiry progressed, we added staff and services as required, and we reduced our complement as particular skills and services were no longer needed. Thus, in the interest of efficiency, our staff complement and range of services continually expanded and contracted according to our current needs. For that reason, and because I wanted to complete the Inquiry with reasonable speed, hiring and procurement decisions often had to be made quickly.

The pool of candidates and potential suppliers with the necessary combination of skills and experience to provide services to a public inquiry is limited. A further difficulty arises from the necessity to engage suitable staff and services on a short-term basis and on short notice. These factors limited the practicality of lengthy competitions, and we sometimes identified suitable candidates through reliable recommendations. Nevertheless, we made every effort to ensure accountability and transparency, and we adhered to Ontario government procurement and hiring procedures when feasible. On occasion, when it was not possible or practical to follow the guidelines to the letter, we incorporated the spirit and intent of the guidelines in our procedures.

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61 For example, Appendix 14(j), Commissioner's Remarks on Attendance and Cross-Examination, January 9, 2006.

My staff created a variety of documents for use throughout the Inquiry, including oaths of confidentiality,[62] detailed terms and conditions for the payment of service providers,[63] and guidelines and criteria for seeking reimbursement of out-of-pocket business expenses.[64] We also developed a number of internal procedures and protocols to guide us and to ensure consistency in our approach to administration.

Similar administrative systems and protocols are likely to be needed in most public inquiries. I was surprised that I often had to rely on my own administrative background, and that of my staff, to develop these basic mechanisms. Once again, I believe that the management of public inquiries could be simplified, and cost efficiencies could be realized, if the government developed administrative best practices and provided more comprehensive guidance and support in administrative matters.[65]

62 Appendix 7, Confidentiality Undertakings.

63 Appendix 12, Sample Retainer Letter, Service Providers.

64 Appendix 11(c), Travel and Out-of-Pocket Expenses Guidelines.

65 See section 15 herein, Inquiry Process Recommendations.

CHAPTER 7

COMMUNICATIONS

7.1 Website

The technology available today affords unprecedented opportunity to ensure public access to the proceedings of a public inquiry. Accordingly, one of the first tasks I assigned to my communications coordinator/media relations officer was to identify and work with a webmaster to design a website that would offer current and complete information on all aspects of the Inquiry.

Public accessibility considerations strongly influenced the content of the Inquiry's website. During the hearings, the transcripts were available on the website no later than the evening of the day the testimony was heard. We kept the other areas of the website up to date with hearing schedules, my public statements and decisions on motions, research papers commissioned by the Inquiry, and other information on the progress of the Inquiry.

In addition to comprehensive links to information, the website included features designed to engage the public in the work of the Inquiry. Through the "feedback" link, for example, visitors to the site could convey their views or share information with me, commission counsel, and other staff. We continually improved the format of the website, and added new links to encompass the breadth and depth of the policy work as it progressed. In terms of public access, however, the addition of a link from our website to a live webcast of the hearings and some of the policy consultations had the greatest impact. We began the live webcast some months after the hearings started, which made it possible for interested individuals, anywhere in the country and beyond, to see and hear the proceedings of the Inquiry in real time. A public inquiry is necessarily conducted in the public view, but through this technology, the reach of the public forum was extended to a degree never before possible. I am grateful for the assistance of counsel for the Estate of Dudley George and George Family Group for helping us to make this service available.

The live webcast had other benefits. Commission counsel and other commission staff could follow the proceedings, even when other responsibilities or cost considerations made it impractical for them to travel to Forest. The same advantage applied to counsel for the parties with standing. I pointed out to them that each party had a continuing responsibility to carefully consider the necessity for their counsel to be present in Kimball Hall from beginning to end of each hearing day and week, and

that our webcast and daily postings of the transcripts were an excellent means of following the proceedings and thus realizing further efficiencies.[66]

Initially, we only webcast the hearings. It soon became apparent, however, that the webcast had established a new level of expectation for public access to the Inquiry's activities and we added webcasts of other Inquiry activities when feasible. In my view, our webcast elevated the threshold for accessibility and transparency in public inquiries, and it will be difficult for any future inquiry not to webcast the proceedings. For instance, our example was followed in the Cornwall Public Inquiry,[67] which was established some months after this Inquiry.

7.2 Media Relations

Public inquiries are called in response to a matter of public concern. Media interest is therefore expected. Since one of the purposes of public inquiries is to bring previously unknown facts and circumstances to light, media attention is also helpful and desirable. It is an important factor in public access to the proceedings. The Inquiry's communications coordinator/media relations officer had excellent relationships with the local and national media outlets and considerable public inquiry experience, and he was well acquainted with what media representatives required and expected.

Sometimes, local cable companies or television networks choose to cover inquiry proceedings from start to finish. As this was not the case for the Ipperwash Inquiry, we arranged for broadcast-quality taping of the hearings by a local audio-visual company, which served as a pool feed for the electronic media covering the hearings.[68] The Inquiry was regularly followed and reported on by the London television station, The New PL, and by the CTV affiliate, CKCO Kitchener. Soon after the hearings began, the Aboriginal Peoples Television Network (APTN) began to air a ninety-minute excerpt twice each week, in addition to periodic nightly newscasts. By the end of the hearings, the Cable Public Affairs Channel (CPAC) was also rebroadcasting some of the proceedings.

The print media, particularly the *Sarnia Observer* and the *London Free Press*, regularly covered the Inquiry. A reporter from the *Toronto Star* attended most of the proceedings, and the Inquiry had national coverage in the *Globe and Mail* and the *National Post* from time to time.

Judges presiding over trials do not discuss the trials in the media, but given the very different function of commissioners of public inquiries, contact with

66 Appendix 14(j), Commissioner's Remarks on Attendance and Cross-Examination, January 9, 2006.

67 The Honourable G. Normand Glaude, Commissioner.

68 See section 9.7 herein, Records of the Proceedings.

the media is not precluded for them. Nevertheless, because I was acutely aware of the importance of public perception of my objectivity throughout, I decided that my commission counsel would be responsible for meeting with the media and would be available for interviews or to answer questions whenever needed. However, commission counsel spoke on my behalf and had the same obligation as I did to be fair and objective. Prudently refraining from comment on the evidence anticipated or already called, commission counsel focused on the inquiry process and timetable and fulfilled this role ably and with professionalism.

I made public statements "from the bench" in Kimball Hall from time to time. Typically, the purpose was to communicate my decisions regarding procedural matters such as the location of the hearings, convey my views on progress of the Inquiry, or emphasize specific objectives with respect to the proceedings.[69] Our communications coordinator/media relations officer generally notified the media that I would be making such a statement, and the text was posted on our website (in addition to being included in the daily transcript).

7.3 Comments and Queries from the Public

Our website was intended to inform and educate the public about the Inquiry, and also to serve as the means through which the public could direct questions, comments, and personal perspectives to the Inquiry. The "feedback" link was routed to my executive assistant's email in-box. It was her responsibility to provide the information requested, and to convey to me and to commission counsel any perspectives offered in this way. Individuals who requested information could thus expect a reply. However, we did not respond (except to acknowledge receipt) to opinions offered with respect to the events surrounding the death of Dudley George, witness testimony, or to any other matter on which I might make a finding or recommendation in my report.

69 Appendix 14, Commissioner's Statements.

CHAPTER 8

STANDING AND FUNDING

8.1 Standing Applications and Decisions

To be as thorough as possible, and to obtain all relevant information and perspectives, public inquiries invite individuals and groups to apply for standing in the inquiry. Typically, a notice of hearing is published, which serves as an invitation to individuals and groups to notify the commission formally if they are interested in participating in the inquiry and to state the basis on which they are requesting standing. As it is not possible to accommodate everyone interested in formally participating, the commissioner considers these applications and grants or denies standing.

The standing process is a mechanism for facilitating a fair, orderly, and timely process. Standing gives interested individuals or groups official status and the right to participate as parties. The tests for granting standing in this Inquiry were set out in the Rules.[70]

For this Inquiry, the Notice of Hearing[71] invited applications for standing in one or both parts of the Inquiry. In total, the Inquiry received thirty-seven written applications. I heard the applications for standing, in Forest, over four days in late April 2004.[72]

I granted standing in Part 1, the fact-finding phase, to parties who demonstrated "an interest which is directly and substantially affected by the subject matter" in Part 1 of the Inquiry, or parties who represented "distinct ascertainable interest and perspectives … essential to the discharge of the Part 1 mandate."[73] Seventeen parties met these criteria. Although there was some duplication of interests and some natural alliances among those groups and organizations, I was satisfied that each represented a distinct interest and that each would assist in fulfilling the Inquiry's mandate.[74] To fifteen of those parties, I also granted standing in Part 2, the policy phase, and I granted standing to an additional thirteen parties to participate only in Part 2. It was my view that each of those

70 Rule 8 (Part 1) and Rule 58 (Part 2), Appendix 2, Rules of Procedure and Practice.

71 Appendix 3, Notice of Hearing.

72 Appendix 13(a), Commissioner's Ruling on Standing and Funding, May 24, 2004.

73 The entitlements and obligations of parties with standing are set out in sections A.II (Part 1) and B.II (Part 2), Appendix 2, Rules of Procedure and Practice.

74 *Ibid*., Rule 8(b).

parties ought to be represented, and granted standing separately, either because the policy matters under examination affected them or because they represented distinct ascertainable interests and perspectives essential to the fulfilling the policy component of the mandate.[75] To avoid duplication, our Rules provided for parties with similar interests to seek joint standing in Part 2. Just as each witness in Part 1 assisted me in drawing my conclusions, each of the parties with standing in the policy phase offered a point of view that needed to be considered.

Although I did not grant limited standing to any party, I did from time to time remind parties to bear in mind the basis on which they had been granted standing when considering their attendances at the Inquiry and their cross-examinations of witnesses. Counsel for a number of parties attended only selected parts of the Inquiry. Through the webcast and daily posting of the transcripts, they were able to limit their attendance to the parts that directly affected their clients, but without compromising the integrity of their representation.

The differences in the privileges of parties with standing in the evidentiary hearing phase and parties with standing in the policy phase reflected the difference in the nature of the proceedings. For example, a party granted Part 1 standing had the right to examine and cross-examine witnesses relevant to the party's interest. Part 2 standing included, among other things, the right to receive the Inquiry's research papers, participate in Inquiry consultations, and apply for project and participation funding.

The privileges of standing had accompanying responsibilities. For example, parties with Part 1 standing were entitled to receive all documents obtained by the Inquiry, but they were required to maintain the confidentiality of those documents unless and until the Inquiry made them public.[76]

In my view, the parties with standing served this Inquiry well. Each party offered valuable perspective and dimension to the investigation and research and thereby enriched the overall process.

8.2 Funding Applications and Recommendations

The Order-in-Council stipulated that

> [t]he Commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interests where, in the Commission's view, the party would not otherwise be able to participate in the Inquiry.[77]

75 *Ibid*., Rule 58(b).

76 Appendix 7(a), Confidentiality Undertaking (Parties with Standing).

77 Appendix 1, Order-in-Council 1662/2003.

The Notice of Hearing on standing also invited applications for funding.[78] I heard these applications concurrently with applications for standing. Seven of the seventeen parties granted standing in the evidentiary hearing phase applied for funding, which covered counsel fees and reasonable disbursements such as travel and accommodation expenses. In accordance with the Order-in-Council, I recommended to the Attorney General that these seven parties be granted funding to facilitate their participation. Acceptable fees and disbursements were based on Management Board of Cabinet/Ministry of the Attorney General guidelines for retaining outside counsel. Parties with a former or current employment or administrative relationship with the Government of Ontario did not apply to me for funding since the government funded counsel fees and disbursements for these parties directly.

The purpose of funding for parties with standing in the policy phase was to encourage and facilitate research, submissions, projects, and participation in seminars and other events initiated by the Inquiry. I made recommendations to the Attorney General on a case-by-case basis, only upon written request describing the project or event and the reason public funding for it was necessary, and only after my staff had carefully reviewed each proposal.[79]

78 Appendix 3, Notice of Hearing.

79 See section 12.3 herein for a discussion of projects of parties with standing in Part 2.

CHAPTER 9

PREPARING FOR THE EVIDENTIARY HEARINGS: PART 1

9.1 Commission Counsel and Investigative Team

In a public inquiry, an effective investigation requires considerable planning and preparation before the hearings can begin. I worked with my lead counsel to establish our team of lawyers and investigators. We chose a legal team that collectively had the knowledge, skills, and experience to deal with the issues we expected to cover in the Inquiry and to accomplish the task at hand.

It was important that the investigators have no direct interest in the subject of the investigation. Investigators are typically drawn from police services, and although we hired the investigators before the hearings on standing took place, we took into consideration that the OPP was likely to apply for standing in the Inquiry. We therefore chose our investigators from the RCMP and the Toronto Police Service rather than the OPP. Once we had chosen our lead investigator, Inspector Rick Moss of the RCMP, he worked with my lead counsel in creating the rest of the investigative team.

9.2 Disclosure and Management of Documents

In its search for the truth, a public inquiry is afforded wide-ranging investigative powers. Among them is the power to require the collection and disclosure of documents. Gathering, reviewing, and analyzing documents and other evidence was perhaps the most laborious aspect of preparing for the fact-finding phase of the Inquiry. Parties with Part 1 standing were required to provide all relevant documents in their possession or to which they had access. We defined "documents" broadly to include materials in written, electronic, audio, video, and digital form, as well as photographic or other visual materials such as maps and graphs.[80] The Inquiry treated documents received from parties or other sources as confidential until they were made part of the public record.

On the whole, parties made their best efforts to produce relevant and helpful materials, both at the outset and as new materials were identified. Partly owing to the investigative and legal proceedings in the years since the death of Dudley

80 Rule 33, Appendix 2, Rules of Procedure and Practice.

George, there was a great volume of documentary evidence. Given the passage of time, it came in a wide range of formats and needed some processing. More than 23,000 documents were scanned into the Inquiry database, assigned an Inquiry document number, and made available to the parties in electronic format. Where appropriate and relevant, we had audio materials transcribed and made available to the parties. The Inquiry reviewed more than 5,000 hours of OPP logger tapes, as well as videotapes which came to the Commission from a variety of sources. Counsel for the parties with standing were required to sign a confidentiality undertaking with respect to documents.[81]

The Inquiry purchased an enhanced software program, initially for commission counsel's use only, to enable searches of the entire database by keyword. However, in light of the very large volume of documents, and the pace of calling witnesses, it soon became apparent that counsel for Part 1 parties also required this software. The software reduced the costs associated with the time required to prepare to examine witnesses. No doubt, the time saved more than offset the additional cost to the Inquiry.

9.2.1 Issues of Privilege

During the hearings, the Inquiry dealt with documents that were ostensibly the subject of solicitor/client privilege, public interest immunity (also known as Cabinet privilege), informant privilege, sensitive police intelligence data pertaining to ongoing operations, deemed undertaking issues (arising from the *George v. Harris*[82] settled litigation), and privacy issues. The Rules included a protocol for handling documents that were the subject of any kind of privilege (or privacy) claim.[83]

In brief, where a party asserted privilege of any kind, I nonetheless directed the party to disclose the subject documents, in unsevered form, to commission counsel for review, with an explanation of the grounds on which privilege (or privacy) was asserted and the basis for the assertion. The review of the subject documents took place in the presence of counsel for the party asserting privilege if the party so requested. On only a few occasions where a party asserted privilege, I issued a summons[84] to the party to produce documents.[85]

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81 Appendix 7(b), Confidentiality Undertaking (Counsel).

82 *Supra* note 28.

83 Rule 32, Appendix 2, Rules of Procedure and Practice. Note that section 11 of the *Public Inquiries Act* (*supra* note 5) precludes admission of privileged matters into evidence.

84 Appendix 8(a), Summons to Witness to Attend and to Produce Documents.

85 *Public Inquiries Act*, *supra* note 5 at sec. 7(1)(b).

In the course of reviewing documents over which privilege was asserted, commission counsel first considered relevance. If the document was not relevant and helpful to the discharge of the Inquiry's mandate, then the document was returned to the party. If the document was deemed potentially relevant, but commission counsel agreed that the claim for privilege had been properly asserted (and not waived at law), then the document would either be returned in its entirety or maintained with the privileged sections severed (where feasible). Madam Justice Bellamy's decision in the course of her inquiry,[86] my counsel's advice, and my own experience as Ontario's first Information and Privacy Commissioner[87] were helpful in establishing this procedure.

Two options were available in the event of disagreement between commission counsel and a party regarding the validity of the privilege claimed (assuming relevance had been established). I could either order production of the subject documents for my inspection and ruling, or I could direct that the issue be resolved on application to the Regional Senior Justice in Toronto or his designate. We outlined this procedure in an appendix to all document summonses issued. Fortunately, no disputes arose which required adjudication.

We dealt with potentially litigious matters arising from time to time regarding disclosure of unsevered documents by developing practical solutions to meet specific concerns. For example, in order to address the OPP's concerns regarding the release of certain intelligence data that could affect active police operations, commission counsel established a process with the OPP wherein one of our investigators, a police officer bound to professional police obligations, reviewed and summarized intelligence documents in the presence of OPP officers. Our investigator provided a written synopsis to commission counsel regarding the relevance (or lack thereof) and validity of the claim of privilege to form a basis for a determination. With respect to claims of public interest immunity over Cabinet documents, commission counsel reviewed all such documents in the presence of counsel for the Province of Ontario, and then made a determination, on relevance and then on privilege. Where the documents were determined to be relevant and helpful to the discharge of my mandate, commission counsel sought, and obtained, waiver of public interest immunity.

I believe that all counsel made their best efforts to disclose relevant and helpful materials and that these efforts, coupled with commission counsel's ability to secure cooperation where required, laid the foundation for a relatively smooth document disclosure process.

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86 *Lyons vs. Toronto (Computer Leasing Inquiry – Bellamy Commission)* (2004), 70 O.R. (3d) (Div. Ct.).

87 1988 to 1990.

At the conclusion of the evidentiary hearing phase, and in accordance with Rule 35, all parties were requested to return the electronic copy of the database, including any copies of any documents not made exhibits or belonging to the party.[88] Only those documents made exhibits or those referred to during the hearings (but not marked as exhibits) are public documents. The originals of all documents disclosed over the course of the Inquiry were returned to the parties. In keeping with the Province of Ontario's archiving requirements, the Inquiry retained copies in its electronic database, which was transferred to the Archives of Ontario at the conclusion of the Inquiry.

9.3 Identifying and Preparing Witnesses

In carrying out its investigation, a public inquiry is empowered to call witnesses to appear and testify under oath, and to compel them to do so if necessary. Commission counsel and the investigators spent a number of months, before the hearings began, reviewing the documents in our database to compile preliminary witness lists. It took hundreds of hours to refine the list, thoroughly considering the likely relevance and helpfulness of the information each individual could provide. The principle of thoroughness informed the selection of witnesses. Given that commission counsel were not advocates for any one point of view, they endeavoured to identify all witnesses who might provide relevant and helpful information.

At the outset of an inquiry, it is difficult to estimate the number of people whose testimony may contribute meaningfully to the investigation. As the inquiry unfolds, additional witnesses are often identified who cannot be ignored if the principle of thoroughness is to be met. However, calling relevant and helpful witnesses does not mean calling all *possible* witnesses. The challenge throughout was to proceed efficiently, while ensuring that the investigation was thorough and fair.

Thoroughness and fairness are not competing objectives, yet achieving the right balance required constant attention and periodic adjustments to our approach. Commission counsel worked closely with counsel for the parties to ensure that all necessary witnesses, but only those necessary, were called to testify. Each witness's testimony added details or perspective to the investigation and enabled me to test and verify the evidence of others.

The process of interviewing potential witnesses continued throughout the hearing phase. Usually (but not always, depending on the witness and the demands

88 Appendix 10, Memorandum from Lead Commission Counsel to Counsel for Parties with Standing re Return of Documents/Databases, December 8, 2006.

of the hearing schedule), one or more counsel and one or more investigator interviewed each witness and a transcript of key witness interviews was made.

Given the passage of time since the events in question took place, witnesses were given copies of documents from the Inquiry database before the interviews, when possible, to help refresh their memories. Interviews could take a considerable amount of time, particularly where documents were not available to refresh memories and individuals had difficulty recalling events and conversations of many years earlier. Information from one witness sometimes led to interviews of further potential witnesses. Also, on occasion, members of the public offered suggestions with respect to relevant witnesses. We considered each of these, and pursued the line of inquiry if we deemed it to be potentially helpful or relevant.

Under the Rules, witnesses called to testify at the Inquiry had certain procedural rights. For example, they had the right to be accompanied by counsel during the interview and to be represented by counsel when they testified.[89]

9.4 Summonses and Search Warrants

Pursuant to the Order-in-Council, the Inquiry was empowered to issue summonses[90] to witnesses in accordance with Part II of the *Public Inquiries Act*.[91] Pursuant to Part III of the *Act*, the Inquiry was also empowered to seek search warrants from a Justice of the Ontario Superior Court of Justice. On occasion, I issued a summons to a witness where the witness did not testify voluntarily, or when a witness requested a summons for other legitimate reasons such as to justify absence from work. It did not prove necessary to execute any search warrants.

The Inquiry's powers to summons witnesses derived from a provincial statute, and while I had the power to issue summonses to individual employees or former employees of the federal government, I could not through them obtain documents relating to the areas of intended examination. These documents are in the control of the relevant Minister of the Crown in Right of Canada and I had no power, as a provincially appointed commissioner, to compel a Minister of the Crown in Right of Canada, in his or her official capacity, to appear and produce documents.[92] The federal government did not apply for standing in the Inquiry and was not subject to the obligations set out in the Rules. Fortunately, the federal government cooperated in providing documents, and we were able to call witnesses to give evidence on matters relevant to the Inquiry involving Indian and

89 Rules 19 and 23, Appendix 2, Rules of Procedure and Practice.

90 Appendix 8(b), Summons to Witness to Appear.

91 *Supra* note 5 at sec. 7(1).

92 *Keable, supra* note 3.

Northern Affairs Canada and the Department of National Defence. However, there may be merit, when considering a future public inquiry on a subject that spans federal and provincial matters, to obtain an accommodation to ensure that both jurisdictions attorn to the jurisdiction of the commission in terms of its power to summons witnesses to attend and to produce documents with respect to matters properly within the jurisdiction of a provincially appointed commission.

9.5 Notices of Alleged Misconduct

Fact-finding, a key aspect of most public inquiries, carries with it the possibility that the evidence heard will affect individual or organizational reputations, particularly if the commissioner makes a finding of misconduct. The *Public Inquiries Act* affords legal protection to anyone who may be found by an inquiry to have been involved in misconduct. Subsection 5(2) of the *Act* provides that no finding of misconduct against a person may be made in the commissioner's report unless the person had received Notice of Alleged Misconduct (sometimes referred to as a "5(2) Notice") and had been given an opportunity to respond to matters described in the Notice.

To minimize anxiety on the part of a recipient, commission counsel, as a practice, started interviews by informing the potential witness of the Inquiry's statutory obligation to issue Notices of Alleged Misconduct where warranted.[93] Commission counsel explained the purpose of the Notice, and what "alleged misconduct" means within the meaning of the statute. Equally important, my counsel also informed the potential witness of what the Notice did not mean; that is, receiving one did not represent any prejudgment of my findings (if any) concerning the witness. Whenever possible, we issued Notices before an individual gave his or her testimony, either directly or through counsel if the witness was represented.

In drafting these Notices, we were careful not to use language that might be confused with potential findings of civil or criminal liability. If any further potential grounds of alleged misconduct emerged subsequent to delivery of a Notice, we prepared and delivered a supplementary Notice.

In the interest of fairness, the Inquiry did not disclose publicly that an individual had been served with a Notice. The recipient was free to let it be known if they wished to do so.

Issuing these Notices was an important measure in preparing for the hearings, and they are an important element in the fair treatment of witnesses. Inquiry

93 Appendix 9, Sample Notices of Alleged Misconduct.

commissioners tend to use them liberally, issuing a Notice even where there is only a possibility that a finding of misconduct may follow. This must be the policy in the interest of fairness, even though the liberal issuing of Notices can work against efforts to contain the development of an adversarial posture among the parties — whether or not an actual finding of misconduct follows.

9.6 Hearing Room and Facilities

While commission counsel and the investigators worked to gather relevant documents and locate and interview relevant witnesses, our administrative team was busy transforming a community centre auditorium into an appropriate public inquiry hearing room. Creating a hearing room environment requires a suitable arrangement of tables and other furnishings and the addition of a coat of arms and flags, but it also requires the application of a certain level of decorum. Our registrar, George Reeve, and hearing room officer, Ron Hewitt, both of whom lived locally and had recently retired from the Court Services Division of the Ministry of the Attorney General, quietly and effectively established decorum in the right measure, somewhere between the formality of a courtroom and the openness of a public forum.

The potential existed for emotions to run high from time to time. The OPP was of the view that low-key security was prudent and arranged for a small team of plainclothes, retired officers to attend the hearings each day under the supervision of Acting Sergeant Debbie Hodgins. Her OPP car was situated nearby, but not on the community centre premises. Fortunately, they were never required to take action.

In addition to the hearing room, the Inquiry had a secure storage room for exhibits, and the hockey arena viewing room was made available for the use of media representatives when they could not all be accommodated in the hearing room.

One boardroom served several functions. It was the Inquiry's office space, the lunch room, and the administrative centre for everyone involved in the proceedings. Thus, throughout the long and intense hearing period, the many complex procedural and substantive issues to be addressed on any given day, and the great volume of administrative and other tasks to be performed daily, were all confined to one small room. After some months of hearings, we rented a portable trailer and parked it outside the community centre to provide a quiet space for commission counsel to work or to interview witnesses. However, none of us had a private office, and the confined quarters presented a considerable challenge. I believe that most observers would have been surprised to learn that the day-to-day

operations of a full-scale public inquiry were concentrated in a single room. Our cheerful and tireless on-site office administrator, Susan Beach, though supported by the Toronto office, bore the full weight of the daily demands and deserves much of the credit for making these arrangements work despite the challenges.

9.7 Records of the Proceedings

Arrangements were in place from the outset to videotape the proceedings, from first day to last. This "gavel to gavel" tape serves as an archival record. We expected that the Inquiry would receive requests for copies of portions of the video footage or documents and other materials filed as exhibits. (Given the volume and variety of materials, it was not practical to post all exhibits on our website.) Requests came from media seeking video footage of witness testimony for television broadcasts, students undertaking research, witnesses and/or their family members, and even a lawyer who wished to use video footage for examination/cross-examination training purposes. We dealt with these requests consistently and fairly through the protocol my staff developed in the early stages of the Inquiry.[94]

The Inquiry retained the services of a court reporting firm with considerable public inquiry experience. The location and facilities no doubt presented the court reporters with technical and personal challenges, but this was not apparent in the service they provided. They completed transcripts of the evidence in time to post them on our website the same evening, and counsel often used transcripts of the previous day's testimony in examining witnesses. The reliability, timeliness, and accuracy of the transcripts contributed considerably to the efficiency of the proceedings and they were of great assistance to all who relied on them.

94 Appendix 11(a), Access to and Use of Hearing Video Footage.

CHAPTER 10

CONDUCT OF THE HEARINGS

10.1 Commissioner's Statements

I made statements from time to time when I felt it necessary to convey my views or expectations regarding the public inquiry process generally, or this Inquiry in particular, to the media, to the public, and even to counsel for the parties.[95] Among other things, I expressed my views on the purposes of inquiries, the principles guiding the Ipperwash Inquiry, the progress of the Inquiry, and my expectations with respect to procedure. I repeatedly returned to the theme of balancing fairness and thoroughness with efficiency, including cost-efficiency.

The Inquiry reached natural junctures for my remarks on progress, such as the conclusion of the examination of a group of witnesses. At other times, however, I had to be attentive to the timing of my statements. My concern for the pace of the Inquiry sometimes prompted statements pertaining to procedural decisions or adjustments, but these had to be timed so that they would not be interpreted as directed to one counsel or related to the testimony of one witness or group of witnesses.

During the two years of hearings, I made over a dozen statements, usually at the beginning or end of the hearing day. The text was included in the transcript of the day's proceedings and also posted separately on our website. I believe they served my intent, which was to communicate something to the public or to counsel. Excerpts were often included in news reports, and counsel sometimes referred to the statements, usually in an effort to demonstrate their understanding of my expectations. Taken together, these statements, which remain on our website, are an overview of my objectives for the Inquiry and provide some insight into the process, particularly the Part 1 phase.

10.2 Aboriginal Traditions

It is difficult for those with non-Aboriginal origins to fully understand the Aboriginal perspective on Canadian institutions, values, and traditions. One of the procedural adjustments I made to the conventional public inquiry process was to add a traditional opening to our hearings for standing and funding to acknowledge the

95 Appendix 14, Commissioner's Statements.

importance and significance of the traditions of Aboriginal peoples.[96] Elder Lillian Pitawanakwat conducted the traditional ceremony, which included smudging, the distribution of tobacco ties to all in attendance, and prayers. I invited her to conduct a similar ceremony at the conclusion of the evidentiary hearings.

At the hearings, Aboriginal witnesses were offered the choice of being sworn to testify while holding an eagle feather, a symbol of truth, or while placing a hand on a bible. Early in the hearings, it became apparent that conventional cross-examination techniques might be at odds with the traditions and beliefs of Aboriginal peoples. The non-Aboriginal reliance on documentation as evidence of fact is difficult to reconcile with the oral tradition of Aboriginal people. To mitigate apprehension on the part of the witnesses and concern on the part of counsel, we organized a two-day Indigenous Knowledge Forum to educate Inquiry personnel, counsel, and the parties about the traditions, practices, and beliefs of Aboriginal peoples and provide some context for the testimony of Aboriginal witnesses. As on later occasions, the event was marked by the participation of Aboriginal drummers. At the conclusion of the forum, drummers from three of the Inquiry's main parties, the Chippewas of Kettle and Stony Point First Nation, the Residents of Aazhoodena and the OPP, spontaneously came together and drummed as one group.

10.3 Hearing Schedule

Before the hearings began, and while the initial document analysis and the witness interviews were still in progress, commission counsel was already developing an overall framework for the hearings. The challenge was to develop an approach that would balance the need to fully understand the circumstances surrounding the death of Dudley George with our obligation to explore only what was necessary to meet the Inquiry's mandate.[97] Throughout the hearings, commission counsel gave considerable attention to the hearing schedule, taking into account the need to achieve this balance, as well a logical sequence for the witnesses and the likely time required for each.

From the outset, commission counsel grouped the seventeen parties with Part 1 standing, and the witnesses to be called, into three broad categories of interests: Aboriginal, Ontario government, and OPP. This was intended to assist in deciding the sequence of the witnesses and the order of cross-examination by the parties. Additional witness categories were emergency personnel directly

96 Appendix 14(a), Commissioner's Remarks at the Hearings on Standing and Funding, April 20, 2004.

97 Appendix 14(n), Commissioner's Remarks, Final Day of Evidentiary Hearings, June 28, 2006.

involved with the events of September 1995, local cottage-owners, the federal government, and experts. We devoted the first days of testimony to expert witnesses who gave us an historical overview of the land and the Aboriginal people in the Ipperwash region to provide context for the investigation.

We notified counsel of the witness schedule weekly and posted the schedule on our website. We began with a hearing week of Monday through Thursday, with two weeks of hearings followed by a one-week adjournment. This is a common pattern in public inquiries. The adjournment allows counsel for the parties to prepare for the witnesses scheduled for the next two-week session and to attend to other matters. It also allows time for the commissioner and commission counsel to address other inquiry business and prepare for future witnesses.

After several months, it became clear that we would have to adjust the timetable if the hearings were to be completed within a reasonable time. Another hearing week was added to cycle, so that the one-week adjournment followed three weeks of hearings. As time went on, we also extended the hearing day by starting earlier, finishing later, and shortening the interval for lunch. From time to time, further adjustments were required owing to the unavailability of a witness, an unexpectedly heavy snowstorm, or other unforeseen circumstances. The rigorous schedule added to the strain of a demanding investigation. On number of occasions, I commended counsel for their responsiveness to all of these adjustments, for understanding why they were necessary, and for recognizing our mutual obligation to complete the investigation in a reasonable amount of time. By the final month, we heard evidence every day, with only a few exceptions.

In this way, we managed to complete the hearings on the schedule forecast some months earlier. In hindsight, now knowing the twists and turns an inquiry of this kind can take, I find it remarkable that the framework my counsel designed so early in the process proved to be such a sound and appropriate roadmap for the investigation.

10.4 Evidence/Examinations

10.4.1 Witness Binders

Before each witness testified, commission counsel compiled a binder based on a comprehensive review and analysis of relevant documents in the Inquiry database and on the interviews our investigators and counsel conducted with the witness. The binder included an outline of the anticipated evidence from the witness, and all relevant Inquiry documents. Five copies of the binder were made: one for me, one for commission counsel conducting the examination-in-chief, one

for the second commission counsel assigned to the witness, one for the registrar, and one for the witness. In accordance with the Rules,[98] commission counsel gave parties with standing an outline the witness's anticipated evidence and a list of the documents likely to be referenced or filed as exhibits. We disclosed Inquiry documents to counsel for the parties electronically, and therefore they also had electronic access to these documents in the hearing room.

Preparing the binders, particularly for key witnesses, was a great deal of work for commission counsel, but the effort contributed substantially to the efficiency of the hearings. The binders were exceptionally helpful in my own preparations for hearing testimony, in focusing the examination, in assisting the witness to recall events, and in guiding the registrar through the day's proceedings. I am very grateful for my counsels' diligence and hard work in this area. The work began at a very high level and the high standard was maintained throughout.

10.4.2 Examination and Cross-Examination

Commission counsel would call each witness. The witness was asked to swear or make affirmation to tell the truth, and commission counsel then led the examination. Commission counsel in a public inquiry has a responsibility to instill confidence in the impartiality of the inquiry in the parties and the public, and it was important that this questioning be carried out fairly and even-handedly.

Our Rules allowed for counsel for a party to apply to me if they wished to lead a witness's evidence,[99] but none of them sought to do so. On a number of occasions, counsel for a witness requested the opportunity to examine his or her own witness, after commission counsel's examination, to bring out issues in chief not led by commission counsel. I allowed this in order to be fair to counsel for the other parties, so that they would have the opportunity to cross-examine on the additional evidence.

Following commission counsel's examination, counsel for the parties had the opportunity to cross-examine the witness. To establish a fair and consistent sequence for the cross-examinations, we assigned an order to the parties within the board categories of interests determined by commission counsel. Cross-examinations proceeded in that order, except that the first group to cross-examine varied depending on the witness, and counsel for the witness was typically the last to cross-examine. Occasionally, counsel for the parties concurred on a change in the order among themselves, to which I usually agreed. After the cross-examinations, commission counsel re-examined the witness.

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98 Appendix 2, Rules of Procedure and Practice, Rule 37.

99 *Ibid*., Rule 12.

The Rules obliged counsel for the parties to provide commission counsel and the other parties with copies of any documents they intended to reference or file as exhibits. The Rules further obliged them to do so at least twenty-four hours before the witness was to testify,[100] but it was not always possible for them to comply. For the most part, I was satisfied that counsel made every effort to honour the intent of this requirement. Where they were unable to do so, the pace of the proceedings and/or the volume of documents were, without exception, the plausible reasons.

The principle of thoroughness applied to the latitude I allowed counsel representing parties. To the greatest extent possible, I allowed them to explore the areas they considered relevant in their examination of witnesses. I was reluctant to impose time limits on examination and cross-examination. I wanted counsel to have the opportunity to explore every avenue that could be helpful to our investigation. Often, what was helpful could only emerge in the course of the examination.

Nevertheless, it was necessary for me to provide some general guidelines and often necessary to urge efficiency. I tried to ensure that counsel did not duplicate evidence already elicited by others, that each examination was limited to the distinct interests of the party represented, and that the evidence brought out would be helpful to me in fulfilling my mandate. I reiterated those criteria on a number of occasions during the hearings, and made two specific requests to counsel. First, if commission counsel had dealt with an issue in direct examination, or another party had done so in some detail during cross-examination, I asked counsel to consider that it was not necessary or helpful to the investigation to review the same ground again. Second, I asked each of them to keep in mind the basis on which their parties had been granted standing when preparing cross-examinations, and to focus the examination on their parties' interest.[101]

I always asked counsel to estimate the time required for cross-examination in each instance. My general rule of thumb was that the time for all cross-examinations, taken together, should not exceed the time for commission counsel's examination. They were cooperative, and generally observed their projected time estimate.

Two witnesses who were important to the work of the Inquiry, OPP officer Kenneth Deane and cottage-owner Isobel Jago, died before their scheduled appearances at the Inquiry. In the case of Mrs. Jago, the commission had interviewed her and we therefore had the benefit of the transcript of that interview. Commission counsel prepared a synopsis of her interview, read it into the record, and filed the

100 *Ibid*., Rule 38.

101 Appendix 14(j), Commissioner's Remarks on Attendance and Cross-Examination, January 9, 2006.

interview transcript as an exhibit. In the case of Kenneth Deane, the Inquiry had the benefit of his sworn evidence, given at his criminal trial and at his examination for discovery in the *George v. Harris*[102] civil litigation. Again, commission counsel prepared and read into the record a synopsis of Mr. Deane's prior sworn testimony and filed the transcripts of his sworn testimony as an exhibit at the Inquiry.

Two individuals who would have been called as witnesses, Robert Isaac and Dale Linton, died before the Inquiry was called. A videotaped interview with Robert Isaac was played at the hearing and filed. With respect to Dale Linton, commission counsel filed a binder containing transcripts of evidence from his attendance at trials, statements made by him, transcripts of telephone calls and radio transmissions involving him, and related electronic files.

10.4.3 Concealing Witness Identity and Exceptions to Open Hearings

The Inquiry hearings were generally open to the public. However, pursuant to the *Public Inquiries Act* (and also as set out in the Rules[103]), I could conduct the hearings in private at my discretion if I was of the opinion that

1. matters involving public security may be divulged at the hearings; or

2. intimate financial or personal or other matters are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that hearings be open to the public.[104]

Witnesses could also apply to me to impose measures to conceal their identities. If I found that a compelling reason existed, I could grant "confidentiality" status to the witness. Such measures could include referring to the witness by non-identifying initials rather than by name in the transcript, other public records, and my report. I could also grant the witness the right to testify in private. Where a witness had confidentiality status, media reports related to the evidence of the witness had to avoid references that might identify the individual, and no photographic, audio, visual, or other representation of the witness could be recorded while the witness testified or when he or she entered or left the site of the Inquiry.

There was only one instance of in-camera proceedings during the Inquiry. This involved certain tapes of telephone conversations, which had not been made public and which commission counsel intended to introduce (and did introduce)

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102 *Supra* note 28.

103 Rules 40 to 47, Appendix 2, Rules of Procedure and Practice.

104 *Supra* note 5 at sec. 4.

through a witness who had been part of the conversation. Counsel for some of the parties brought a motion for the early public disclosure of these tapes. The motion was argued in public, but I heard the portion of the motion that dealt with the specifics of the conversations in camera so that the content of the tapes would not be disclosed inadvertently.[105]

There was one request for confidentiality regarding the identity of a witness. In the case of one OPP officer, counsel for the Ontario Provincial Police Association requested that the officer's face not be photographed or webcast. The officer was involved in sensitive police work, which would have been jeopardized otherwise, and I agreed to the request for that reason. The parties fully supported my decision.

10.5 Closing Submissions and Replies in Part 1

On March 30, 2006, I informed the parties that the hearings would be completed by June 29, and I described the procedures for closing submissions and replies. I invited all parties with standing in Part 1 to submit written closing submissions and, if they wished, to also make submissions orally. They also had the option of replying to the submissions of other parties with Part 1 standing.[106]

I asked the parties to file written submissions, in both a hard copy and electronic format, and to distribute them electronically to the other parties who participated in the hearings within one month following the conclusion of the evidentiary hearings. If the parties in Part 1 chose to reply to submissions by other parties with Part 1 standing, they were to deliver the written replies within two weeks of that date, filing and distributing them in the same manner as the submissions. We posted all written submissions and replies on the website on the first day of the oral submissions. In the interest of fairness, I directed parties not to publish their submissions or replies before that date.

Once the parties choosing to make oral submissions had advised the Inquiry of their intention, we determined and circulated the order of presentation. I advised the parties that I would not allocate the unused time of one party to another party, and that at the conclusion of each party's submission, I would call the next party scheduled.[107]

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105 Appendix 13(b), Commissioner's Ruling on a Motion by the Chiefs of Ontario and the Estate of Dudley George and George Family Group, October 12, 2004.

106 Appendix 15(a), Memoranda to Parties with Standing re Closing Submissions Process: from Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 and 2, May 19, 2006.

107 Appendix 15(b) Memoranda to Parties with Standing re Closing Submissions Process: from Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 and 2, July 14, 2006.

I assigned parties with Part 1 standing a maximum of either one or two hours for oral submissions, depending on the nature and scope of the party's interest or perspective. They divided the time as they chose: to address the main points of their written submissions and/or to reply to the submissions of other parties. I heard oral submissions over the course of four days (August 21 to August 24, 2006) in Kimball Hall.

The investigation into the events surrounding the death of Dudley George concluded after 229 hearing days, hearing testimony from 139 witnesses, receiving into evidence 1,876 exhibits, and four days of closing oral submissions.

10.6 Formal Closing of Evidentiary Hearings

From the outset of the Inquiry, I hoped that, at the conclusion of a fair and thorough inquiry into the events surrounding the death of Dudley George, those whose lives were affected would have gained a sense of closure. To mark the conclusion of the hearings formally, as a symbolic end of a chapter in those events, we arranged a closing at Kimball Hall to bring together those who participated in the process. I invited Elder Lillian Pitawanakwat to conduct a traditional ceremony, as she had done for the opening of the hearings on standing and funding. At the closing, Aboriginal drumming groups from the Chippewas of Kettle and Stony Point First Nation, the Residents of Aazhoodena and the OPP, each representing one of the main parties in the Inquiry, once again performed together, as they had done spontaneously at the Indigenous Knowledge Forum. It was a distinctive and powerful highlight of the Inquiry.

CHAPTER 11

POLICY PHASE: PART 2

The second part of my mandate, the policy phase, was intended to prepare me "to make recommendations directed to the avoidance of violence in similar circumstances."[108] As was the case in the first part of my mandate, I had full discretion to define the scope and methods.

The Walkerton Inquiry's approach to addressing the policy component of its mandate served as an excellent foundation for formulating a program for this part of the Inquiry. I am grateful to Harry Swain, a member of that inquiry's research advisory panel, for sharing his valuable experience with us. I drew upon the Walkerton experience in considering criteria for granting Part 2 standing and funding, the terms of reference for a research advisory committee, and the general elements of a research program. Administrative documents from that inquiry, such as consulting contracts, were extremely useful as templates. Nye Thomas, my director of policy research, supported by one full-time policy counsel and one part-time senior policy advisor, gathered advice from experienced and knowledgeable academics and other experts to further develop an approach for this phase of the Inquiry.

Although Part 1 would inform Part 2, the evidentiary hearings alone could not foster the level of participation and analysis required to address the policy part of the Inquiry's mandate. For the policy phase, we developed a wide-ranging approach to collecting information on the key issues identified, including research papers, expert panels, round tables, community dialogue, and an advisory committee.[109]

11.1 The Research Advisory Committee

Pursuant to the Rules,[110] and with the assistance of my director of policy and research, I established the Research Advisory Committee (RAC) to assist in shaping the policy work and to advise me on the many complex policy matters to be considered. We retained six academics and practitioners in relevant fields for the committee, on an as-needed basis.[111] We set out the terms of the arrangement in

108 Appendix 1, Order-in-Council 1662/2003.

109 Appendix 14(a), Commissioner's Remarks at the Hearings on Standing and Funding, April 20, 2004.

110 Rule 52, Appendix 2, Rules of Procedure and Practice.

111 Appendix 5, Research Advisory Committee Members.

a retainer letter, which included a confidentiality undertaking. The RAC did not have final decision-making authority, but under Mr. Thomas's leadership, it contributed to almost every aspect of the policy phase, including designing the research and consultation plan, selecting potential authors for research papers, reviewing papers, assessing research project applications, and advising on potential expert witnesses. The committee was also helpful to me as a source of perspectives on policy directions as I considered my recommendations.

11.2 Scope of the Policy Mandate

The first challenge in fulfilling the policy part of my mandate was to define the breadth and depth of the research to be undertaken. The virtually inexhaustible array of potential subjects for research had to be narrowed to those I considered most central to my mandate, yet without prematurely eliminating any areas that might prove to be important considerations in formulating my recommendations.

In the Rules, I had already signalled four key policy issues, raised by the events surrounding the death of Dudley George, which would form the basis for the research and consultation framework.[112] The policy phase would examine the relationship between police and Aboriginal people, the relationship between police and government, the interaction between police and protestors, and measures to avoid violent confrontations over Aboriginal land and/or treaty claims in Ontario. As the research progressed, it became apparent that the issue of interaction between police and Aboriginal protesters was difficult to separate from the relationship between police and Aboriginal people. These two matters thus later became one policy category.

Just as commission counsel had charted the course for the evidentiary hearings early in that phase, the policy team, under Mr. Thomas's direction and with input from the RAC and key stakeholders in the Inquiry, set out a policy and research framework early in the policy phase. That framework served the Inquiry well, and provided me with a solid foundation for making recommendations.

My hope and expectation is that this body of excellent research, which is available in electronic format with my report, will also serve as a catalyst for continuing policy debate and change.

112 Rule 1, Appendix 2, Rules of Procedure and Practice.

CHAPTER 12

RESEARCH AND CONSULTATION

The broad areas of research set out in the Rules encompassed a high-level assessment of the circumstances and policies that contributed to the events in Ipperwash Provincial Park. These areas provided the framework for the research papers commissioned by the Inquiry, for consideration of projects suggested by parties with Part 2 standing, for the seminars designed to educate and assist commission counsel, staff, and me, and for the portion of my report dedicated to policy analysis and recommendations.

12.1 Commissioned Research

I invited the RAC and the parties with standing in the policy phase to propose specific topics, within the major policy areas of research, for concentrated research and analysis. Upon my approval of the topics, the policy team identified and recommended qualified and respected academic and other researchers to probe each topic and write papers on their findings. As the Inquiry progressed, and as new issues or considerations that fell within the scope of its work came to light, I approved further topics for research papers. In all, the Inquiry commissioned twenty-one papers,[113] all of which were posted on our website.

Researchers were required to submit papers in draft form. We posted the drafts on the website to solicit remarks from parties with standing in the Inquiry and other interested individuals and organizations. The researchers then finalized their papers with the benefit of the comments sometimes obtained through formal consultation sessions organized by the Commission, and comments from the Inquiry's policy staff, members of the RAC, and interested stakeholders. The final papers were posted on the website. These papers reflected a point of view, and since it was important that no conclusions be attributed to me in advance of my report, all papers included a disclaimer: "Opinions expressed are those of the author and do not necessarily reflect those of the Ipperwash Inquiry or the Commissioner."

Many of these papers served as underpinnings for the analysis of the issues, and indeed for my recommendations with respect to avoiding violence. My further hope and objective for this research was that it would inform commission

113 Appendix 17, Inquiry Statistics.

counsel and counsel for the parties with standing in Part 1 in their examination of witnesses and enlighten all participants in the Inquiry. I was pleased to observe that this often proved to be the case, and counsel for the parties sometimes referred to them in cross-examining witnesses.

12.2 Consultations, Roundtables, and Other Events

The Inquiry sponsored and co-sponsored symposia, roundtables, and other events to solicit participation, response, and the exchange of information. These were meaningful opportunities for parties to the Inquiry and, from time to time, the public, to become actively engaged in the policy debate. Also, as I attended all of these events, they gave parties with standing in Part 2 a chance to convey their points of view and experiences to me directly.

Often, we invited the media, or webcast the events, thereby extending their reach even further. We videotaped some events, and distributed copies to participants for future reference. On rare occasions, usually to promote candour, I chose not to record the event. When the topic was of less general interest, or when logistical or financial considerations made a public event impracticable, we organized smaller sessions for only the parties most directly interested and/or commission counsel and staff. For the most part, however, the policy discussion took place in public view.

In my view, given the many complex policy issues involved, seeking guidance from as many sources as possible could only enrich the Inquiry process and the result. From time to time, I also met with well-regarded experts, leaders, and thinkers to discuss the substance of our research or to talk about policy development through public inquiries generally.

I made it clear to the participants in the consultations that, in order to maintain procedural fairness with respect to the Part 1 hearings, these events were not opportunities to comment on the evidence brought out in the hearings, nor to express views on the events of September 1995. I also made it clear that I was there to listen and learn, but felt it was wiser for me not to engage in discussion or debate at that stage. I would keep my mind open throughout the Inquiry and set out my views in my report. Everyone I met with over the course of the Inquiry respected the need to refrain from commenting on the evidence being heard in Part 1.

The Inquiry benefited from wide-ranging knowledge and experience through the consultations, as did the participants, thus contributing to broader public debate and to better understanding of many important and complex issues. I certainly learned a great deal from these sessions and found them extremely useful.

12.3 Projects of Parties with Part 2 Standing

The consultations and research papers spanned the breadth of my policy mandate, but I also wanted to encourage the parties with standing to pursue additional research to contribute to the debate and assist me in formulating recommendations.

Our Rules stated that the Inquiry would invite written and/or oral submissions from parties with standing and the public about any matter relevant to the policy phase.[114] Although the Inquiry welcomed all submissions, only individuals and organizations granted standing in Part 2 were entitled to apply to me to recommend that the Attorney General approve funding to assist them in participating in the Inquiry.[115]

I invited the parties to consider undertaking their own research, and interested parties submitted written proposals. The proposals were required to explain how the projects would complement the research already completed and ultimately contribute to the work of the Inquiry. I considered each of the proposals after my staff had analyzed them, and if the proposal was approved, the party was required to enter into an agreement with the Inquiry which set out the terms on which approval was given.

12.4 Discussion Papers

With the research and consultations completed, and the deadline for closing submissions still to come, the policy team prepared three short discussion papers, one on each of the major policy areas to be considered: government/police relations, policing Aboriginal occupations and Aboriginal/police relations, and treaty and Aboriginal rights.

The purpose of these papers was to inform the parties of some of the issues I was likely to consider in writing my report and to solicit their responses to a number of questions. The parties were encouraged to consider these issues and questions in their closing submissions. In the memorandum accompanying the discussion papers, my director of policy and research emphasized that the discussion papers did not reflect any conclusions on my part.

I strongly believed in sharing the work of the Inquiry as it progressed, rather than only in my final report. The discussion papers were posted on our website, and they elicited further public response and debate as well as furthering the policy work.

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114 *Ibid*., Rule 50(b).

115 *Ibid*., Rule 62.

12.5 Oral and Written Closing Submissions in Part 2

I invited parties with exclusively Part 2 standing to submit written closing submissions and, if they wished, to present their submissions orally to highlight or support their written submissions. I allocated thirty minutes to each of the parties who wished to do so. Seven parties made oral submissions in addition to their written submissions, which I heard in Kimball Hall on August 24, 2006.[116] I asked parties to file written submissions, in hard copy and electronic format, and to distribute them electronically to all Part 2 parties who had participated in the hearings within one month of the end of the evidentiary hearings. As I had done with respect to Part 1 parties, I directed the parties not to publish their submissions in advance. We made all submissions public simultaneously by posting them on our website on the first day of the oral closing submissions.

116 Appendix 15(c), Memoranda to Parties with Standing re Closing Submissions Process: from Director of Policy and Research to Parties with Standing Exclusively in Part 2, May 25, 2006.

CHAPTER 13

REPORT

13.1 Final Decisions

Ultimately, I decided on four volumes for the report — one dedicated to the Part 1 investigation and findings, one to the analysis stemming from the policy phase (Part 2), this volume on the inquiry process, and an executive summary which included a list of all of my recommendations. All volumes of this report, together with the commissioned research papers,[117] are available in electronic format, either on CD and/or on the website.

In contemplating the structure and presentation of the final report, I was mindful that many people would not wish to read a lengthy report (or even parts of it) in its entirety. With this in mind, and since I considered it important to reach the broader public with what I had learned, we prepared some brief summaries of facts, findings, policy issues, and recommendations, and made them available when the report was released.

13.2 Writing Process

After almost two years of hearings, I had to review and consider evidence from 139 witnesses and over 60,000 pages of transcript. As Justice Bellamy had done, I also arranged for each witness to be photographed, with the photographs used only to assist in refreshing my memory as I reviewed the evidence.

Under the capable direction of Ronda Bessner, we began summarizing and distilling the evidence as soon as the hearings began. Once it had been reduced to a manageable size, the task of analysis and making findings could begin. This was a challenging and difficult task, and Ms. Bessner's assistance was indispensable.

The catalyst for the policy analysis and my recommendations was the three discussion papers prepared by the policy team and distributed to the parties before they made their final written and oral submissions. My policy director used the parties' responses in compiling a cogent and thoughtful draft of policy analysis and options for my consideration.

117 A further six papers, written by experts for the Osgoode Hall Law School Symposium on Police/Government Relations (co-sponsored with the Inquiry) are to be published separately by an academic publisher.

My executive assistant, Debbie Strauss, assisted me in preparing this volume on the Inquiry process. Our many discussions over the course of the Inquiry and our mutual interest in public administration provided the foundation for my reflections on the public inquiry process in general and for this Inquiry's process in particular.

Once I was satisfied with the substance of each section of the report, I worked closely with an editor, Agnes Vanya, who had also worked with Justice Bellamy. I am indebted to her for editorial acumen and for polishing my language into what I hope will be regarded as a well-organized and useful report. Elizabeth Phinney also provided editorial "polish" to some components of the report.

13.3 Design, Production, and Release

A commissioner's responsibilities do not end with writing a report:

> The commission shall deliver its final report containing its findings, conclusions and recommendations to the Attorney General. In delivering its report to the Attorney General, the commission shall be responsible for translation, printing and shall ensure availability in both French and English, in electronic and printed versions and in sufficient quantities for public release. The Attorney General shall make the report available to the public.[118]

Meeting these obligations required considerable planning related to design, production, and release, well in advance of completing the text, including appropriate cover design, interior presentation to assist the reader, and scheduling for translation and printing.

Distribution of the report, its availability in electronic and paper format beyond the term of the Inquiry, and details regarding the initial public release were the responsibility of the Attorney General. The contacts my staff developed with the communications staff at the Ministry of the Attorney were, I believe, mutually beneficial.

118 Appendix 1, Order-in-Council 1662/2003.

CHAPTER 14

WRAPPING UP/WINDING DOWN

As this volume has described, a considerable administrative and operational infrastructure must be put in place for a public inquiry. Then, it has to be dismantled in an orderly fashion.

As the Inquiry wound down, contracts with consultants and other service providers required for the investigative and policy research phases of the Inquiry ended, but some new services, such as translation and printing, were added as required.

We were expected to leave the office space as vacant as we found it. As the Inquiry moved into its final stages, we compiled inventories of equipment and furniture, arranged to transfer these items to be reused elsewhere, and cancelled data and telephone lines.

All records of the Inquiry had to be appropriately archived and/or available electronically for continued use and reference. We catalogued the files and organized the records for transfer to the Archives of Ontario. The Inquiry website is to be maintained for one year following the end of the Inquiry. Thereafter, the Ministry of the Attorney General will provide access to the report through the Ministry's website.

CHAPTER 15

INQUIRY PROCESS RECOMMENDATIONS

1. The Ministry of the Attorney General should create a permanent secretariat or repository of administrative expertise and best practices related to public inquiries to provide more comprehensive operational support and guidance to commissioners and administrative staff.

2. The Ministry of the Attorney General should provide administrative and technical assistance for the production of the final report of a commission of inquiry, thereby enabling the commission to focus on the content. This would include identifying and engaging contractors for translation, design, typesetting, printing, and production in electronic format.

ACKNOWLEDGMENTS

Regardless of one's previous experience, a newly appointed commissioner of a public inquiry is confronted with a short and steep learning curve. I am indebted to many people who helped me navigate the path, at all stages of the Ipperwash Inquiry.

My judicial colleagues the Associate Chief Justice Dennis O'Connor,[119] Justice Denise Bellamy,[120] Justice Fred Kaufman,[121] Justice Horace Krever,[122] Justice Murray Sinclair,[123] and Justice David Cole,[124] all of whom had had experience as commissioners of inquiry, offered invaluable advice and perspectives; I was particularly grateful for Justice Kaufman's library of reference material at the outset of my orientation. I also very much appreciated the support and encouragement of my long-time colleagues and friends, the Chief Justice of Ontario R. Roy McMurtry and the Chief Justice of the Ontario Court of Justice, Brian W. Lennox.

There are many people, to whom I owe gratitude, who contributed their expertise, skill, and support to this Inquiry. The contribution of some may be acknowledged here more than that of others, but each person's contribution was critical to the work of the Commission. This was a team effort, from start to finish, and every member of the team not only did what was expected of them, they did more. Each person who worked on this Inquiry should feel a sense of pride in a job well done. I simply can't say enough to thank and acknowledge them all.

The public must have confidence in the integrity of the investigation in a public inquiry, and I believe we achieved this, in large measure, because of the skill, integrity, and character of commission counsel and the entire legal team. A stellar team of lawyers organized the evidentiary hearings, led by a seasoned civil litigator, Derry Millar from Weirfoulds LLP. Mr. Millar, together with another experienced litigator, Susan Vella (Goodman and Carr LLP), and an experienced criminal lawyer, Donald Worme (Semaganis Worme and Missens), conducted

119 In his capacity as commissioner, Walkerton Inquiry, currently the Associate Chief Justice of Ontario.

120 In her capacity as commissioner, Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry.

121 In his capacity as commissioner, Commission on Proceedings Involving Guy Paul Morin.

122 In his capacity as commissioner, Commission of Inquiry on the Blood System in Canada.

123 In his capacity as co-commissioner, Aboriginal Justice Inquiry of Manitoba.

124 In his capacity as co-chair, Commission on Systemic Racism in the Ontario Criminal Justice System.

an exemplary investigation. Assistant Counsel Katherine Hensel and Megan Ferrier supported them throughout. Jodie-Lynn Waddilove joined us as an articling student and continued for a time after her call to the Bar; Rebecca Cutler replaced her. I also appreciated the assistance of lawyer Bay Ryley for a short time during the summer of 2005, and lawyer Chris Foy and law student Brydie Bethell during the summer of 2004.

We heard a vast volume of testimony over the course of two years of public hearings and the task of analyzing it is daunting. Senior legal analyst Ronda Bessner had preformed a similar role for my colleagues Madam Justice Denise Bellamy and Associate Chief Justice Dennis O'Connor, and she applied the same diligence and professionalism to this inquiry. Ms. Bessner's knowledge of the law, combined with her unique and special writing skills were instrumental in helping me prepare this report. Although only available to varying degrees and at various times, junior legal analysts Erin Stoik, Suzanne Sinammon, Julia Milosh, and Deirdre Harrington conscientiously summarized the transcripts and assisted Ms. Bessner.

Under the thoughtful stewardship of Nye Thomas, our director of policy and research, the Commission isolated and thoroughly explored the many complex issues of relevance to the policy component of my mandate. Mr. Thomas brought his extensive policy and research background to our work and I am particularly grateful for his assistance in helping to prepare the policy volume of the report. Mr. Thomas was supported by policy counsel Noelle Spotton and part-time policy advisor Jeffrey Stutz. Both Ms. Spotton and Mr. Stutz brought considerable experience, knowledge, and sensitivity to the issues requiring attention and analysis.

I am also grateful for the guidance our Research Advisory Committee members brought to our deliberations and analysis: Darlene Johnston, Wally McKay, Philip Murray, Peter Russell, Kent Roach, and Jonathan Rudin. I appreciated the early contributions of Tonita Murray and Earl Commanda, both of whom had to withdraw from the Committee due to other commitments.

Dave Henderson made himself available in the early months as our chief administrative officer. His extensive experience with other recent inquiries and knowledge of Ontario government practices and procedures helped me set off on the right path. Maureen Murphy, manager of finance and operations, was, together with my executive assistant, Debbie Strauss, responsible for the smooth administration of the Commission. Their many years of experience in the Ontario public service were a great asset in creating an administrative structure for the Inquiry. Ms. Murphy came to the Commission on relatively short notice, from the

Office of the Chief Justice of the Ontario Court, and I very much appreciated Chief Justice Lennox's support for this assignment.

I want to express my appreciation to my executive assistant, Debbie Strauss, who assisted me throughout. Ms. Strauss's calm disposition and balanced judgment helped me through some very difficult issues over the course of the Inquiry. I am also indebted to my administrative assistant, Tina Afonso, with whom I also worked at Legal Aid Ontario, and without whom I could not have stayed organized. I am also grateful to my colleague of many years, Tom Mitchinson, who, after retiring from the Ontario Public Service, agreed to serve as a part-time advisor.

A great deal of background work must be done well before the first witness is called to testify, and again in preparing each witness to give evidence. Our lead investigator, RCMP Inspector Rick Moss, and retired RCMP officer Jerry Woodworth, and Toronto Police Detective Sergeant Anil Anand ably and professionally supported commission counsel in this task. I am grateful for the support from the police services for the temporary assignment of the officers.

Legal counsel and the investigators could confidently rely on the extensive document management services of Paul Coort, principal of Coort & Associates. Each of the court reporters, Wendy Warnock, Carol Geehan, and Dustin Warnock from Digi-Tran Inc., provided reliable and accurate transcripts, maintaining consistent quality over the course of the hearings.

Peter Rehak, a proficient journalist with considerable experience in assisting other commissions of inquiry, expertly addressed the Commission's media relations and other communications needs. Our webmaster was Djordje Sredojevic, from Autcon, and Avolution Multimedia, under the direction of Guy Bennett, provided audio-visual support in Forest. They all contributed to engaging the public in the Inquiry, and I am grateful for the care and attention they brought to their tasks.

I would like to thank His Worship Cam Ivey, Mayor of the Municipality of Lambton Shores, and his staff, chief administrative officer John Byrne and administrative assistant Karen Cameron, for accommodating the Inquiry in the Forest Memorial Community and Recreation Centre for almost two years. The on-site assistance of area manager Bill Bentley and the daily attention and support of community centre staff were also essential and greatly appreciated.

Transforming a community centre auditorium into a public inquiry hearing room required much more than adjustments to the furnishings. Our hearing room officer, Ron Hewitt, was attentive to all of the additional considerations, and in a kind and unobtrusive manner. The registrar, George Reeve, undertook his duties with unfailing good humour as well as proficiency, keeping careful track

of over a thousand exhibits. The hub of the administrative wheel in Forest was Susan Beach, who enthusiastically and competently rose to the myriad daily challenges, sometimes under considerable pressure and under conditions unusual for a public inquiry. I wish to acknowledge Ms. Beach's supervisor, Janet Fagan, who supported her secondment.

Under Ms. Murphy's competent supervision, the size of our administrative and legal support team was adjusted to fit the needs of the Inquiry. Grace Goldstein displayed unwavering dedication throughout, and Noreen Gordon, Lynn Dianand, Carolyn Takata, Anne Dancy, Shannon Peterson, Marianne Jacobson, Margaret Barnes, and Aveneil John, who joined us for various lengths of time, each made a valuable contribution. I would also like to acknowledge the guidance of Kathy Genore, manager of finance and administration for both the Walkerton and SARS Inquiries, and to thank the Honourable Mr. Justice Archie Campbell[125] for sparing so much of her time, particularly during the early months of this Inquiry.

I owe gratitude to my skilled and tireless editor, Agnes Vanya, who was highly regarded and recommended by Justice Bellamy, with whom she had worked on the Toronto leasing inquiries, and to Elizabeth Phinney, who also contributed to this effort. I also appreciated the assistance of Tania Craan and Tom Childs who crafted the design and production of the final report.

I would like to acknowledge the contribution of the parties with standing, their counsel, the many witnesses who testified, and the experts who shared their knowledge with us.[126] I would also like to acknowledge Mr. Sam George who attended from the first day of hearings to the last. I believe Mr. George's attendance was an indication of his regard for the inquiry process as a means for getting answers to the questions he had been asking since September 1995. Finally, I would like to acknowledge Mr. Clifford George, who also attended the hearings regularly until his death on September 30, 2005. I know that Mr. George would have liked to have witnessed the end of the process. I hope that if he had been able to read this final report, he would have felt that the inquiry process provided a basis for healing and moving forward.

Those of us involved with the Inquiry could not have carried out our responsibilities without the support of our spouses, families, and friends. An all-consuming assignment, continuing for a significant period and located out of town, necessarily deflects considerable energy from one's personal life. It would be impossible to overstate the importance of the understanding, encouragement, and patience of our families and friends, from beginning to end.

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125 In his capacity as commissioner, Commission to Investigate the Introduction and Spread of Severe Acute Respiratory Syndrome (SARS).

126 Appendix 4, Parties with Standing and Counsel; Appendix 6, Witnesses.

Reflecting on the Inquiry team as a whole, I share Madam Justice Bellamy's observation: "An inquiry team is a bit like a submarine crew, thrown together to work under difficult conditions while weeks stretch into months and then years, submerged in a tightly sealed vessel of confidentiality. It takes a special group of people just to function in that environment, much less excel. Yet my team made excellence seem easy. I owe them an immense debt of gratitude."[127]

An accurate account of the process of the Inquiry must entail describing the challenges we faced and the scale of hard work demanded of everyone involved. It is important, therefore, to also convey some sense of the immeasurable rewards of the experience. It was an honour and a privilege to have served as commissioner of this Inquiry, and it was a daily joy to work in the company of so many outstanding people who were deeply dedicated to its goals. I hope that the inquiry process itself, the research legacy, and the final report make a positive difference to those whose lives were most directly affected by the events that prompted the Inquiry, and to all residents of Ontario.

127 The Honourable Madam Justice Denise E. Bellamy, *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report*, Volume 1: *Facts and Findings*, at p. 15.

APPENDICES

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2. Rules of Procedure and Practice
3. Notice of Hearing
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6. Witnesses
7. Confidentiality Undertakings
    a. Confidentiality Undertaking (Parties with Standing)
    b. Confidentiality Undertaking (Counsel)
    c. Confidentiality Undertaking (Staff, Suppliers and other Service Providers)
8. Sample Summonses
    a. Summons to Witness to Attend and to Produce Documents
    b. Summons to Witness to Appear
9. Sample Notices of Alleged Misconduct
10. Memorandum from Lead Commission Counsel to Counsel for Parties with Standing re Return of Documents/Databases, December 8, 2006.
11. Administrative Protocols
    a. Access to and Use of Hearing Video Footage
    b. Exhibits Management
    c. Travel and Out-of-Pocket Expenses Guidelines
12. Sample Retainer Letter, Service Providers
13. Commissioner's Rulings
    a. Commissioner's Ruling on Standing and Funding, May 24, 2004
    b. Commissioner's Ruling on a Motion by the Chiefs of Ontario and the Estate of Dudley George and George Family Group, October 12, 2004

c. Commissioner's Ruling Regarding the OPP Disciplinary Files, August 15, 2005

d. Commissioner's Ruling re the Motion by Aboriginal Legal Services of Toronto and the Aazhoodena and George Family Group, June 5, 2006

14. Commissioner's Statements

a. Commissioner's Remarks at the Hearings on Standing and Funding, April 20, 2004

b. Commissioner's Opening Statement, July 13, 2004

c. Commissioner's Statement on the Progress of the Inquiry, November 1, 2004

d. Commissioner's Statement on the Progress of the Inquiry, March 30, 2005

e. Commissioner's Statement on the Progress of the Inquiry, June 1, 2005

f. Commissioner's Statement on National Aboriginal Day, June 20, 2005

g. Commissioner's Statement on the Progress of the Inquiry, June 30, 2005

h. Commissioner's Remarks, September 12, 2005

i. Commissioner's Remarks on the Passing of Clifford George, October 17, 2005

j. Commissioner's Remarks on Attendance and Cross-Examination, January 9, 2006

k. Commissioner's Statement on the Progress of the Inquiry, March 6, 2006

l. Commissioner's Remarks on the Evidentiary Hearing Timetable, March 30, 2006

m. Commissioner's Statement on the Inquiry Timeline, May 26, 2006

n. Commissioner's Remarks, Final Day of Evidentiary Hearings, June 28, 2006

o. Commissioner's Remarks, Oral Submission Process and Thereafter, August 21, 2006

p. Commissioner's Remarks, Evidentiary Hearings Closing, August 24, 2006

15. Memoranda to Parties with Standing re: Closing Submissions Process
    a. From Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 & 2, May 19, 2006
    b. From Lead Commission Counsel to Counsel for Parties with Standing in Part 1 and Part 1 & 2, July 14, 2006
    c. From Director of Policy and Research to Parties with Standing Exclusively in Part 2, May 25, 2006
16. Media Releases
    a. Ipperwash Inquiry Legal Counsel Announced (November 24, 2003)
    b. Ipperwash Inquiry Announces Hearings (March 9, 2004)
    c. Ipperwash Inquiry Receives 35 Applications for Standing (April 15, 2004)
    d. Ipperwash Inquiry Ruling on Standing and Funding Issued (May 7, 2004)
    e. Ipperwash Inquiry Announces New Counsel (June 3, 2004)
    f. Symposium on Relations Between Police and Government (June 7, 2004)
    g. Leading Experts and Academics Take Part in Symposium on Police and Government Sponsored by Osgoode Hall Law School and the Ipperwash Inquiry (June 24, 2004)
    h. Experts on Aboriginal Culture and History to Testify at Start of Ipperwash Inquiry (July 7, 2004)
    i. Ipperwash Inquiry Resumes Next Week with History Testimony (August 13, 2004)
    j. Statement by the Ipperwash Inquiry regarding media conference by lawyers for Dudley George Estate (September 3, 2004)
    k. Ipperwash Inquiry to hold consultation on Aboriginal Burial and other Sacred Sites in Toronto on December 8, 2005 (December 5, 2005)
    l. OPP presents forum on Aboriginal policing to Ipperwash Inquiry (January 23, 2006)
    m. Chiefs of Ontario to present forum on Aboriginal issues to Ipperwash Inquiry on March 8 and 9, 2006 (March 6, 2006)
17. Inquiry Statistics

Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

In 1995, the Ipperwash Provincial Park was the site of a protest by First Nations representatives. Mr. Dudley George was shot in the course of the protest and later died.

Under the *Public Inquiries Act*, R.S.O. 1990, c. P.41, the Lieutenant Governor in Council may, by commission, appoint one or more persons to inquire into any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or the administration of justice therein or any matter of public concern, if the inquiry is not regulated by any special law and if the Lieutenant Governor in Council considers it desirable to inquire into that matter.

The Lieutenant Governor in Council considers it desirable to inquire into the following matters. The inquiry is not regulated by any special law.

Therefore, pursuant to the *Public Inquiries Act*:

Establishment of the Commission

1. A commission shall be issued effective November 12, 2003 appointing the Honourable Sidney B. Linden as a commissioner.

Mandate

2. The commission shall:

   (a) inquire into and report on events surrounding the death of Dudley George; and

   (b) make recommendations directed to the avoidance of violence in similar circumstances.

3. The commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization. The commission, in the conduct of its inquiry, shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

O.C./Décret 1662/2003

4. The commission shall deliver its final report containing its findings, conclusions and recommendations to the Attorney General. In delivering its report to the Attorney General the commission shall be responsible for translation and printing, and shall ensure that it is available in both English and French, in electronic and printed versions, and in sufficient quantities for public release. The Attorney General shall make the report available to the public.

5. Part III of the *Public Inquiries Act* applies to the inquiry and the commission conducting it.

Resources

6. The commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interest, where in the commission's view the party would not otherwise be able to participate in the inquiry without such funding.

7. Within an approved budget, the commission may retain such counsel, staff, investigators and expert advisers as it considers necessary in the performance of its duties at reasonable remuneration approved by the Ministry of the Attorney General. They shall be reimbursed for reasonable expenses incurred in connection with their duties in accordance with Management Board of Cabinet Directives and Guidelines.

8. The commission shall follow Management Board of Cabinet Directives and Guidelines and other applicable government policies in obtaining other services and goods it considers necessary in the performance of its duties unless, in the commissioner's view, it is not possible to follow them.

9. All ministries, Cabinet Office, the Premier's Office, and all boards, agencies and commissions of the government of Ontario shall, subject to any privilege or other legal restrictions, assist the commission to the fullest extent so that the commission may carry out its duties.

Recommended _____ Attorney General

Concurred _____ Chair of Cabinet

Approved and Ordered NOV 12 2003 Date

_____ Lieutenant Governor

RULES OF PROCEDURE AND PRACTICE

THE IPPERWASH INQUIRY

LA COMMISSION
D'ENQUÉTE IPPERWASH

Rules of Procedure and Practice

1. Commission proceedings will be divided into two phases. Part I will focus on the circumstances and events surrounding the death of Anthony O'Brien (Dudley) George.

   In Part II of the Inquiry, the Commission will review key policy issues raised by the events surrounding the death of Dudley George and will make recommendations directed to the avoidance of violence in similar circumstances. These issues will include the relationship between police and Aboriginal people, the relationship between police and government, the interaction between police and protestors, and the avoidance of violent confrontations over Aboriginal land and/or treaty claims in Ontario.

A. Rules – Part I.

I. General

2. Public hearings will be convened in the Ipperwash area at Forest in the Community Centre (Kimball Hall) and in Toronto at the Commission hearing room (250 Yonge St., 29th floor), and such other locations as the Commission designates, to address issues related to Part I of the Inquiry.

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3. All parties and their counsel shall be deemed to undertake to adhere to these Rules, which may be amended or dispensed with by the Commission as it sees fit to ensure fairness. Any party may raise any issue of non-compliance with the Commissioner.

4. The Commissioner shall deal with a breach of these Rules as he sees fit including, but not restricted to, revoking the standing of a party, and imposing restrictions on the further participation in or attendance at (including exclusion) the hearings by any party, counsel, individual, or member of the media.

5. Insofar as it needs to gather evidence, the Commission is committed to a process of public hearings. However, applications on some aspects of its mandate may be made to proceed *in camera* in accordance with s. 4 of the *Public Inquiries Act*. Such applications should be made in writing at the earliest possible opportunity pursuant to the provisions of Section III (vi) below.

6. Subject to s. 4 and s. 5 of the *Public Inquiries Act*, the conduct of and the procedure to be followed on the Inquiry is under the control and discretion of the Commissioner.

7. The Commissioner may extend or abridge any time prescribed by these rules.

II. Standing for Part I

8. Commission counsel, who will assist the Commissioner throughout the Inquiry and are to ensure the orderly conduct of the Inquiry, have standing throughout the Inquiry. Commission counsel have the primary responsibility for representing the public interest at the Inquiry, including the responsibility to ensure that all interests that bear on the public interest are brought to the Commissioner's attention. Persons or groups may be granted standing by the Commissioner, if the Commissioner is satisfied that they:

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(a) have an interest which is directly and substantially affected by the subject matter of Part I of the Inquiry in which event the party may participate in accordance with s. 5 (1) of the *Public Inquiries Act*, or

(b) represent distinct ascertainable interests and perspectives that are essential to the discharge of his mandate in Part I, which the Commissioner considers ought to be separately represented before the Inquiry, in which event the party may participate in a manner to be determined by the Commissioner.

9. The Commissioner will determine the extent to which a party granted standing might participate in Part I of the Inquiry.

10. The term "party" is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.

11. Counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

III. Evidence

(i) General

12. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness' evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.

13. Subject to section 11 of the *Public Inquiries Act*, the Commission is entitled to receive any relevant evidence at the Inquiry, which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.

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14. Subject to the Order in Council (1662/2003), the Commission may rely on any transcripts or record of pre-trial, trial or appeal proceedings before any court in relation to the proceedings and prosecutions and such other related material as the Commission considers relevant to its duties.

15. Subject to Rule 20, the Commission may admit at the Inquiry evidence not given under oath or affirmation.

16. Parties are encouraged to provide to Commission counsel the names and addresses of all witnesses they believe ought to be heard by July 31, 2004 together with a brief statement of the witness's relevance to the Inquiry. If possible, parties should also provide Commission counsel with copies of all relevant documentation, including statements of anticipated evidence, at the earliest opportunity, and in any event by not later than August 30, 2004.

17. Commission counsel have discretion to refuse to call or present evidence.

18. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is needed, Commission counsel shall call the witness, subject to Rule 11.

(ii) Witnesses

19. Anyone interviewed by or on behalf of Commission counsel is entitled, but not required, to have personal counsel present for the interview to represent his or her interests.

20. Witnesses will give their evidence at a hearing under oath or affirmation, which may be accompanied by some other form of conscience binding symbol.

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21. If special arrangements are desired by a witness in order to facilitate that witness' comfort in testifying, a request for accommodation shall be made to the Commission sufficiently in advance of the witness' scheduled appearance to reasonably facilitate such requests. While the Commission will make reasonable efforts to accommodate such requests, the Commissioner retains ultimate discretion as to whether, and to what extent, such requests will be accommodated.

22. Witnesses may request that the Commission hear evidence pursuant to a summons, in which case a summons shall be issued.

23. Witnesses who are not represented by counsel for parties with standing are entitled to be represented by counsel of their choice while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objections thought appropriate.

24. Witnesses may be called more than once.

(iii) Order of Examination

25. The order of examination will be as follows:

(a) Commission counsel will adduce the evidence from the witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions;

(b) parties granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties having standing and if they are unable to reach agreement, by the Commissioner;

(c) counsel for a witness, regardless of whether or not counsel is also representing a party, will examine last, unless he or she has adduced the evidence of that witness in chief, in which case there will be a right to re-examine the witness; and

(d) Commission counsel will have the right to re-examine.

26. Except with the permission of the Commissioner, and as hereinafter specifically provided, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete. In the event a witness has personal counsel, that counsel may speak to his or her client about areas of anticipated testimony that have not yet been the subject of examination. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

(iv) Access to Evidence

27. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings *in camera*.

28. A daily transcript will be posted to a website transcript repository which will be fully accessible to the parties, the public and the media. It will be available by both direct access to the court reporting service's website transcript repository and via link from the Commission's website. Full access will be available for viewing, downloading and printing capability.

29. The P transcript will also be available on an expedited daily basis, but the cost of this service will be the responsibility of the party or person ordering it. The Commission will not pay for expedited transcripts for any party or member of the public or media, nor will the cost be an assessable disbursement for parties with funded status.

30. One copy of the P exhibits will be available to be shared by the media.

31. Only those persons authorized by the Commission, in writing, shall have access to C transcripts and exhibits.

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(v) Documents

32. The Commission expects all relevant documents to be produced to the Commission by any party with standing where the documents are in the possession, control or power of the party. Where a party objects to the production of any document on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party and/or that party's counsel may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling or may direct the issue to be resolved by the Regional Senior Justice in Toronto or His designate.

33. The term "documents" is intended to have a broad meaning, and includes the following mediums: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

34. Originals of relevant documents are to be provided to Commission counsel upon request.

35. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commission

may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information.

36. Documents received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document to a proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 35.

37. Subject to Rule 35 and to the greatest extent possible, Commission counsel will endeavour to provide in advance to both the witness and the parties with standing relating to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness' testimony, and a statement of anticipated evidence.

38. Parties shall at the earliest opportunity provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings, and in any event shall provide such documents no later than 24 hours prior to the day the document will be referred to or filed.

39. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced as a relevant document. This does not preclude the document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross-examination, a copy must be made available to all parties by counsel intending to use it not later than 48 hours prior to the testimony of that witness, subject to the discretion of the Commissioner.

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(vi) Confidentiality

40. If the proceedings are televised or broadcast by some other medium, applications may be made for an order that the evidence of a witness not be televised or broadcast.

41. Without limiting the application of s. 4 of the *Public Inquiries Act*, the Commissioner may, in his discretion and in appropriate circumstances, conduct hearings in private when he is of the opinion that matters involving public security may be disclosed, or if considering intimate financial, personal or other matters that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure outweighs the desirability of adhering to the general principle that the hearings should be open to the public.

42. Witnesses may apply to the Commissioner for measures aimed at protecting his or her identity for a compelling reason as determined in the sole discretion of the Commissioner. Upon a successful application to the Commissioner the witness may be granted the status of "Confidentiality". For the purposes of the Inquiry, Confidentiality may include the right to have his or her identity disclosed only by way of non-identifying initials, and, if the individual so wishes, the right to testify before the Commission in private, together with any other privacy measures which the party may request and the Commissioner, in his discretion, grants. Subject further to the discretion of the Commissioner, only the Commissioner, Commission staff and counsel, counsel for parties with standing, counsel for the witness who has been granted Confidentiality and media representatives may be present during testimony being heard in private.

43. A witness who is granted Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials. Any reports of the Commission using the evidence of witnesses who have been granted Confidentiality will use non-identifying initials only.

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44. Media reports relating to the evidence of a witness granted Confidentiality shall avoid references that might reveal the identity of the witness. No photographic, audio, visual or other reproduction of the witness shall be made either during the witness' testimony or upon his or her entering and leaving the site of the Inquiry.

45. Any witness who is granted Confidentiality will reveal his or her name to the Commission and counsel participating in the Inquiry in order that the Commission and counsel can prepare to question the witness. The Commission and counsel shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.

46. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness's testimony.

47. All parties, their counsel and media representatives shall be deemed to undertake to adhere to the rules respecting Confidentiality.

(vi) Section 5(2) Notices

48. The Commission will deliver notices pursuant to s. 5(2) of the *Public Inquiries Act* after information about alleged misconduct has come to the Commission's attention that *may* give rise to findings of misconduct. These will be delivered on a confidential basis to the persons or parties to whom they relate, and a copy will also be provided to the subject person or party's counsel, if such counsel has been identified to Commission Counsel. Supplementary notices may be delivered from time to time by the Commission as warranted by the information before it.

49. If any party believes that it is necessary to adduce documentary evidence or to call evidence to respond to allegations of possible misconduct for which a notice under s. 5(2) of the *Public Inquiries Act* has been received, then that party may apply for leave to call that evidence or may request that Commission counsel call

such evidence. If relevant and responsive to issues raised in the s. 5(2) notice, leave will be given. Cross-examination of the witness by counsel for other parties shall be limited to matters adduced in evidence during the examination in chief of the witness, except with leave of the Commissioner.

B. Rules - Part II

I. General

50. Because of the policy nature of the issues, the Commission will utilize a range of research and policy development processes. The objectives of Part II are to promote an informed discussion and analysis of the policy issues raised by the Inquiry and to ensure that parties with standing and the public have a meaningful and ongoing opportunity to participate. Amongst the various initiatives which may be adopted under Part II, the Commission will:

(a) commission a range of research and policy papers (the "Research and Policy Papers") from recognized experts on a broad range of relevant topics. The structure and format of the Research and Policy Papers will vary but will generally include a description of current practises, historical developments, an analysis of relevant issues, and potential options (if applicable) and a bibliography;

(b) invite written and/or oral submissions from parties with standing and the public about any matter relevant to Part II, including the Research and Policy Papers;

(c) convene meetings or symposia (the format of which may vary) to discuss issues raised by the Inquiry. Parties with Part II standing and the members of the public will be invited to participate; and

(d) post commissioned research and policy material and public submissions on its website.

51. The Commission may call evidence during its hearings on matters relevant to Part II.

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(i) Commission Papers

52. The Commission will establish one or more Research Advisory Panels (the "Panels"). The role of the Panels will be to make recommendations to the Commission on the subject matters of the Commission Papers and who should be retained to prepare them.

53. The Commission will set and publish a deadline by which all Commission Papers must be completed and the Papers will thereafter be published, in draft, on the Commission's website.

(ii) Public Submissions

54. Any interested person may make a Public Submission, in writing, to the Commission dealing with any matter related to Part II of the Inquiry including responses to any matter raised in the Commission Papers.

55. The Commission will set and publish a deadline by which all public submissions must be received. All public submissions will be made available for public review either on the Commission's website or at the Commission's offices.

(iii) Public Meetings and Symposia

56. The Commission will convene a number of symposia and/or public meetings to discuss issues raised in Part II of the Inquiry. The format of the public meetings will be tailored to the topics discussed and may vary. The public meetings may include the Commissioner, authors of relevant Research and Policy Papers, parties granted standing in Part II (and their counsel or representative if identified to Commission Counsel or the Director of Policy for the Commission), members of Research and Policy Panel, and any other persons invited by the Commission whom the Commissioner concludes would contribute to the discussion.

57. The public meetings shall be recorded unless, on application of a party or other invited persons, the Commissioner in his discretion determines otherwise.

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II. Standing for Part II

58. Persons or groups may be granted standing by the Commissioner for Part II of the Inquiry if the Commissioner is satisfied that:

(a) they are sufficiently affected by Part II of the Inquiry; or

(b) they represent distinct ascertainable interests and perspectives that are essential to the discharge of his mandate in Part II, and which the Commissioner considers ought to be separately represented before the Inquiry. In order to avoid duplication, groups of similar interest are encouraged to seek joint standing.

59. Because of the different nature of the proceedings in the two phases of the Inquiry, the nature and extent of a party's participation will be different in Part II than in Part I, except where evidence is called by the Commission in which case the Rules governing evidence and witness testimony adopted in Part I shall apply with any necessary modifications.

60. In addition to the ability of all members of the public to receive Commission Papers and make Public Submissions, those persons or groups who have been granted standing in Part II shall be entitled to participate directly in the public meetings.

III Access to Evidence and Documents

61. Rules 26 to 39 regarding access to evidence and documents apply to Part II of the Inquiry.

C. Funding

62. The Commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interest, where in the Commission's view the party would not be otherwise able to participate in the Inquiry without such funding.

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63. Further information is available on the Commission's website at www.ipperwashinquiry.ca.

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Notice of Hearing

Mr. Justice Sidney B. Linden has been appointed as the Commissioner of the Ipperwash Inquiry. In Part I, the Commission will inquire into and report on events surrounding the death of Dudley George, including the protest at the Ipperwash Provincial Park in 1995 where Dudley George was shot. Part II of the Inquiry will have a policy focus and will make recommendations directed to the avoidance of violence in similar circumstances.

Applications by interested individuals and organizations for standing and funding in relation to both Part I and Part II of the Inquiry will be heard commencing at 10:30 a.m. to 5:00 p.m. on April 20 , 2004, and continuing on each of April 21, 22 and 23, 2004 commencing at 9:30 a.m. to 5:00 p.m. in the Ipperwash area at the Forest Memorial Community Centre (Kimball Hall) located at 6276 Townshend Line, Forest, Ontario. NO EVIDENCE WILL BE HEARD AT THIS TIME.

The criteria for standing in Part I and Part II of the Inquiry and the criteria for funding are set out in the Rules of Procedure and Practice which can be found at our website at www.ipperwashinquiry.ca or a copy can be obtained by contacting the Inquiry at the addresses and/or telephone numbers set out below.

Applications for standing should be made in writing and provide the following information:

(a) Whether standing is sought for Part I or Part II of the Inquiry; and

(b) A statement of how the applicant satisfies the criteria for standing set out in the Rules of Practice and Procedure.

Applications for funding should be made in writing and should provide the following information:

(a) A statement of how the applicant satisfies the criteria for funding set out in the Rules of Practice and Procedure. In demonstrating why an applicant would not otherwise be able to participate without such funding, the application may include financial information and, for organizations, financial statements, operating budgets, the number of members and membership fee structure. Applicants should also indicate whether they have contacted other groups or individuals to bring them into an amalgamated group, and the results of those contacts;

(b) A description of the purposes for which the funds are required, how the funds will be disbursed and how they will be accounted for;

(c) A statement of the extent to which the applicant will contribute its own funds and personnel to participate in the Inquiry; and

(d) The name, address, telephone number and position of the individual who will be responsible for administering the funds, and a description of the financial controls put in place to ensure that the funds are disbursed for the purposes of the Inquiry.

Applications for standing and/or funding should be submitted to the Inquiry by delivering a copy either to our offices in Toronto at the address set out below or by e-mail at feedback@ipperwashinquiry.ca by no later than 5:00 p.m. on April 8, 2004.

THE IPPERWASH INQUIRY
250 Yonge St., 29th Floor,

P.O. Box 30
Toronto, Ontario M5G 2N7
Tel: (416) 314 - 9200

Fax: (416) 314 - 9393
e-mail: feedback@ipperwashinquiry.ca

IPPERWASH INQUIRY
Parties with Standing

Parties	Counsel
PART 1 & PART 2	
Aazhoodena and George Family Group	**Roach, Schwartz and Associates** **Barristers & Solicitors** Peter Rosenthal Jackie Esmonde
Aboriginal Legal Services of Toronto	**Aboriginal Legal Services of Ontario** Kim Murray Brian Eyolfson **Falconer Charney Macklin** Julian N. Falconer Julian Roy Sunil Mathai
Charles Harnick	**Sutts Strosberg LLP** **Barristers & Solicitors** Harvey T. Strosberg Jacqueline A. Horvat
Chiefs of Ontario	**Blake, Cassels & Graydon LLP** William G. Horton Matthew Horner **Maurice Law** Kathleen Lickers, Counsel (Part II)
The Estate of Dudley George and George Family Group	**Klippensteins, Barristers & Solicitors** Murray Klippenstein Vilko Zbogar Basil Alexander **Andrew Orkin, Barrister & Solicitor** Andrew Orkin
Government of Ontario	**Ministry of Attorney General** **Crown Law Office Civil** Kim Twohig Walter Myrka Susan Freeborn

Parties	Counsel
Kettle & Stony Point First Nation	**William B. Henderson** **Barrister & Solicitor** William (Bill) Henderson **Robbins Henderson & Davis** Jonathon C. George Colleen Johnson, Counsel
Marcel Beaubien	**Raphael Partners LLP** **Barristers & Solicitors** Douglas A. Sulman Trevor Hinnegan
Michael Harris	**Fasken Martineau Du Moulin LLP** **Barristers & Solicitors** Peter A. Downard William Hourigan Jennifer L. McAleer
Municipality of Lambton Shores	**McKenzie Lake Lawyers LLP** **Barristers & Solicitors** David R. Nash Janet M. Clermont
Office of the Chief Corner	**Office of the Chief Coroner,** **Province of Ontario** Alfred J.C. O'Marra Francine Borsanyi
Ontario Provincial Police	**Cooper, Sandler & West** **Barristers & Solicitors** Mark Sandler Andrea Tuck-Jackson[1] Leslie Kaufman
Ontario Provincial Police Association	**Paliare Roland Rosenberg Rothstein LLP** **Barristers & Solicitors** Ian Roland Karen Jones Ian McGilp Jennifer Gleitman

[1] Until appointed to the Ontario Court of Justice

Parties	Counsel
Residents of Aazhoodena (Army Camp)	**Ross, Scullion** **Barristers & Solicitors** Anthony Ross Kevin J. Scullion Cameron D. Neil
Robert Runciman	**Fenton, Smith** **Barristers & Solicitors** Ian Smith **Stockwood Spies** **Barristers & Solicitors** Nancy Spies[2] Alice Mrozek
PART 1 ONLY	
Christopher Hodgson	**Miller, Thomson LLP** **Barristers & Solicitors** Peter D. Lauwers Mark R. Frederick Craig Mills Megan Mackey Erin Tully
Debbie Hutton	**Heenie Blaikie** **Barristers & Solicitors** David Roebuck Anna Perschy Melissa Panjer Adam Goodman
PART 2 ONLY	**Counsel and/or Representative**
Aboriginal Peoples Council of Toronto	**Reynolds Dolgin** Stephen Reynolds
African Canadian Legal Clinic	**African Canadian Legal Clinic** Marie Chen

[2] Until appointed to the Superior Court of Ontario

Parties	Counsel
Amnesty International Canada	**Amnesty International Canada** Alex Neve, Secretary General
Anishinabek Police Services	**Law Office of Hugh MacDonald** **Barrister & Solicitor** Hugh N. MacDonald
Canadian Civil Liberties Association	**Canadian Civil Liberties Association** A. Alan Borovoy
Centre Ipperwash Community Association	Eugene Dorey, Chairperson
Chippewas of Nawash Unceded First Nation	**Olthuis Kleer Townshend** **Barristers & Solicitors** Roger Townshend Lorraine Y. Land
George Simpson and Roland Carey	**Polishuk, Camman & Steele** Andrew Camman
Law Union of Ontario	**Law Union of Ontario** J. Robert Kellermann
Mennonite Central Committee Ontario	**Mennonite Central Committee Ontario** Don Procter - (former) Aboriginal Neighbours Coordinator, Southern Ontario Rick Cober Bauman - Program Director
Nishnawbe-Aski Police Services Board	**Beamish, MacKinnon** **Barristers & Solicitors** Catherine M. Beamish
Ontario Federation of Individual Rights and Equality	Mary-Lou LaPratte
Union of Ontario Indians	**Union of Ontario Indians** Fred Bellefeuille, Counsel

IPPERWASH INQUIRY
Research Advisory Committee Members

Professor Darlene Johnston. Professor Johnston joined the Faculty of Law at the University of Toronto in 2002 as an Assistant Professor and Aboriginal Student Advisor. Her teaching areas include Aboriginal Law and Property Law and some of her research focuses on the relationship between totemic identity, territoriality and governance.

Wally McKay. Wally McKay is from Sachigo Lake First Nation. He has over 30 years leadership experience, including terms as Grand Chief and Regional Grand Chief. Wally is a consultant, specializing in First Nations governance.

Philip Murray. Mr. Murray was Commissioner of the RCMP between 1994 and 2000. He retired in September 2000. Mr. Murray holds a Bachelor of Business Administration and a Certificate in Personnel Administration from the University of Regina, Saskatchewan. He is a graduate of the Canadian Police College Advanced Police Studies Program. He is also a graduate of the United States Federal Bureau of Investigation's (FBI) National Executive Institute. Mr Murray served with the RCMP for 38 years. He has broad experience in operational policing and management, progressing from a uniformed peace officer to the most senior position of Commissioner of the RCMP.

Professor Kent Roach. Professor Roach is a professor of law and criminology at the University of Toronto. He holds degrees in law from Yale and University of Toronto, and a degree in political science and history from University of Toronto. He served as research director for the Ontario Law Reform Commission's Project on Public Inquiries, and Dean of Law at the University of Saskatchewan. Acting pro bono, he has frequently appeared before the Supreme Court of Canada as counsel for various public interest groups.

Jonathan Rudin. Mr. Rudin is the co-author and researcher of the Royal Commission on Aboriginal Peoples' report on criminal law - Bridging the Cultural Divide. He has been the Program Director at Aboriginal Legal Services of Toronto where he assisted with the development of the Community Council Program and the Gladue (Aboriginal Persons) Court at the Toronto Old City Hall Courthouse.

Professor Peter Russell, O.C. Professor Russell taught Political Science at the University of Toronto from 1958 until 1996, specializing in Judicial, Constitutional and Aboriginal Politics. He is a past President of the Canadian Political Science Association and an Officer of the Order of Canada. He is the author of The Judiciary in Canada: The Third Branch of Government, Constitutional Odyssey: Can Canadians Become A Sovereign People? and co-editor of Judicial Power and Canadian Democracy. His book on The Mabo Case and Indigenous Decolonization will be published in 2005.

Former Members

Grand Council Chief Earl Commanda. Chief Commanda is the Chief of the Union of Ontario Indians. Chief Commanda, of Serpent River First Nation, has been involved in

aboriginal politics in various capacities for over 20 years. He served ten consecutive terms as Chief in his community, as well as several years as a band councilor.

Tonita Murray. Ms. Murray is a civilian member of the Royal Canadian Mounted Police, the Director General of the Canadian Police College, and Director of the Police Futures Group, which is a policy think-tank on policing connected to the Canadian Association of Chiefs of Police. Ms. Murray has spent close to 30 years in the policing field. Ms. Murray has published articles on policing and written and edited a range of official reports related to crime, law enforcement and police management.

Witnesses Who Testified

Witness Name	Dates
Darlene Johnston	July 13, 14, & 15, 2004
Joan Holmes	Aug. 17, 18, & 19 & Sept. 8, 2004
Stan Thompson	Sept. 9, 2004 & June 19, 2006
Clifford George	Sept. 10, 20, & 21, 2004
Bonnie Bressette	Sept. 21, 22, & 23 & Nov. 22, 2004
Marcia Simon	Sept. 23, 27, & 28, 2004
Marlin Simon	Sept. 28, 29, & 30 & Oct. 12 & 18, 2004
David George	Oct. 19, 20, & 21 & Nov. 1, 2004
Stewart George	Nov. 2, 2004
Elwood Tracy George	Nov. 3 & 4, 2004
Clayton George	Nov. 4 & 8, 2004
Mike Cloud	Nov. 8 & 9, 2004
Glen Bressette	Nov. 9 & 10, 2004
Dale Plain	Nov. 10, 2004
Stacey George	Nov. 22, 2004
Roderick Abraham George	Nov. 23, 24, & 25, 2004
Isaac Doxtater	Nov. 25 & 29, 2004
Gabriel Doxtator	Nov. 29 & 30, 2004
Wesley George	Nov. 30 & Dec. 1, 2004
Kevin Simon	Dec. 1, 2, & 6, 2004
Cecil Bernard George	Dec. 6, 7, & 8, 2004
Warren George	Dec. 8 & 9, 2004
Leland Bradley White	Jan. 10, 2005
John Thomas Cousins	Jan. 12, 2005
Gerald George	Jan. 12, 13, & 17, 2005
Nicholas Cottrelle	Jan. 18 & 19, 2005
Tina George	Jan. 19 & 20, 2005
Harley George	Jan. 20, 2005
Gina George	Jan. 31, 2005
Glenn George	Feb. 1, 2, & 3, 2005
Carolyn George	Feb. 3 & 7, 2005
Hank Veens	Feb. 7, 2005

Witness Name	Dates
Jeremiah George	Feb. 7 & 8, 2005
Charles George	Feb. 8, 2005
Carl Tolsma	Feb. 9, 21, & 22, 2005
Larry French	Feb. 10, 2005
Wally Kaczanowski	Feb. 23, 2005
Miles Bressette	Feb. 23 & 24, 2005
Ron George	Feb. 28 & Mar. 1, 2005
Chief Tom Bressette	Mar. 1, 2, & 3, 2005
Elizabeth Stevens [Thunder]	Mar. 7, 2005
Chico Ralf	Mar. 7 & 8, 2005
Bob Watts	Mar. 8, 2005
Bruce Elijah	Mar. 9 & Sept. 22, 2005
Bob Antone	Mar. 10, 2005
Joan Goldi	Mar. 30, 2005
John Goldi	Mar. 30, 2005
Gord Peters	Mar. 30 & 31, 2005
Ovide Mercredi	Mar. 31 & Apr. 1, 2005
Ben Pouget	Apr. 1 & 4, 2005
Layton Elijah	Apr. 5 & 6, 2005
Mrs. Rose Manning	Apr. 6 & 7, 2005
Sam George	Apr. 7 & 18, 2005
Walter Peter Harding	Apr. 18 & 19, 2005
Glen Morgan	Apr. 19, 2005
Karen Bakker-Stephens	Apr. 19 & 20, 2005
Jack Knight	Apr. 20, 2005
Geoffrey Connors	Apr. 20 & 21, 2005
Mark Watt	Apr. 21 & 25, 2005
John Tedball	Apr. 25, 2005
Cesare DiCesare	Apr. 25, 2005
Dr. Alison Marr	Apr. 26, 2005
Dr. Elizabeth Saettler	Apr. 26 & 27, 2005
Malcolm Gilpin	Apr. 27, 2005
Robert Scott	Apr. 27 & 28, 2005
Dr. Michael Shkrum	Apr. 28, 2005

Witness Name	Dates
Marilene Bergman	May 9, 2005
Jacqueline Derbyshire	May 9, 2005
Dr. Andrew McCallum	May 10, 2005
Deputy Commissioner John Carson	May 10, 11, 12, 16, 17, 18, 19, 30, & 31, 2005 June 1, 2, 6, 7, 8, 9, 20, 27, 28, 29, & 30, 2005 June 16, 2006
Superintendent Ronald Fox	July 11, 12, 13, 14, 18, & 19, 2005
Chief Superintendent Christopher Coles	Aug. 15, 16, 17, & 18, 2005
Retired OPP Commissioner Thomas O'Grady	Aug. 18, 22, 23, 24, & 25, 2005 June 15 & 16, 2006
Scott Hutchison Counsel, Ministry of the Attorney General Criminal Law Branch	Aug. 25, 29, & 30, 2005
Julie Jai Director of Legal Services Ontario Native Affairs Secretariat ("ONAS")	Aug. 30 & 31 & Sept. 12, 13, 14, & 15, 2005
Eileen Hipfner Ontario Native Affairs Secretariat	Sept. 15, 19, & 20, 2005
Anna Prodanou	Sept. 20 & 21, 2005
Shelley Spiegel	Sept. 21, 2005
Elizabeth Christie @ the time lawyer, Ministry of the Attorney General	Sept. 26 & 27, 2005
Tim McCabe Lawyer, Ministry of the Attorney General	Sept. 28 & 29, 2005 & Feb. 13, 2006
Leslie Kohsed-Currie ONAS	Oct. 17, 2005
Scott Patrick Special Advisor on First Nations Issues to Solicitor General	Oct. 17 & 18, 2005
Peter Sturdy Ministry of Natural Resources	Oct. 18, 19, & 20, 2005
Les Kobayashi Ministry of Natural Resources	Oct. 20, 24, 25, & 26, 2005
Ron Vrancart Deputy Minister, MNR	Oct. 26, 27, & 31, 2005
Dave Moran Executive Assistant to Charles Harnick	Oct. 31 & Nov. 1, 2005

Witness Name	Dates
Kathryn Hunt Executive Assistant to Robert Runciman	Nov. 2, 2005
Jeff Bangs Executive Assistant to Christopher Hodgson	Nov. 3 & 21, 2005
Larry Taman Deputy Attorney General & Deputy Minister for Native Affairs	Nov. 14, 15, & 16, 2005
Bill King Caucus Liaison	Nov. 16 & 17, 2005
Deb Hutton	Nov. 21, 22, & 23, 2005
Charles Harnick Attorney General	Nov. 24, 28, & 29, 2005
Elaine Todres Deputy Solicitor General	Nov. 29 & 30 & Dec. 1, 2005
Robert Runciman Solicitor General	Jan. 9, 10, & 11, 2006
Christopher Hodgson Minister of Natural Resources	Jan. 11, 12, 16, 17, & 18, 2006
Marcel Beaubien MPP	Jan. 18, 19, 24, & 25, 2006
Tony Parkin OPP	Feb. 6, 7, 8, 9, & 13, 2006
Michael Harris Former Premier	Feb. 14, 15, 16, & 20, 2006
Mark Wright OPP	Feb. 21, 22, & 23 & Mar. 6, 7, 20, & 21, 2006
George Speck OPP, Cst., #3303 (Forest Detachment)	Mar. 22 & 27, 2006
Chris A. Martin OPP, D/Cst., #6842 (Intelligence officer)	Mar. 27 & 28, 2006
Larry Parks OPP, Cst., #5314	Mar. 28 & 29, 2006
Neil Whelan OPP, Sr. Cst., #4433	Mar. 29, 2006
Mark Gransden OPP, Cst., #7195	Mar. 30, 2006
Mike Dougan OPP, Cst., #6806	Apr. 3, 2006
Mark Dew OPP, D/Cst., #6505 (Intelligence officer)	Apr. 3 & 4, 2006

Witness Name	Dates
Vince George OPP, Cst., #5145	Apr. 5, 2006
Stan Korosec OPP, Sgt., #6544 (ERT)	Apr. 5, 6, & 18, 2006
Kent Skinner OPP, A/S/Sgt, #6120 (TRU team commander at TOC with Carson)	Apr. 19 & 20, 2006
Robert "Rob" Graham OPP, Sgt., #6194 (ERT leader)	Apr. 20 & 21, 2006
Richard Zupancic OPP, Cst., #6379 (TRU Team Member operating TOC)	Apr. 24, 2006
Wayde Jacklin OPP, S/Sgt., #6515	Apr. 25 & 26, 2006
Robert C. ("Rob") Huntley OPP, Sgt., #6014 (ERT leader and CMU member)	Apr. 27, 2006
Wade Lacroix OPP, S/Sgt., #5154 (CMU Commander Sept. 6)	May 8, 9, & 10, 2006
George Hebblethwaite OPP, Sgt., #5527 (CMU, second in charge)	May 10, 11, & 15, 2006
Sheldon "Sam" Poole OPP, Cst., #7772 (CMU arrest team)	May 16, 2006
James Root OPP, Cst., #8014 (CMU arrest team)	May 16 & 17, 2006
Wilhelmus "Bill" Bittner OPP, Cst., #6592 (CMU arrest team)	May 17, 2006
Kevin York OPP, Cst., #7540 (CMU member)	May 18, 2006
Dennis Leblanc OPP, Cst., #4163 (CMU prisoner van driver)	May 23, 2006
Chris Cossitt OPP, Cst., #7590 (CMU member)	May 23 & 24, 2006
Mark Beauchesne OPP, Cst., #6685 (TRU Alpha Team)	May 24 & 25, 2006
James A. Irvine OPP, Cst., #6804 (TRU Sierra Team)	May 25 & 26, 2006
Ted. E. Slomer OPP, A/Cst. (TRU Medic at TOC)	May 26 & June 5, 2006
John R. Slack OPP, Sgt., #5630 (ERT Leader)	June 5, 2006

Witness Name	Dates
David M. Boon OPP, Cst., #7886	June 6, 2006
William Klym OPP, Cst., #7068	June 6, 2006
Don Bell OPP, Det. Sgt., #6442, (Intelligence)	June 6, 7, & 8, 2006
Trevor Richardson OPP, D/Sgt., #4707	June 8 & 9, 2006
Wayne Wawryk Expert	June 9, 2006
Steven Lorch OPP, Cst., #7716	June 12, 2006
Tracy Dobbin OPP, Cst., #8845	June 12, 2006
Brad Seltzer OPP, Sgt., #4936 (Negotiating team)	June 13, 2006
Commissioner Gwen Boniface	June 14 & 15, 2006
Mrs. Fran Hannahson Cottager	June 19 & 20, 2006
Captain W.D. Smith Department of National Defence	June 26, 2006
C.O. Allan Howse	June 27, 2006
Ron French Department of Indian and Northern Affairs	June 28, 2006

IPPERWASH INQUIRY

Susan M. Vella, Commission Counsel

250 Yonge Street, 29th Floor, P.O. Box 30
Toronto ON M5G 2N7

Tel: 416 314-9224

Fax: 416 314-9393

Ontario

COMMISSION D'ENQUÊTE SUR IPPERWASH

Susan M. Vella, avocate de la Commission

250, rue Yonge, 29e étage, C.P. 30
Toronto ON M5G 2N7

Tél: 416 314-9224

Téléc: 416 314-9393

Undertaking of the Parties to the Commission of the Ipperwash Inquiry

I undertake to the Commission of the Ipperwash Inquiry that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documentation or information to anyone.

I understand that this undertaking will have no force or effect with respect to any document or information which becomes part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I further understand that such documents or information will be collected from me by the person acting as my counsel who disclosed them to me.

_____ _____

Signature Witness

_____ _____

Date Date

IPPERWASH INQUIRY

Susan M. Vella, Commission Counsel

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Toronto ON M5G 2N7

Tél: 416 314-9224

Téléc: 416 314-9393

Undertaking of Counsel to the Commission of the Ipperwash Inquiry

I undertake to the Commission of the Ipperwash Inquiry that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone for whom I do not act, and to anyone for whom I act only upon the individual in question giving the written undertaking annexed hereto. In the event I act for a coalition, I will disclose such documents and information to anyone who is a member of that coalition only upon the individual in question giving the written undertaking annexed hereto.

I understand that this undertaking has no force or effect once any such document or information has become part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents or information, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction.

I further undertake to collect for destruction such documents or information from anyone to whom I have disclosed any documents or information which were produced to me in connection with the Commission's proceedings.

_____	_____
Signature	Witness
_____	_____
Date	Date

IPPERWASH INQUIRY

Confidentiality Undertaking

I undertake to the Ipperwash Inquiry to keep confidential, and will not disclose nor give to any person, any and all Ipperwash Inquiry documents or information that are not in the public domain and to which I may become privy during the course of my assignment with the Inquiry.

I will not use these documents or information for any purpose another than my work for the Ipperwash Inquiry. I understand that confidential information includes both written material as well as that conveyed through discussion, in the course of the Inquiry's daily business.

At the end of my assignment with the Inquiry, I will not make copies of, and will return, any and all documents that are subject to this undertaking.

Name _____

Signature_____ Date_____

Witness' Name _____ Date_____

Witness' Signature _____

Summons to Witness
(*Section 7, Public Inquiries Act, R.S.O. 1990*)

Re: Ipperwash Inquiry

To: [NAME]

You are hereby summoned and required to attend before the Commission of the Ipperwash Inquiry at an inquiry conducted by the said Commission to be held at Forest in the Municipality of Lambton on [DATE] at the hour of 10:30 in the forenoon and so from day to day until the inquiry is concluded or the Commission otherwise orders, to bring with you and produce at such time and place the documents specified in Appendix A herein.

Dated this * day of * 200*

Ipperwash Inquiry

_____

Commissioner Sidney B. Linden

Note:

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Ontario Superior Court of Justice. If you fail to attend and give evidence at the inquiry, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Ontario Superior Court of Justice in the same manner as if for contempt of that Court for disobedience to a summons.

Appendix A

Definitions

"Document" includes any memorandum, analysis, report, minutes, notes, summaries, directives, circulars, surveys, opinions, briefing material, submission, correspondence, record, incident reports, notebooks, or any other note or communication in writing, any electronic communications (both internal and external), electronic calendars, electronic or other day timers and notes, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche, CD-ROMs, and any data or information recorded or stored by means of any device, in relation to the matters listed below.

Documents Requested

1) *

2) *

3) *

Procedure to be Followed where Privilege Claimed

In the event privilege is claimed over a document, which is the subject of this summons, the procedure to be followed is as set by Rule 31 of the Rules of Procedure and Practice to the Ipperwash Inquiry, as supplemented herein.

Definitions

"Commissioner" means the Commissioner of the Ipperwash Inquiry and includes Counsel acting on his behalf;

"Document" means any paper or other material on which there is recorded anything that is capable of being read or understood by a person, computer system or other device, consistent with the definition set out in the summons;

"Judge" means the Regional Senior Judge of the Superior Court of Justice for Toronto, or His designate;

"Privilege" means solicitor-client privilege, cabinet privilege or public interest immunity.

Procedure

For greater clarity, where a person elects to seek a ruling by the Regional Senior Justice in Toronto of His designate:

1. The [PERSON] may within 30 days from the day that privilege is claimed apply on two days notice of motion to all other persons entitled to make application to the Judge for an order:

a) appointing a place and a day not later than 21 days after the date of the order for the determination of the question whether the document is privileged and must produce the document(s) to the Judge at that time and place,

b) serve a copy of the order on all persons entitled to make application within 6 days of the date on which it was made, and

c) apply, at the appointed time and place, for an order determining the question.

2. Disposition of Application

On an application under paragraph 1, the Judge

a) may, if the Judge considers it necessary to determine the question whether the document should be disclosed, inspect document;

b) shall allow the Commissioner and the OPP to make submissions,

c) shall determine the question summarily, and,

d) deliver concise reasons for the determination in which the nature of the document is described without divulging the details thereof.

3. Privilege continues:

Where the Judge determines pursuant to paragraph 2(c) that a privilege exists in respect of a document, notwithstanding that the Commissioner and the

Commission Counsel have inspected the document, the document remains privileged and inadmissible as evidence unless the [PERSON] consents to its admission in evidence or the privilege is otherwise lost.

4. Where the Judge to whom an application has been made under paragraph 1 cannot act or continue to act under this section for any reason, subsequent applications under paragraph 1 may be made to another judge of the Superior Court of Justice.

5. An application under paragraph 1 shall be heard in private.

SUMMONS TO WITNESS

(Issued under Section 7, Public Inquiries Act, R.S.O. 1990, c. P. 41)

TO: **[NAME]**

You are hereby summoned and required to attend, before the Ipperwash Inquiry at Forest Memorial Community Centre (Kimball Hall) at 6276 Townsend Line, Forest, Ontario, on [DATE], at the hour of 9 o'clock in the forenoon (local time) and so from day to day until the inquiry is concluded or the Commission otherwise orders, to give evidence on oath touching the matters in question in the Inquiry.

Dated this *th day of * 200*

_____

Commissioner Sidney B. Linden

Note:

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Ontario Superior Court of Justice. If you fail to attend and give evidence at the inquiry, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Ontario Superior Court of Justice in the same manner as if for contempt of that Court for disobedience to a summons.

R.S.O. 1990, c. P.41, Form 1

IPPERWASH INQUIRY

W.A. Derry Millar, Lead Commission Counsel

250 Yonge Street, 29th Floor, P.O. Box 30
Toronto ON M5B 2L7

Tel: 416 314-9258
Fax: 416 314-9393

Ontario

COMMISSION D'ENQUÊTE SUR IPPERWASH

W. A. Derry Millar, avocat principal de la Commission

Bureau 250, rue Yonge, 29e étage, C.P. 30
Toronto ON M5B 2L7

Tél: 416 314-9258
Téléc: 416 314-9393

Notice of Alleged Misconduct

(Public Inquiries Act, ss.5(2))

Pursuant to subsection 5(2) of the Public Inquiries Act, you are notified that in its report(s), the Commission of the Ipperwash Inquiry may make a finding of misconduct by you, the substance of which alleged misconduct is set out in Schedule "A", attached.

This notice is given without prejudice to the ability of the Commission of the Ipperwash Inquiry, through its counsel, to modify the particulars of the substance of the alleged misconduct as circumstances may necessitate.

Receipt of this notice entitles you full opportunity to be heard in person or through counsel with regard to those issues or areas of evidence that affect your interest.

To: [redacted]

From: W.A. Derry Millar
Lead Commission Counsel
Commission of the Ipperwash Inquiry

Date: [redacted]

IPPERWASH INQUIRY

Susan Vella, Commission Counsel

250 Yonge Street, 29th Floor, P.O. Box 30
Toronto ON M5G 2N7

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Tél: 416 314-9224
Téléc: 416 314-9393

Notice of Alleged Misconduct

(*Public Inquiries Act,* s-s.5(2))

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Receipt of this notice entitles you full opportunity to be heard in person or through counsel with regard to those issues or areas of evidence that affect your interest.

To: [redacted]

From: Susan Vella
Commission Counsel
Commission of the Ipperwash Inquiry

Date: [redacted]

725149.1

From: Derry Millar
Sent: Friday, December 08, 2006 1:02 PM
To: NAMES REDACTED
Cc: NAMES REDACTED
Subject: Ipperwash Inquiry - Database & Documents

Dear Counsel:

I am writing with respect to two issues: (1) the documents distributed to the parties and their counsel by the Commission; and (2) the SuperText Research Licence/Software.

DOCUMENTS:

In accordance with Rule 35, we hereby request that you return to the Commission the electronic copy of the database and all documents provided to you by the Commission including any copies of any documents not made exhibits or not belonging to the party. This request covers all documents distributed to you in whatever form. Only those documents made exhibits or referred to during the hearing by their document number, but not marked as an exhibit, are public documents.
It is the intention of the Commissioner to seal the database by order for 20 years and then send a complete copy of the database to the Archives of Ontario.

For those of you who provided us with hard drives to load the database, you can either:

1. Return the hard drive to us and we will remove the database and return the hard drive to you; or

2. Remove the database from the hard drive and send me an e-mail certifying that you have done that.

For those of you who received CD-ROMs with the documents, which includes almost everyone at least at the beginning until we made available SuperText Research, please return the CD-ROMs to us, or certify that you have destroyed them.

With respect to hard copies documents in your possession, you can either return them or destroy then and certify to us that you have done that.

SUPERTEXT LICENCE/SOFTWARE:

The parties who received SuperText Research licence/software must return to the Commission office in Toronto the CD-ROM which contains this software; the packaging in which the software was provided; and the dongle you received with the SuperText licence/software - this dongle is required for use of the product in future applications.

Please courier the material under both headings to the attention of Maureen Murphy at:

Ipperwash Inquiry
Suite 2910
250 Yonge Street
P.O. Box 30
Toronto, ON M5B 2L7

Please let me know if you have any questions.

Yours very truly,
Derry Millar

Derry Millar
Lead Commission Counsel
Ipperwash Inquiry
250 Yonge Street, Suite 2910, P.O. Box 30
Toronto, ON M5B 2L7
Toll: 1-866-939-9979
Tel: 416-314-9258
Fax: 416-314-9393
Email: dmillar@weirfoulds.com

www.ipperwashinquiry.ca

IPPERWASH INQUIRY
PROTOCOL RE: Access to and Use of Hearing Video Footage

Recognizing:

1) the Commission's ownership of, and copyright to, the video footage being made of the Inquiry hearings; and,
2) that the footage is of evidence heard at the hearings and that prior to the conclusion of all testimony and the Commissioner's analysis thereof, the evidence cannot and has not been assigned weight or credibility by the Commissioner,

the following protocol for access to and use of hearing video footage has been developed.

PURPOSE:

To facilitate public/media access to Inquiry hearings video footage;
To ensure appropriate controls on access to and use of video footage; and,
To better define internal procedures in responding to requests for video footage.

PROCEDURE:

Taping the Hearings

Avolution Multimedia, of Sarina, Ontario, has been contracted by the Commission to videotape the Inquiry hearings for the duration of the Inquiry, taking place in Kimball Hall, Forest.

Peter Rehak, the Inquiry's Communications Co-ordinator and Media Relations Officer, is the primary technical "on-site" liaison between Avolution and the Commission.

Administrative issues, including contract approval, rests with Debbie Strauss, Manager of Operations and Executive Assistant to the Commissioner.

The Commission owns the videotape and the copyright to it.

Responding to Requests for Video Footage

Requests for a copy (ies) of video footage should be made in writing and directed to the Commissioner, Justice Sidney Linden. The request should indicate the footage required and its intended use and audience. The request should also indicate whether it is anticipated that the footage will be modified and, if so, in what way.

Upon agreement to the request, the requester will be asked to sign an agreement with the Commission, indicating its understanding of the terms and conditions attached to the granting of the request.

A copy of the signed Agreement will be forwarded to Avolution Multimedia by the Commission, to indicate approval to proceed. The requester will then contact Avolution Multimedia (contact Paul Cotton) to obtain the footage authorized.

Cost

The Commission will not charge the requester for the rights to use the footage. However, all costs incurred by Avolution Multimedia are the requester's responsibility. These arrangements are strictly between Avolution Multimedia and the requester; the requester will be invoiced directly by Avolution.

June, 2005
Ipperwash Inquiry

AGREEMENT
RE: ACCESS TO AND USE OF HEARING VIDEO FOOTAGE

_____ has been granted access to and use of footage from the Ipperwash Inquiry hearings, as outlined in the attached request.

It is understood that:

1) changes to the agreed to use of the footage, as outlined, must be brought to the Commissioner's attention, and agreed to in writing, prior to any change to the agreed to use of the footage being made;

2) the footage must be attributed to the Ipperwash Inquiry as testimony heard during the hearings but that neither weight nor credibility has been assigned to the testimony, by the Commissioner, at the time the footage was released by the Commission, to the requester;

3) any and all modification to the video footage must be acknowledged and attributed to the requester;

4) the footage provided by the Inquiry may be excerpted or edited but not in a manner that distorts the sense and meaning of the testimony;

5) a disclaimer must clearly state that the Commission is not responsible for the content or any accompanying commentary; and,

6) no profit may be made on the use and distribution of the footage.

_____ , on behalf of _____, agrees to the terms set out above.

_____
Date

IPPERWASH INQUIRY
PROTOCOL RE: EXHIBITS MANAGEMENT

PURPOSE:

To ensure appropriate controls on original exhibit management;
To facilitate public/media access to Inquiry exhibits;
To mitigate against 'frivolous' requests for duplication; and,
To better define internal procedures in responding to requests for copies of original exhibits.

PROCEDURE:

Numbering, Cataloguing and Filing Original Exhibits

Responsibility for numbering, cataloguing and filing original Inquiry exhibits rests with George Reeve, Registrar for the Commission. The Registrar performs his responsibilities under the direction of, and guidance from, Derry Millar, Lead Commission Counsel.

The Registrar is responsible for filing original exhibits in the Kimball Hall documents room, at end of each hearing day. These originals will constitute part of the Inquiry's official record and will be transferred to the Archives of Ontario at the conclusion of the Inquiry.

Making Exhibits of Significant/Wide Public Interest Available

Where an exhibit is expected to be of significant/wide public interest, or where otherwise deemed by the Commissioner, Lead Commission Counsel or the Communications Co-ordinator/Media Relations Officer, copies of original exhibits may be made available by the Commission, for the media or otherwise, in hard copy or electronic copy, and/or for viewing on the Inquiry's website, as arranged by Peter Rehak .*

* The hearing transcripts, posted on the website daily, are the official record of the Inquiry. As a matter of course, exhibits will not be posted on the website, primarily due to the volume anticipated. From time to time, the Commission may decide to post an exhibit, if deemed warranted or feasible.

Responding to Requests for Copies of Exhibits

Requests for numerous copies of a single exhibits, for a single copy of numerous exhibits and/or for audio-visual exhibits should be made in writing and directed to Debbie Strauss, Manager of Operations. Request should describe the original exhibit in as much detail as possible and specify the exhibit number.

The cost to duplicate exhibits will be borne by the requester, who will be advised of the cost and must agree to being invoiced directly by the service provider, before arrangements for a copy will be made. Arrangements for copying will most often be made in Toronto where duplicates of the original exhibits reside. Every effort will be made to use these duplicates rather than the originals which are stored for archival purposes.

The charge will be determined by the outside service provider, where used, or will consistent with Provincial Government per page tariff, where duplication is undertaken on site.

The Commission may chose to waive the tariff where single or few copies of exhibits in standard paper format are requested.

economical. No claims may be made for damage to rental or personal vehicles nor for traffic or parking violations while on Commission business.

Parking costs incurred when travelling out of town and at airport terminals are allowable. Charges for bridge, ferry and highway tolls are allowed.

3. Accommodation

The government of Ontario rate should be requested wherever possible. Costs such as movie rentals and mini-bar charges are not allowable expenses. An itemized hotel/motel invoice must accompany the claim for reimbursement.

Where accommodations arrangements have been made by the Commission, it will be invoiced directly for the basic room rate. All other expenses incurred must be paid by the claimant upon check-out, and reimbursement sought by way of an expense claim, according to the guidelines.

4. Meals

Claims may be made for the actual cost of the meal but may not exceed $ 6.75 for breakfast, $ 9.25 for lunch and $18.00 for dinner. Please note that this is not a meal allowance. The province requires itemized receipts. Reimbursement may not be sought for alcohol consumed at a meal.

5. Administration

Claims, together with supporting receipts, should be submitted on the expense claim form referred to above. The claim should indicate the nature of Inquiry business for which each claim form relates.

For ease of processing, the claimant should include their SIN in the space marked Employee WIN Employee ID and should include a complete mailing address. Claims will take up to 30 days to process and a cheque will be mailed directly to the address noted on the form.

Claims should be submitted within 10 days of the period covered by the claim to:

Maureen Murphy
Manager, Finance and Operations
Ipperwash Inquiry
250 Yonge Street, Suite 2910
Toronto ON M5G 2N7
Telephone: 416-325-3883

A rental or personal vehicle may be used, whichever is more practical and economical. No claims may be made for damage to rental or personal vehicles nor for traffic or parking violations while on Commission business.

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IPPERWASH INQUIRY

The Honourable Sidney B. Linden, Commissioner

250 Yonge Street, Suite 2910
Toronto ON M5G 2N7

Tel: 416 314-9200

Fax: 416 314-9393

Web: www.ipperwashinquiry.ca

Ontario

COMMISSION D'ENQUÊTE SUR IPPERWASH

L'honorable Sidney B. Linden, commissaire

Bureau 2910, 250, rue Yonge
Toronto ON M5G 2N7

Tél. : 416 314-9200

Téléc. : 416 314-9393

Internet : www.ipperwashinquiry.ca

Dear [ ]:

This is to confirm the offer of the Commission of the Ipperwash Inquiry to retain you to provide [specify] services to the Ipperwash Inquiry.

The retainer will take effect on [date].

The fee for your services is at $xxx per [hour/day/other]. No payments will be made for benefits.

Your fee payment will be made on the basis of your submitting an invoice to Maureen Murphy, Manager of Finance and Operations for the Commission, indicating the days and hours worked, and the work performed, during the period covered by the invoice. No deductions will be made from these payments for income tax, Canada Pension Plan, or Employment Insurance. You are responsible for making arrangements directly with Canada Customs and Revenue Agency regarding these items.

During the term of your engagement, you will report to and take direction from [name and position/relationship with/to the Commission].

On acceptance of this agreement, you will treat as confidential and will not disclose or give to any person, during or after this assignment, any information or document that is of a character confidential to the business of the Commission to which you may become privy as a result of the performance of the above mentioned services.

All rights to any reports or other material prepared by or for you in the performance of your services, pursuant to this agreement shall be the property of the Commission.

Either party may cancel this agreement, upon giving seven days written notice of such intention.

If you are in agreement with these terms, please signify by signing below and returning the original to me.

Yours very truly,

The Honourable Sidney Linden
Commissioner

The undersigned hereby agrees to the matters documented above.

Signature: _____
[supplier]

2

IPPERWASH INQUIRY

COMMISSION D'ENQUÊTE SUR IPPERWASH

RULING ON STANDING AND FUNDING

I. THE INQUIRY PROCESS

I have been appointed by Order in Council 1662/2003 dated November 12, 2003 to:

a) inquire into and report on events surrounding the death of Dudley George; and

b) make recommendations directed to the avoidance of violence in similar circumstances.

The Inquiry will be conducted in two parts. Part I will focus on the matters set out in paragraph (a) of the Order in Council. Part II will address the matters set out in paragraph (b) of the Order in Council.

The Rules of Procedure and Practice to govern Parts I and II of the Inquiry have been published on the Commission website at www.ipperwashinquiry.ca .

A. Process – Part I

Part I will be conducted by way of public hearings to be held in Forest and Toronto, at which witnesses will give evidence under oath or affirmation, and at which the witnesses will be examined and cross-examined. Parties with standing will make closing submissions at the end of Part I.

B. Process – Part II

Part II will address primarily policy issues and will proceed concurrently with Part I. In Part II, the Commission will commission research and policy papers from experts, invite written and/or oral submissions from parties with standing and the public, convene meetings, symposia (the format of which may vary) and hold evidentiary hearings on relevant public policy topics.

II. STANDING AND FUNDING

The Commission published a Notice of Hearing which invited interested parties to apply for standing and funding. The Commission received thirty-five applications for standing and seventeen applications for funding. The applications were heard in Forest from April 20 to 23, 2004. We also received two applications for standing after the standing hearings concluded and those are dealt with in this ruling.

A. Standing – Part I

I have granted standing in Part I to persons or groups who have demonstrated that they have a substantial and direct interest in the subject matter of the Inquiry pursuant to section 5.1 of the *Public Inquiries Act*, R.S.O. 1990, c.P.41 (the "Act"). I have also granted standing, on a discretionary basis, to parties who do not have a direct and substantial interest in the subject matter of the Inquiry, but who represent distinct ascertainable interests, and whose expertise or perspective will be essential if the Commission is to fulfill its mandate.

A grant of standing for Part I will entitle a party to:

1. access to documents collected by the Commission, subject to the Rules of Procedure and Practice;
2. advance notice of documents which are proposed to be introduced into evidence;

3. advance provision of statements of anticipated evidence;
4. a seat at the counsel table;
5. the opportunity to suggest witnesses to be called by Commission Counsel, failing which an opportunity to apply to me to lead the evidence of a particular witness;
6. the opportunity to cross-examine witnesses on matters relevant to the basis upon which standing was granted; and
7. the opportunity to make closing submissions.

By seeking and being granted standing, a party is deemed to have attorned to the jurisdiction of the Commission and to abide by the Commission's Rules of Procedure and Practice.

B. Standing – Part II

I have granted standing for Part II of the Inquiry to parties that represent distinct ascertainable interests and perspectives that are likely to be helpful to me in considering policy-based or systemic "recommendations directed to the avoidance of violence in similar circumstances."

III. STANDING - REASONS

A. Standing – Parts I and II

I have granted standing for both Parts I and II of the Inquiry to the following parties:

The Estate of Dudley George and George Family Group

The Estate of Anthony "Dudley" George, Maynard "Sam" George, Reginald George, Pamela George, Joan Price, and Laverne George, representing five of Anthony "Dudley" George's ("Dudley George") seven siblings, have applied for and are hereby granted standing on their own behalf and on behalf of the estate of their brother, Dudley George,

for Parts I and II of the Inquiry. The interests of its members will be directly and substantially affected by the subject matters of both parts of the Inquiry, and their participation will be essential to the Commission if it is to fulfill its mandate.

Aazhoodena and George Family Group

The Aazhoodena and George Family Group (consisting of Perry Neil Watson George, Darryl Kerry Stonefish, Cheryl Fay Stonefish, Kevin Charles Daniel Simon, Laura Mia George, Christina Laura Wakefield, Robert Darryl Stonefish, Leanne Louise George, Cathryn May Mandoka, Graham Fletcher George, and Daniel Ray George, Jr.) have applied for and are hereby granted standing to participate in Parts I and II of the Inquiry. Members of the Aazhoodena and George Family Group are each related, by blood or marriage, to Dudley George, and include descendants of members of the former Stoney Point Reserve. The interests of the members of this group will be directly and substantially affected by the evidence led at the Inquiry. The participation of this group's members, through submissions, and as witnesses, will also assist the Commission in the fulfillment of its mandate.

Residents of Aazhoodena

This group consists of fifty residents of Camp Ipperwash, now referred to as Aazhoodena by its occupants. Several of its members were present at Ipperwash Provincial Park when Dudley George died, several are related to Dudley George, and each resides at Camp Ipperwash/Aazhoodena or Kettle and Stony Point First Nation. The members of this group have applied and are hereby granted standing for Parts I and II of the Inquiry. The members have a direct and substantial interest in the work of both Parts of the Inquiry and their participation will assist the Commission in fulfilling its mandate in both Parts of the Inquiry.

Chippewas of Kettle and Stony Point First Nation

The Chippewas of Kettle and Stony Point First Nation (the "First Nation") have applied for and are hereby granted standing for Parts I and II of the Inquiry. Dudley George was a member of the First Nation, as were many of the witnesses to his death and the circumstances surrounding his death. Ipperwash Provincial Park and Camp Ipperwash/ Aazhoodena are lands previously held by the ancestors of many members of the First Nation. Its members have been and continue to be significantly affected by the events of September, 1995. Their interests will be directly and substantially affected by the work of this Commission, in both its Parts.

Province of Ontario

The Province of Ontario has applied for and is hereby granted standing to participate in both Parts I and II of the Inquiry. The involvement of several Crown ministries, including the Ministry of Natural Resources, the Ministry of the Attorney General (including the Special Investigations Unit and the Ontario Native Affairs Secretariat), and the Ministry of Community, Safety and Correctional Services (formerly the Ministry of the Solicitor General) in the events of September, 1995, is likely to be examined in both stages of the Inquiry. The Province therefore has a direct and substantial interest in the subject matter of both Parts of the Inquiry, and represents a distinct and ascertainable interest and perspective. Its participation is essential to the discharge of the Commission's mandate.

The Honourable Michael D. Harris

Mr. Harris has applied for and is hereby granted standing in Parts I and II of the Inquiry. At the time of the events giving rise to the Inquiry, Mr. Harris was the Premier of Ontario. The extent and nature of his participation in ministerial decision making at the time of Dudley George's death has been brought into question in previous civil

proceedings commenced by family members of Dudley George. Mr. Harris' interests are therefore directly and substantially affected by the subject matter of Part I of the Inquiry. Further, he has a substantial interest in the policy issues to be considered by the Inquiry.

Charles Harnick

Mr. Harnick has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events that give rise to this Inquiry, Mr. Harnick was the Attorney General of Ontario and the Minister responsible for Native Affairs. In the civil action that preceded this Inquiry, his involvement in the events surrounding the death of Dudley George was put at issue, and his involvement is likely to be examined in this Inquiry. As such, he has a direct and substantial interest in the Commission's work in both Parts of the Inquiry.

Robert Runciman

Mr. Runciman has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events at issue in this Inquiry, Mr. Runciman was the Solicitor General for Ontario and Minister for Correctional Services. In the civil action that preceded this Inquiry, it was alleged that Mr. Runciman's participated in the events leading up to the death of Dudley George. The same issues may arise in Part I of the Inquiry. Mr. Runciman therefore has a direct and substantial interest in the subject matter of Part I of the Inquiry. Similarly, the relationship between the OPP and the Solicitor General are likely to be at issue in Part II of the Inquiry, and Mr. Runciman therefore has a direct and substantial interest in the subject matter of Part II.

Marcel Beaubien

Mr. Beaubien has applied for and is hereby granted standing for Parts I and II of the Inquiry. At the time of the events that give rise to this Inquiry, Mr. Beaubien was the Member of the Legislative Assembly for the provincial riding encompassing Ipperwash

Provincial Park, as well as Kettle and Stony Point First Nation, the Town of Forest, and the surrounding lands. In his application for standing, Mr. Beaubien asserts that he was "an important participant" in events and activities relating to the occupation of Ipperwash Provincial Park and Camp Ipperwash/Aazhoodena in the months prior to and following the death of Dudley George in September, 1995. As such, he has a direct and substantial interest in the work of both Parts of the Inquiry.

Ontario Provincial Police

The Ontario Provincial Police ("OPP"), Commissioner Gwen Boniface, and the commissioned officers of the OPP have applied for and are hereby granted standing for Parts I and II of the Inquiry. They have a direct and substantial interest in both Parts of the Inquiry, arising from the direct involvement of the OPP and its officers in the events in question, and in relation to any policy recommendations relating to policing that may be made pursuant to the Commission's work in Part II of the Inquiry.

Ontario Provincial Police Association

The Ontario Provincial Police Association ("OPPA") has applied for and is hereby granted standing for Parts I and II on behalf of its present and past members, including Mr. Kenneth Deane, who may have had any involvement with any of the matters that are the subject matter of the Inquiry. The OPPA is the exclusive collective bargaining agent for all non-commissioned officers of the OPP and civilian members of the OPP not employed in supervisory or confidential capacity. Those members of the OPPA referred to above have a direct and substantial interest in the Part I of the Inquiry, in that they were present, on duty, and involved in the events giving rise to this Inquiry in September 1995 at Ipperwash Provincial Park. Further, its members have a direct and substantial interest in Part II of the Inquiry.

Office of the Chief Coroner for Ontario

The Chief Coroner of the Province of Ontario has applied for and is hereby granted standing for Parts I and II of the Inquiry. On September 7, 1995, shortly after the death of Dudley George, the Office of the Chief Coroner commenced an investigation into Mr. George's death. I anticipate that the report generated as a result of that investigation, as well as subsequent investigations conducted by the Chief Coroner, are likely to assist the Commission in fulfilling its mandate for Part I of the Inquiry. The Chief Coroner has the power to call an inquest; however, the Chief Coroner submitted that given the broad mandate of the Order-in-Council, he may determine that an inquest would be an unnecessary duplication of effort and expense and any benefit that an inquest would provide to address the considerations of section 20 of the *Coroner's Act* and issues arising from his investigation will be realized through the Inquiry. Further, the Chief Coroner's expertise with respect to both the fact finding process and in the development of policy recommendations directed to the avoidance of deaths in similar circumstances is likely to be of assistance to me in fulfilling my mandates under Parts I and II of the Inquiry.

Municipality of Lambton Shores

The Municipality of Lambton Shores has applied for and is hereby granted standing for Parts I and II of the Inquiry. Many of the events likely to be at issue in this Inquiry took place within the boundaries of the Municipality. The Municipality participated directly in negotiations with many of the affected and involved parties, both before and after Mr. George's death. The Municipality will be directly and substantially affected by the proceedings in Part I of the Inquiry, and has a direct interest in any policy recommendations arising from Part II of the Inquiry.

Chiefs of Ontario

The Indian Associations Co-ordinating Committee of Ontario Inc. ("Chiefs of Ontario") has applied for and is hereby granted standing for Parts I and II of the Inquiry. The Chiefs of Ontario is the umbrella organization for all status Indian communities in Ontario. Its mandate is to represent the interests of each of Ontario's 134 First Nations on issues of broad general significance. It was directly involved in the events immediately prior and subsequent to the death of Dudley George on September 6, 1995. The Chiefs of Ontario has a direct and substantial interest in the subject matters of both Parts of this Inquiry. Further, I anticipate that the perspective and expertise of the organization with respect to First Nations communities will assist the Commission in its work.

Aboriginal Legal Services of Toronto

Aboriginal Legal Services of Toronto ("ALST") has applied for and is hereby granted standing for Parts I and II of the Inquiry. ALST is a legal clinic established to serve the Aboriginal community in the Greater Toronto area. While ALST and its membership and clientele do not have direct and substantial interest in the subject matter of Part I of the Inquiry, they have developed considerable expertise with respect to Aboriginal people and the justice system, and particularly with respect to policing. As such, it represents a distinct and ascertainable interest. That expertise will assist the Commission in discharging its mandate in both Parts I and II of the Inquiry.

B. Standing – Part I

The following Parties have applied for and been granted standing for Part I only.

Christopher D. Hodgson

Mr. Hodgson has applied for and is hereby granted standing to participate in Part I of the Inquiry. At the time of the incidents that give rise to this Inquiry, Mr. Hodgson was the Minister of Natural Resources. The Ministry of Natural Resources had responsibility for Ipperwash Provincial Park, the site of the dispute that resulted in Dudley George's death. In the civil litigation that preceded this Inquiry, initiated by members of Dudley George's family, Mr. Hodgson actions, responsibilities, and knowledge concerning the events at Ipperwash were put at issue. They are likely to arise in the course of the Inquiry. As such, Mr. Hodgson has a direct and substantial interest in the subject matter of Part I of the Inquiry.

Debbie Hutton

Ms. Hutton has applied for and is hereby granted standing with respect to Part I of the Inquiry. Ms. Hutton has asserted in her application for standing that she was the Executive Assistant – Issues Management in the Officer of the Premier at the time of the events in question in this Inquiry. She states that in the days immediately preceding and following the death of Dudley George, she communicated with the Premier and other senior advisors in the Office of the Premier regarding the protest at Ipperwash Provincial Park. She also attended Interministerial Committee and other Government meetings, as a representative of the Premier's Office, at which the situation at Ipperwash Provincial Park and possible Government responses to that situation were discussed. As such, she has a direct and substantial interest in the subject matter of Part I of the Inquiry.

C. Standing – Part II

I have granted standing for Part II to the following parties:

Union of Ontario Indians

The Union of Ontario Indians has applied for and is hereby granted, standing to participate in Part II of the Inquiry. The Union is the political organization representing 42 of the First Nations in Ontario. Kettle Point and Stony Point First Nation is a member of the Union. The Union represents a distinct and ascertainable interest. Its members have a direct and substantial interest in any policy recommendations I make at the culmination of the Inquiry. The experience and perspective of the Union are likely to assist the Commission in Part II of the Inquiry.

Chippewas of Nawash Unceded First Nation

The Chippewas of Nawash Unceded First Nation have applied for and are hereby granted standing to participate in Part II of the Inquiry. This First Nation has its own experiences with disputes concerning land and burial sites, involving circumstances with some similarities to the circumstances experienced by the occupants of Ipperwash Provincial Park and Camp Ipperwash/Aazhoodena. I believe those experiences, combined with the First Nation's involvement in policy initiatives and programs designed to minimize the potential for violence in the context of disputes concerning Aboriginal rights, give this applicant a level of expertise and a perspective that will assist the Commission in the fulfillment of its mandate in Part II of the Inquiry.

Anishnabek Police Service

The Anishnabek Police Service has applied for and is hereby granted standing to participate in Part II of the Inquiry. The Anishnabek Police Service is an Aboriginal police service with primary policing responsibility for seventeen First Nation territories in Ontario, including Kettle Point and Stony Point First Nation (although not during the time of events at issue in this Inquiry). The experience of the Anishnabek Police Service

in developing policies, practices and procedures for culturally appropriate police services will assist the Commission in Part II of the Inquiry.

Nishnawbe-Aski Police Service

The Nishnawbe-Aski Police Service ("NAPS") has applied for standing in Parts I and II of the Inquiry. I do not find that NAPS has a sufficiently direct and substantial interest in the subject matter of Part I of the Inquiry to be granted standing in that phase of the Inquiry's work. However, the experience and perspective of NAPS will assist the Commission in its work in Part II of the Inquiry, and I therefore grant NAPS standing for that part. NAPS has been involved in the development of culturally appropriate policing practices and the provision of policing services to First Nations communities in the Nishnawbe-Aski area in Northwestern Ontario.

I note that, in its application for standing, NAPS acknowledges the potential overlap between the assistance it may be able to provide to the Commission and the involvement of other Aboriginal police services. I urge Anishnabek Police Services and NAPS to collaborate, wherever possible, to the extent that their interests and experience coincide, to avoid any duplication of their work in Part II of the Inquiry.

Centre Ipperwash Community Association

The Centre Ipperwash Community Association ("CICA") has applied for and is hereby granted standing for Part II of the Inquiry. The CICA represents approximately 120 non-First Nations households in the area of Ipperwash Provincial Park, and therefore represents a distinct and ascertainable interest. Its members have a direct and substantial interest in any policy recommendations that I may make pursuant to the proceedings in Part II of the Inquiry. Further, the perspective of the CICA may assist the Commission in the fulfillment of its mandate in Part II.

Aboriginal Peoples Council of Toronto

The Aboriginal Peoples Council of Toronto has applied for standing in Parts I and II of the Inquiry. The Council is granted standing for Part II of the Inquiry but not for Part I of the Inquiry. The Council represents approximately 1000 members of the Aboriginal community in the Greater Toronto Area. Its mandate is to advocate on behalf of Aboriginal peoples in the Metropolitan Toronto area with respect to, among other things, policing issues and relations between police and Aboriginal people and organizations. The Council represents a distinct and ascertainable interest and perspective, and the involvement of the Council in Part II of the Inquiry may assist the Commission in the subject matter of that Part. I also encourage the Council to work, in whatever manner it deems appropriate, with Aboriginal Legal Services of Toronto, with respect to the subject matter of Part I of the Inquiry.

Law Union of Ontario

The Law Union of Ontario has applied for standing to participate in Parts I and II of the Inquiry. In its application materials, the Law Union demonstrated that, in the approximately 30 year history of the organization, it has developed considerable interest in and experience concerning policing issues. Further, the Law Union has involved itself in advocacy concerning issues affecting Aboriginal communities, including the events that give rise to this Inquiry. I do not find that the interests of the Law Union are sufficiently directly and substantially affected by the subject matter of Part I of the Inquiry to warrant granting the Law Union standing for that Part. I find, however, that the Law Union's interest and considerable experience with respect to policing issues may assist the Commission in Part II of the Inquiry. Accordingly, the Law Union is granted standing for Part II.

African Canadian Legal Clinic

The African Canadian Legal Clinic (the "ACLC") has applied for standing for Parts I and II of the Inquiry. In my view, the ACLC does not represent interests directly and substantially affected by the subject matter of Part I of the Inquiry, to warrant Part I standing. The ACLC provides advice and representation to African Canadians on legal matters involving issues of systemic and institutional racism and racial discrimination. In that capacity, ACLC represents a distinct and ascertainable interest and perspective that may be of assistance to the Commission in the fulfillment of its mandate in Part II of the Inquiry and they are granted Part II standing.

Amnesty International Canada

Amnesty International Canada has applied for standing for Parts I and II of the Inquiry. In addition to having a great deal of experience and involvement with international human rights issues and cases, the organization has engaged in advocacy and analysis concerning the events that are at issue in this Inquiry. I believe that its perspective and experience may assist the Commission in the fulfillment of its mandate in Part II of the Inquiry, and accordingly, I grant standing to Amnesty International Canada for Part II. In my view, Amnesty International does not have a sufficiently direct and substantial interest in the subject matter of Part I of the Inquiry to warrant my granting standing for that Part of the inquiry, but of course, they are free to attend the hearings that will constitute Part I of the Inquiry, in a non-participatory capacity and I encourage its members to do so.

Canadian Civil Liberties Association

The Canadian Civil Liberties Association ("CCLA") has applied for and is hereby granted standing to participate in Part II of the Inquiry. The CCLA has, in its approximately 40 year history, developed considerable expertise in the course of its

advocacy on policing and Aboriginal issues. This expertise may assist the Commission in the fulfillment of its mandate for Part II of the Inquiry.

Mennonite Central Committee Ontario

The Mennonite Central Committee Ontario ("MCC") has applied for and is hereby granted standing for Part II of the Inquiry. As stated in its application materials, the MCC is the relief and development agency of the Mennonite and Brethren in Christ Church. The MCC was involved with the people of Kettle Point and Stony Point First Nation prior to September, 1995, and directly after the death of Dudley George. Their experience and involvement in the de-escalation and resolution of conflict in this and other conflicts will assist the Commission in Part II of the Inquiry.

George Simpson and Rowland Carey

George Simpson and Rowland Carey have applied for standing for Part II of the Inquiry. Messrs. Simpson and Carey were Correctional Managers indicted and disciplined after a riot at the Bluewater Youth Centre. In their standing application, they state that political interference similar to that alleged to have occurred at Ipperwash also occurred during the police investigation of that riot. Messrs. Simpson and Carey are granted standing in Part II of the Inquiry, particularly with respect to the relationship between the executive branch of government and the police.

The Ontario Federation for Individual Rights and Equality

The Ontario Federation for Individual Rights and Equality has applied for standing for Parts I and II of the Inquiry. The Commission has been advised by Ms. Mary Lou LaPratte, the president of the Federation, that the Federation was incorporated in 1996 and has 350 members. The application states that the Federation was formed as a result of the tragedy in 1995 and the aftermath within the Ipperwash community. The application indicates that Ms. LaPratte is a long-time and active resident of the Ipperwash

area. In my view, the Federation, which was not formed until after the events of September 1995, does not have a direct and substantial interest in the subject matter of Part I of the Inquiry to warrant Part 1 standing. However, the application indicates that Ms. LaPratte in her individual capacity may have information that will assist the Inquiry in its work in Part I and Commission staff will be contacting Ms. LaPratte to discuss her potential participation as a witness. The members of the Federation do have an interest, based on the Federation's application, in the policy recommendations that I may make in Part II of the Inquiry and accordingly the Federation is granted standing in Part II of the Inquiry.

IV. OTHER APPLICANTS

The following parties have applied for standing in one or both Parts of the Inquiry. I have concluded that their interests are not directly and substantially affected by the mandate of either Part of the Inquiry, or that they do not represent a distinct and ascertainable interest. However, several of these applicants will be called upon to participate in the work of the Commission as witnesses and I encourage each of these parties to attend the hearings and proceedings that constitute each Part of the Inquiry, if they are so inclined.

Jeffrey Bangs and Paul Rhodes

Messrs. Bangs and Rhodes have applied for standing to participate in Part I of the Inquiry. They each allege that they have an interest which is directly and substantially affected by the subject matter of Part I. Mr. Bangs was Executive Assistant to the Minister of Natural Resources at the time of the events at issue in this Inquiry. Mr. Rhodes was Senior Media Advisor to the Office of the Premier at the same time. Mr. Bangs asserts that he was present at several Interministerial Committee meetings that took place on September 4 through September 6, during which time the situation at Ipperwash Provincial Park was discussed. Mr. Rhodes asserts that he was involved in strategic discussions throughout the same period of time, and was further involved in

communicating the position of the Premier's Office and the Government in the period following Mr. George's death. The participation of Mr. Bangs and Mr. Rhodes in the events of September, 1995 in their respective capacities will likely mean that both individuals will be called as witnesses in Part I of the Inquiry. However, in my view, neither Mr. Rhodes nor Mr. Bangs has sufficient a direct and substantial interest in the subject matter at issue in Part I of the Inquiry to warrant granting standing. If, during the course of the Inquiry, that situation changes, they will be given an opportunity to renew their application for standing.

The Golden Rule Society

The Golden Rule Society, of Sarnia, Ontario, has applied for limited standing at the Inquiry. The Society has requested that it be permitted to pose the written question set out in its application to the OPP and First Nations representatives. The Society does not have a direct and substantial interest in the subject matter of either Part of the Inquiry, and accordingly, their request for standing is denied.

Munyonze Hamalengwa

Munyonze Hamalengwa has applied, on his own behalf, for standing in Parts I and II of the Inquiry. Mr. Hamalengwa is a criminal lawyer practicing in the Greater Toronto Area. He is a prolific writer and has done considerable work in the area of systemic racism, through his writing and his legal advocacy. However, I find that Mr. Hamalengwa does not have a direct and substantial interest in the subject matter of either Part of the Inquiry distinct from the interests represented by other parties granted standing. I encourage Mr. Hamalengwa to work with the other organizations granted standing with a view to contributing to the process in whatever manner he and the particular organization deems appropriate.

Maynard T. George

Maynard T. George has applied for standing to participate in the Inquiry, in his individual capacity. In my view, Mr. Maynard does not have a direct and substantial interest in either Part of the Inquiry that is distinct from other parties granted standing. However, his involvement, at various points, in the occupation of Camp Ipperwash/Aazhoodena, and in other disputes, mean that his participation in the Inquiry as a witness will be of assistance to the Commission. Moreover, it was clear from Mr. George's oral submissions on standing that he has amassed a great deal of documentary, videotaped, and other evidence that will assist the Commission throughout Parts I and II of the Inquiry. Accordingly, Commission Counsel will work with Mr. George to ensure that any relevant evidence and information in his possession is brought to light at the Inquiry.

Mike and Brenda Neuts

Mike and Brenda Neuts have applied for standing in Part II of the Inquiry. In their application for standing, the Neuts draw parallels between the police and coroner's investigations into the death of Dudley George and comparable investigations into the death of their son, Myles Neuts. While both deaths were tragic, and gave rise to considerable controversy, I find that the interests of the Neuts are not sufficiently directly and substantially connected to the subject matter of this Inquiry to warrant my granting standing to the Neuts. Mr. and Mrs. Neuts are, of course, welcome to attend the hearings in Part I and the meetings, symposia, and other events in Part II of the Inquiry that are open to the public if they wish.

Trevor Cloud

Trevor Cloud has applied for standing to participate in the Inquiry, in his individual capacity. Mr. Cloud has stated in his application for standing that he is descended from the members of the former Stoney Point Reserve. While Mr. Cloud may be called as a

witness in Part I of the Inquiry, and as such he will be interviewed by Commission staff, I do not find that he has a direct and substantial interest in either Part of the Inquiry, pertaining to the events of September, 1995, that is distinct from other parties granted standing. Mr. Cloud is, of course, encouraged to attend any and all of the Part I hearings and Part II events that he wishes.

Chief Ka-Nee-Ka-Neet

An application for standing and funding was made on behalf of the Traditional, Inherent Head Chief of Anishinabe Nation, Ka-Nee-Ka-Neet. The application states:

1. the Chief is responsible to ensure that the provisions of Treaties and Bargains are upheld;
2. the Chief has extensive knowledge on Indian issues and as such would be able to expedite certain aspects of the Inquiry;
3. all servants of the Crown are trustees to non-enfranchised Indians and as such there exists a trustee/fiduciary relationship; and
4. the Chief has knowledge that William Robinson had no capacity to undertake Treaties and as such the Huron Robinson and the Huron Superior Treaties are of the defect (sic).

Chief Ka-Nee-Ka-Neet was unable to attend the standing hearing but requested that I consider his application on the basis of the written materials. I have done this and I am of the view that Chief Ka-Nee-Ka-Neet does not have a direct and substantial interest in the subject matter of the Inquiry nor does he represent a distinct ascertainable interest and perspective that are essential for the discharge of my mandate. Accordingly, his application for standing and funding is denied.

Bruce Wilson Bressette

Bruce Wilson Bressette, a member of Kettle and Stony Point First Nation, has applied for standing for Parts I and II of the Inquiry, on the basis of events that occurred at Kettle and

Stony Point First Nation in 1998. The events Mr. Bressette describes in his application for standing are not sufficiently temporally connected to the subject matter of this Inquiry to form a basis for granting standing to Mr. Bressette, or to give Mr. Bressette and his family a distinct and ascertainable interest with respect to the Commission's mandate. He is, however, welcome to make written submissions to the Commission if he believes these events are relevant and should be examined in either Part of the Inquiry, and he is also welcome to attend the proceedings as a member of the public.

V. FUNDING

A. Funding - Part I

Paragraph 6 of the Order in Council provides that:

> The Commission may make recommendations to the Attorney General regarding funding to parties who have been granted standing, to the extent of the party's interests, where in the Commission's view the party would not otherwise be able to participate in the Inquiry without such funding.

The Commission is to follow Management Board of Cabinet Directives and Guidelines with respect to the expenses of the Commission and must follow the Ministry of the Attorney General's Fee Schedule for Private Sector Lawyers in recommending funding for participants.

To be considered for a funding recommendation, an applicant must:

a. have obtained standing in at least one of Part I or Part II of the Inquiry;
b. be able to demonstrate that it does not have sufficient financial resources to enable it adequately to represent its interests; and
c. have a proposal as to the use it intends to make of the funds and how it will account for the funds.

In addition, I have also considered the following factors in making my recommendations:

a. the nature of the applicant's interest and/or proposed involvement in the Inquiry;

b. whether the applicant has an established record of concern for and a demonstrated commitment to the interest it seeks to represent;
c. whether the applicant has special experience or expertise with respect to the Commission's mandate; and
d. whether the applicant has attempted to form a group with others of similar interests.

The scope of the funding that I may recommend relates to the payment of counsel and reasonable disbursements in relation to the work of the counsel including reasonable travel and accommodation expenses. Funding, as recommended by me, includes preparation and work done after November 12, 2003.

Ten of the seventeen parties granted Part I standing by these reasons have not made a funding application. They are as follows: the Province of Ontario, the Ontario Provincial Police, Ontario Provincial Police Association, the Chief Coroner of the Province of Ontario, the former Premier and three former cabinet ministers, an MPP and an Assistant to the Premier.

The purpose of funding is to permit the party to adequately represent its interest at the Inquiry. The principle that should guide the funding decisions by the Ministry is one of fairness so that the parties for whom funding is recommended by these reasons should be treated equitably with those other parties for whom the Government is providing funding. There are 7 parties who have been granted Part I standing who have specifically asked for funding. These are as follows:

The Estate of Dudley George and George Family Group

The Estate of Dudley George and the George Family Group have requested funding. I am satisfied that the George Family Group meets the criteria for funding and the applicants would not otherwise be able to participate without such funding. As stated in its application, the George Family Group seeks funding for:

1. Legal counsel preparation and attendance fees, and disbursements. The applicants submit that they require and should be afforded a team of four more or less full time legal counsel (one of which may be an articling student), which is the scale of the legal team the applicants had assembled for the trial which was scheduled to begin on October 6, 2003. Three of the proposed counsel already have many years of highly intensive involvement in the issues in this inquiry, and are therefore likely able to make a significant contribution.
2. Prior to the hearing, to conduct a review of existing and new documentation arising out of the killing, to conduct research, to provide assistance to the Inquiry including through provisions of documents, information, analysis, facilitation of contact with various other parties, and for general preparation.
3. Preparation for effective and constructive participation in Inquiry hearings and other activities.
4. Retaining 2-4 experts for studies on historical or legal topics which the estate and family group has identified to this point as being especially significant, such as related to aboriginal burial grounds, and which could supplement or dovetail with the Inquiry's own work.
5. Expenses related to travel and attendance at all Inquiry hearings and other activities;
6. Partial or full payment of expenses for Sam George to attend the hearings in Toronto, such as for accommodation and related expenses. It is submitted that Mr. George is in a unique situation, given his extraordinary degree of participation over the eight years since the shooting, and that his day-to-day presence and participation, with financial contribution, would likely be of assistance to the Inquiry.

In my view, there is a difference in establishing a team for a trial in which the team represents the plaintiffs and a team of lawyers for a commission of inquiry. At this Inquiry, it is the Commission Counsel who will be calling most, if not all, of the witnesses on behalf of the Commission. While counsel will by necessity spend time preparing, it is important that the use of counsel funded at public expense be carefully utilized. Accordingly, I recommend funding for two counsel and an articling student or

clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

Funding is also sought for retaining experts. Pursuant to the Government guidelines, I am not recommending funding for experts, but I am asking counsel for the George Family Group to discuss with the Commission Counsel the names of the experts they wish to have called and the reason for calling the expert so that Commission Counsel may consider calling the experts.

Funding is also sought for the payment of Mr. Sam George's attendance at the hearings in Toronto, for accommodation and related expenses. I have not determined the location of the hearings yet and this application will be considered at the appropriate time.

Aazhoodena and George Family Group

This group includes Pierre George, one of Dudley George's brothers, and a number of his cousins.

I am satisfied after reviewing the submissions of counsel and the funding application that the group meets the criteria for funding.

Mr. Pierre George and the group seek funding for one senior counsel and one junior counsel plus disbursements including travel to Forest and related expenses. Funding is also sought for Mr. Pierre George to travel and stay in Toronto for hearings in Toronto.

I recommend that funding be provided for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. I am not prepared to consider funding for Mr. Pierre George to attend the hearings in Toronto until I have made a determination regarding the location of future hearings.

Residents of Aazhoodena

One firm represents this group of fifty individuals. Many of these individuals participated in the events in question. I am satisfied from the materials supplied by counsel that the group meets the criteria for funding.

I recommend funding for two counsel and an articling student or clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. The applicants submit that because of the large number of people involved, in their group, their counsel need help to communicate with them. Having such a large group of individuals represented by one firm will be very conducive to the efficient conduct of the hearing process. While I recognize that help will be needed to communicate with such a large group of clients, it should be possible for an articling student or a clerk on a part-time basis to do this.

Chippewas of Kettle and Stony Pont First Nation

The Chippewas of Kettle and Stony Pont First Nation seek funding for:

1. Preparation, participation, representation and submissions;
2. First Nation Community Impact (strategy); and
3. Public Relations.

The First Nation submits that it does not have sources of funding that it can secure for its participation in the Inquiry. It submits that in light of its many roles as a level of government, advocate and service provider, the First Nation has no funds available to it that it could reasonably or justifiably allocate for this purpose. In addition, Mr. Henderson, counsel for the First Nation, in his oral submissions advised me that the First Nation's financial statement shows a surplus. Mr. Henderson indicated that the surplus arose from funds received from Casino Rama under an agreement through which all First Nations in Ontario derive some benefit. However, there are rules attached to those funds

that would not contemplate the payment of fees for counsel or for any other activities of this type of legal nature.

I am satisfied that the First Nation meets the criteria for funding and I recommend funding for two counsel and a clerk including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines. I am unable to recommend funding for the First Nation community impact strategy or for public relations. Notwithstanding the benefit to the First Nation of undertaking these activities, they are not within the mandate granted to me regarding recommending funding for counsel.

Municipality of Lambton Shores

The Municipality of Lambton Shores in its application submits that the Municipality is not in a financial position to fund its participation in the Inquiry. The Municipality seeks funding for a lawyer to be present at the hearing and for a law clerk and a lawyer to be available to review documentation, interview parties and prepare for the Inquiry.

In its application, the Municipality states that:

> At the time of these events and subsequently, the Municipality could not afford the legal costs that were being incurred and conducted a fundraising activity in the community in order to assist.

The Municipality further submits that:

1. The Municipality has had to suffer the financial impact of the events surrounding Camp Ipperwash. Not only has tourism been affected, but businesses have been affected and the tax base of the Municipality has been seriously impaired.

2. Values of properties have been affected, declining business activity and the increased cost of providing services and maintenance to the area have had a profound effect on the Municipality budget.

3. The residents should not bear the burden of the costs of participation in this Inquiry. The residents rely on their elected officials to represent them and are relying on the Municipality to take an active and direct role in the Inquiry. They will be relying on the Municipality to represent their comprehensive interests.

The Mayor of Lambton Shores, Mr. Cam Ivey, stated as follows in his oral submissions:

> We don't have any money in the budget. We like to think that we run a pretty tight ship here but we are a small rural municipality, and if I can just give you some sort of perspective: if it's going to costs us, say, $200,000 to be - - have standing here as we go through the whole process, that's going to mean something in the order of three and one-half maybe as much as 4 per cent of our local budget – of our local tax dollar levy and that's quite significant for a community of our size.

While normally, one would expect a municipality to seek funding directly from the Province rather than through the Commission process, I am prepared to recommend funding for the Municipality for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

Chiefs of Ontario

The Chiefs of Ontario seek funding for three lawyers to participate in the hearings. The Chiefs of Ontario submit that it does not have sufficient resources to permit it to participate in the Inquiry. The Chiefs of Ontario propose to make maximum use of the resources which it can access without Commission funding.

The applications and submissions on behalf of the Chiefs of Ontario indicate that it receives core funding from the Governments of Canada and Ontario and project funding from both levels of government. As the project funding is tied to specific initiatives, the Chiefs of Ontario do not have discretionary resources for proper professional participation in the Inquiry. The Chiefs of Ontario have indicated that it does not have any independent sources of revenue.

The Chiefs of Ontario commit in its application that it will make every effort to make an independent contribution to its proposed intervention. It will contribute its office resources, which include files on First Nations policy issues. It will coordinate input from First Nations, elders and other First Nations organizations, both through direct consultation by counsel, and through the operation of a Steering Committee.

I am satisfied that the Chiefs of Ontario meet the requirement for funding. I recommend funding for two counsel including reasonable disbursements and reasonable travel and related expenses in accordance with the Government of Ontario guidelines.

Aboriginal Legal Services of Toronto

The Aboriginal Legal Services of Toronto ("ALST") is primarily funded by Legal Aid Ontario, although it does receive funding from other sources. ALST seeks funding for disbursements for out of town travel expenses for one lawyer and also to retain the services of an additional lawyer to assist in the preparation for participation in the proceedings. As noted in its application, ALST has one director, two staff lawyers and one community legal worker funded by Legal Aid Ontario. Legal Aid Ontario provides a limited amount of funding for disbursements. ALST indicates in its material that it assisted in the last calendar year 1391 clients through intake services and it presently has 379 open case files. ALST states that it requires two lawyers for the Inquiry but cannot use both its lawyers, as it will be unable to serve its clientele. I recommend:

1. funding for one counsel including reasonable disbursements for travel and related expenses in accordance with the Government of Ontario guidelines; and
2. funding for reasonable disbursements for travel and related expenses in accordance with the Government of Ontario guidelines for a second counsel.

B. Funding – Part II

The purpose of funding in Part II is to encourage and facilitate research, submissions, projects and participation from a wide variety of perspectives. I will, therefore, recommend funding to Part II parties for one of two purposes. First, I will recommend project funding to parties to undertake research, prepare submissions, organize meetings, or for other relevant projects. Second, I will recommend disbursement funding to facilitate participation in Part II hearings or meetings. I will consider applications for Part II funding if parties make a written request to the Commissioner to the attention of Nye Thomas, Director of Policy and Research, describing their proposed research/submission/project and an explanation of how this work will assist the Inquiry. Parties will also be required to explain why this work could not be undertaken without public funding. Funding for advocacy groups will not always be granted if their mandates include participation in exercises like this Inquiry. I will make these decisions on a case-by-case basis in view of the need to coordinate projects and research and to ensure that the Inquiry receives the full benefit of the party's expertise.

SUMMARY AND CONCLUSION

Standing for both Parts I and II of the Inquiry has been granted to the following parties:

1. The Estate of Dudley George and George Family Group;
2. Aazhoodena and George Family Group;
3. Residents of Aazhoodena;
4. Chippewas of Kettle and Stony Point First Nation;
5. The Province of Ontario;
6. The Honourable Michael D. Harris;

7. Charles Harnick;
8. Robert Runciman;
9. Marcel Beaubien;
10. Ontario Provincial Police;
11. Ontario Provincial Police Association;
12. Chief Coroner of the Province of Ontario;
13. Municipality of Lambton Shores;
14. Chiefs of Ontario; and
15. Aboriginal Legal Services of Toronto.

Standing for Part I only of the Inquiry has been granted to the following individuals:

1. Christopher D. Hodgson; and
2. Debbie Hutton.

Standing for Part II only of the Inquiry has been granted to the following parties:

1. Union of Ontario Indians;
2. Chippewas of Nawash Unceded First Nation;
3. Anishnabek Police Services;
4. Nishnawbe-Aski Police Services Board;
5. Centre Ipperwash Community Association;
6. Aboriginal Peoples Council of Toronto;
7. Law Union of Ontario;
8. African Canadian Legal Clinic;
9. Amnesty International Canada;
10. Canadian Civil Liberties Association;
11. Mennonite Central Committee Ontario;
12. George Simpson and Rowland Carey; and
13. The Ontario Federation of Individual Rights and Equality.

In total, 17 parties have been granted standing to participate in Part I of the Inquiry, and 28 parties have been granted standing to participate in Part II of the Inquiry. The diverse

collection of interests and perspectives that will be represented in each Part of the Inquiry is necessary if the Commission is to fulfill its mandate. However, the large number of parties involved could potentially raise logistical and procedural difficulties. There is a danger that the proceedings, particularly in Part I of the Inquiry, will become bogged down by the number of parties with the right to cross-examine witnesses and make submissions. With that in mind, I am urging counsel for each of the parties granted standing to carefully assess where the interests, perspectives and expertise of their clients coincide with the interests, perspectives, and expertise of other parties, and, where possible, to work together with a view to avoiding duplication in the questioning of any witnesses or in any submissions that may be made. Clearly, the parties are in the best position to determine how, and to which issues, they are best aligned. However, if the parties with standing are unable to cooperate to avoid duplication, I will have to intervene to avoid repetitive questioning and submissions.

I was encouraged by the constructive tone of so many of the submissions made before me at the standing hearings in Forest and I am hopeful that the co-operative relationship between the parties and Commission Counsel will continue throughout the Inquiry. I am looking forward to working with all the parties as the Inquiry proceeds.

Date: May 7, 2004

The Honourable Sidney B. Linden
Commissioner

IPPERWASH PUBLIC INQUIRY

COMMISSIONER'S RULING
RE MOTION BY THE CHIEFS OF ONTARIO AND
THE ESTATE OF DUDLEY GEORGE AND GEORGE FAMILY GROUP

The Chiefs of Ontario have brought a motion, requesting that I, as Commissioner of the Ipperwash Inquiry (the "Commission"), authorize and direct Commission Counsel to publicly release two audio recordings (the "audio recordings") provided to the Commission by one of the parties and produced by the Commission to the parties as part of the Commission's disclosure. The motion also requests that immediate and ongoing steps be taken to ensure that "any documentary evidence that is central to the mandate of the Inquiry" be released to the public as soon as practicable after such evidence becomes known to Commission Counsel. We have also been asked to take immediate and ongoing steps to publicly release any and all documentary evidence at the same time that it is provided to the Commissioner unless Commission Counsel or a party providing a particular document intends to take the position that the document should never be made public.

In a separate, parallel motion brought by the Estate of Dudley George and George Family Group, we have been asked to immediately assign an Exhibit number to and enter into the Inquiry public record, the same two audio recordings. Further, this motion seeks to have me authorize and direct Commission Counsel to immediately make these recordings available for public release and to release legal counsel for the parties to the Inquiry from their confidentiality and use undertakings in respect of these audio recordings.

The major part of this motion was heard in public, but a part of it that referred to the specific content of the audio recordings was heard *in-camera*.

Both of these motions have characterized the recordings as "documentary evidence that is central to the mandate of the Inquiry."

I have been appointed Commissioner to conduct this Inquiry by an Order in Council (1662/2003), dated November 12, 2003. Pursuant to s. 3 of the *Public Inquiries Act*, R.S.O. 1990, Chapter P. 41, (the "Act"), the conduct of this Inquiry is under the control and direction of the commissioner conducting the inquiry.

I have determined, pursuant to my authority under s. 3 of the Act and the Order in Council, that this Inquiry will be conducted under the Inquiry's Rules of Procedure and Practice (the "Rules"). All parties to the Inquiry have agreed to abide by the Rules which are available on our website.

Rule 12 of the Rules provides that:

> In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness' evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.

Pursuant to Rule 17, I have granted Commission Counsel, subject to my general authority over the conduct of the proceedings, the discretion to refuse to call or present evidence. This discretion includes, by implication, the discretion to call or present evidence in the order and manner deemed appropriate by Commission Counsel, and to disclose that evidence to the public as it is put before the Commission.

Pursuant to Rule 36, the general rule is that documents are to be treated as confidential "unless and until they are made public." That is the purpose of the confidentiality undertaking that all parties are asked to sign prior to full disclosure being made. The purpose of this Rule is to encourage comprehensive documentary production in a timely manner to the Commission. As importantly, this procedure allows the parties to participate fully in the proceedings and properly prepare for the witnesses who will be called to give evidence at the hearing. While Rule 36 does give the Commissioner the power to declare that a document should not be treated as confidential, in my view that power should only be exercised sparingly and for the reasons outlined below, should not be exercised to grant the relief sought in these motions.

In *Lyons* v. *Toronto (Computer Leasing Inquiry – Bellamy Commission)*, [2004] O.J. No. 648 (Ont. Div. Ct.), at para.38, Swinton J., set out the following passage cited by Commissioner Bellamy in her decision from the article by O'Connor A.C.J., "The role of commission counsel in a public inquiry" (*Advocates' Society Journal*, June 2003, p. 10):

> "It is with the assistance of commission counsel that the commissioner carries out his or her mandate, investigating the subject matter of the inquiry and leading evidence at the hearings. Throughout, commission counsel act on behalf of and under the instructions of the commissioner."

These motions have requested that I override the discretion I have conferred on Commission Counsel with respect to the calling and public disclosure of certain evidence at the Inquiry. In my view, it is neither necessary nor appropriate to do so in the circumstances.

As Cory J. noted in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 457 (at para. 30) (S.C.C.), citing *Phillips* v. *Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 (at pp. 137-138) (S.C.C.), one of the primary functions of public inquiries is fact-finding and investigation.

The investigative process of the Part I hearings of this Inquiry will involve, *inter alia*, the identification of those documents that are "central to the mandate of the Inquiry". The role of Commission Counsel is to locate the documents, analyze them, put them into context and then to introduce them into evidence through witnesses testifying at the public inquiry. That is the process that has been followed in other inquiries and it is the process being followed in this Inquiry. In my view, this Inquiry is proceeding exactly as it is supposed to. A great deal of documentary evidence has been obtained, it is being analyzed and evaluated on an ongoing basis and it will be presented publicly at this Inquiry. The hearing component of the investigative process is in the early stages, with only a few of the many witnesses who will eventually be called having testified thus far.

The characterization, weight, and proof of any and all documentary evidence to be put before the Commission will continue throughout the proceedings and will be completed by my findings, once I have heard all of the evidence that will ultimately be put before the Commission.

The Chief of Ontario's motion requests that those documents "central to the mandate of the Inquiry" be immediately disclosed to the public. To date, tens of thousands of documents have been produced to the Commission by the various parties. That production process has yet to be completed, with several of the parties having indicated that they have further documents to produce.

Given the number of documents produced to the Commission, the incompleteness of the documentary production process by the parties, the still relatively early stage of the investigation, and the lack of an evidentiary or testamentary foundation for the characterization or proof of such "central" documents, it is premature for either the Commission or parties to the Inquiry to identify all of those documents that will ultimately be considered "central to the mandate of the Inquiry". Furthermore, the characterization of particular documents as "central to the mandate of the Inquiry" is, in essence, a finding as to the appropriate weight that should be placed on those documents. These recordings may indeed be central to the mandate of the Inquiry, but that is a finding that should only be made at the culmination of the Inquiry process after all of the evidence has been heard, rather than at its inception.

Commission Counsel have a duty to present the evidence to the Commission and public in a manner that is impartial, balanced, fair, thorough and orderly.

It would be premature and inconsistent with the duty of Commission Counsel to present evidence in an impartial, balanced, fair, thorough, and orderly manner, to characterize any document or documents as "central to the mandate of the Inquiry",

and to disclose it to the public before it has been introduced in its proper context through the hearing process.

In my view, Commission Counsel need to retain the discretion afforded them under the Rules to call evidence in such a manner, order and timing as to permit the impartial, orderly, logical, fair, and probative presentation of all of the evidence that will ultimately be put before the Commission.

Commission Counsel in accordance with their duty have determined an order to the presentation of witnesses which in their view ensures the evidence is presented logically, comprehensively, and understandably to both the parties and the public as follows:

(a) Expert historical witnesses (already called);
(b) First Nations and other community witnesses (in progress);
(c) Emergency medical personnel;
(d) Police officers; and
(e) Civil servants and politicians.

The need for an orderly and thoughtful plan is particularly important in an Inquiry such as this one with voluminous productions and numerous and complex factual issues.

This order is subject to change, due to the evolving nature of the investigation and evidence before the Commission, the availability of certain witnesses, and any other considerations that may affect Commission Counsel's evaluation of the appropriateness of this intended order. The submissions of the various counsel in this motion while differing in many respects, all acknowledged the importance of hearing evidence in context, and I am confident that Commission Counsel will continue to publicly disclose documentary evidence when it becomes relevant to the testimony afforded by each witness, or as it becomes otherwise necessary to comply with the obligation of the Commission to ensure procedural fairness in these proceedings.

The parties to the conversation on the audio recording as well as the parties mentioned in the discussions will be called as witnesses. These witnesses will be called in a manner and at a time to be determined at the discretion of Commission Counsel, and consistent with the duty of Commission Counsel to present evidence in a balanced, orderly, and logical fashion.

Mr. Horton has proposed, among other things, that Commission Counsel create a compendium of key documents for use by all of the parties and the Commissioner as is done in certain civil cases. At first blush, this proposal may appear to have some merit. However, in considering this proposal, it is important to remember what and how a compendium is used, for example, in Commercial Court, where it was first formally recognized, as provided in the Commercial Court Practice Direction.

Paragraph 47 of the Commercial Court Practice Direction states as follows:

> "In appropriate cases, to supplement any required formal record, counsel are requested to consider preparing an informal Compendium of key materials to be referred to in argument (fair extracts of documents, transcripts, previous orders, authorities, etc.) to assist in focusing the case for the Court: (see Saskatchewan Egg Producers' Marketing Board v. Ontario, [1993] O.J. No. 434.) Relevant portions of the Compendium should be highlighted or marked. Counsel are urged to consult among themselves in the preparation of a joint compendium, if possible. The compendium should contain only essential material. The use of a loose-leaf format is particularly helpful to the Court both for conducting hearings and for writing decisions."

The Rules of Civil Procedure also recognize compendiums in Rule 61.10 for use on appeals. The compendium forms part of the Appeal Book and Compendium and is separate from the Exhibit Book. It is clear from reviewing Rule 61.10(1) that the compendium for use on appeals is to serve the same purpose as the Commercial Court compendium, that is, to assist in the argument of the appeal by putting together extracts from transcripts and the documents that are going to be referred to during the argument of the appeal.

We are not close to the argument stage or submissions in this Inquiry, and the preparation of this type of compendium would not, in my view, be of any assistance, at this stage.

Mr. Horton and Mr. Klippenstein suggested that Commission Counsel create a compendium which is more like a joint exhibit book of key documents prepared for use at trial in many civil cases. However, in a civil case, counsel put together an Exhibit Book, on consent. With 17 parties, plus Commission Counsel, the process of attempting to create such an agreed upon joint Exhibit Book would in all likelihood be so time consuming as to be unworkable. Each party would need to identify what they suggest are the "key documents". All of the parties would then have to agree on the characterization of those documents as "key documents", to be included in an Exhibit Book. Such an exercise with two, three or even four parties would take a long time and in the end, might not be successful. With seventeen parties, many with different interests, this process could take weeks if not months. Ultimately, there might be so little agreement that the time would have been wasted. And rather than focusing on presenting the evidence and moving forward with the Inquiry, Commission counsel would be focused on trying to achieve a consensus among the parties as to the documents to go into the Exhibit Book. This exercise would ultimately greatly delay the completion of this Inquiry as witnesses would be deferred until this Exhibit Book was compiled. I do not believe, it is in the general public interest to prolong this Inquiry by engaging in this proposed exercise.

On the other hand, if the Compendium were simply composed of every document that every party considered to be a key document, it might not look much different than the productions themselves and be of very little value.

Mr. Horton submitted that just because certain procedures have been followed in other inquiries is no reason to slavishly follow them in this Inquiry. I agree with that submission and we are prepared to consider new or better ways of proceeding. Mr. Horton acknowledged that the Osgoode Symposium and the forthcoming Indigenous Knowledge Forum are examples of our willingness to be innovative.

However, to allow the Chiefs of Ontario's motion could fundamentally alter the nature of the public inquiry process. That may not have been the applicant's intention, but, as one counsel noted in his oral submissions opposing the motion – and I'm paraphrasing – it could result in 'wholesale dumping' of documents into the public realm without a real opportunity to evaluate their significance and before they are tendered through witnesses at the Inquiry who are entitled to comment upon their accuracy, their reliability or to give context to them. He further noted that this could contribute to a process where it becomes more important to argue one's case in the media, rather than in the inquiry. That is not a process that I wish to contribute to.

From the outset of this Inquiry, I have asked Commission Counsel to consult with parties regarding the process to be followed by this Inquiry. I am also encouraging any party who has suggestions to make regarding the conduct of this Inquiry to meet with Commission counsel to discuss them. That is the approach that has been followed in this Inquiry to date and will continue throughout the Inquiry. I value and appreciate the suggestions of any party to these proceedings.

When it is determined that the evidence on the audio recordings are sufficiently relevant, Commission Counsel will enter the recordings as evidence and they will be made public before this Inquiry at that time.

At the risk of being repetitive, it is important for me to repeat that the audio recordings are not secret. They will be introduced in this Inquiry and thereby will be made publicly available. However, in my judgment, their immediate release and the other relief sought in these motions is neither required nor advisable. Accordingly the motions are dismissed.

October 12, 2004

IPPERWASH PUBLIC INQUIRY

COMMISSIONER'S RULING
RE MOTION BY THE ONTARIO PROVINCIAL POLICE AND
THE ONTARIO PROVINCIAL POLICE ASSOCIATION

Introduction

1. The Ontario Provincial Police (the "OPP") and the Ontario Provincial Police Association (the "OPPA") have brought a motion requesting that I set aside the summons that I issued to Commissioner Gwen Boniface of the OPP on June 15, 2005 (the "Summons").

2. The Summons requires Commissioner Boniface to attend before the Inquiry and to produce the following documents:

> (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.

3. The OPP resists production of the records sought in items (1) and (2) in the absence of a judicial order. The OPP's position is that sections 69(9) and 80 of the *Police Services Act*, R.S.O. 1990, c. P.15 prevent disclosure of internal complaint files to a public inquiry; that a third party records analysis as undertaken in *A.M.* v. *Ryan,* [1997] 1 S.C.R. 157 before a judge of the Superior Court of Justice is necessary before the records can be disclosed; and that the records are privileged on the basis of common law privilege principles.

4. The OPPA objects to the disclosure or production of the contents of the discipline files on the basis of statutory prohibition under sections 69 and 80 of the *Police Services Act.* The OPPA submits further that the materials sought are inadmissible evidence at a public inquiry by virtue of sections 69(9) and 69(10) of the *Police Services Act*, section 11 of the *Public Inquiries Act*, and common law rules governing third party records and confidentiality. The OPPA submits that before the records can be produced to the Commission for inspection, the test for production of third party records as set out in *R.* v. *O'Connor* (1995), 103 C.C.C. (3d) 1 (S.C.C.) must be met.

5. The Province of Ontario objects to the production of the materials on the basis that they are not relevant to the mandate of the Inquiry, and in the alternative are privileged. In the Province's view, an *O'Connor* or *Ryan* application is not necessary, and the issue can be decided on the basis of privilege.

6. Aboriginal Legal Services of Toronto ("ALST") responds to the motion of the OPP and the OPPA and requests that their motion to quash the Summons to Commissioner Gwen Boniface dated June 15, 2005 be dismissed, and that the materials subject to the Summons be produced to the parties with standing. ALST argues that sections 69 and 80 of the *Police Services Act* are inapplicable to the records over which privilege is asserted, and that the records do not satisfy the test for "case-by-case" privilege under the common law.

7. The Chiefs of Ontario opposes the motion of the OPP and OPPA on the basis that the documents sought under the Summons are highly relevant and that there is no statutory or common law bar to the Commission issuing the Summons.

8. Written submissions were received by the Commission from the parties that decided to make submissions, and oral argument was heard in public at the Inquiry on July 19 and July 20, 2005.

Facts

9. On May 31, 2005, Deputy Commissioner John Carson of the OPP testified before this Inquiry about comments made by Officers Dyke and Whitehead on September

5, 1995. On September 5, 1995, Officers Dyke and Whitehead were engaged in surveillance of the Ipperwash Provincial Park and the Army Camp, during the course of which they made a videotape. The following exchange occurs in the videotape entered as Exhibit P-452 at the Inquiry and transcribed at pages 239-241 of the May 31, 2005 hearing transcript:

SPEAKER 1: What the fuck is this? UP --
SPEAKER 2: You're not supposed to be drinking over in that area.
SPEAKER 1: Yeah, what we're freelance?
SPEAKER 2: (laughs) What --
SPEAKER 1: What are we supposed to be, UPS?
SPEAKER 2: UPA.
SPEAKER 1: He said UPS. Where are you guys from? UPS.
SPEAKER 2: UPS.
SPEAKER 1: United --
SPEAKER 2: Parcel Service, sir.
SPEAKER 1: -- Postal.
SPEAKER 2: And we're disgruntled. Still a lot of press down there?
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 (5) or six (6) 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.

10. Deputy Commissioner Carson testified on May 31, 2005 that internal disciplinary action was taken against both officers involved in this exchange (*May 31, 2005 transcript, page 241, lines 15 and 16*). He stated that he was not aware of the particular disciplinary action, but knew that a formal hearing under the *Police Services Act* was not held (*May 31, 2005 transcript, page 242, lines 3 and 6).*

11. On June 1, 2005 after informing himself of additional information about the discipline imposed on Officers Dyke and Whitehead, Deputy Commissioner Carson testified that when the incident came to light, Officer Dyke had retired from the OPP and was working for the OPP on a contract basis. At the conclusion of the investigation into the incident, Officer Dyke no longer provided services to the OPP (*June 1, 2005 transcript, page 16, lines 8-25*). Officer Whitehead accepted informal discipline which consisted of forfeiting three days pay and attending four days of First Nations awareness training (*June 1, 2005 transcript, page 18, lines 2-25*).

12. Also on June 1, 2005 Deputy Commissioner Carson testified that several officers had been subject to informal discipline as a result of their involvement in the production and distribution of mugs and t-shirts in relation to Ipperwash (*June 1 transcript, page 26, lines 9-11*). A CD-Rom with images of the mugs and t-shirts was entered as Exhibit P-458 at the Inquiry. The mug depicts a "Team Ipperwash '95" logo and an image of an arrow through an OPP shoulder flash. The t-shirt depicts an "E.R.T., T.R.U., '95" logo with a horizontal white feather underneath it. In aboriginal tradition, the arrow and feathers symbolize dead warriors (*June 1 transcript, page 28, lines 19-22*).

13. On June 1, 2005, counsel for ALST requested production through Commission counsel of: the discipline files maintained by the OPP in respect of the "discredible conduct" of Officers Dyke and Whitehead consisting of the videotaped verbal exchange; the discipline files maintained by the OPP in respect of the mug and t-shirt distributions; and the orders, policies, guidelines and/or procedures maintained by the OPP in respect of the usage of "informal discipline".

14. On June 7, 2005, Counsel for the OPP wrote to Commission counsel and refused to produce the discipline files, stating: "The OPP as a matter of policy and in

reliance upon existing statutory authority, cannot produce, upon request, internal complaint files."

15. On June 15, 2005, I issued the Summons to Commissioner Gwen Boniface of the OPP requiring Commissioner Boniface to attend before the Inquiry and to produce:

> (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.

16. The OPP has provided to the Commission the orders and policies referred to in item (3) but has refused to produce the files referred to in (1) and (2).

17. The general course of conduct adhered to by this Commission to obtain documents from the OPP has been as follows: Commission counsel have requested that documents be produced and the OPP has then asked that a summons be issued. Once a summons has been served, the OPP has produced the records sought to the Commission. In this case, notwithstanding that a summons was issued, the OPP refused to produce the documents.

Powers of the Commission

18. I have been appointed Commissioner to conduct this Inquiry by an Order in Council (1662/2003) dated November 12, 2003. Pursuant to section 3 of the *Public Inquiries Act*, R.S.O. 1990, Chapter P. 41, the conduct of an inquiry is under the control and direction of the commission conducting the inquiry.

19. Section 2 of the *Public Inquiries Act* states a commission may be appointed when the Lieutenant Governor in Council:

> considers it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario or the conduct of any part of the public business thereof or of the administration of justice therein or that the Lieutenant Governor in Council declares to be a matter of public concern . . . the Lieutenant Governor in Council may, by commission, appoint one or more persons to conduct the inquiry.

20. Under the Order in Council that established this Commission, the Lieutenant Governor in Council has appointed me as Commissioner to:

> (a) inquire into and report on events surrounding the death of Dudley George; and
>
> (b) make recommendations directed to the avoidance of violence in similar circumstances.

21. The Commission has a fact-finding mandate and broad powers to summon relevant witnesses and documents to fulfill that mandate. Subsection 7(1) of the *Public Inquiries Act* provides:

> Power to summon witnesses, papers, etc.
>
> 7.(1) A commission may require any person by summons,
>
> (a) to give evidence on oath or affirmation at an inquiry; or
>
> (b) to produce in evidence at an inquiry such documents and things as the commission may specify,
>
> relevant to the subject-matter of the inquiry and not inadmissible in evidence at the inquiry under section 11.

22. Section 11 of the *Public Inquiries Act* provides:

> Privilege
>
> 11. Nothing is admissible in evidence at an inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.

23. Pursuant to the *Act*, the legislature has signaled that a public inquiry may admit evidence that is otherwise inadmissible in a court of law subject to one exception: assuming it is relevant, the only evidence that is inadmissible in a public inquiry is evidence protected by a privilege.

24. The legislature's intention to allow for the broad admission of evidence in public inquiries is consistent with the purpose of public inquiries. As Cory J. stated in *Canada (Attorney General)* v. *Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 457 (at para. 30), citing *Phillips* v. *Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 (at pp. 137-138), one of the primary functions of public inquiries is fact-finding and investigation. According to Cory J. in *Canada (Attorney General)* v. *Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 457 (at para. 34):

> A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages. Rather, an inquiry is an investigation into an issue, event, or series of events. The findings of a commissioner relating to that investigation are simply findings of fact and statements of opinion reached by the commissioner at the end of the inquiry. They are unconnected to normal legal criteria. They are based upon and flow from a procedure which is not bound by the evidentiary or procedural rules of a courtroom. There are no legal consequences attached to the determinations of a commissioner. They are not enforceable and do not bind courts considering the same subject matter. The nature of an inquiry and its limited consequences were correctly set out in *Beno* v. *Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia),* [1997] 2 F.C. 527, at para. 23:
>
> > "A public inquiry is not equivalent to a civil or criminal trial. . . In a trial, the judge sits as an adjudicator, and it is the responsibility of the parties alone to present the evidence. In an inquiry, the commissioners are endowed with wide-ranging investigative powers to fulfil their investigative mandate . . . The rules of evidence and procedure are

> therefore considerably less strict for an inquiry than for a court. Judges determine rights as between parties; the Commission can only "inquire" and "report" . . .Judges may impose monetary or penal sanctions; the only potential consequence of an adverse finding . . . is that reputations could be tarnished."

Rules of Procedure and Practice of this Inquiry

25. I have determined, pursuant to my authority under section 3 of the *Public Inquiries Act* and the Order in Council, that this Inquiry will be conducted under the Inquiry's Rules of Procedure and Practice (the "Rules"). All parties to the Inquiry have agreed to abide by the Rules. The Order in Council establishing this Inquiry provides in paragraph 9:

> All ministries, Cabinet Office, the Premier's Office, and all boards, agencies and commissions of the government of Ontario shall, subject to any privilege or other legal restrictions, assist the commission to the fullest extent so that the commission may carry out its duties.

26. Rule 13 of the Rules of the Inquiry specifically highlights that all relevant evidence is admissible in a public inquiry unless it is privileged:

> Subject to section 11 of the *Public Inquiries Act*, the Commissioner is entitled to receive any relevant evidence at the Inquiry, which might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.

27. Under the Inquiry Rules, I have the power to order production of documents over which privilege has been claimed to Commission counsel. Rule 32 provides:

> The Commission expects all relevant documents to be produced to the Commission by any party with standing where the documents are in the possession, control or power of the party. Where a party objects to the production

> of any documents on the grounds of privilege, the document shall be produced in its original unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party and/or that party's counsel may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling or may direct the issue to be resolved by the Regional Senior Justice in Toronto or His designate.

28. In *Lyons* v. *Toronto Computer Leasing Inquiry* (2004), 70 O.R (3d) 39 (Div. Ct.), Jeffrey Lyons sought an order quashing a ruling of the Honourable Denise Bellamy, Commissioner of the Toronto Computer Leasing Inquiry, which provided for Commission counsel to review documents over which Mr. Lyons was claiming solicitor-client privilege. In its decision, the Divisional Court confirmed that a commissioner has the power to determine whether documents are privileged and, therefore, inadmissible in Commission hearings (*Lyons* v. *Toronto Computer Leasing Inquiry* at para. 35). The Court also upheld the procedure of Commission counsel screening documents for privilege (at paras. 38-44).

There is no statutory privilege

29. In my view, the sections of the *Police Services Act*, upon which the OPP and the OPPA rely, do not create a statutory privilege over the documents.

30. Section 80 of the *Police Services Act* provides:

> Every person engaged in the administration of this Part shall preserve secrecy with respect to all information obtained in the course of his or her duties under this Part and shall not communicate such information to any other person except,
>
> (a) as may be required in connection with the administration of this Act and the regulations;
>
> (b) to his or her counsel;

(c) as may be required for law enforcement purposes; or

(d) with the consent of the person, if any, to whom the information relates.

31. Statutory secrecy and confidentiality provisions do not confer privilege. In *Transamerica Life Insurance Co. of Canada* v. *Canada Life Assurance Co*. (1995), 27 O.R. (3d) 291 (Gen. Div.), Justice Sharpe considered the issue of whether the Office of the Superintendent of Financial Institutions was required to produce documents in light of the following confidentiality provisions:

(a) section 22 of the *Office of the Superintendent of Financial Services Act*, R.S.C. 1985, c. 18 which provides: "(1) All information (a) regarding the business or affairs of a financial institution or persons dealing therewith that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament . . . . is confidential and shall be treated accordingly"; and

(b) section 672 of the *Insurance Companies Act*, S.C. 1991, c, 47 which provides: "(1) Subject to section 673, all information regarding the business or affairs of a company, society, foreign company or provincial company or persons dealing therewith that is obtained by the Superintendent, or by any person acting under the direction of the Superintendent, as a result of the administration or enforcement of any Act of Parliament is confidential and shall be treated accordingly."

32. Justice Sharpe in the *Transamerica Life Insurance* decision at paragraph 25 said the following with respect to statutory confidentiality:

> . . . a statutory promise of confidentiality does not constitute an absolute bar to the information sought here, in my view, a statutory promise of confidentiality does not constitute an absolute bar to compelling production of the documents and information in the possession and control of OSFI. I see no reason to give statutory confidentiality a higher degree of protection that any other form of confidentiality. There is no reason why Parliament should be taken to have adopted the legal category of confidentiality without intending that category to have its ordinary legal meaning and effect. It is well established that confidential information may be

> subpoenaed and introduced in evidence if ordered by a court. The general rule is that although information is confidential, it must be produced unless the test laid down in *Slavutych* v. *Baker,* [1976] 1 S.C.R. 254 is met. Parliament could have provided that the information and documents at issue here could not be compelled by summons, but in my view, to accomplish this end, specific language to that effect would be required.

33. The OPP sought to distinguish this case on the basis that section 80 of the *Police Services Act* is different from the provisions considered by Justice Sharpe because it contains exceptions for when information may be communicated. In my view, the enumeration of these exceptions does not change the nature of section 80 of the *Police Services Act*: it is a confidentiality or secrecy provision, and not a privilege provision.

34. The OPP also submitted that it relies on the following passage by Peter Hogg in *Liability of the Crown,* quoted in the *Transamerica Life Insurance* decision: "Many statutes contain provisions that expressly make information confidential . . . The scope of these provisions is a matter of interpretation in each case. Those provisions that specifically prohibit the introduction of evidence in court will obviously be effective to withhold the protected material from litigation . . . ". In my view, this statement points to the necessity of looking to the specific language of a statute to interpret its provisions in a given case.

35. If the legislature intended to establish a privilege, it would have done so explicitly. The *Education Act*, for example, creates a statutory privilege over pupil records:

> A record is **privileged** for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction of the pupil, and such record,
>
> (a) subject to subsections (2.1), (3) and (5), is not available to any other person; and
>
> (b) except for the purposes of subsection (5), is not **admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other**

> **proceeding**, except to prove the establishment, maintenance, retention or transfer of the record,
>
> without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the written permission of the pupil. R.S.O. 1990, c. E.2, s. 266 (2); 1991, c. 10, s. 7 (2). [emphasis added]

36. Subsection 69(9) of the *Police Services Act* provides:

> (9) No document prepared as a result of a complaint is admissible in a civil proceeding, except at a hearing held under this Part.

37. Subsection 69(9) of the *Police Services Act* uses neither the word "privileged", nor does it delineate a broad category of proceedings as is the case in the *Education Act*; instead, it refers only to documents being inadmissible in civil proceedings.

38. Pursuant to section 11 of the *Public Inquiries Act* and in accordance with the broad investigative mandate of public inquiries, evidence that is inadmissible in civil proceedings may be admissible in public inquiries: the only exclusion is for privilege. If the legislature had intended to exclude evidence that is inadmissible in a civil proceeding from admission in public inquiries, the legislature would have referred to this exclusion expressly. When a provision specifically mentions one or more items but is silent with respect to other items that are comparable, it is presumed that the silence is deliberate and reflects an intention to exclude the items that are not mentioned (Sullivan, *Sullivan and Driedger on the Construction of Statutes,* Fourth Edition (2002), Butterworths: at p. 187).

39. In my view, section 11 of the *Public Inquiries Act* is a full answer to the question of whether the *Police Services Act* prevents the admission of the discipline files as evidence at the Inquiry; however, the OPP and the OPPA have raised the issue of whether a public inquiry is a "civil proceeding" as referred to in section 69 of the *Police Services Act*.

40. *Canada (Solicitor General)* v. *Ontario (Royal Commission of Inquiry into Confidentiality of Health Records)*, [1981] 2 S.C.R. 494, the case relied on by the OPP and the OPPA for the proposition that a public inquiry is a civil proceeding does not interpret "civil proceeding" to include a judicial inquiry. This decision stands for the proposition that the police informer privilege applies to a public inquiry. It does not define a public inquiry as a civil proceeding.

41. The OPPA relies on *Re Newfoundland and Labrador & Royal Newfoundland Constabulary Association*, (2004) 133 L.A.C. (4th) 289 (Arbitrator Oakley) as authority for the proposition that a judicial inquiry is a civil proceeding. This case is distinguishable as it relates to the interpretation of a collective agreement.

42. In my view, a public inquiry is not a "civil proceeding" as referred to in the *Police Services Act*. A public inquiry is an investigative and not an adjudicative process. It is inquisitorial not adversarial. Under the mandate of this Inquiry, I can make no determination of civil or criminal liability, nor can I impose damages or penalties. The Order in Council establishing the Commission provides that:

> The commission shall perform its duties without expressing any conclusions or recommendation regarding the civil or criminal liability of any person or organization. The commission, in the conduct of its inquiry, shall ensure that it does not interfere with any ongoing legal proceedings relating to these matters.

43. My conclusion that the phrase "civil proceedings" does not include public inquiries is supported by legal dictionary definitions of the words "civil" and "proceeding":

(a) The *Canadian Law Dictionary* (Fourth Edition (1999), Barron's: at p. 47) provides the following definition of the word "civil" but does not contain a definition of "proceeding":

> **CIVIL** 1. The branch of law that pertains to suits other than criminal practice and is concerned with the rights and duties of persons in contract, tort, etc.; 2. civil law as opposed to common law;

(b) The *Dictionary of Canadian Law* (Third Edition (2004), Thomson Carswell: at p. 192 and 998-999) provides the following definition of the words "civil" and "proceeding":

> **CIVIL**. *adj*. 1. Of legal matters, private as opposed to criminal. 2. Used to distinguish the criminal courts and proceedings in them from military court and proceedings. 3. Used to distinguish secular from religious.
>
> . . . .
>
> **PROCEEDING.** *n*. . . . . 8. Includes an action, application or submission to any court or judge or other body having authority by law or by consent to make decisions as to the rights of persons.

44. A public inquiry is of a very different nature from both civil trials and administrative hearings. In civil actions and purely administrative hearings, there is some *lis* between the participants, which the decision-maker must determine. An adversarial process is engaged and the role of the judge or tribunal is to reach a decision with respect to that *lis* based on the evidence and argument presented. In contrast, there is no *lis* in a public inquiry. Public inquiries are investigative.

45. The OPP has argued that because section 69(9) of the *Police Services Act* defines “civil proceeding” to include hearings held under Part V of the *Police Services Act*, which can result in findings of misconduct similar to those that may be made in public inquiries, a “civil proceeding” must also include a public inquiry. In my view, a hearing under the *Police Services Act* is quite different from a public inquiry because it is adversarial and because it can result in penalties being imposed on the officers involved.

46. Accordingly, the *Police Services Act* does not provide a statutory bar to the Commission’s receipt of the summonsed discipline files, or to production of the allegedly privileged documents to Commission counsel.

Third Party Records Analysis

47. The third party records analysis proposed by the OPP and the OPPA has no application. While some of the criminal cases in which records relating to officers’

misconduct and discipline are sought by accused persons do refer to the privacy interest of officers in relation to their employment records, in the cases that follow *R.* v. *O'Connor* (1985), 103 C.C.C. (3d) 1 (S.C.C.), in the context of police discipline files, the "third party" is the police and not the individual officer. Typically, an accused will seek production of documents relating to the investigating officers. Such documents are in the possession of the police and not in the possession of the Crown. The documents are therefore not automatically producible to the accused under the Crown's disclosure obligations.

48. In this case, the documents are within the possession of a party to this proceeding, which, as such, has an obligation to produce relevant documents. It is within my mandate to make decisions regarding relevance and privilege.

Case-by-Case Privilege

49. I have determined that there is no statutory privilege or bar in the *Police Services Act* with respect to the documents sought. There may be a claim of common law case-by-case privilege based on the Wigmore criteria as referred to in *Slavutych* v. *Baker,* [1976] 1 S.C.R. 254 and *A.M.* v. *Ryan*, [1997] 1 S.C.R. 157 at para. 20; however, without access to the documents, neither Commission counsel nor I can assess whether the documents are privileged.

50. My decision with respect to possible case-by-case privilege is reserved pending review of the documents by Commission counsel and if necessary, by me.

Waiver

51. ALST submitted that privilege, to the extent that it is found to exist at law and on these facts, over the discipline files in relation to Officers Dyke and Whitehead has been waived by virtue of Deputy Commissioner Carson's disclosure to the Commission and to the public of the details of the discipline imposed on the officers. In my view, there has been no waiver by the OPP or its officers as a result of the disclosure to the Commission or to the public of the details of the discipline with the consent of the officers.

Ruling

52. In my view, the documents should be produced to Commission counsel. Accordingly, my ruling is as follows:

(i) Documents over which privilege are claimed should be produced to Commission counsel in accordance with Rule 32, which delineates the procedure upheld in *Lyons* v. *Toronto Computer Leasing Inquiry*, (2004) 70 O.R (3d) 39 (Div. Ct.);

(ii) There is no statutory privilege or bar preventing the production of the documents required by my summons to Commissioner Boniface dated June 15, 2005; and

(iii) A third party records analysis by a Judge of the Superior Court of Justice has no application because the documents are held by a party to this Inquiry.

53. The OPP is required to produce the discipline files in respect of the "discredible conduct" of Detective Constable James Dyke and Detective Constable Darryl Whitehead on September 5, 1995, and the discipline files maintained by the OPP in respect of the mugs and t-shirt distributions. The documents should be produced to Commission counsel who will review the documents. I will then make my decision regarding the claim of common law, case-by-case privilege.

54. Therefore, the motions to set aside the Summons are dismissed. I direct that:

(i) The OPP shall deliver the following documents to Commission counsel by no later than 5:00 p.m. August 22, 2005:

(1) The discipline files maintained by the OPP in respect of the "discredible conduct" of Detective Constable James Dyke and Detective Constable Darryl Whitehead; and

(2) The discipline files maintained by the OPP in respect of the mugs and t-shirt distributions.

(ii) Commission counsel shall review the documents for relevance and possible privilege;

(iii) The review will be conducted confidentially on Inquiry premises;

(iv) Counsel for the OPP and the OPPA may attend and participate in the review; and

(v) Relevant and non-privileged material will be distributed to parties with standing in the usual manner employed by this Inquiry.

55. The OPPA has requested that if after hearing submissions I want to enforce the Summons by requiring the OPP to produce the documents to Commission counsel, I should first state a case in writing to the Divisional Court in accordance with subsection 6(1) of the *Public Inquiries Act*. If, after consideration of this ruling, the OPPA still wishes me to state a case, the OPPA should provide confirmation of this request including the particulars of the case to be stated no later than 5:00 p.m. on August 19, 2005.

Released: August 15, 2005

The Honourable Sidney B. Linden
Commissioner

IPPERWASH PUBLIC INQUIRY

COMMISSIONER'S RULING
RE MOTION BY ABORIGINAL LEGAL SERVICES OF TORONTO AND THE AAZHOODENA AND GEORGE FAMILY GROUP HEARD MAY 23, 2006

INTRODUCTION

1. This a motion brought by Aboriginal Legal Services of Toronto and the Aazhoodena and George Family Group for the relief set out below. This motion is supported by The Estate of Dudley George and members of the George Family, the Residents of Aazhoodena, the Kettle Point & Stony Point First Nation and the Chiefs of Ontario. The motion is opposed by the Ontario Provincial Police Association and the Ontario Provincial Police. The Province of Ontario and the other parties, took no position on this motion.

2. The motion seeks the following:

> 1) An order by the Honourable Commissioner Linden directed at the Ontario Provincial Police (the "OPP") and the Ontario Provincial Police Association (the "OPPA") as follows:
>
> > i) That the OPP by operation of formal order require all officers to preserve and surrender any and all memorabilia, mementoes or souvenirs relating to the events at Ipperwash Provincial Park from August 1 to November 1, 1995, including but not limited to any forms of clothing (including t-shirts), mugs or any other items that relate to or commemorate Ontario Provincial Police operations at Ipperwash Provincial Park during the designated time period;
> >
> > ii) That the OPPA formally notify its members of its obligations pursuant to this Honourable Commission's Rules of Procedure and Practice with specific reference to the obligations of the members to preserve and surrender any and all memorabilia, mementoes or souvenirs relating to the events at Ipperwash Provincial Park from August 1 to November 1, 1995, including but not limited to any forms of clothing (including t-shirts), mugs or any other items that relate to or commemorate Ontario Provincial Police operations at Ipperwash Provincial Park during the designated time period;

1a) The issuance of a summons pursuant to s. 7 of the *Public Inquiries Act* directed at the Ontario Provincial Police and/or Commissioner Gwen Boniface requiring the collection and production to the Inquiry of any and all memorabilia, mementoes or souvenirs in the possession of Ontario Provincial Police officers relating to the events at Ipperwash Provincial Park from August 1 to November 1, 1995, including but not limited to any forms of clothing (including t-shirts), mugs or any other items that relate to or commemorate Ontario Provincial Police operations at Ipperwash Provincial Park during the designated time period;

2) An order by the Honourable Commissioner providing for the release of the unedited versions of exhibits P1051, P1052 and P1053 (the "discipline records"); and

3) In the alternative, an order by the Honourable Commissioner providing for the disclosure of all edited information in exhibits P1051 and P1052 (the discipline records) that pertains to the identity and role of any individuals and/or officials who participated formally or informally in the investigative and discipline process.

BACKGROUND

3. In my ruling dated August 15, 2005, I found that there was no statutory privilege attached to the discipline documents. I ordered production to Commission counsel of discipline files maintained by the OPP in respect of the mugs and t-shirts distributions and the discipline files maintained by the OPP in respect of the "discreditable conduct" of Detective Constable James Dyke and Detective Constable Darryl Whitehead for a case-by-case privilege review. In addition, the discipline files in respect of a beer can and feathers, a bulls-eye and arrow and certain cartoons and comments on a Pinery Park blackboard were covered by my order as well as the discipline file in respect to Constable Chris Cossitt relating to the comments made by Fraser, J., in his reasons for judgment in *The Queen* v. *Kenneth Deane*. Pursuant to my order, the files were provided to Commission counsel. The OPPA requested that I state a case to the Divisional Court with respect to my ruling on the issue of statutory privilege and the production of the documents. The request by the OPPA was supported by the OPP and the Province of Ontario.

4. Discussions took place between my counsel and counsel for the OPPA, OPP and the Province of Ontario. The parties and my counsel agreed, subject to my approval, on the following which was noted on the record on February 6, 2006 at pages 13 to 16:

> We are able to avoid this outcome by settlement which we negotiated on your authority with the Ontario Provincial Police, the Ontario Provincial Police Association and the Province.
>
> Let me describe the settlement in simple terms. The OPP, OPPA, and Province have consented to releasing the discipline files to the Commission for distribution to the Parties on the following conditions.
>
> First, the names and information which could reasonably identify the police officers who had no involvement with the events from September 4th to 6th, 1995, have been redacted and second the names and information which could reasonably identify the MNR or the Ministry of Natural Resources personnel who were interviewed by the OPP investigators have been redacted.
>
> Let me be clear, however, as to what is remaining in the records. First, the names of all police officers who had some involvement in the events from September 4 to 6, 1995, remain in the record and are disclosed by virtue of their consent.
>
> This includes references made to and/or statements given by the Incident Commander then Inspector John Carson, then Acting Detective Staff Sergeant Mark Wright, Staff Sergeant Klaus Bouwman, Sergeant Kent Skinner, then Superintendent Anthony Parkin.
>
> As well, other officers have consented to their names being publicly disclosed including Commissioner Gwen Boniface, former Deputy Commissioner Nagel, former Commissioner Tom O'Grady, and the lead investigator on the Omnibus complaint, Dennis Atkin (*sic*).
>
> It also includes the three (3) subject police officers who were involved in the events from September 4 to 6, 1995, being Detective Chris Cossitt and Detective Constables Whitehead and Dyke.
>
> Second, of the police officers whose names have been redacted, none of these officers had any involvement in the events of September 4 to 6, 1995, but rather came after September 6th, 1995. Further, none of these police officers were local; that is none were assigned to the Forest detachment at the relevant time period.

Two (2) other conditions were attached to the proposal by the OPP, OPPA, and the Province. First, they have consented to the release and public disclosure of this information without prejudice to their positions as originally argued before you regarding the applicability of the Police Services Act and the existence of privilege.

Second, while they do not consent to these documents being made exhibits in this proceeding they will not challenge the admissibility of the files and the circumstances of the resolution of this matter so that the Inquiry may continue to complete Part 1 without the interruption and delay which would be caused by court proceedings.

Your Counsel carefully considered these conditions in their review of the discipline files and have concluded that they are fair and reasonable and will not prejudice the Commission's investigation.

The material condition for our purposes was the redaction of names and identifying information relating to certain police officers and the MNR personnel. We believe that this information is not relevant to the work of the Inquiry since these police officers had no involvement with the events from September 4th to 6th, 1995.

Similarly, the names of the MNR witnesses interviewed in the course of the police investigation are not relevant nor are they material to assist in the Inquiry in its work, that is, an inquiry into and reporting on the events surrounding the death of Dudley George.

What is important is what is left intact and remaining in the records, namely, the substance of what these officers and MNR personnel saw, heard, and understood in relation to these matters as well as their candid views as to the propriety of these episodes. As well, the complete investigation, analysis, and outcome of each of the discipline investigations are fully revealed.

In addition the names of those officers who did have some involvement with the events of September 4 to 6, 1995, are transparent and revealed fully in the records.

Hence, the public will now know the extent to which the allegations were found to be true, whether or not they were found to constitute discreditable conduct and what, if any, discipline was administered as well as the OPP institutional response to these events. From a systemic perspective the public will know what others who witnessed or were a party to the various episodes thought about the propriety or lack thereof of those episodes.

5. On February 6, 2006, I accepted the settlement proposed by my counsel and the discipline files redacted as noted above were marked as Exhibits P-1051, P-1052 and P-1053. I stated as follows at p. 23 of the transcript:

> That's fine. I want to commend counsel -- or Commission counsel and all counsel who worked very hard to achieve this objective. I understand that Mr. Falconer and others may have some comment down the road.
>
> But at this point, we're able to produce an incredible number of documents relating to discipline files which will allow a fulsome cross-examination on issues that I believe are relevant to this Inquiry without the necessity of having a stated case.
>
> So, I wish to commend counsel. Now we'll leave the -- I think we should mark them as exhibits subject to whatever Mr. Falconer and you discuss and if you have some alterations or additions, we'll deal with that later on.

RECENT DEVELOPMENTS GIVING RISE TO THE MOTION

6. The Inquiry has heard evidence of the existence of mugs and t-shirts, photographs of which were marked as Exhibit P-438. On May 11, 2006, my counsel disclosed to the parties the existence of another t-shirt which had not been previously identified. A photograph of the logo on the t-shirt was subsequently marked as Exhibit P-1494 and the t-shirt itself was marked as Exhibit P-1497. On May 11, 2006, counsel for the OPP advised me as follows at pages 15 and 16 of the transcript:

> First of all, I wish to indicate, sir, that this matter first came to our attention on Tuesday of this week. Neither Mr. Sandler nor myself nor Commissioner Boniface was aware of it beforehand.
>
> An important lesson learned at this Inquiry is that when an apology is appropriate, it must be made immediately.
>
> Accordingly, Commissioner Boniface has advised me to apologise at this time to the First Nations community and to the George family for what has come to light. Furthermore, she has directed that an investigation into this matter be commenced immediately by the Professional Standards Branch of the OPP. I have been further advised that steps are being taken to commence that investigation this morning.
>
> In addition, I have been asked to convey that the OPP is shocked and appalled by the existence of these items and that it is unfortunate that they were not captured in the original investigation.

> As you know, Mr. Commissioner, Commissioner Boniface is scheduled to testify before this Inquiry in the upcoming weeks and I anticipate, sir, that she will make a more formal apology at that time.

7. On May 16, 2006, counsel for the OPPA advised Commission counsel that the individual who originated the second version of a t-shirt, marked as Exhibit P-1097, had identified himself. Commission counsel immediately advised the parties of this information on May 17, 2006, and subsequently disclosed to the parties the name of the individual, Constable William Klym. The parties were informed that Constable Klym would be called as a witness at the Inquiry during the week of June 5th, 2006, on the issue of the t-shirt.

8. On May 25, 2006, during the evidence of Sergeant James Irvine, Commission counsel asked the witness about a pin, which had on it the TRU team crest and the badge number of Kenneth Deane. A photograph of the pin was marked as Exhibit P-1606. Sergeant Irvine testified that the pin had been created to support Kenneth Deane on his appeal. On May 27, 2006, Sergeant Irvine testified that a t-shirt had been prepared with the words "I Support Kenneth Deane" or similar words on it. Counsel for the moving parties requested that I take into account on the motion the existence of this pin and t-shirt.

9. On May 26, 2006, Commission counsel was provided with certain documents from the OPP relating to the pin, which will be introduced into evidence. As well, they were advised by counsel for the OPPA that there existed in the Inquiry database (Inquiry Document No. 1005375, Page 175), a copy of the pin under the heading: The Ken Deane Defence Fund Pin. None of the parties had previously identified this document notwithstanding its productions to all parties as part of the Inquiry's disclosure of documents in 2004.

DECISION

10. I agree with the comments made by Commission counsel on May 11, 2006:

> However, the road to healing and reconciliation will not be built if obstacles to that goal of healing and reconciliation are not excavated and the conduct of individuals not examined in the light of day.
>
> It is in the nature of a public inquiry and the investigation that it involves to bring to light matters that have been previously confidential. It is one (1) of the goals of a public inquiry that the examination of the actions of individuals will lead to better understanding and learning so the conduct will not reoccur.

11. As mentioned above, I have heard evidence of the existence of memorabilia arising from the events at Ipperwash Provincial Park. The evidence has disclosed the following forms of memorabilia: t-shirt with a horizontal feather, a mug with an OPP crest on it, one with an arrow through the crest and the other without, a beer can with a feather and OPP tape, a bulls-eye and arrow, certain cartoons and a second version of a t-shirt, with the TRU crest, an anvil with the letters ERT and a broken arrow between the TRU crest and the anvil. (Exhibits P-438, P-1494 and P-1497)

12. In my view, the creation of memorabilia, whether racist or not, arising from an incident where someone has died is inappropriate. Where the memorabilia is insulting and offensive to the community involved, it is even more troubling. As noted above, the person who created the logo and t-shirt depicted in Exhibits P-1494 and P-1497 has identified himself and will be called as a witness at the Inquiry to explain what he did and why he did it.

13. The overriding question for me is what evidence do I need to carry out my mandate. I have the evidence of witnesses on the issue of memorabilia as well as the discipline files (Exhibits P-1051, P-1052 and P-1053), which reveal the identity of officers who had any involvement with the Ipperwash policing operation between September 4th and 6th, 1995, as well as the complete investigation, analysis and outcome of each of the discipline investigations. In my view, with the evidence that I have and the evidence that I will hear from Constable Klym, Commissioner Boniface and former Commissioner O'Grady and perhaps others, I will have sufficient evidence to deal with any issues that arise from the existence of the memorabilia.

14. In my report, I intend to deal with the allegations of racist souvenirs and what was done by the OPP in response to these souveniers as well as to other memorabilia. But in my view trying to collect all items of memorabilia is not necessary to enable me to undertake an examination of the role, if any, that racism had, within the OPP, on the events surrounding the death of Dudley George or to inform my recommendations directed to the avoidance of violence in similar circumstances.

15. I have said on other occasions, this is not an inquiry into systemic racism in the OPP nor the justice system. As well this is not an inquiry into the adequacy of the OPP complaint and discipline processes nor the investigation carried out by the OPP as outlined in Exhibits P-1051, P-1052, and P-1053. The names that have been redacted from the material are not necessary for me to execute my mandate.

16. Having said that, I agree with much of what was said by counsel for the moving parties, in their oral submissions. I would hope that the Commissioner of the OPP, having expressed her view that she was "shocked and appalled" by the existence of the second t-shirt, will take measures to ensure there is a complete and thorough investigation with respect to the t-shirt. Further, I would hope that the Commissioner of the OPP will do whatever she can to ensure that there are no other offensive t-shirts or other memorabilia in existence commemorating the events of September 6th, and if there are, she will use her best efforts to ensure they are destroyed and not displayed in any way.

17. While the Kenneth Deane Defence Fund Pin (Exhibit P-1606) and the "I support Ken Deane" t-shirt may have been in bad taste given the death that gave rise to the charge of criminal negligence, in my view, these items do not fall into the same category as the memorabilia that was directly related to the events at Ipperwash on September 6th, 1995. These items are not something that "commemorates" the events of September 6th, 1995 at Ipperwash Provincial Park and, in any event, the response of the OPP to these items will be dealt with in the evidence that will be called at the Inquiry.

18. For these reasons, the motion is dismissed.

Released: June 5, 2006

The Honourable Sidney B. Linden
Commissioner

COMMISSIONER LINDEN'S OPENING REMARKS at THE HEARINGS FOR STANDING & FUNDING FOR THE IPPERWASH INQUIRY

April 20, 2004

Introduction

- Good Morning. My name is Sidney Linden and I was appointed Commissioner of this Inquiry by Order in Council of the Government of Ontario. I am also a judge of the Ontario Court of Justice and served as the Chief Justice of that court from 1990-99.

- Before making my opening remarks, I am going to call Lillian Pitawatikwat, an Elder to conduct a 'traditional opening'.

- The public inquiry process in Canada, inherently incorporates protocols and customs that are based on Anglo-Canadian heritage. By adding a 'traditional opening' we are also acknowledging the importance and significance of some of the traditions of Aboriginal Peoples.

[Traditional Opening]

- Today marks the first public session of the Inquiry. However, the Commission staff has been working full time over the last few months, putting our team in place, establishing our infrastructure, gathering evidence, identifying and interviewing witnesses and experts and sifting through the thousands of pages of documents.

- Today, and the balance of this week, have been designated to hear applications, by individuals and groups to obtain standing and possibly funding for the Inquiry.

- According to the Order in Council, the Commission was established to inquire into and report on events surrounding the death of Dudley George, in Ipperwash Provincial Park in September 1995. The Commission has also been asked to make recommendations aimed at avoiding violence in similar circumstances.

- The Inquiry will be undertaken in two parts: Part 1 will inquire into and report on events surrounding the death of Mr. George. Part 2 will make recommendations directed to the avoidance of violence in similar circumstances.

- Part 1 of the Inquiry will be conducted in the typical way of public hearings, at which witnesses will be called and examined by Commission counsel and, if necessary, will then be cross-examined by parties who have standing.

- Part 2 will be conducted differently. Although Part 2 will be informed by Part 1, evidentiary hearings alone are unlikely to foster the participation and analysis required to address the second part of the Inquiry's mandate. As a result, Part 2 of the Inquiry will use additional approaches to collect information on key issues identified, including research papers, expert panels, roundtables, community dialogues and advisory committees.

- Our intention is to proceed with both parts concurrently and we will ensure the timetables of the two parts do not conflict with one another.

- I invite everyone to consult the Inquiry website, which will be updated regularly, for the anticipated schedule for hearings and other events. Our website address is *www.ipperwashinquiry.ca*.

Making Application to the Commission for Standing & Funding

- Now I intend to briefly deal with the hearings of the next few days which are being held to hear applications for standing and funding.

- It is essential that an inquiry of this kind be as thorough as possible and that the Commissioner consider all relevant information, from a variety of perspectives. This is achieved through the participation of interested parties.

- In an inquiry of this kind, people or groups that have been given status are entitled to participate in the proceedings. This official status is called "standing". Standing is granted to facilitate the orderly, timely and fair conduct of the Inquiry.

- Today's hearings are intended to identify those people or groups that should have standing. As set out in the Rules of Procedure and Practice, this official status may be given to those who may have a direct and substantial interest in the proceedings of the Inquiry, or whose participation may be helpful.

- One of the advantages of a two-part process is that some individuals or groups that may not have sufficient connection to the events of September 1995 to warrant standing for Part 1 may be able to receive standing and participate in Part 2.

- Our intention is to interpret the criteria for Part 2 standing broadly to enable the participation of any individual or group who can contribute to the achievement of the Commission's mandate.

- The Commission received 35 applications for standing. As in other Commissions of Inquiry, categories of standing will be either full, limited or special depending on the extent of the applicant's direct legal interest and/or contribution to the proceedings.

- Full standing entitles a party to: access documents; advance notice of documents that will be introduced in evidence; advance provision of statements of anticipated evidence; a seat at the counsel table; the right to examine or cross examine witnesses as appropriate; and, the right to make submissions.

- Limited or special standing will be determined based on the written and oral submissions and will entitle a party to some but not all of the rights as parties with full standing.

- The Order in Council provides that the Commissioner may make recommendations to the Attorney General for funding for parties who have been granted standing and who might otherwise be unable to participate in the Inquiry without funding.

- The Commission itself does not provide funding to parties with standing. It makes a recommendation to the government who may or may not accept the recommendation.

- I intend to reserve my decision regarding standing and funding and will send a copy of the decision to each applicant as soon as possible. These decisions will also be posted on our website.

- Any party granted standing should review the Rules and should visit our website regularly for information about the Inquiry, including scheduling details.

Rules of Procedure and Practice

- The Rules of Procedure and Practice for Part 1 and 2 of this Inquiry were modeled on the Rules used in other public inquiries. They were initially posted on the Inquiry website in early March, and comments were sought. Some of the suggestions we received have been incorporated and are reflected in the current version now posted.

- Any further comments regarding the Rules should be communicated to Commission counsel, whom I will be introducing shortly.

- The Commission will be completely transparent and disclosure of all relevant documents will be made available, on disc, to all parties that are granted standing and a paper copy will be available in the hearing room for witnesses as needed.

Importance of Public Inquiries in a Democracy

- I would like to spend a few minutes addressing the importance of public inquiries.

- Public inquiries are usually called in response to a matter of public interest; very often there is also some element of public controversy, involved.

- The purpose of an inquiry, in these circumstances is generally to find out what happened, what went wrong and to look at what can be done to avoid a similar occurrence. As a result, inquiries can look backward and forward at the same time.

- This dual mandate is what makes public inquiries both unique and perhaps unusual to some observers. This dual mandate, however, is also what makes public inquiries useful in our democracy and is why they provide a valuable public service.

- This particular Inquiry was borne out of a sense of anger and a feeling of frustration regarding unanswered questions as to what occurred at Ipperwash Provincial Park in September 1995. That sense of anger and that feeling of frustration are the foundation of the considerable and lengthy effort that was put forward by many groups and individuals requesting that a public inquiry take place.

- For these reasons, it is important to devote a few minutes to addressing what an inquiry is, and, just as importantly, what it is not.

- A public inquiry investigates and reports on matters of substantial *public* interest. In other words, it is not simply an inquiry; it is a *public* inquiry.

- An important aspect of our democracy is the right of all citizens to know what happened in a given situation – particularly in a situation were there has been loss of life and there remain unanswered questions.

- Although the events that we are inquiring about, took place almost 9 years ago, the Commission is committed to doing all it can, given our mandate and our legal authority, to gather all the relevant evidence and call all the necessary witnesses to make this Inquiry as complete as possible.

- Public inquiries can also serve the policy development process by considering public opinion, proposing and exploring policy options, and making recommendations.

- Among the advantages of the public inquiry process are its openness, its investigative capability and its independence.

- It is this openness and transparency of the inquiry system that distinguishes it from the policy development process carried on "in house" by government agencies.

- These factors, coupled with an inquiry's independence, means that the inquiry should be free from the personal, political, partisan or organizational influences that often accompany public controversies.

- The investigative capability of an inquiry distinguishes it from a court of law where a judge or jury is confined to determining questions of guilt or innocence and fault or no fault and fact-finding is necessarily limited to the particular dispute in question.

- A public inquiry is not a trial and the Commission has not been established to revisit judgments already passed, nor to investigate criminal offences or to assign civil liability.

- While the Commission may determine wrong-doing, it does not find anyone guilty of a crime nor does it establish civil responsibility for monetary damages.

- However, an inquiry is expected to go beneath the surface of the controversy and to explore the factors and conditions that gave rise to the incident. A public inquiry can and should consider the broader context in which the events occurred.

- A key aspect of public inquiries - fact-finding in public - makes it possible for individual or organizational reputations to be at risk.

- Accordingly, principles of natural justice and procedural fairness require that due process safeguards are in place and these will be rigorously observed by this Commission.

Broad Goals of this Public Inquiry

- There has been a great deal already written and said about the events at Ipperwash Provincial Park in September 1995 and the causes. Among other things, there have been criminal trials, a civil action, an SIU and a Coroner's investigation. All of this has resulted in thousands of pages of transcripts, documents and other evidence.

- As we proceed to fulfill the specific mandate of the Commission, one of the broader goals is a desire to contribute to restoring good relations among the people affected and to restoring their faith in the institutions of government and of democracy.

- Our hope is that the process of this Inquiry will contribute to healing and to moving forward for those whose lives were affected by the events of September 1995.

- In due course, the Commission's recommendations will be submitted to the government and to the public at large. Our hope is that the report will be supported by most, if not all, of the people involved in this process and in that way, it will contribute to the shaping of public policy.

- This Inquiry should also contribute to public education and to a greater understanding of the many issues stemming from the shooting of Mr. George.

- We intend to be guided in our efforts by the same principles that have guided other commissions, namely: thoroughness, expedition, openness to the public and fairness.

- Timely information will be available on our website. Transcripts of the day's proceedings will be posted almost immediately and other means of sharing the proceedings are still being explored. The Inquiry will also use our website to distribute Part 2 research papers, public submissions, and to seek comments from the parties and the public.

- We expect that the media will actively report on the Inquiry, thereby informing those who are not able to attend in person. Commission staff will make every effort to ensure material is available for the media and to answer questions.

- Mr. Peter Rehak is the Commission's communications and media relations advisor. He held the same position with other recent inquiries including the Walkerton Inquiry and the Toronto Computer Leasing Inquiry.

Reasons for Holding Initial Hearings in the Ipperwash Area

- Before introducing some of the Commission staff, another important issue that I wish to speak to is the location, or locations, of the hearings.

- Selection of an appropriate location should be based on consideration of a number of factors. These include accessibility to the public, the preference of the parties, the location of the majority of the parties, any local interest in the proceedings, availability of suitable facilities, accommodation capacity and other logistical concerns and cost.

- The Commission has contemplated these factors and also considered the Rules of Civil Procedure. We have decided that some of the hearings

should be held in Forest – a location near where a substantial part of the events in September 1995 occurred – and some in Toronto.

- We will continue with the next stage of the Inquiry process, here in Kimball Hall. In July, we will begin with an examination of the historical context of the events of September 1995.

- However, the location of hearings beyond the end of this September has not yet been determined and I encourage anyone with a view on the merits of holding the hearings either here or in Toronto, to communicate their views to the Commission.

Commission Team

- At this time, I would like to introduce the Commission's counsel. More detailed biographies are available on our website.

  [Introductions]

- I will now call upon our lead counsel, Mr. Derry Millar.

COMMISSIONER LINDEN'S OPENING REMARKS
IPPERWASH INQUIRY HEARINGS

July 13, 2004

- Good Morning. As most of you know, my name is Sidney Linden and I am the Commissioner of the Ipperwash Inquiry.

- Welcome to what is being referred to as Part One or the 'evidentiary' part of this Inquiry – at which witnesses will be called and examined by Commission counsel, and if necessary, cross-examined by parties who have been granted standing at the Inquiry.

- This Inquiry was called to inquire into and report on events surrounding the death of Dudley George in Ipperwash Provincial Park in September 1995. The Commission has also been asked to make recommendations aimed at avoiding violence in similar circumstances.

- We began this Inquiry in April at the Hearings on Standing and Funding and, at that time, had a respected Elder, Lillian Pitawanakwat, conduct a traditional ceremony.

- There will be two parts to the Inquiry: Part 1 will deal with the events surrounding Mr. George's death and will be conducted in the typical way of public hearings.

- Part 2 will deal with policy issues which are designed to help us develop recommendations for preventing violence in similar circumstances, in the future.

- Both Parts will proceed concurrently.

- Part 2 has already started with a symposium on police and government relations, held in June, in partnership with Osgoode Hall Law School. The

Commission's draft research plan for Part 2 of the Inquiry is posted on our website. Parties are invited to comment and to submit project proposals.

- Seventeen parties have been granted standing for Part 1 of the Inquiry and twenty-eight for Part 2. This official status of "standing" entitles the parties to participate in the proceedings and to other entitlements as set out in the Rules of Procedure and Practice.

- The parties represent a variety of perspectives on the events that are the subject of this Inquiry as well as on subjects that the Commission views as necessary to consider in order to fulfill its mandate.

Commissioner's Goals for this Inquiry

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- The Inquiry's Part One mandate, as set out in the OIC, states that the Commission is to "inquire into and report on the events surrounding the death of Dudley George."

- We hope to explore both the specific circumstances of the shooting and the context in which the shooting occurred. Both perspectives are key to the Inquiry's "fact-finding" mandate.

- In doing so, my hope is that the Inquiry will contribute to the public's understanding of both the specific incident and of factors or conditions that contributed to it.

- Public education and understanding are key features of this and indeed of most public inquiries.

- Education and understanding are particularly important because they can contribute to healing and to moving forward for those whose lives were affected by the events of September 1995.

- In this respect, I am mindful of the fact that re-visiting the events that took place almost nine years ago, may re-open wounds and re-kindle feelings and tensions. The establishment of the Inquiry may also raise unrealistic expectations about what can be achieved through the inquiry process.

- It is challenging for any public inquiry to define its scope given the many issues an investigation of this kind can raise. This is particularly true for inquires such as the Ipperwash Inquiry, that are mandated to go beyond mere fact-finding.

- A Commission must necessarily find a balance between being broad, on the one hand, and focused, on the other, in its investigation of facts and mitigating circumstances.

- Please be assured that my goal is to address these issues and challenges completely, thoughtfully, openly and fairly.

July & August Hearings and Beyond

- We will begin shortly, but first I want to comment on two matters regarding these hearings – the first having to do with substance, the second, with location.

- The hearing days in July and August will be dedicated, to the extent possible, to providing a common historical background and starting point for the parties and for all who will be following the Inquiry.

- In keeping with the Commission's goal of establishing the context and contributing to public education, we have engaged two experts to map out the long and complex sequence of historical facts and occurrences involving the Aboriginal peoples of this area.

- The breadth and scope of this overview is deliberate. We believe that an understanding by Ontarians of the Aboriginal history of the region and the

historical context of the incident is fundamental to the Inquiry and to our educational mandate. Our goal is to be comprehensive and fair.

- Having said that, we certainly understand that history is subject to interpretation and debate. And in that regard, the experts who we will be calling as witnesses are subject to cross-examination by counsel for the parties.

- The second matter is that of the location of these hearings. At the hearings on standing, I indicated that the Commission was considering a variety of factors in making its decision regarding the location for the hearings, and I encouraged any party with views on this question, to share them with the Commission. A few parties have expressed their preference.

- I have determined that Forest should be the primary location for these hearings, based on the principle that an inquiry of this kind, should be held in the location where a substantial part of the events in question occurred.

- In my view, physical proximity heightens one's awareness of, and appreciation for the events in question. It also better ensures that the Inquiry is readily accessible to a majority of those who were most affected by those events.

- Nonetheless, I intend to continue to evaluate the matter of location as we proceed. We are currently scheduled to be in this location until early March.

- Information about the Inquiry's schedule and events can be found at our website: *www.ipperwashinquiry.ca*

- Before calling upon Mr. Millar, I would like to formally introduce you to some members of the Commission team, some of whom I introduced at the Standing hearings in April.

- Mr. Millar is well known to most of you, he is the Commission's Lead Counsel, he comes to this Inquiry from Weir Foulds, where he is a senior litigation partner.

- Susan Vella is Commission Counsel and she is a partner in the law firm of Goodman and Carr. Don Worme has just recently joined the Inquiry Team; he's been engaged in private practise. Among other things, he was Lead Counsel for the family of Neil Stonechild in that Public Inquiry in Saskatchewan.

- Katherine Hensel is the Commission's Assistant Counsel; Katherine practises law with a litigation group, at the law firm of McCarthy Tetrault.

- Peter Rehak is the Media Relations Advisor, and Nye Thomas is the Director of Policy and Research, and he's responsible for managing Part II of the Inquiry.

- More detailed biographical information is available for everyone on our website.

COMMISSIONER'S STATEMENT

Observations Regarding Progress of the Inquiry
November 1, 2004

As we conclude the proceedings today, I wish to make a few brief comments on the progress of the Inquiry. This may be the first of periodic observations that I make, during the course of the Inquiry.

I think the timing for these observations is appropriate. We have now completed the first full two months of evidentiary hearings and I have had an opportunity to reflect on how we are progressing and to look forward to the next few weeks and months.

First, I would like to note some of our successes.

In my view, the hearings have been running smoothly, almost without incident. And, where there have been technical or other issues, these have been resolved relatively quickly. This is not as easy as it appears and I want to commend the hearing room staff, the "behind the scenes" of the Inquiry staff and the community centre staff for their hard work.

I also wish to commend out-of-town counsel, parties and others who have made the transition to Forest seamlessly. I know that this has not been easy personally or professionally and I want to acknowledge your efforts.

Finally, I wish to commend all counsel for their professionalism, hard work, and high degree of co-operation with the Commission and with each other. The sheer volume of documentary and other material has made this a daunting task but, again, with only a few exceptions, everything seems to be working smoothly.

Notwithstanding these successes, I am increasingly concerned about the pace of the proceedings. We are simply moving too slowly. This is not a serious problem yet but, in my view, it is a situation that requires our attention, sooner rather than later. Lengthy delays and extensions have the potential to undermine the credibility of the Inquiry. The public inquiry process always entails a delicate balancing of thoroughness and efficiency. Many who actively support the general objectives of a public inquiry also have legitimate concerns regarding the length of time it takes and the costs involved.

This is a publicly funded process and many of the parties to this Inquiry are receiving public funding to participate. Accordingly, the public has a right to expect us to undertake our work not only with thoroughness but also with economy and efficiency in mind.

As you know, the Commissioner and Commission counsel have a responsibility to manage the Inquiry process and, in that regard, we are recommitting ourselves to

ensuring that we can fulfill our mandate with thoroughness but also within a reasonable time. We intend to continually monitor our progress according to that standard.

Commission Counsel have taken considerable time and care with early witnesses to establish background and context in some detail. It may not be necessary to repeat that same level of detail with every witness and accordingly, Commission Counsel have advised that they intend to narrow the scope of their examination for some of the forthcoming witnesses into a more specific time frame.

But obviously, we couldn't manage this process alone.

Parties to this Inquiry have differing objectives and expectations. Clearly counsel have a duty to represent and protect their clients' interests and these remarks are not directed to any particular counsel or party. However, it is important for me to remind everyone of the statement I made at the opening of the hearings on standing:

> *A public inquiry is not a trial and the Commission has not been established to revisit judgments already passed, nor to investigate criminal offences or assign civil liability. While the Commission may determine wrong doing, it does not find anyone guilty of a crime, nor does it establish civil responsibility for monetary damages.*

Because this is a public inquiry, there is an element of public education as part of its mandate and because in my view, it is also important to establish the context of events, that is, cultural, historical or otherwise, I believe it is appropriate to allow some latitude regarding counsel's questions. However, we cannot lose sight of our mandate as set out in our Order-in-Council:

> *a) to investigate into and report on the events surrounding the death of Dudley George and,*
>
> *b) to make recommendations directed to the avoidance of violence in similar circumstances.*

Therefore, I am respectfully asking all counsel to strengthen their efforts to ensure that their cross-examinations and interventions add value to the Inquiry's mandate. I am also encouraging counsel to communicate with Commission counsel on a regular basis with any suggestions or recommendations they may have as to how we can continue to work together to complete our work fairly, thoroughly and in a manner that is economically responsible.

Thank you

COMMISSIONER LINDEN'S OPENING REMARKS
IPPERWASH INQUIRY HEARINGS

March 30, 2005

- Before we move on to the next group of witnesses, I would like to take a few minutes to reflect on the work of the Inquiry to date.

- With the benefit of extensive reading, research and listening over the last number of months, we now know a great deal more than we did when we began. Accordingly, we are in a better position to bring more focus to the scope of the Inquiry.

- It is important that we keep in mind the specific mandate of the Inquiry at all times - that is, "to inquire into and report on events surrounding the death of Dudley George and to make recommendations directed to the avoidance of violence in similar circumstances".

- When these hearings began, I stated publicly my interest in achieving a number of other broad goals. These included a desire to contribute to public understanding of the events in question and the circumstances surrounding them which I hoped could, in turn, contribute to some healing among those affected.

- I also expressed my intention to be guided by the same principles that have guided other commissions, namely: thoroughness, openness to the public, fairness and expedition.

- Through this hearing process, which is the most public aspect of the Inquiry, I believe we have been successful, so far, in going beneath the surface of the controversy and exploring some of the factors that may have given rise to it. We will continue to do this as other witnesses give their testimony.

- I hope all parties and indeed, the public at large, will agree that we are also contributing to public understanding and education of the issues through the research and other policy work that we have undertaken.

- I am confident that the over 20 research papers being commissioned by the Inquiry as well as our accompanying consultations will add considerably to our knowledge and understanding.

- While it may be naïve to expect that the Inquiry process can contribute to the healing of long-standing feelings and emotions, I am of the view that the principles, of openness and communication that we are observing, can create an environment that facilitates the healing process.

- We have had some success in achieving this goal and I want to encourage those affected, to use what is learned through the Inquiry as a starting point for what might be achieved beyond the Inquiry itself.

- Our long list of past and future witnesses demonstrates our desire to be thorough and fair. The same is true of our efforts to encourage participation by all parties at this public hearing and in the Part 2 process.

- Our efforts to be fair and thorough must be balanced with the goals of conducting the Inquiry in a timely and efficient fashion. I want to recognize the contribution made by all parties to help this process along. I would like to acknowledge the understanding of all counsel of our need to lengthen our hearing day as well as their concerted efforts to ensure that cross-examinations are necessary and relevant.

- My Commission counsel and I remain committed to an expeditious process and I encourage further constructive discussions among all counsel as to additional ways in which we may use our time responsibly and effectively. I believe it is in all of our interests to do so.

- It is challenging for any public inquiry to define and contain its scope given the many contributing issues and sometimes competing interests that an investigation of this kind can raise. I think this is particularly true for inquires such as this one that is mandated to go beyond simple fact-finding.

- I am always mindful of the importance of scope of the Inquiry. This is because it affects the selection of witnesses, the duration of the hearings, the cost of the Inquiry, and the subject matter of its recommendations.

- The scope of any inquiry must have limits and, sometimes, assumptions about these can lead to expectations that extend beyond the actual mandate.

- Our Order-in-Council states that the Inquiry is to investigate the events *surrounding* the death of Dudley George. Among the challenges is to define what the term "surrounding" means. How far back in time is relevant to our mandate? How far forward? We must be sufficiently broad and yet appropriately focused to achieve our objective and fulfill our mandate.

- We must be necessarily mindful of the limits of our jurisdiction. We are a provincially-created inquiry, yet we are investigating issues that clearly have federal implications.

- I have previously stated that we intend to explore both the specific circumstances of the shooting of Dudley George, as well as the context in which that shooting occurred. Both are key to the Inquiry's fact-finding and policy mandate.

- Having said that, there is considerable room for interpretation as to what this means.

- In my view, the Inquiry's mandate, *to investigate and report on the events surrounding the death of Dudley George*, must remain focused on the decisions made and the actions taken by all involved prior to and following the shooting, in September 1995, outside Ipperwash Provincial Park. In other words, what happened, who was involved and why did the shooting occur?

- At the conclusion of our investigation, I will be making recommendations as to how to avoid violence when similar situations occur in the future, that is, situations giving rise to aboriginal protests that draw the attention of police and government.

- I believe, the Inquiry also has an obligation to acknowledge that systemic or historic circumstances may have contributed to the actions taken and decisions made. While many of these circumstances pre-date the events that gave rise to this Inquiry or appear to fall outside its jurisdiction or mandate, they shed light on why the events occurred. That is what is meant by context.

- The obligation to consider context prompts us to examine the larger Canadian experience in areas such as: Native land treaty rights, policing practices and government's role in policing activities. In my report, I expect to consider these issues when making my recommendations.

- There are two specific issues that have been given considerable attention in the evidence at these hearings. The first issue relates to questions regarding the status of the Army Camp land, the provincial park, the 'sandy parking lot' and the corner of land located at the north-east end of the Army Camp. How should this land be described, who owns it and other related issues?

- The second issue is that of recognition and status of the self-identified 'Stoney Pointers' in relation to the Kettle and Stony Point Band.

- It is recognized that these two issues form an important back-drop and context to our work even though they pre-date the events we have been mandated to investigate.

- While I may comment on these issues in my final report, it is unrealistic to expect that this provincial inquiry can, by itself, resolve these long-standing questions.

- Having said that, I am hopeful that our work can and will contribute to their resolution in a timely fashion in a way that is acceptable to all parties.

- To this end, although the Federal Government has chosen not to participate as a party to this Inquiry, I expect to comment in my report, on the role of the Federal Government in these matters.

- As the work of the Inquiry progresses, its scope and shape will become clearer.

- During the next phase of the Inquiry we will be calling emergency response, medical, hospital and other health care witnesses. We will follow with witnesses from law enforcement agencies, other members of the local community and finally, with witnesses who are civil servants, both federal and provincial, and politicians.

- We still have a way to go, but in my view, our work so far has been constructive and for some, even therapeutic. I am confident that if we continue in the same spirit, we will reach a successful conclusion.

- Thank you.

COMMISSIONER'S STATEMENT
IPPERWASH INQUIRY HEARINGS
June 1, 2005

- Having heard the parties' estimations of the anticipated time required to cross-examine this witness, I want to expand upon, a few points I have made previously.

- In conducting this Inquiry, I have studied the experiences of other inquiries and have emphasized my own goal that we be guided by the principles of fairness, comprehensiveness and efficiency.

- To this end, I read with interest Justice O'Connor's acknowledgement of counsels' success, during the Walkerton Inquiry, in ensuring cross-examinations were relevant, non-repetitive and focused. He said, "Counsel for the parties kept their cross-examinations focused, thus avoiding considerable duplication and delay".

- I believe we have also been successful, thus far, in this Inquiry.

- It is worthy of reminder that a public inquiry is not a civil nor a criminal trial. The Commissioner does not make findings of civil or criminal liability, nor does the Commissioner have the ability to impose penalties.

- An inquiry is an inquisitorial and not an adversarial proceeding. Notwithstanding the separate, and sometimes distinct interests of

parties with standing, I believe this fact should continue guide our behaviour during the course of this Inquiry.

- As Commissioner, I have a responsibility to the public to be thorough and fair, while, at the same time, mindful of time and cost. It is important for this, and indeed for any public inquiry to move at a consistent and efficient pace. As a publicly-funded process, the public has the right to expect the Inquiry to conduct its work with economy and efficiency.

- At this juncture, I want to re-iterate what I have said in the past: that counsel make every effort to ensure that their cross-examinations and interventions add value to the Inquiry's mandate. As I previously stated, the credibility of the Inquiry is potentially undermined if it is perceived as being unnecessarily lengthy.

- I am aware that it is not easy to estimate the length of time required for cross-examination or, indeed, examination-in-chief. Commission counsel's examination of Deputy Carson was longer than anticipated.

- However, in view of the responsibility of Commission Counsel and the role of Deputy Carson in these proceedings, in my view, this was appropriate. Further, I am confident that the thoroughness of Mr. Millar's examination will serve to conserve the time required for cross-examination.

- Again, citing Justice O'Connor's observation of his own proceedings, "Normally, cross-examinations in total took no more time than did an examination by commission counsel and often far less time".

- I am encouraged that counsels' estimates of the time required to cross-examine Inspector Carson will not exceed the examination-in-chief.

- Commissioners have the power to control their own proceedings. This is explicitly stated in our rules of procedure, the *Public Inquiries Act*, and in judicial decisions.

- As has been observed by legal academics, "…courts have taken a generally deferential approach to commissions of inquiry and allowed them considerable leeway in determining their own procedures…The courts seem to be aware of the need not to strangle public inquiries with procedures that are more appropriate in an adversarial setting, such as a civil or criminal trail".

- Generally, the number of witnesses and the extent of cross-examination, for example, are within the discretion of the Commission. The basis on which standing is granted to parties is one means through which this discretion may be exercised.

- Standing has been granted in Part 1 to persons or groups who have demonstrated that they have a substantial and direct interest in the

subject matter of this Inquiry pursuant to section 5(1) of the *Public Inquiries Act*.

- Standing has also been granted, on a discretionary basis, to some who, although they do not have a direct and substantial interest in the subject matter of the Inquiry, do represent distinct ascertainable interests, and whose expertise or perspective is important for the fulfillment of the Commission's mandate.

- It is my expectation that all counsel will keep in mind, the basis on which standing was granted and take steps to ensure that cross-examination is conducted accordingly.

- Counsel should be aware that, if in my view, estimations of time required exceed what I consider reasonable *or* , if cross-examination considerably exceeds estimate, I may intervene.

- And, once again, I urge all parties to continue their efforts to consult among themselves to avoid duplication.

- In conclusion, I would like to commend counsel for their efforts thus far, to work together, and with the Commission, co-operatively and professionally. It is important that we continue to do so.

- Thank you

COMMISSIONER'S STATEMENT ON JUNE 20, 2005 REGARDING NATIONAL ABORIGINAL DAY (June 21)

- As many of you are aware, in 1996, the former Governor General, Romeo LeBlanc declared June 21 as National Aboriginal Day.
- June 21 was selected because of the cultural significance of the summer solstice – the first day of summer and the longest day of the year.
- The intent, in 1996, of proclaiming National Aboriginal Day was to recognize the contribution of Aboriginal Peoples to Canadian society and to the fabric of Canada.
- Out of respect for the significance of this day to Aboriginal communities and for the fact that it is often reserved for ceremonies and celebration, the Inquiry will not sit tomorrow.
- We will resume hearings on Wednesday, June 22nd at 9:00 a.m. In the coming weeks, it may become necessary for us to sit later on some days to make up for lost time.
- In the meantime, I wish all of our Aboriginal colleagues and communities a meaningful day tomorrow, with friends and family.
- Thank you.

COMMISSIONER'S REMARKS
PROGRESS OF THE INQUIRY
June 2005

- On a number of occasions, I have expressed my commitment to a thorough as well as to an expeditious inquiry process. In my view, these two goals are not incompatible when public funds are being used.

- Indeed, the public has a legitimate expectation that, in our effort to be thorough, we will not lose sight of the timeliness of the inquiry process. Throughout, there is an expectation that any public inquiry, ours included, will find and maintain a proper balance between these two important objectives.

- No doubt, this is sometimes easier said than done. Counsel for parties with standing have a duty to advance and protect their clients' interests and commission counsel has a responsibility to ensure the mandate of the inquiry is fulfilled.

- Furthermore, Commission counsel and I as Commissioner have an added duty to effectively manage the inquiry process, in the public interest.

- With this in mind, I have been considering the time it might take to complete the oral testimony component of the inquiry, and achieve a proper balance.

- To date we have had just over 100 hearing days, and by December 1, we will have added approximately 60 more.

- My hope and expectation is that we should be able to complete the hearings within the time currently scheduled, namely by December 1st, 2005.

- However, our experience with Deputy Commissioner Carson demonstrates that examination and cross-examination of witnesses can end up taking longer than any of us would have anticipated. I think we would all agree that Deputy Carson's evidence was both valuable and comprehensive, but it will not be possible to spend anywhere near this amount of time with other witnesses without seriously running the risk of extending these hearings *considerably longer than planned*.

- To this end, I have asked Commission counsel to consult and work with all parties to ensure that the time remaining between now and the December 1st is used most effectively.

- This may require making choices or finding alternative ways of presenting and receiving evidence such as by way of affidavit or by agreed statement of fact where the facts are not in dispute or are not controversial.

- Regardless of when we finish, it will always be possible to do more. However, I believe it is possible to be comprehensive, fair and complete within a clearly defined timeframe. We have made good progress and I am encouraging everyone to continue to work together to achieve our objective, of completing the oral testimony by December 1st.

COMMISSIONER'S OPENING REMARKS
September 2005

- GOOD MORNING.

- AS WE MOVE INTO THE SEPTEMBER HEARINGS, I THOUGHT IT WOULD BE APPROPRIATE FOR ME, TO DO ANOTHER OF MY INFORMAL UPDATES OF THE STATUS OF THE INQUIRY.

- YOU WILL RECALL SOME OF THE REMARKS I MADE WHEN WE BEGAN THESE EVIDENTIARY HEARINGS, APPROXIMATELY ONE YEAR AGO.

- AT THAT TIME, I SAID THAT A PUBLIC INQUIRY INVESTIGATES AND REPORTS ON MATTERS OF SUBSTANTIAL *PUBLIC* INTEREST – IT IS A MEANS BY WHICH WE CAN GO BENEATH THE SURFACE OF AN INCIDENT OR SITUATION, FOR THE BENEFIT OF THE PEOPLE AFFECTED – AND, FOR THE BROADER PUBLIC.

- THUS FAR, I BELIEVE WE HAVE DONE THIS BY CONSIDERING MANY POINTS OF VIEW IN THE FACT-FINDING PART OF THE INQUIRY WHERE WITNESSES WITH DIFFERENT INTERESTS AND PERSPECTIVES HAVE BEEN AND CONTINUE TO BE CALLED TO TESTIFY. WE ARE ALSO DOING IT IN THE PART 2 POLICY REVIEW THROUGH THE PUBLIC FORUMS, RESEARCH PAPERS AND CONSULTATIONS THAT WE HAVE BEEN CONDUCTING.

- WE HAVE AND WILL CONTINUE TO DIG DEEPLY THROUGH THE COMPREHENSIVE, AND SOMETIMES SCHOLARLY, TESTIMONY OF EXPERTS TO INFORM OUR FACT-FINDING AND THROUGH OUR COMMISSIONED RESEARCH ON TOPICS THAT WILL ASSIST AND INFORM MY RECOMMENDATIONS FOR THE FUTURE.

- IN MY VIEW, IT HAS BEEN IMPORTANT AND NECESSARY FOR BOTH THOSE DIRECTLY AFFECTED OR INVOLVED IN THE EVENTS SURROUNDING THE DEATH OF DUDLEY GEORGE, AS WELL AS FOR THE PUBLIC AT LARGE, TO TELL, AND TO HEAR THE COMPLETE STORY, AS WELL AS SUGGESTIONS FOR THE FUTURE.

- THIS IS A LENGTHY, BUT NECESSARY PROCESS.

- BY DEFINITION, A *PUBLIC* INQUIRY NEEDS TO BE OPEN AND TRANSPARENT. WE HAVE TRIED, FROM THE OUTSET, TO ENSURE THAT OUR DUAL PROCESSES OF FACT-FINDING AND POLICY REVIEW ARE IN PUBLIC VIEW.

- FOR EXAMPLE, THROUGH OUR WEBSITE, WHERE DAILY TRANSCRIPTS AND LIVE WEBCASTS OF THE HEARINGS ARE AVAILABLE, AND THROUGH REGULAR POSTINGS OF WITNESS LISTS AND SCHEDULES, RESEARCH PAPERS AND NOTES FROM OUR CONSULTATIONS AND OTHER MEETINGS.

- PUBLIC ATTENDANCE AT THE HEARINGS IN FOREST IS ALSO WELCOMED AND ENCOURAGED – MOST DAYS SOME MEMBERS OF THE PUBLIC ARE HERE.

- THE MEDIA HAS ASSISTED OUR EFFORTS TO BE OPEN THROUGH REGULAR LOCAL, AND SOMETIMES PROVINCIAL AND NATIONAL REPORTING. OUR VIDEO AND AUDIO FEED IS AVAILABLE FOR THE MEDIA AND OTHER INTERESTED GROUPS, TO EXTEND THE 'REACH' OF THE INQUIRY.

- IN MY VIEW, THE INVESTIGATIVE CAPACITY OF A PUBLIC INQUIRY, COUPLED WITH ITS OPENNESS AND TRANSPARENCY CONTRIBUTES TO

A VERY IMPORTANT BENEFIT OF PUBLIC INQUIRIES, NAMELY PROVIDING PUBLIC INFORMATION AND EDUCATION.

- MEMBERS OF THE PUBLIC WHO ARE INTERESTED, CAN OBTAIN INFORMATION ON A REGULAR BASIS – ONE DOES NOT NEED TO WAIT FOR THE FINAL REPORT. I BELIEVE, WE HAVE BEEN SUCCESSFUL IN ENGLIGHTENING AND INFORMING, NOT ONLY THE ACTIVE PARTICIPANTS IN THE PROCESS BUT THE LARGER PUBLIC AS WELL.

- AND FINALLY, I BELIEVE THE INQUIRY PROCESS CAN BE INSTRUMENTAL IN CONTRIBUTING TO HEALING, AND TO BUILDING AND REPAIRING INSTITUTIONAL AND INDIVIDUAL BRIDGES.

- I HOPE ALL PARTIES FEEL WE HAVE BEGUN TO MOVE IN THIS DIRECTION AND THAT THIS CAN BE CONTINUED LONG AFTER THE PROCESS HAS BEEN COMPLETE.

- I RE-ITERATE MY APPRECIATION OF COUNSELS' EFFORT TO WORK CONSTRUCTIVELY TO MEET OUR GOALS.

- ULTIMATELY, THIS INQUIRY WILL BE MEASURED AGAINST ITS SUCCESS IN MEETING ITS DUAL MANDATE OF FACT-FINDING AND MAKING RECOMMENDATIONS FOR THE FUTURE.

- BUT IT IS ALSO INEVITABLE AND EVEN JUSTIFIABLE THAT THE ASSESSMENT OF OUR SUCCESS WILL TAKE INTO ACCOUNT THE TIME TAKEN AND THE COSTS INCURRED, WHEN PUBLIC FUNDS ARE BEING USED.

- INQUIRIES *ARE* LENGTHY AND COSTLY BUT THEY CAN'T BE JUSTIFIED AT *ANY* COST OR OVER AN *UNLIMITED* PERIOD OF TIME . YOU HAVE

HEARD ME REFER TO THE NEED FOR ACHIEVING A 'BALANCE' IN OUR EFFORTS TO BE COMPREHENSIVE YET EFFICIENT.

- AND SO, NOTWITHSTANDING MY VIEW THAT WE HAVE DONE WELL TO DATE, INEVITABLY, THERE WILL BE A FINAL REPORT CARD.

- I BELIEVE IT IS IMPORTANT THAT MY REPORT BE SUBMITTED TO THE GOVERNMENT THAT APPOINTED ME IN SUFFICIENT TIME FOR IT TO CONSIDER, AND WHERE POSSIBLE OR DESIRED, TO ACT ON MY RECOMMENDATIONS.

- FOLLOWING THE CONCLUSION OF THE HEARINGS, THERE IS STILL MUCH WORK TO BE DONE. MONTHS OF TESTIMONY WILL BE ANALYZED, FINDINGS OF FACT MADE AND I ALSO NEED TO CONSIDER THE EXTENSIVE RESEARCH AND CONSULTATION THAT WE HAVE UNDERTAKEN. FINALLY, RECOMMENDATIONS WILL NEED TO BE DEVELOPED.

- THIS PROCESS, WHICH WILL CULMINATE IN THE WRITING AND PRODUCTION OF MY REPORT, JUDGING FROM THE EXPERIENCE OF OTHER INQUIRIES, IS EXPECTED TO TAKE APPROXIMATELY 6 MONTHS, FOLLOWING THE CONCLUSION OF THE FACT-FINDING.

- I AM, THEREFORE, URGING THE PARTIES TO CONTINUE TO WORK TOGETHER, WHEREVER POSSIBLE, AND TO SUPPORT OUR EFFORTS TO ENSURE THAT THE GOALS OF EFFICIENCY AND THOROUGHNESS REMAIN IN PROPER BALANCE.

- AS YOU KNOW, MY GOAL HAS BEEN TO FINISH HEARING THE EVIDENCE BY DECEMBER 1. COMMISSION COUNSEL, WITH THE SUPPORT OF ALL PARTIES, HAVE BEEN TRYING TO FIND WAYS OF MEETING THIS

OBJECTIVE BY IDENTIFYING THE REMAINING WITNESSES THAT NEED TO BE HEARD IN ORDER TO ENSURE A THOROUGH INVESTIGATION.

- HOWEVER, MY UNDERSTANDING IS THAT DESPITE COUNSELS' BEST EFFORTS, THE DECEMBER 1 TARGET DATE MAY NOT BE REALISTIC. ACCORDINGLY, I HAVE AUTHORIZED COMMISSION COUNSEL TO SCHEDULE ADDITIONAL HEARING DATES BEYOND THE END OF NOVEMBER AND INTO THE EARLY PART OF 2006.

- THAT BEING SAID, I CONTINUE TO BE MINDFUL OF THE PASSAGE OF TIME AND THE NEED TO COMPLETE THE HEARING PHASE OF THE INQUIRY AS SOON AS IS REASONABLY POSSIBLE. REGARDLESS OF WHEN THE EVIDENTIARY HEARINGS END, THERE WILL OF COURSE, BE SUFFICIENT TIME AND OPPORTUNITY PROVIDED FOR PARTIES TO OFFER BOTH WRITTEN AND ORAL SUBMISSIONS.

- I HAVE ASKED COMMISSION COUNSEL TO BE DELIGENT IN USING OUR REMAINING HEARING DATES EFFECTIVELY, AND I WOULD SIMPLY REITERATE MY REQUEST THAT ALL COUNSEL CONTINUE TO CO-OPERATE IN HELPING TO ACHIEVE THE PROPER BALANCE BETWEEN EFFICIENCY AND THOROUGHNESS THAT CHALLENGES ALL PUBLIC INQUIRIES.

- THANK YOU.

COMMISSIONER'S REMARKS
RE: PASSING OF CLIFFORD GEORGE

- **GOOD MORNING.**

- **THIS MORNING'S SESSION CANNOT BEGIN WITHOUT ACKNOWLEDGING THE ABSENCE OF CLIFFORD GEORGE**

- **IT WAS WITH SADNESS THAT THE COMMISSION LEARNED THAT CLIFFORD PASSED AWAY ON SEPTEMBER 30.**

- **OVER THE LAST YEAR, THE COMMISSION AND INDEED, ALL PARTIES TO THIS INQUIRY, CAME TO KNOW AND TO APPRECIATE CLIFFORD GEORGE.**

- **I BELIEVE I CAN SPEAK ON BEHALF OF EVERYONE WHEN I EXPRESS MY APPRECIATION FOR HIS CONTRIBUTION TO BOTH THE SUBSTANCE AND THE PROCESS OF THIS INQUIRY.**

- **CLIFFORD CONTRIBUTED TO THE INQUIRY, IN A VERY PUBLIC WAY, THROUGH THE RECOUNTING OF HIS LIFE EXPERIENCE IN CANADA AND OVERSEAS. PERHAPS AS SIGNIFICANTLY, WAS A MORE QUIET CONTRIBUTION BY WAY OF THE FORTITUDE AND GRACE THAT OBVIOUSLY GUIDED HIM THROUGH HIS LIFE AND THROUGH THESE EXPERIENCES.**

- **I KNOW THAT CLIFFORD'S PASSING LEAVES A LARGE HOLE IN THE LIVES OF HIS FAMILY AND HIS COMMUNITY. I WOULD LIKE TO ONCE AGAIN EXPRESS MY PERSONAL CONDOLENCES AND THE CONDOLENCES OF EVERYONE WORKING FOR THE COMMISSION TO HIS FAMILY AND TO THE COMMUNITY.**

October 17, 2005

COMMISSIONER'S REMARKS
January 9, 2006

- GOOD MORNING AND HAPPY NEW YEAR.

- WE HAVE COME A LONG WAY SINCE THESE HEARINGS BEGAN. WE HAVE HAD 156 HEARING DAYS AND HEARD TESTIMONY FROM 95 WITNESSES. MANY PEOPLE ARE QUICK TO ASK: "HOW MUCH LONGER IS IT GOING TO TAKE?"

- I WOULD LIKE TO SPEND A FEW MINUTES REVISITING A THEME THAT I HAVE STRESSED ON A NUMBER OF OCCASIONS – THAT IS, BALANCING WHAT MAY APPEAR TO BE THE COMPETING OBJECTIVES OF THOROUGHNESS ON THE ONE HAND, AND EFFICIENCY, ON THE OTHER.

- I WILL BEGIN WITH THE GOAL OF THOROUGHNESS: THROUGH THIS INVESTIGATION AND THESE HEARINGS, WE ARE ENDEAVOURING TO BRING TO LIGHT ALL THE FACTS ABOUT THE EVENTS SURROUNDING THE DEATH OF DUDLEY GEORGE.

- WHILE THE EVENTS IN QUESTION OCCURRED 10 YEARS AGO, THE CURRRENT GOVERNMENT WAS OF THE VIEW THAT QUESTIONS REMAINED UNANSWERED AND THAT THE BEST WAY TO ANSWER THEM WAS THROUGH A PUBLIC INQUIRY.

- A PUBLIC INQUIRY TAKES TIME – OFTEN MORE THAN CAN BE ACCURATELY PREDICTED AT THE OUTSET.

- ONLY AFTER DOCUMENTS ARE READ, INTERVIEWS ARE CONDUCTED AND ALL THE EVIDENCE IS GATHERED DOES THE BREADTH AND DEPTH OF THE MANY ISSUES REQUIRING INVESTIGATION BECOME

APPARENT. AS COMMISSIONER, IT IS MY OBLIGATION TO ENSURE THAT NO STONE IS LEFT UNTURNED.

- AT THE OUTSET, IT IS ALSO DIFFICULT TO ESTIMATE THE NUMBER OF PEOPLE WHOSE RECOLLECTION MAY CONTRIBUTE MEANINGFULLY TO THE INVESTIGATION.

- A PUBLIC INQUIRY IS A UNIQUE OPPORTUNITY BECAUSE OF ITS INDEPENDENCE AND ITS STATUTORY AUTHORITY. AS SUCH, IT CAN OFTEN BRING TO LIGHT IMPORTANT FACTS AND PERSPECTIVES THAT WERE PREVIOUSLY NOT KNOWN.

- AS THE INQUIRY UNFOLDS, THEREFORE, ADDITIONAL WITNESSES ARE OFTEN IDENTIFIED. THESE CANNOT BE IGNORED IF WE ARE TO MEET OUR COMMITMENT OF THOROUGHNESS.

- IN THE CASE OF THIS INQUIRY, WE HAVE THE BENEFIT OF 17 DIFFERENT AND LEGITIMATE PERSPECTIVES, AS REPRESENTED BY THE PARTIES WITH STANDING. MUCH HAS BEEN LEARNED SO FAR - BUT THERE ARE STILL MANY WITNESSES TO HEAR FROM, TO ENSURE THE STORY IS COMPLETE.

- I AM COMMITTED TO COMPLETING THESE HEARINGS WITH THE SAME ATTENTION TO THOROUGHNESS THAT I BELIEVE, WE HAVE DEMONSTRATED TO DATE.

- I INDICATED SOME TIME AGO, MY EXPECTATION THAT THE HEARINGS MIGHT HAVE BEEN CONCLUDED BY NOW. FOR THE REASONS I HAVE DISCUSSED ABOVE, I NOW ESTIMATE THAT WE WILL CONCLUDE THIS SPRING.

- I WOULD NOW LIKE TO TURN TO THE TOPIC OF EFFICIENCY. AS COMMISSIONER, I ALSO HAVE THE OBLIGATION OF MANAGING THE ENTIRE INQUIRY PROCESS. THIS RESPONSIBILITY MANIFESTS ITSELF EARLY IN THE PROCESS WITH THE PREPARATION OF RULES OF PROCEDURE, TO GUIDE AND DEFINE THE PARAMETERS OF THESE PROCEEDINGS.

- OTHER EXAMPLES OF THE COMMISSION'S EFFORTS TO CONDUCT AN EFFICIENT PROCESS INCLUDE CIRCULATING SUMMARIES OF ANTICIPATED EVIDENCE, LEADING EVIDENCE THOROUGH DETAILED EXAMINATIONS-IN-CHIEF AND WORKING WITH PARTIES' COUNSEL TO ENSURE AN ORDERLY, THOROUGH AND FAIR PROCESS.

- PARTIES TO THE INQUIRY, AS REPRESENTED BY THEIR COUNSEL CAN CONTRIBUTE TO THIS EFFORT AS WELL - IT IS MY VIEW THAT WE ALL SHARE RESPONSIBILITY FOR AN EFFICIENT PROCESS.

- I HAVE TWO SPECIFIC REQUESTS TO COUNSEL IN THIS REGARD. FIRST, IF ISSUES HAVE BEEN DEALT WITH BY COMMISSION COUNSEL, IN THEIR DIRECT EXAMINATION OR IN SOME DETAIL BY ANOTHER PARTY DURING THEIR CROSS-EXAMINATION, IT IS NOT NECESSARY NOR HELPFUL TO THIS INVESTIGATION TO HAVE THE SAME GROUND REVIEWED AGAIN.

- SECOND, I AM ASKING EACH OF YOU TO KEEP IN MIND THE BASIS ON WHICH YOUR PARTY WAS GRANTED STANDING WHEN PREPARING YOUR CROSS-EXAMINATION AND TO FOCUS YOUR EXAMINATION ON YOUR PARTY'S INTEREST.

- WE GRANTED STANDING TO 17 PARTIES TO ENSURE THAT ALL NECESSARY PERSPECTIVES WERE CANVASSED, BUT THEY DO NOT

NEED TO BE, AND SHOULD NOT BE, CANVASSED REPEATEDLY.

- EACH PARTY WILL HAVE AMPLE OPPORTUNITY TO MAKE COMPREHENSIVE CLOSING SUBMISSIONS, EITHER WRITTEN OR ORAL OR BOTH, AT THE CONCLUSION OF THE HEARINGS. I AM, THEREFORE ASKING YOU TO BE MINDFUL OF QUESTIONS THAT NEED TO BE ASKED IN CROSS-EXAMINATION AND OF THOSE MATTERS THAT SHOULD MORE APPROPRIATELY BE DEALT WITH IN CLOSING SUBMISSIONS.

- FURTHERMORE, IN MY VIEW, EACH PARTY HAS A CONTINUING RESPONSIBILITY TO CAREFULLY CONSIDER THE NECESSITY OF THEIR COUNSEL BEING PRESENT, IN KIMBALL HALL, FROM THE BEGINNING TO THE END OF EACH HEARING DAY AND WEEK.

- I APPRECIATE THAT THE 'TWISTS AND TURNS' THAT THESE HEARINGS TAKE SOMETIMES MAKES IT CHALLENGING FOR THE PARTIES – AND THEIR COUNSEL - TO ANTICIPATE THE DIRECTION THE EVIDENCE WILL TAKE, AND THEREFORE, THE EXTENT TO WHICH A WITNESS' TESTIMONY MAY BE OF DIRECT OR SUBSTANTIAL INTEREST TO THEIR PARTY.

- OUR WEBCAST, AND DAILY POSTING OF TRANSCRIPTS ARE AN EXCELLENT MEANS TO FOLLOW THE PROCEEDINGS - AND THE OUTLINES OF ANTICIPATED EVIDENCE PREPARED BY COMMISSION COUNSEL, ARE INTENDED TO ASSIST COUNSEL TO ANTICIPATE RELEVANT EVIDENCE OR ISSUES REQUIRING THEIR DIRECT PARTICIPATION.

- I APPRECIATE, HOWEVER, THAT EVEN BY MONITORING THE WEBCAST AND REFERRING TO THE OUTLINES OF ANTICIPATED EVIDENCE UNEXPECTED OR UNANTICIPATED SITUATIONS MAY ARISE.

- IN CONCLUSION, I WANT TO REITERATE MY VIEW THAT THE VERY REAL CONCERN FOR BOTH THOROUGHNESS AND EFFICIENCY REQUIRES CONSTANT VIGILENCE AND EFFORT BY ALL OF US, AS WE ARE ENGAGED IN A PROCESS THAT IS, FOR THE MOST PART, PUBLICLY-FUNDED.

- I HAVE COMMENDED COUNSELS' CO-OPERATION IN THE PAST AND, ONCE AGAIN, I WANT TO ACKNOWLEDGE THE SIGNIFICANT EFFORTS THAT HAVE BEEN AND CONTINUE TO BE MADE BY MOST COUNSEL IN ADDRESSING THESE IMPORTANT CONCERNS.

- I AM COMMITTED TO COMPLETING A THOROUGH AND FAIR INVESTIGATION – FROM BEGINNING TO END – BUT I ALSO WANT TO REITERATE MY CONCERN THAT THOROUGHNESS CANNOT BE ACHIEVED AT *ANY COST*. BOTH THOROUGHNESS AND EFFICIENCY MUST CONTINUE TO GUIDE US IN OUR EFFORTS TO MAINTAIN THE INTEGRITY OF THIS PROCESS.

- THANK YOU.

COMMISSIONER'S REMARKS
PROGRESS OF THE INQUIRY
March 6, 2006

- GOOD MORNING.

- AS HAS BEEN MY PRACTICE THROUGHOUT THESE HEARINGS, I WISH TO MAKE A FEW COMMENTS ON THE PROGRESS OF THE INQUIRY.

- HOWEVER, BEFORE DOING SO, I WISH TO ACKNOWLEDGE THE UNEXPECTED NEWS LAST WEEK OF KENNETH DEANE'S TRAFFIC ACCIDENT AND TRAGIC DEATH.

- ON BEHALF OF THE COMMISSION AND ALL INVOLVED WITH THE INQUIRY, I WISH TO EXTEND OUR SYMPATHIES TO MR. DEANE'S FAMILY. I KNOW HOW DIFFICULT IT MUST BE FOR THEM TO DEAL WITH THEIR LOSS.

- WHILE THE COMMISSION WILL NOT HAVE THE BENEFIT OF MR. DEANE'S VIEWS AND PERSPECTIVE, WE ARE NONETHELESS CONFIDENT THAT OUR INVESTIGATION WILL BE COMPLETE.

- THERE ARE A NUMBER OF MEANS BY WHICH WE INTEND TO DEAL WITH THE ABSENCE OF HIS FIRST HAND TESTIMONY AT THIS INQUIRY, AND COMMISSION COUNSEL WILL ADDRESS THIS ISSUE AT A LATER TIME.

- WE HAVE NOW HEARD TESTIMONY FROM SEVERAL OF THE MOST ANTICIPATED WITNESSES AND SOME PEOPLE MAY HAVE CONCLUDED THAT THE FACT-FINDING PORTION OF THE INQUIRY IS COMPLETE. HOWEVER, THAT IS NOT THE CASE.

- LET ME EXPLAIN, IN A LITTLE MORE DETAIL, WHERE WE ARE IN THE PROCESS.

- AT THE OUTSET, WE IDENTIFIED THREE PRIMARY CATEGORIES OF WITNESSES AROUND WHICH WE INTENDED TO ORGANIZE THESE PROCEEDINGS, NAMELY ABORIGINAL WITNESSES WHICH WE HAVE HEARD FROM, GOVERNMENT OFFICIALS WHICH WE HAVE ALSO NOW HEARD FROM, AND FINALLY THE OPP, THE WITNESSES WHO ARE NOW TESTIFYING. WE HAVE ALSO HEARD FROM THE MEDICAL AND EMERGENCY PERSONEL WHO WERE DIRECTLY INVOLVED IN THE EVENTS OF SEPTEMBER 1995.

- WHILE WE HAVE HEARD FROM MOST OF THE SENIOR OPP OFFICIALS, THERE ARE MANY OTHER POLICE WITNESSES, PREDOMINENTLY CONSTABLES, WHO WERE DIRECTLY INVOLVED, WHO MUST BE CALLED. THE NEXT FEW WEEKS WILL BE DEVOTED TO HEARING TESTIMONY FROM THESE WITNESSES AS WELL AS FROM THE CURRENT COMMISSIONER OF THE OPP, GWEN BONIFACE.

- MUCH HAS BEEN LEARNED SO FAR. EACH WITNESS ADDS DETAILS OR PERSPECTIVES TO THE INVESTIGATION THAT HELPS ME TEST OR VERIFY THE EVIDENCE OF OTHERS AND ULTIMATELY, WILL HELP ME TO REACH CONCLUSIONS.

- FOLLOWING THE OPP WITNESSES, THERE ARE A FEW ADDITIONAL WITNESSES TO CALL WHO FALL OUTSIDE THE THREE PRIMARY CATEGORIES, BUT WHO WERE DIRECTLY AFFECTED BY, OR INVOLVED WITH, THE EVENTS OF SEPTEMBER 1995. THESE INCLUDE SOME LOCAL COTTAGERS AND DEPARTMENT OF NATIONAL DEFENCE OFFICIALS. OUR INVESTIGATION IS NOT COMPLETE UNTIL WE HAVE HEARD FROM ALL OF THE WITNESSES.

- THROUGHOUT THESE PROCEEDINGS WE MUST KEEP IN MIND THAT THE PROCESS OF A PUBLIC INQUIRY IS NOT ONLY FOR THE BENEFIT OF THE COMMISSIONER. THERE IS A SIGNIFICANT PUBLIC EDUCATION COMPONENT TO A PUBLIC INQUIRY AND IT PROVIDES AN OPPORTUNITY FOR THE PUBLIC TO HEAR - AND FOR WITNESSES TO SHARE - THEIR PERSPECTIVES AND EXPERIENCES.

- WE INTEND TO CALL ALL RELEVANT AND HELPFUL EVIDENCE, BUT THAT DOES NOT MEAN WE INTEND TO HEAR ALL *POSSIBLE* EVIDENCE. AS HAS BEEN THE CASE SINCE WE BEGAN, THOROUGHNESS AND FAIRNESS NEED TO CONTINUE TO BE BALANCED WITH ECONOMY.

- I WANT TO REMIND EVERYONE THAT THE COMMISSION'S POLICY AND RESEARCH WORK IS BEING CARRIED OUT AT THE SAME TIME AS THESE PART 1 HEARINGS. SIGNIFICANT AMOUNTS OF RESEARCH HAS BEEN GATHERED AND IS BEING REVIEWED.

- EXPERTS AND PARTIES WHO HAVE PART 2 STANDING HAVE CONTRIBUTED TO THIS RESEARCH. A NUMBER OF FORUMS AND SYMPOSIA HAVE BEEN HELD AND, AS YOU KNOW, ANOTHER IS SCHEDULED FOR LATER THIS WEEK. MANY OF THESE SESSIONS ARE OPEN TO THE PUBLIC AND HAVE BEEN WEBCAST TO GIVE THE MATERIAL PRESENTED TO THE COMMISSION, WIDE ACCESSIBILITY.

- AFTER THE HEARINGS AND POLICY WORK HAVE CONCLUDED, I INTEND TO COMPLETE MY REPORT AS QUICKLY AS POSSIBLE. MY GOAL IS TO HAVE IT FINISHED BEFORE THE END OF THIS CALENDAR YEAR.

- IT IS WELL KNOWN THAT A PUBLIC INQUIRY IS A LENGTHY AND COSTLY UNDERTAKING. IT ALSO GOES WITHOUT SAYING THAT PUBLIC FUNDING IS NOT UNLIMITED. THESE FACTS ARE, NO DOUBT, TAKEN INTO ACCOUNT IN A GOVERNMENT'S DECISION TO HAVE AN INQUIRY.

- I HAVE SAID ON PREVIOUS OCCASIONS, MY EXPECTATION IS THAT THE COST OF THIS INQUIRY WILL BE COMPARABLE TO OTHER RECENTLY COMPLETED COMMISSIONS OF INQUIRY.

- I WANT TO ASSURE EVERYONE THAT THE COST TO THE PUBLIC OF THIS INQUIRY HAS ALWAYS BEEN FOREFRONT IN MY MIND AND THAT EVERY DECISION I HAVE MADE HAS BEEN WITH A VIEW TO BALANCING THE NEED FOR THOROUGHNESS, FAIRNESS AND ECONOMY.

- FROM THE OUTSET, MY PRINCIPAL GOAL HAS BEEN TO CONDUCT A THOROUGH, FAIR AND OPEN INQUIRY. MY SECONDARY GOAL HAS BEEN TO CONTRIBUTE, IN SOME WAY, TO THE HEALING OF THOSE INDIVIDUALS WHOSE LIVES WERE AFFECTED BY THE EVENTS OF SEPTEMBER 1995.

- NOTWITHSTANDING THE MANY TWISTS AND TURNS AN INQUIRY MAY TAKE, I BELIEVE THAT, SO FAR, WE HAVE BEEN SUCCESSFUL IN ACHIEVING THESE GOALS.

- THANK YOU.

COMMISSIONER'S REMARKS
EVIDENTIARY HEARING TIMETABLE

March 30, 2006

- BEFORE WE BEGIN TODAY, I WOULD LIKE TO MAKE SOME REMARKS REGARDING THE TIMETABLE FOR COMPLETING THE EVIDENTIARY HEARINGS, WHICH IS IN KEEPING WITH MY STATED OBJECTIVE OF COMPLETING MY REPORT THIS YEAR.

- I UNDERSTAND THERE HAS BEEN SOME DISCUSSION AMONG THE PARTIES AND WITH COMMISSION COUNSEL REGARDING CROSS-EXAMINATION AND THE NEED FOR COMPLETING THESE HEARINGS. WE'VE SEEN SOME EVIDENCE OF THIS IN THE LAST FEW DAYS AND IT IS VERY ENCOURAGING.

- I APPRECIATE THE CONTINUED EFFORT TO WORK TOGETHER CO-OPERATIVELY AND CONSTRUCTIVELY. ALL PARTIES TO THESE PROCEEDINGS HAVE DEMONSTRATED A RECOGNITION OF THE NEED TO BALANCE THE COMPETING OBJECTIVES OF THOROUGHNESS AND ECONOMY.

- AS YOU KNOW, HEARING DATES HAVE BEEN SCHEDULED UNTIL THE END OF MAY TO CALL EVIDENCE FROM THE POLICE OFFICERS INVOLVED, FROM LOCAL COTTAGERS AND FROM WITNESSES WITH THE DEPARTMENTS OF NATIONAL DEFENCE AND INDIAN AND NORTHERN AFFAIRS.

- IF WE DON'T FINISH BY THE END OF MAY, AND IT BECOMES NECESSARY, I AM PREPARED TO EXTEND OUR HEARING SCHEDULE INTO JUNE. IF THIS SHOULD OCCUR, WE WILL BE SITTING EVERY WEEK DAY IN JUNE, EXCEPT FOR JUNE 22 WHEN KIMBALL HALL IS UNAVAILABLE AND THE HEARINGS WILL CONCLUDE ON JUNE 28.

- COMMISSION COUNSEL IS WORKING TO ENSURE THAT THE REQUIRED WITNESSES ARE HEARD FROM IN THE TIME REMAINING, AND I AM CONFIDENT THAT COUNSEL FOR THE PARTIES WILL APPROACH CROSS-EXAMINATION IN THE NEXT 3 MONTHS, WITH THE JUNE 28 COMPLETION DATE IN MIND. AS I'VE SAID, WE'VE ALREADY SEEN SOME EVIDENCE OF THIS, THIS WEEK.

- TO MAXIMIZE THE TIME REMAINING, A NUMBER OF MODIFICATIONS TO THE HEARING WEEK SCHEDULE IS NECESSARY.

- AS WE DID THIS WEEK, THE FIRST DAY OF A HEARING WEEK – USUALLY MONDAY - WILL BEGIN AT 10:00 AM RATHER THAN 10:30 AM AND WE WILL ADJOURN THAT DAY AT 5:30 PM RATHER THAN AT 5:00 PM.

- FOR THE REMAINING DAYS OF A HEARING WEEK, WE WILL CONTINUE TO START AT 9:00 AM AND ADJOURN AT 5:00 PM, OR EVEN LATER, RATHER THAN AT 4:30 PM.

- FINALLY, THE LUNCH PERIOD WILL BE SHORTENED BY 15 MINUTES, TO 1 HOUR.

- THESE FEW MODIFICATIONS WILL ADD CONSIDERABLE HEARING TIME BETWEEN NOW AND JUNE 29.

- I FULLY APPRECIATE THAT ADDING THIS TIME TO THE HEARING SCHEDULE WILL ALSO ADD TO THE PRESSURE EVERYONE IS ALREADY EXPERIENCING, BUT I BELIEVE THAT WE HAVE TO DO WHATEVER WE CAN TO MAXIMIZE THE USE OF THE REMAINING HEARING DAYS.

- AT THIS TIME, I WOULD ALSO LIKE TO SET OUT MY EXPECTATIONS REGARDING A TIMETABLE AND A PROCESS FOR CLOSING WRITTEN AND ORAL SUBMISSIONS FOR PART 1.

- PARTIES WILL BE ASKED TO FILE THEIR WRITTEN SUBMISSIONS WITH THE COMMISSION, WITH A COPY TO OTHER PART 1 PARTIES, BY JULY 28.

- TIME-LIMITED ORAL SUBMISSIONS WILL TAKE PLACE DURING THE WEEK OF AUGUST 21. PARTIES MAY LIMIT THEIR ORAL SUBMISSIONS TO THE MAIN POINTS OF THEIR WRITTEN SUBMISSION AND/OR THEY MAY USE THE TIME TO REPLY TO OTHER PARTIES' SUBMISSIONS.

- WE WILL BE COMMUNICATING THE AMOUNT OF TIME TO BE ALLOCATED TO EACH PARTY FOR ORAL SUBMISSIONS IN THE NEXT WEEK OR SO. THERE WILL BE NO LIMIT FOR WRITTEN SUBMISSIONS, BUT OUR OBJECTIVE IS TO COMPLETE THE ORAL SUBMISSIONS WITHIN ONE WEEK.

- SIMILARILY, IN THE NEXT WEEK OR SO, I WILL BE ADDRESSING THE INQUIRY SUBMISSION PROCESS, AS IT RELATES TO PART 2.

- IN THE MEANTIME, I TRUST THIS STATEMENT PROVIDES THE PARTIES WITH SUFFICIENT NOTICE AND DIRECTION TO PREPARE AND PLAN OVER THE NEXT FEW MONTHS, AND THAT IT WILL ALSO INFORM MEMBERS OF THE PUBLIC AND MEDIA WHO ARE FOLLOWING THESE PROCEEDINGS OF OUR ANTICIPATED TIMETABLE.

- AGAIN, YOUR ASSISTANCE IN BRINGING THESE PROCEEDINGS TO A TIMELY CONCLUSION, WHILE AT THE SAME TIME, ENSURING THAT OUR INVESTIGATION IS COMPLETE, IS VERY MUCH APPRECIATED.

- THANK YOU.

COMMISSIONER'S STATEMENT
FRIDAY, MAY 26, 2006

- **BEFORE ADJOURNING TODAY, I WOULD LIKE TO CONCLUDE THE AFTERNOON WITH A FEW BRIEF REMARKS.**

- **WHEN WE RETURN ON JUNE 5TH IT WILL BE FOR OUR FINAL WEEKS OF TESTIMONY.**

- **IN MY LAST STATEMENT, I OUTLINED THE TIMETABLE FOR CONCUDING THE PART 1 EVIDENTIARY HEARINGS. I STATED THEN AND REPEAT NOW THAT THE HEARINGS WILL CONCLUDE NO LATER THAN JUNE 29TH. WRITTEN SUBMISSION WILL BE DUE BY JULY 28TH AND ORAL SUBMISSIONS WILL BE HEARD DURING THE WEEK OF AUGUST 21ST.**

- **ALL PARTIES TO THE INQUIRY HAVE NOW BEEN ADVISED OF THE PROCESS FOR MAKING A WRITTEN AND – IF THEY CHOOSE, AN ORAL SUBMISSION. WHEN WE KNOW WHICH PARTIES WILL BE MAKING AN ORAL SUBMISSION, THE ORDER WILL BE DETERMINED, COMMUNICATED TO ALL PARTIES AND POSTED ON THE WEB SITE.**

- **WHEN WE RETURN THERE WE BE A MAXIMUM OF 17 HEARING DAYS REMAINING TO JUNE 29TH. I AM ENCOURAGED BY COUNSELS' EFFORTS TO CONCENTRATE ON THE MOST USEFUL AND RELEVANT PARTS OF THE EVIDENCE IN THEIR EXAMINATIONS AND CROSS EXAMINATIONS. I BELIVEVE WE ARE MAKING THE BEST USE OF THE TIME REMAINING AND I AM URGING EVERYONE TO CONTINUE WITH THIS OBJECTIVE**

IN MIND. EACH REMAINING DAY IS IMPORTANT AND REQUIRES OUR CONTINUED CO-OPERATION.

- **IT HAS BEEN A LONG AND SOMETIMES CHALLENGING PROCESS, BUT I AM CONFIDENT THAT OUR FINAL REPORT WILL BE USEFUL AND TIMELY.**

- **THERE IS NO DOUBT THAT AT THE CONCLUSION OF THIS PROCESS, WE WILL HAVE A GREATER UNDERSTANDING OF THE CIRCUMSTANCES AND EVENTS SURROUNDING THE DEATH OF DUDLEY GEORGE IN SEPTEMBER 1995.**

- **AS OUR MANDATE STATES, WE WILL ALSO BE IN A POSITION TO MAKE CONSTRUCTIVE RECOMMENDATIONS DIRECTED TO THE AVOIDANCE OF VIOLENCE IN SIMILAR CIRCUMSTANCES IN THE FUTURE.**

- **THANK YOU.**

COMMISSIONER'S REMARKS
Final Day of Evidentiary Hearings
June 28, 2006

• THIS BRINGS US TO THE CONCLUSION OF THE EVIDENTIARY HEARINGS OF THIS INQUIRY EXCEPT FOR COUNSELS' WRITTEN AND ORAL SUBMISSIONS, WHICH WILL OCCUR DURING THE WEEK OF AUGUST 21.

• I WOULD LIKE TO CONCLUDE TODAY WITH A FEW BRIEF REMARKS ON THE PUBLIC INQUIRY PROCESS IN GENERAL, AND THIS INQUIRY, IN PARTICULAR.

• AT THE OUTSET OF THESE PROCEEDINGS, I SET OUT FOUR PRINCIPLES TO GUIDE US: OPENNESS, THOROUGHNESS, FAIRNESS AND EXPEDIENCY. COMMISSION COUNSEL AND I DID OUR BEST TO ENSURE THAT OUR COMMITMENT TO THESE PRINCIPLES WERE ADHERED TO IN EVERY PROCEDURAL AND LEGAL DECISION WE MADE.

• THROUGH OPENNESS, THE PUBLIC IS PROVIDED WITH A 'WINDOW' INTO AN INCIDENT, AND TO THE CIRCUMSTANCES SURROUNDING IT, THAT OTHERWISE MAY NOT BE AVAILABLE. AMONG THE WINDOWS IN THIS INQUIRY WERE THESE PUBLIC HEARINGS, WHICH WERE CONDUCTED IN THE COMMUNITY WHERE THE EVENTS IN QUESTION OCCURRED.

• BROAD PUBLIC ACCESS WAS MADE POSSIBLE THROUGH THE DAILY LIVE WEBCAST OF THE PROCEEDINGS AND THE ELECTRONIC POSTING OF THE TRANSCRIPTS BY THE END OF THE SAME DAY.

• NATIONAL, REGIONAL AND LOCAL MEDIA COVERED MUCH OF THE PROCEEDINGS. SOME LOCAL MEDIA WERE PRESENT ALMOST DAILY, INCLUDING THE SARNIA OBSERVER, THE A-CHANNEL IN LONDON AND CTV SARNIA.

• ONE-WAY IN WHICH THOROUGHNESS WAS ACHIEVED WAS BY CALLING APPROXIMATELY 140 WITNESSES, WHO HAD RELEVANT OR HELPFUL EVIDENCE, TO TESTIFY. FAIRNESS WAS ASSURED THROUGH, AMONG OTHER THINGS, THE CROSS-EXAMINATION OF THESE WITNESSES BY ANY AND SOMETIMES ALL - OF THE 17 PARTIES WITH STANDING, THEREBY PROVIDING US WITH MANY PERSPECTIVES THOUGH WHICH TO ASSESS THE EVIDENCE.

• YOU HEARD ME REMARK, ON MANY OCCASIONS, THAT IT WAS NECESSARY TO BALANCE THE PRINICIPLES OF THOROUGHNESS AND FAIRNESS WITH THAT OF ECONOMY AND EFFICIENCY.

• EVER MINDFUL THAT THIS IS A PUBLICY FUNDED PROCESS, I BELIEVE THAT WE KEPT TO A RIGOROUS SCHEDULE, STARTING OUR DAY EARLY AND FINISHING LATE WHEN NECESSARY. THROUGHOUT, COUNSEL WAS PROVIDED WITH TIMELY DISCLOSURE AND SUMMARIES OF WITNESSES' ANTICIPATED EVIDENCE TO ASSIST WITH THEIR PREPARATION.

• IT WAS A TREMENDOUS CHALLENGE TO BALANCE THE DESIRE TO FULLY UNDERSTAND THE CIRCUMSTANCES OF MR. GEORGE'S DEATH, ON THE ONE HAND, WITH THE OBLIGATION TO EXPLORE ONLY WHAT WAS NECESSARY TO MEET THE INQUIRY'S MANDATE, ON THE OTHER.

• I BELIEVE WE SUCCESSFULLY NAVIGATED THAT PATH.

• IN MY VIEW, THERE ARE OTHER MEASURES AGAINST WHICH A PUBLIC INQUIRY CAN AND SHOULD BE EVALUATED.

• YOU WILL RECALL THAT AT THE OUTSET OF THESE HEARINGS, I IDENTIFIED THE GOALS OF PUBLIC EDUCATION AND, THROUGH EDUCATION AND UNDERSTANDING, THE GOAL OF HEALING. IT WAS MY DESIRE THAT AT THE END OF THIS PROCESS, THE INQUIRY WOULD CONTRIBUTE TO THE PUBLIC'S UNDERSTANDING OF BOTH THE SPECIFIC INCIDENT OF SEPTEMBER 1995 AND OF THE FACTORS OR CONDITIONS THAT CONTRIBUTED TO IT.

• PUBLIC EDUCATION IS NOT ONLY ACHIEVED THROUGH THE COMMISSIONER'S FINAL REPORT. THE PUBLIC HAS ALSO BENEFITED FROM THE PESPECTIVES SHARED BY THE MANY WITNESSES, WHO TESTIFIED PUBLICLY, AND THE KNOWLEDGE OF THE NUMEROUS EXPERT WITNESSES, THAT HAVE ALSO BEEN CALLED TO TESTIFY.

• IN ADDITION, THE PUBLIC HAS HAD ACCESS TO THE MANY RESEARCH PAPERS, CONSULTATIONS, FORUMS AND DISCUSSION PAPERS ON THE POLICY ISSUES BEING EXPLORED BY THE COMMISSION, WHICH WILL GUIDE MY RECOMMENDATIONS ON HOW TO AVOID VIOLENCE IN SIMILAR CIRCUMSTANCES, IN THE FUTURE.

• THESE HEARINGS HAVE NOT ONLY PROVIDED AN OPPORTUNITY FOR THE PUBLIC TO HEAR, BUT FOR WITNESSES TO SHARE SOME FOR THE FIRST TIME - THEIR VIEW OF EVENTS IN 1995.

• I WAS ALWAYS AWARE OF THE FACT THAT RE-VISITING EVENTS THAT TOOK PLACE OVER 10 YEARS AGO MAY RE-OPEN WOUNDS AND RE-KINDLE FEELINGS AND TENSIONS.
BUT I WAS ALWAYS ALSO HOPEFUL, THAT THROUGH THIS PROCESS, THE INQUIRY MIGHT LEAVE THE COMMUNITIES AND INDIVIDUALS AFFECTED A LITTLE "BETTER" THAN THEY WERE WHEN WE BEGAN.

• I HAVE BEEN ENCOURAGED BY THE RESPONSE TO THIS INQUIRY: BY THE THANKS FROM SOME WITNESSES FOR HAVING HAD THE OPPORTUNITY TO TESTIFY, BY THE EXPRESSIONS OF HOPEFULNESS BY THOSE AFFECTED FOR A BETTER FUTURE AND BY THE STEPS TAKEN BY SOME PARTIES TOWARD THAT END.

• THE HEARINGS IN FOREST DEALT WITH THE FIRST PART OF MY MANDATE AND, UNDERSTANDABLY, PUBLIC ATTENTION WAS FOCUSED ON THEM.

• HOWEVER, IN ADDITION TO EXAMINING WHAT HAPPENED AT IPPERWASH IN 1995, MY MANDATE INCLUDES MAKING RECOMMENDATIONS ON HOW TO AVOID VIOLENCE IN SIMILAR CIRCUMSTANCES.

• AS YOU KNOW, THE COMMISSION HAS DONE MUCH POLICY WORK WHILE THE EVIDENTIARY HEARINGS HAVE BEEN UNDERWAY. IT IS MY BELIEF THAT THE MATERIALS PRODUCED AND COLLECTED UNDER OUR POLICY AND RESEARCH UMBRELLA WILL PROVE TO BE A LASTING LEGACY OF THE IPPERWASH INQUIRY.

• RELATIONS BETWEEN ABORIGINAL PEOPLES AND GOVERNMENTS, POLICE AND OTHER SEGMENTS OF THE CANADIAN POPULATION CONTINUE TO DOMINATE THE PUBLIC AGENDA AND ARE LIKELY TO DO SO FOR SOME TIME. I HOPE THAT OUR WORK IN THESE AREAS WILL PROVE TO BE OF GREAT VALUE IN ADDRESSING ONGOING AND FUTURE DISPUTES.

• MUCH OF THE MATERIAL IS POSTED ON OUR WEBSITE AND WILL, OF COURSE, BE CONTAINED IN MY FINAL REPORT ALONG WITH MY RECOMMENDATIONS. I'D LIKE TO RECOGNIZE MR. NYE THOMAS, THE COMMISSION'S DIRECTOR OF POLICY AND RESEARCH AND HIS TEAM, NOELLE SPOTTON AND JEFFREY STUTZ, FOR THEIR OUTSTANDING WORK IN THIS AREA.

• MANY OF THE PARTIES HAVE ATTENDED SOME OF THE SYMPOSIA AND OTHER MEETINGS WE ORGANIZED. IN THE PAST FEW DAYS NEW DISCUSSION PAPERS HAVE BEEN POSTED THAT I HOPE WILL BE CONSIDERED BY THE PARTIES WHEN MAKING THEIR FINAL SUBMISSIONS.

• THE AREAS COVERED INCLUDE ISSUES AFFECTING THE POLICING OF ABORIGINAL OCCUPATIONS AND PROTESTS, ABORIGINAL PEOPLES AND POLICING AND THE JUSTICE SYSTEM AND RELATIONS BETWEEN GOVERNMENTS AND POLICE. THESE, ALONG WITH TREATY RIGHTS AND

ABORIGINAL RIGHTS ISSUES, ARE CENTRAL TO MANY ABORIGINAL DISPUTES.

• A REFLECTION ON THESE HEARINGS WOULD BE INCOMPLETE WITHOUT MENTION OF THE VALUABLE CONTRIBUTION MADE BY LEGAL COUNSEL.

• I WANT TO RE-ITERATE MY APPRECIATION TO THE PARTIES' COUNSEL FOR THEIR CO-OPERATION THROUGHOUT THESE TWO YEARS AND FOR THE FACT THAT, NOTWITHSTANDING THE MANY DIVERSE INTERESTS, A STRONG SENSE OF CIVILITY AND RESPECT, FOR EACH OTHER AND FOR THE PROCESS, HAS BEEN MAINTAINED.

• I WOULD ALSO LIKE TO RECOGNIZE THE COMMISSION'S LEGAL TEAM, UNDER THE STEWARDSHIP OF LEAD COUNSEL, DERRY MILLAR.

• ONE OF THE ESSENTIAL OBJECTIVES OF A PUBLIC INQUIRY IS TO RESTORE PUBLIC CONFIDENCE, BY BRINGING TO LIGHT ALL THE IMPORTANT FACTS AND DOING SO IN AN OPEN AND IMPARTIAL MANNER. COMMISSION COUNSEL ARE AT THE FOREFRONT OF DOING WHAT IS NECESSARY TO MEET THIS OBJECTIVE.

• IN MY VIEW, THE SKILL AND INTEGRITY THAT MR. MILLAR BROUGHT TO THIS INQUIRY ESTABLISHED THE STANDARD FOR HIS OWN TEAM AND SERVED AS GUIDEPOSTS FOR ALL OF US. FURTHERMORE, I BELIEVE WE HAVE GONE A LONG WAY TO EARNING THE PUBLIC'S CONFIDENCE IN BOTH THE INQUIRY INTO THE EVENTS OF SEPTEMBER 1995 AND THE INQUIRY PROCESS ITSELF.

• MR. MILLAR WAS SUPPORTED BY A STELLAR TEAM OF LAWYERS AND INVESTIGATORS.
AT THIS TIME, I WOULD LIKE TO EXPRESS MY THANKS TO MS. SUSAN VELLA, MR. DON WORME, MS. KATHERINE HENSEL, MS. MEGAN FERRIER, MS. REBECCA CULTLER AND JODIE-LYNN WADDILOVE, WHO IS NOW PRACTICING LAW IN OTTAWA, WITH THE FEDERAL GOVERNMENT.

• I WOULD ALSO LIKE TO THANK OUR INVESTIGATORS LED BY INSPECTOR RICK MOSS OF THE RCMP, JERRY WOODWORTH, WHO RETIRED AFTER ALMOST 40 YEARS WITH THE RCMP, AND ANIL ANAND WHO WAS SECONDED FROM THE TORONTO POLICE SERVICE.

• IN MY VIEW NO COMMISSIONER HAS EVER BEEN BETTER SERVED THAN I HAVE BEEN BY THIS OUTSTANDING TEAM.

• WE WILL RESUME ON AUGUST 21 FOR THE PARTIES' ORAL SUBMISSIONS. WHICH WILL MARK THE OFFICIAL CONCLUSION OF THIS PART OF THE INQUIRY.

• IN THE MEANTIME, I HOPE THE SUMMER PROVIDES ALL OF US WITH SOME OPPORTUNITY TO SPEND TIME WITH FRIENDS AND FAMILY, WHO HAVE PROVIDED US WITH MUCH NEEDED SUPPORT DURING THESE HEARINGS.

• THANK YOU.

COMMISSIONER'S REMARKS
Re: Oral Submission Process & Thereafter
August 21, 2006

- GOOD MORNING. I MUST SAY, EVERYONE IS LOOKING – AND I HOPE, FEELING – A LITTLE MORE RESTED THAN WHEN WE WERE LAST TOGETHER IN JUNE.

- ALTHOUGH WE HAVE A DEMANDING SCHEDULE THIS WEEK, I WOULD LIKE TO TAKE A FEW MINUTES TO EXPLAIN BRIEFLY WHERE WE ARE IN THE INQUIRY PROCESS AND WHAT WORK STILL REMAINS TO BE DONE.

- WE HAVE COME A LONG WAY SINCE THE HEARINGS ON STANDING AND FUNDING JUST OVER TWO YEARS AGO. OUR EFFORTS TO CONDUCT A THOROUGH AND FAIR INVESTIGATION INTO THE EVENTS SURROUNDING THE DEATH OF DUDLEY GEORGE IN SEPTEMBER 1995, HAVE RESULTED IN:

  - THE ESTABLISHMENT OF A DATABASE OF OVER 23,000 DOCUMENTS;
  - EVIDENCE HEARD FROM 139 WITNESSES, INCLUDING SOME EXPERT WITNESSES, DURING 229 DAYS OF TESTIMONY;
  - AN ARCHIVE OF 1876 EXHIBITS;
  - A VERBATIM WRITTEN RECORD OF THE HEARINGS AMOUNTING TO OVER 60,000 PAGES OF TRANSCRIPTS; AND,
  - A VIDEO RECORDING OF THE PROCEEDINGS, FROM BEGINNING TO END.

- THE LEGACY OF OUR POLICY WORK, DIRECTED AT MAKING RECOMMENDATIONS TO AVOID VIOLENCE IN SIMILAR CIRCUMSTANCES, INCLUDES:

- OVER 20 COMMISSIONED RESEARCH PAPERS, BY ACADEMICS AND OTHER EXPERTS;
- MANY PAPERS, ON A VARIETY OF RELEVANT TOPICS, WRITTEN BY PARTIES WITH PART 2 STANDING;
- OVER A DOZEN MEETINGS, SYMPOSIA AND OTHER EVENTS ORGANIZED TO ASSIST THE COMMISSION IN UNDERSTANDING THE DIFFERENT ISSUES AND PERSPECTIVES;
- IN TOTAL, THESE EVENTS WERE ATTENDED BY SEVERAL HUNDRED PEOPLE AND, WHEN WEBCAST, WERE VIEWED BY MANY OTHERS.

- OF COURSE, I HOPE THE RESULTS OF OUR EFFORTS WILL GO BEYOND STATISTICS AND CONVEY A SENSE OF THE DEPTH AND SCOPE OF THE WORK THAT HAS BEEN UNDERTAKEN, NOT ONLY BY THE COMMISSION, BUT BY EVERYONE INVOLVED.

- ONCE AGAIN, I WOULD LIKE TO EXPRESS MY APPRECIATION FOR THE CONTRIBUTION MADE BY THE PARTIES AND THEIR COUNSEL TO THIS PROCESS.

- THE WRITTEN SUBMISSIONS CONVEY THE PARTIES' POSITIONS ON THE EVIDENCE HEARD AND ARE NOW PUBLICLY AVAILABLE ON OUR WEBSITE.

- I HAVE REVIEWED ALL OF THE WRITTEN SUBMISSIONS. THE NEXT FOUR DAYS HAVE BEEN SET ASIDE FOR PARTIES WITH STANDING AT THE INQUIRY, TO HIGHLIGHT THEIR WRITTEN SUBMISSIONS AND TO RESPOND TO POINTS RAISED BY OTHERS IN THEIR WRITTEN SUBMISSIONS. THE PURPOSE IS NOT TO PROVIDE AN OPPORTUNITY TO RAISE NEW ISSUES.

- THESE SUBMISSIONS ARE NOT EVIDENCE, THEY ARE A PARTY'S INTERPRETATION OF THE EVIDENCE AND IN SOME CASES WHAT THE PARTY IS URGING ME TO CONCLUDE FROM THE EVIDENCE.

- WE ALL HAVE A PROFESSIONAL OBLIGATION TO TREAT THE COMMISSION, COUNSEL, PARTIES AND WITNESSES WITH CANDOUR, FAIRNESS, COURTESY AND RESPECT. WE HAVE ALL TRIED TO DO THAT DURING THE COURSE OF THE PUBLIC HEARINGS.

- THAT DUTY EXTENDS TO THE ORAL SUBMISSIONS THAT COUNSEL MAKE. IT IS NOT HELPFUL TO ME OR TO THE PROCESS, AND IN MY VIEW IT IS UNFAIR, FOR COUNSEL IN THEIR ORAL SUBMISSIONS TO USE LANGUAGE THAT IS NOT ROOTED IN THE EVIDENCE AND IS INFLAMMATORY, or SPECULATIVE.

- DURING THE COURSE OF THE ORAL SUBMISSIONS I ASK COUNSEL TO REMEMBER THEIR OBLIGATIONS AND IN PARTICULAR THEIR OBLIGATION OF FAIRNESS WHEN MAKING STATEMENTS AND CHARACTERIZING THE CONDUCT OF THE WITNESSES.

- EACH PARTY HAS BEEN ASSIGNED A MAXIMUM LENGTH OF TIME IN WHICH TO MAKE ITS ORAL SUBMISSION. SOME MAY NOT USE THE FULL AMOUNT OF TIME ASSIGNED BUT THEY MAY NOT EXCEED THAT AMOUNT OF TIME.

- IN ORDER TO PROCEED IN AN ORDERLY AND EFFICIENT MANNER AND TO CONCLUDE BY THURSDAY OF THIS WEEK, I AM ASKING THAT COUNSEL REFRAIN FROM MAKING OBJECTIONS DURING THE SUBMISSION OF ANOTHER PARTY. PARTIES THAT PARTICIPATED IN THE HEARING PROCESS, HAVE HAD THE OPPORTUNITY TO MAKE THEIR CASE IN THEIR WRITTEN SUBMISSION AND IN THEIR WRITTEN RESPONSE TO THE OTHER PARTIES.

C:\IPPERWASH INQUIRY\Commissioner's Remarks - Oral Hearing Process etc.doc (Rev. August 18, 2006 12:47 pm)

- I INTEND TO CONSIDER EVERY ARGUMENT VERY CAREFULLY BUT ULTIMATELY, MY REPORT WILL BE BASED ON MY OWN ASSESSMENT OF THE EVIDENCE, AND MY OWN ASSESSMENT AS TO WHAT POLICY CHANGES AND RECOMMENDATIONS TO INCLUDE IN MY REPORT.

- NOTWITHSTANDING THE INTERESTS THAT COUNSEL REPRESENT, AND THE VIEWS THAT COUNSEL WISH TO SHARE DURING THESE ORAL SUBMISSIONS, I URGE COUNSEL TO KEEP IN MIND THE PRINCIPLE OF FAIRNESS WHICH HAS GOVERNED OUR PROCEEDINGS.

- ON FRIDAY MORNING, THE EVIDENTIARY HEARING PHASE OF THE INQUIRY WILL CONCLUDE WITH A BRIEF CLOSING, TO WHICH ALL THE PARTIES, THEIR COUNSEL AND THE PUBLIC ARE INVITED TO ATTEND.

- I WILL THEN BE SPENDING THE NEXT FEW MONTHS WRITING MY REPORT. IT IS MY INTENTION TO COMPLETE IT BY THE END OF THE YEAR AND, SUBJECT TO PRODUCTION CONSIDERATIONS, TO DELIVER IT TO THE ATTORNEY GENERAL AS SOON THEREAFTER AS POSSIBLE.

- ON A NUMBER OF OCCASIONS, I HAVE EXPRESSED MY VIEW THAT THE VALUE OF A PUBLIC INQUIRY, WITH A MANDATE SUCH AS THIS ONE, MAY GO BEYOND WHAT IS SAID IN THE COMMISSIONER'S FINAL REPORT. THE PROCESS ITSELF GENERATES DISCUSSION AND DEBATE, AND MAY FOSTER NEW UNDERSTANDINGS AND PROVIDE A CATALYST FOR CHANGE.

- THE PUBLIC'S ACCESS TO THIS INQUIRY WAS MAXIMIZED THROUGH THE WEBCASTING OF WITNESS' TESTIMONY AND PART 2 EVENTS, THROUGH THE POSTING OF RESEARCH AND DISCUSSION PAPERS ON OUR WEBSITE AND THROUGH AN OPEN CONSULTATION PROCESS ON MANY COMPLEX POLICY ISSUES. OVER THE NEXT FEW MONTHS, I WILL BE

TAKING SOME ADDITIONAL STEPS TO FACILITATE INDIVIDUALS' AND INSTITUTIONS' AWARENESS OF THE PERSPECTIVES THAT HAVE BEEN SHARED WITH ME.

- FOR EXAMPLE, I WILL BE EXPLORING MEANS FOR BRINGING THE INQUIRY'S RESEARCH AND OTHER MATERIALS TO THE ATTENTION OF TEACHERS, PROFESSORS AND OTHERS INVOLVED IN FURTHERING EDUCATION. I WILL ALSO BE TAKING STEPS TO ENSURE OUR MATERIALS CONTINUE TO BE AVAILABLE TO INSTITUTIONS AND OTHER ORGANIZATIONS BEYOND THE DURATION OF THE COMMISSION. I AM ALSO CONSIDERING PREPARING SHORT SUMMARIES OF KEY ISSUES AT THE CENTER OF THE INQUIRY, WHICH SHOULD PROVIDE EASIER ACCESS TO SOME OF WHAT WE'VE LEARNED DURING THIS PROCESS.

- TIME IS STILL OF THE ESSENCE AND SO I WILL NOW CALL UPON MR. MILLAR AND THEN WE WILL BEGIN WITH THE FIRST PARTY.

- THANK YOU.

C:\IPPERWASH INQUIRY\Commissioner's Remarks - Oral Hearing Process etc.doc (Rev. August 18, 2006 12:47 pm)

COMMISSIONER'S REMARKS
EVIDENTIARY HEARINGS CLOSING
August 24, 2006

- GOOD MORNING.

- TODAY MARKS THE CONCLUSION OF THE EVIDENTIARY HEARING PHASE OF OUR INQUIRY.

- ALTHOUGH THE MAIN PURPOSE OF THE EVIDENTIARY HEARINGS HAS BEEN TO INVESTIGATE THE EVENTS SURROUNDING THE DEATH OF DUDLEY GEORGE, IT HAS ALWAYS BEEN MY VIEW THAT A PUBLIC INQUIRY MAY SERVE PURPOSES BEYOND THOSE EXPLICITLY SET OUT IN ITS ORDER IN COUNCIL.

- A PUBLIC INQUIRY CONTRIBUTES TO PUBLIC DEBATE AND PUBLIC EDUCATION; IT PROVIDES A FORUM FOR CITIZENS AND GROUPS TO PARTICIPATE IN THE RESOLUTION OF ISSUES AND THE DEVELOPMENT OF FUTURE POLICIES AND STRATEGIES CONCERNING MATTERS IN WHICH THEY HAVE A STAKE OR INTEREST.

- PERHAPS MOST IMPORTANTLY, A PUBLIC INQUIRY MAY SERVE AS A CATALYST FOR MOVING FORWARD BY INDIVIDUALS OR COMMUNITIES AFFECTED BY THE EVENTS IN QUESTION.

- YOU MAY RECALL AT THE VERY OUTSET OF THESE PROCEEDINGS, I STATED THAT ONE OF MY BROADER GOALS WAS TO CONTRIBUTE TO RESTORING GOOD RELATIONS AMONG THE PEOPLE AFFECTED AND TO RESTORING THEIR FAITH IN THE INSTITUTIONS OF GOVERNMENT AND DEMOCRACY.

- WITH THIS GOAL IN MIND, I DECIDED TO INVITE ALL PARTIES AND THEIR COUNSEL TO COME TOGETHER ONE FINAL TIME TODAY TO CLOSE THIS CHAPTER OF EVENTS, IN A SPIRIT OF GOODWILL AND HOPE FOR THE FUTURE.

- I AM HAPPY TO WELCOME, LILLIAN PITAWANAKWAT, AN ELDER FROM WHITEFISH RIVER FIRST NATION, WHO OFFERED A TRADITIONAL PRAYER WHEN THESE PROCEEDINGS BEGAN. AT THAT TIME, MS. PITAWATIKWAT ALSO PRESENTED ME WITH A TALKING STICK THAT I HAVE KEPT ON MY DESK THROUGHOUT THE INQUIRY.

- I INTEND TO KEEP IT, ALONG WITH THE EAGLE FEATHER, AN ABORIGINAL SYMBOL OF TRUTH, THAT WAS GIVEN TO ME AT THE CHIEFS OF ONTARIO FORUM AND THAT NOW IS KEPT IN A VERY BEAUTIFUL TRADITIONAL CASE THAT WAS MADE BY SAM GEORGE'S WIFE, VERONICA.

- I AM PLEASED THAT DRUMMERS REPRESENTING THREE OF THE MAIN PARTIES TO THIS INQUIRY, THE CHIPPEWAS OF KETTLE AND STONY POINT, THE STONEY POINTERS AND THE OPP, ARE PRESENT THIS MORNING. THESE THREE DRUM GROUPS PARTICIPATED IN THE INDIGENIOUS KNOWLEDGE FORUM, ORGANIZED BY THE INQUIRY. AT THAT TIME, I VIEWED THEIR PARTICIPATION AS A VERY POSITIVE DEVELOPMENT AND I AM DELIGHTED THAT THEY ARE HERE AGAIN TODAY.

- I HAVE BEEN ENCOURAGED BY THE RESPONSE TO THIS INQUIRY FROM PARTIES AS WELL FROM THE PUBLIC. I BELIEVE THAT WE HAVE MADE SOME PROGRESS TOWARDS FOSTERING OPEN DIALOGUE, BETTER RELATIONS AND UNDERSTANDING. MY HOPE

IS THAT THE IMPACT OF THESE IMPROVED RELATIONSHIPS WILL BE DEEP AND LONG LASTING.

- THERE IS STILL MUCH TO DO, BUT THE TASK WILL BE EASIER IF THOSE INVOLVED UNDERTAKE IT IN A SPIRIT OF GOODWILL, MUTUAL RESPECT AND UNDERSTANDING.

- BEFORE I CALL UPON MS. PITAWANAKWAT, I WANT TO RE-ITERATE MY APPRECIATION TO EVERYONE WHO HAS BEEN INVOLVED WITH THIS PROCESS. I HAVE LEARNED A TREMENDOUS AMOUNT, AND I HOPE EVERYONE HAS.

- IT IS BEEN AN HONOUR AND A PRIVILEGE TO SERVE AS COMMISSIONER AND I SINCERELY THANK THE COMMUNITY, AND I ALSO THANK ALL PARTIES AND THEIR COUNSEL FOR THEIR DILIGENCE, PROFESSIONALISM AND CONSTRUCTIVE CONTRIBUTION TO THE WORK OF THIS INQUIRY.

- THANK YOU.

From: Derry Millar
Sent: Friday, May 19, 2006 3:10 PM
To: NAMES REDACTED
Cc: NAMES REDACTED
Subject: Submissions

Dear Counsel:

The procedure outlined in this email pertains to the Commission s written and oral submission process. It applies to parties with combined Part 1 and Part 2 standing and to parties with Part 1 standing only; in other words, it is applicable to parties that have participated in the evidential hearing process.
Parties may make written and oral submissions to the Commission or may choose to only make a written submission.

WRITTEN SUBMISSIONS & RESPONSES:

Written submissions should be filed with the Commission and distributed to the parties that participated in the hearing process on or before July 28, 2006. Please provide the Commission with a hard copy as well as an electronic version in Word and distribute it to the parties electronically.
Parties may choose to deliver a written response. Written responses should be distributed to the parties and filed with the Commission, in the same manner as the submissions, on or before Wednesday, August 16, 2006.

The Commission will post all written submissions and responses on the Inquiry website on the first day of the oral submissions (see below). In the interest of fairness, the Commissioner has directed that parties not publicly release the submissions or responses before August 21.

ORAL SUBMISSIONS - WEEK OF AUGUST 21, 2006:

Parties may choose to limit their oral submissions to the main points of their written submission and/or to use the time to reply to the submissions of other parties. Please keep in mind that one party's unused time will not be allocated to another party; accordingly, when one party has completed its submissions, the Commissioner will call the next scheduled party.

Parties' time allocations for oral submissions is set out below.

I. Up to 2 hours:

1. The Dudley George Estate and Family Group;
2. Aazhoodena and George Family Group;
3. Residents of Aazhoodena;
4. Chippewa's of Kettle and Stony Point First Nation;
5. Chiefs of Ontario;
6. Aboriginal Legal Services of Toronto;
7. Michael D. Harris;
8. Debbie Hutton;
9. Ontario Provincial Police;
10. Ontario Provincial Police Association; and
11. The Province of Ontario;

II. Up to 1 hour:

1. Charles Harnick;
2. Robert Runciman;
3. Christopher D. Hodgson;
4. Marcel Beaubien;
5. Municipality of Lambton Shores; and
6. Chief Coroner of the Province of Ontario.

Do you intend to make Oral Submissions?

Counsel who wish to make an oral submission in addition to their written submissions should advise the Commission by June 22, 2006, so that the Commission may plan for the oral submissions. Parties who do not advise the Commission on or before this date will not permitted to make an oral submission. Once the Commission has been advised as to which parties wish to make oral submissions, we will circulate the order of submissions.

PROCEDURE FOR PARTIES WITH STANDING EXCLUSIVELY IN PART 2:

The procedure regarding submissions, for parties with standing exclusively in Part 2 will be covered in a separate email from Nye Thomas, Director Policy and Research. Parties with standing exclusively in Part 2 of the Inquiry are invited to make a written submission on issues related to the Part 2 mandate of the Inquiry and they may choose to also make an oral submission of up to ½ hour. The Commission will provide electronic copies of the Part 2 parties written submissions to any party with Part 1 or Part 1 and Part 2 standing that request them.

Yours very truly,

Derry Millar
Lead Commission Counsel
Ipperwash Inquiry
250 Yonge Street, Suite 2910, P.O. Box 30
Toronto, ON M5B 2L7
Toll: 1-866-939-9979
Tel: 416-314-9258
Fax: 416-314-9393
Email: dmillar@weirfoulds.com

www.ipperwashinquiry.ca

From: Derry Millar
Sent: Friday, July 14, 2006 11:07 AM
To: NAMES REDACTED
Cc: NAMES REDACTED
Subject: Oral Submission - Week of August 21, 2006

Dear Counsel:

Set out below is the order of presentation for the oral submissions. We will start on August 21, 2006, at 9:00 am. I anticipate that we will sit each day from 9:00 am to approximately 7:00 pm. We have not assigned specific times or dates to parties as the Commissioner wishes to proceed in order with no loss of time in the event that a party or parties finish earlier than anticipated. We anticipate that the oral submissions will be completed late Thursday afternoon.

On behalf of the Commissioner, I would also like to extend an invitation to all counsel and their parties to attend a Closing planned by the Commissioner on Friday, August 25, 2006, in Kimball Hall, from 10 – 11 am. The Commissioner intends this to both mark the formal conclusion of the evidential hearings and to offer a positive occasion from which to move forward. Details of the program are still being finalized; I will advise you of further arrangements in due course. The Commissioner would like to encourage all parties and counsel to attend the closing.

ORDER OF ORAL SUBMISSIONS:

PARTIES WITH STANDING IN PART 1

A.

1. The Dudley George Estate and Family Group – up to 2 hours;

2. Aazhoodena and George Family Group – up to 2 hours;

3. Residents of Aazhoodena – up to 2 hours;

4. Chippewa's of Kettle and Stony Point First Nation – up to 2 hours;

5. Chiefs of Ontario – up to 2 hours;

6. Aboriginal Legal Services of Toronto – up to 2 hours;

B.

7. The Honourable Michael D. Harris – up to 2 hours;

8. Charles Harnick – up to 1 hour;

9. Robert Runciman – up to 1 hour;

10. Christopher D. Hodgson – up to 1 hour;

11. Marcel Beaubien – up to 1 hour;

12. Debbie Hutton – up to 2 hours;

C.

13. Municipality of Lambton Shores – up to 1 hour;

14. Chief Coroner of the Province of Ontario – up to 1 hour;

D.

15. The Province of Ontario – up to 2 hours;

E.

16. Ontario Provincial Police Association – up to 2 hours;

17. Ontario Provincial Police – up to 2 hours.

PARTIES WITH STANDING ONLY IN PART 2 *

18. Mennonite Central Committee Ontario – up to one-half hour;

19. Amnesty International – up to one-half hour;;

20. Union of Ontario Indians – up to one-half hour;;

21. Chippewas of Nawash – up to one-half hour;;

22. African Canadian Legal Clinic – up to one-half hour; and

23. Canadian Civil Liberties Association – up to one-half hour.

*Note: The above order of appearance was later changed, as follows: Mennonite Central Committee Ontario, Amnesty International, African Canadian Legal Clinic, Chippewas of Nawash, Union of Ontario Indians, and Canadian Civil Liberties Association.

As a guide only, we anticipate that the submissions of the parties as numbered above will be completed as follows: numbers 1 to 4 on August 21; numbers 5 to 9 on August 22; numbers 10 to 15 on August 23; and numbers 16 to 23 on August 24.

Yours very truly,

Derry Millar

Derry Millar
Lead Commission Counsel
Ipperwash Inquiry
250 Yonge Street, Suite 2910, P.O. Box 30
Toronto, ON M5B 2L7
Toll: 1-866-939-9979
Tel: 416-314-9258
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DRAFT MEMORANDUM

TO: Parties with Standing Exclusively in Part Two of the Ipperwash Inquiry

FROM: Nye Thomas
Director, Policy and Research
Ipperwash Inquiry

DATE: May 25, 2006

RE: Final Written and Oral Submissions to the Ipperwash Inquiry

As you may know, the Part One evidential hearings of the Ipperwash Inquiry will conclude no later than June 29th, 2006. We are, therefore, now in a position to set out the process and timetable for final submissions from parties with standing to the Inquiry.

The purpose of this memo is to set out the process and timetable for final submissions – both written and oral – for parties that have standing *exclusively in Part Two* of the Inquiry. A memo to parties that have participated in the evidential hearing process, that is parties with standing in *both* parts of the Inquiry or exclusively *in Part One,* has been sent to them by Derry Millar, Lead Commission Counsel.

Written Submissions – July 28, 2006

Parties who wish to make a written submission to the Commission, should file it with the Commission on or before July 28, 2006. The Commission should be provided with a hard copy as well as an electronic version in Word format.

The Commission will electronically distribute these written submission to other parties with standing exclusively in Part Two and to the parties with standing in both parts of the Inquiry. As well, the Commission would be pleased to make the written submissions of parties with standing in both parts, available to parties with standing only in Part Two, in electronic format.

Please let me know before June 22 if you intend to submit a written submission. In the meantime, I will be in touch with each party to review the submission process.

The Commission will post the written submissions received from all parties on the Inquiry website on the first day of oral submissions (see below). *In the interest of fairness, the Commissioner has directed that parties not publicly release the submissions before this date, August 21.*

Oral Submissions – Week Of August 21, 2006

Parties may choose to also make an oral submission to the Commission. Please note, only parties that filed a written submission may make an oral submission.

Oral submissions will begin the week of August 21st, 2006 and will take place at Kimball Hall in Forest, Ontario. Parties with standing exclusively in Part Two will be given up to 30 minutes for their oral submissions.

Parties who wish to make an oral submission should advise me by June 22, 2006 of their desire to do so. Parties who do not advise the Commission by this date, will not be permitted to make an oral submission. A schedule for the oral submissions will be distributed at a later date.

Attention News/Assignment Editors:

Ipperwash Inquiry legal counsel announced

TORONTO, Nov. 24 /CNW/ - W.A. Derry Millar, a senior litigation counsel, has been appointed lead Counsel for the Ipperwash Inquiry, The Honourable Sidney B. Linden, Commissioner of the Inquiry, announced today.

Mr. Millar is a partner in the Toronto law firm WeirFoulds LLP and is a bencher of the Law Society of Upper Canada, the legal profession's governing body. He has served as chair and vice-chair of many Law Society committees including the Equity and Aboriginal Issues Committee.

Mr. Millar was called to the Ontario Bar in 1974. His wide-ranging experience includes acting as chair of boards of inquiry established in the 1980s to hear complaints against police officers of the Metropolitan Toronto Police.

Mr. Millar graduated from the Dalhousie Law School in Halifax, Nova Scotia, in 1966 and subsequently served as Law Clerk to the Honourable Mr. Justice Ritchie of the Supreme Court of Canada. In 2001, he was elected a Fellow of the American College of trial Lawyers.

His practice at WeirFoulds is exclusively civil litigation and administrative law including aviation, commercial, estates, environmental, insurance, products liability and real estate.

The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003 under the Public Inquiries Act. Its mandate is to inquire and report on events surrounding the death of Dudley George who was shot and later died during a protest by First Nations at the Ipperwash Provincial Park in 1995. The Inquiry is also directed to make recommendations directed to the avoidance of violence in similar circumstances.

-0- 11/24/2003

For further information: Derry Millar: (416) 947-5021; Media Contact: Peter Rehak: (416) 212-6876.

Attention News/Assignment Editors:
Ipperwash Inquiry Announces Hearings

TORONTO, March 9 /CNW/ - The Ipperwash Inquiry will hold hearings on standing and funding starting on April 20, 2004, in Forest, Ontario, Justice Sidney B. Linden, the Commissioner of the Inquiry, announced today.

The hearings will be held at the Forest Memorial Community Centre (Kimball Hall) at 6276 Townsend Line, in Forest. Forest is part of the Municipality of Lambton Shores. The hearings will continue as required on April 21, 22 and 23.

On April 20, the hearings will be held from 10:30 a.m. to 5 p.m., on subsequent days from 9:30 a.m. to 5 p.m.

Standing before a Commission of Inquiry gives the individual or organization the right to take part in the proceedings and to make submissions on terms set by the Commissioner. The Inquiry is inviting applications from any person or group who has a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to fulfill the Commissioner's mandate.

Applications for standing and funding should be submitted by 5:00 p.m. on Thursday, April 8, 2004, by delivering a copy to the Commission's offices. The address is: 250 Yonge Street, 29th Floor, P.O. Box 30, Toronto, Ont. M5G 2N7; Telephone 416-314-9200; Fax (416) 314-9393; e-mail: feedback@ipperwashinquiry.ca.

The Commission's draft Rules of Procedure and on Funding as well as more information on the hearings may be found on the Inquiry's web page at: www.ipperwashinquiry.ca. The public is invited to comment on the draft rules by March 15, 2004.

The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003, under the Public Inquiries Act. Its mandate is to report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by Aboriginal people at Ipperwash Provincial Park and later died. The Commission is also directed to make recommendations that would avoid violence in similar circumstances.

The Commissioner intends to separate the inquiry into two phases that will run concurrently. Part 1 will deal with the events surrounding the death of Dudley George. Part 2 will deal with the policy issues and recommendations directed to the avoidance of violence in similar circumstances.

The hearings proper will start on July 12, 2004 at the Forest Memorial Community centre, the same venue where the hearings on standing will be held.

A tentative schedule is available on the Inquiry's web page www.ipperwashinquiry.ca.

-0- 03/09/2004

For further information: and interviews: Derry Millar, Lead Counsel: (416) 314-9258; media contact and information: Peter Rehak, (416) 212-6876

Attention News/Assignment Editors:

Ipperwash Inquiry Receives 35 Applications for Standing

TORONTO, April 15 /CNW/ - The Ipperwash Inquiry has received 35 applications standing and funding. The applications will be heard from on April 20 to 23 in Forest, Ontario before Justice Sidney B. Linden, the Commissioner of the Inquiry.

The applicants include the estate and family of Anthony ":Dudley" George, who was shot during a protest by Aboriginal people at Ipperwash Provincial Park in 1995 and later died; the Ontario Provincial Police; the Ontario Provincial Police Association; the Ministry of the Attorney General and former Ontario Premier Michael Harris.

A complete list and schedule is available on the Inquiry's web page: www.ipperwashinquiry.ca

The hearings will be held at the Forest Memorial Community Centre (Kimball Hall) at 6276 Townsend Line, in Forest. Forest is part of the Municipality of Lambton Shores. On

Standing before a Commission of Inquiry gives the individual or organization the right to take part in the proceedings and to make submissions on terms set by the Commissioner. The applicant must show a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to fulfill the Commissioner's mandate.

The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003, under the Public Inquiries Act. Its mandate is to report on events surrounding the death of.Dudley George. The Commission is also directed to make recommendations that would avoid violence in similar circumstances.

A tentative schedule for evidentiary hearings is available on the Inquiry's web page www.ipperwashinquiry.ca.

-0- 04/15/2004

For further information: and interviews: Derry Millar, Lead Counsel: (416) 314-9258; media contact and information: Peter Rehak (416) 212-6876.

Attention News/Assignment Editors

Ipperwash Inquiry Ruling on Standing and Funding Issued

TORONTO, May 7 /CNW/ - Justice Sidney B. Linden, the Commissioner of the Ipperwash Inquiry, today issued his ruling on standing and funding.

The ruling is posted on the Inquiry's web page: www.ipperwashinquiry.ca

Hearings of applications for standing were held in Forest, Ont., on April 20, 21, 22 and 23, 2004.

Standing before a Commission of Inquiry gives the individual or organization the right to take part in the proceedings and to make submissions on terms set by the Commissioner.

The Ipperwash Inquiry was established by the Government of Ontario on November 12, 2003, under the Public Inquiries Act. Its mandate is to report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by Aboriginal people at Ipperwash Provincial Park and later died. The Commission is also directed to make recommendations that would avoid violence in similar circumstances.

The Commissioner intends to separate the inquiry into two phases that will run concurrently. Part I will deal with the events surrounding the death of Dudley George. Part II will deal with the policy issues and recommendations directed to the avoidance of violence in similar circumstances.

In the Ruling, 17 parties have been granted standing to participate in Part I of the inquiry and 28 parties have been granted standing in Part II of the Inquiry.

The hearings will start on July 13, 2004 at the Forest Memorial Community Centre (Kimball Hall), the same venue where the hearings on standing were held.

A preliminary schedule is available on the Inquiry's web page www.ipperwashinquiry.ca.

-0- 05/07/2004

For further information: and interviews: Derry Millar, Lead Counsel: (416) 314-9258; media contact and information: Peter Rehak (416) 212-6876.

Attention News/Assignment Editors

Ipperwash Inquiry Announces New Counsel

TORONTO, June 3 /CNW/ - The Honourable Sidney B. Linden, the Commissioner of the Ipperwash Inquiry, today announced the appointment of Donald E. Worme, Q.C., as Commission Counsel.

Mr. Worme is a Cree lawyer from the Kawacatoose First Nation Treaty Four, Saskatchewan.

He joins Lead Counsel W.A. Derry Millar, Counsel Susan Vella and Assistant Counsel Katherine Hensel on the Inquiry's legal team.

After graduating from the University of Saskatchewan College of Law in 1985, Mr. Worme articled with the Federal Department of Justice in public prosecutions. Since receiving his call to the Bar in 1986, he has been engaged in private practice and has acquired extensive and varied experience in criminal and aboriginal law litigation. He has appeared at all levels of court, including the Supreme Court of Canada.

Mr. Worme was lead counsel for the family of Neil Stonechild during the 2003-2004 Public Inquiry in Saskatchewan into the death of Neil Stonechild, an Aboriginal teenager whose body was found in an industrial area of Saskatoon in 1990. Mr. Worme also acted for inmate Sandra Paquachon in the Commission of Inquiry into Events of 1994 at the Prison for Women in Kingston.

Mr. Worme replaces Todd Ducharme on the Inquiry's legal team. Mr. Ducharme was appointed to the Ontario Superior Court of Justice last month.

Information about the Ipperwash Inquiry is available on its website: www.ipperwashinquiry.ca

-0- 06/03/2004

For further information: Media Contact: Peter Rehak, (416) 212-6876.

Attention News/Assignment Editors

Ipperwash Inquiry and Osgoode Hall Law School Sponsor Symposium on Relations Between Police and Government
Canada News-wire
Monday, June 7, 2004
Section: General News
Dateline: TORONTO
Time: 15:14 (Eastern Time)

TORONTO, June 7 /CNW/ - The Ipperwash Inquiry and Osgoode Hall Law School will hold a one-day academic research symposium dealing with relationship between the police and government.

The symposium will be held on Tuesday, June 29, 2004, at the Osgoode Professional Development Centre, 1 Dundas Street West, 26th Floor, Toronto, from 8:30 a.m. to 5 p.m.

The Inquiry and Osgoode Hall Law School will also host a dinner on the evening of Monday, June 28, 2004. Mr. Justice Peter Cory will open the conference with a speech at the dinner titled "Reflections on Recent Experience with Public Inquiries."

The dinner will be held at the Delta Chelsea Hotel, 33 Gerrard Street West, Toronto. It will start at 7:00 p.m.

The symposium on the 28th will address the following issues:

- Core Principles of the Government/Police Relationship;
- The Legal Sites of Government-Police Relations;
- The History and the Future of the Politics of Policing;
- An International and Comparative Perspective;
- Government-Police Relations in an Aboriginal Context;
- The Oversight of Government-Police Relations in Canada: The Constitution, the Courts, Administrative Processes and Democratic Governance.

Prior to the symposium, the Inquiry and Osgoode will commission six academic research papers to be distributed and/or presented at the symposium.

The researchers selected to author and present the commissioned papers represent a diverse mix of scholars who are leading experts in relevant areas of concern to the Inquiry, including:

- Professor Kent Roach, Faculty of Law, University of Toronto.
- Professor Dianne Martin, Osgoode Hall Law School, York University.
- Professor Margaret Beare, Department of Sociology and Osgoode Hall Law School, York University.
- Professor Philip Stenning, Victoria University of Wellington in New Zealand.
- Professor Gordon Christie, Osgoode Hall Law School, York University.
- Professor Lorne Sossin, Faculties of Law and Political Science, University of Toronto.

The writers have been instructed to avoid discussing or speculating on the facts surrounding the death of Dudley George or the role of the police or government in the Ipperwash matter. These issues will be dealt with in the evidentiary hearings in Part One of the Inquiry.

The commissioned papers, any commissioned commentaries, and a summary of the discussion at the symposium will be published on the Inquiry's website:

www.ipperwashinquiry.ca. Additional information about the Inquiry and the symposium is also available on the Inquiry website.

The media are invited to attend the symposium. However, space is limited and those wishing to cover the event or to receive materials from the event should contact Peter Rehak, the Inquiry's Media Relations Officer at 416-212-6876.

-0- 06/07/2004

Attention News/Assignment Editors

Leading Experts and Academics Take Part in Symposium on Police and Government Sponsored by Osgoode Hall Law School and the Ipperwash Inquiry

TORONTO, June 24 /CNW/ - Leading experts and academics will be participating in a one-day symposium on relations between police and governments organized jointly by the Ipperwash Inquiry and Osgoode Hall Law School.

The symposium will be held on Tuesday, June 29th, 2004, at the Osgoode Professional Development Centre, 1 Dundas Street West, 26th Floor, Toronto, from 8:30 a.m. to 5 p.m.

Six academic research papers have been prepared and will be presented at the symposium. The authors are Kent Roach, Faculty of Law, University of Toronto; Dianne Martin, Osgoode Hall Law School, York University; Margaret Beane, Department of Sociology and Osgoode Hall Law School, York University; Philip Stenning, Victoria University of Wellington, New Zealand; Gordon Christie, Osgoode Hall Law School and Faculty of Law, University of British Columbia and Lorne Sossin, Faculty of Law and Department of Political Science, University of Toronto.

The pre-conference drafts of their papers have been posted on the Ipperwash Inquiry's web site: www.ipperwashinquiry.ca. The conference agenda and more detailed information about the symposium and the Inquiry is also available on the website.

Commentators on the papers include Ron Atkey, a former chairman of the Canadian Security and Intelligence Service Review Committee; Susan Eng former chair of the Metropolitan Toronto Police Services Board; R.H. Simmonds, former Commissioner of the RCMP; Tonita Murray. Director General of the Canadian Police College; Reg Whitaker, author and professor, University of Victoria; Kim Murray, Aboriginal Legal Services; Alan Borovoy of the Canadian Civil Liberties Association and Wesley Pue of the University of British Columbia.

Mr. Justice Peter Cory will open the conference at a dinner on the evening of June 28, 2004 with a speech titled: "Reflections on Recent Experience with Public Inquiries."

The Ipperwash Inquiry was established by the Government of Ontario under Public Inquiries Act, and its mandate is to inquire and report on events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations representatives at Ipperwash Provincial Park and later died.

The Inquiry is also to make recommendations that would avoid violence in similar circumstances. The Commissioner, the Honourable Sidney B. Linden, has separated the Inquiry into two phases that will run concurrently. Part 1 will deal with the events surrounding the death of Dudley George. Part 2 will deal with the policy issues and recommendations directed to the avoidance of violence in similar circumstances.

The symposium is being held under Part 2. The symposium is open to the media and public with prior registration due to limited space.

-0- 06/24/2004

For further information: Peter Rehak (media inquiries), (416) 212-6876; Nye Thomas (symposium inquiries), (416) 314-9200.

Attention News/Assignment Editors

Experts on Aboriginal Culture and History to Testify at Start of Ipperwash Inquiry Next Week

TORONTO, July 7 /CNW/ - Two experts on aboriginal culture and history will be the first witnesses at the Ipperwash Inquiry that starts evidentiary hearings on Tuesday, July 13, 2004, in Forest, Ontario.

The Inquiry was established by the Government of Ontario to inquire into the fatal shooting of Dudley George during a protest by Aboriginal people at Ipperwash Provincial Park in 1995.

Under its terms of reference, the Inquiry is to report on the circumstances that led to the shooting and is also to make recommendations designed to avoid violence in similar circumstance in the future. The Honourable Sidney B. Linden is the Commissioner.

The witnesses during the first three days of hearings next Tuesday, Wednesday and Thursday will be Darlene Johnston, B.A., LL.B., LL.M., an assistant professor of law at the University of Toronto, and Joan Holmes, B.A., M.A., president of Joan Holmes Associates Inc, an Aboriginal rights and research consulting firm.

Their presentations and the three days of hearings on August 17, 18 and 19 will set the context for the evidence to be heard later in the year about the 1995 protest and the subsequent events.

Professor Johnston is a specialist in Great Lakes Aboriginal history and is a descendant of the Great Lakes Aboriginal ancestors. She is also a member of the Inquiry's Research Advisory Committee. Her presentation will include an exposition of the significance of burial grounds in Aboriginal culture. A burial ground is one of the issues in the dispute that led to the 1995 protest. She will also examine the relationship of the lands in this region to the Great Lakes Aboriginal people in the 17th and early 18th century.

Ms. Holmes will trace the history of relations and land transactions between Great Lakes Aboriginal people and governments going back to the 18th century. Her presentation will include an examination of the land transactions between 1927 and 1928 in which the Kettle Point and Stony Point First Nation surrender land, the purchase of the Ipperwash Provincial Park by the province and the eviction of the First Nation from Stony Point reserve during the 2nd World War.

As part of that review, she will trace the requests for return of its former Stony Point reserve territory and governmental responses to such request, including requests made by the Honourable Jean Chretien when he was the Minister Responsible for Indian Affairs. The Department of National Defence used the War Measures Act to appropriate the former Stony Point Reserve in 1942. As well, Ms. Holmes will review the contemporary claims concerning the possible existence of burial grounds of both Ipperwash Provincial Park and the nearby Camp Ipperwash.

Ms. Homes and her firm have done extensive historical research for the federal government a number of provincial governments and Aboriginal groups.

"One of the purposes of a public inquiry is to educate the public on the matters in issue. An understanding by Ontarians of the Aboriginal history of the region and the historical context of the incident is

fundamental to the Inquiry and our educational mandate," says Lead Commission Counsel Derry Millar.

Commissioner Linden has separated the Inquiry into two phases that will run concurrently. Part I will deal with events surrounding the death of Dudley George. Part II will deal with the policy issues and recommendations directed to the avoidance of violence in similar circumstances.

As a component of Part II, the Inquiry co-sponsored with the Osgoode Hall Law School a symposium on police and government that was held in Toronto on June 29, 2004. Information about the symposium is available on the inquiry's web page at www.ipperwashinquiry.ca. More information about the inquiry is also available on the web page.

Next week's hearing will be held at the Forest Memorial community center (Kimball hall) at 6276 Townsend Line, Forest, Ontario. Forest is part of the Municipality of Lambton Shores. The first day's hearing will start at 10:30 a.m. and at 10 a.m. on the subsequent days. The schedule of further hearing days including the time and location, is posted on the Inquiry's website.

-0- 07/07/2004

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For further information: Peter Rehak, Communication Coordinator and Media Relations Officer, The Ipperwash Inquiry, (416) 212-6876

Attention News/Assignment Editors:

Ipperwash Inquiry Resumes Next Week With History Testimony

TORONTO, Aug. 13 /CNW/ - The Ipperwash Inquiry resumes next week with the testimony of Joan Holmes, B.A., M.A., president of Joan Holmes Associates Inc, an Aboriginal rights and research consulting firm. Ms Holmes is the second of two experts to testify at the evidentiary hearings that started the Inquiry hearings last month.

Next week's hearings are scheduled for Tuesday, August 17, Wednesday, August 18, and Thursday, August 19, in Forest, Ontario.

Ms. Holmes will trace the history of relations and land transactions between Great Lakes Aboriginal people and governments from the mid-18th Century to 1995. Her presentation will include an examination of the land transactions between 1927 and 1928 in which the Kettle Point and Stony Point First Nation surrendered land, the purchase of the Ipperwash Provincial Park by the province and the expropriation of the Stony Point reserve during the Second World War.

As part of that review, she will trace the requests for return of the former Stony Point reserve territory and governmental responses to such request, including requests made by the Honourable Jean Chrétien when he was the Minister Responsible for Indian Affairs. The Department of National Defence used the War Measures Act to appropriate the former Stony Point Reserve in 1942. As well, Ms. Holmes will review the contemporary claims concerning the possible existence of burial grounds of both Ipperwash Provincial Park and the nearby Camp Ipperwash.

During three days of hearings in July, the Inquiry heard testimony from Darlene Johnston, B.A., LL.B., LL.M., a specialist in Great Lakes Aboriginal history and a descendant of the Great Lakes Aboriginal ancestors. She is also a member of the Inquiry's Research Advisory Committee. Her presentation is available on the Inquiry' web page www.ipperwashinquiry.ca

The Inquiry was established by the Government of Ontario to inquire into the fatal shooting of Dudley George during a protest by Aboriginal people at Ipperwash Provincial Park in 1995.

The Inquiry is to report on the circumstances that led to the shooting and is also to make recommendations designed to avoid violence in similar circumstance in the future. The Honourable Sidney B. Linden is the Commissioner.

The historical presentations set the context for the evidence to be heard later in the year about the 1995 protest and the subsequent events.

Commissioner Linden has separated the Inquiry into two phases that will run concurrently. Part I will deal with events surrounding the death of Dudley George. Part II will deal with the policy issues and recommendations directed to the avoidance of violence in similar circumstances.

Next week's hearing will be held at the Forest Memorial Community Center (Kimball hall) at 6276 Townsend Line, Forest, Ontario. Forest is part of the Municipality of Lambton Shores. The hearing on Tuesday, August 17, will start at 10:30 a.m. and at 10 a.m. on the subsequent days. The schedule of further hearing days is posted on the Inquiry's website: www.ipperwashinquiry.ca.

For further information: Peter Rehak, Communication Coordinator and Media Relations Officer, The Ipperwash Inquiry, (416) 212-6876.

Attention News Editors:

Statement by the Ipperwash Inquiry regarding media conference by lawyers for Dudley George Estate

TORONTO, Sept. 3 /CNW/ - The Ipperwash Inquiry today released the following statement regarding a media conference held by the lawyers for the Estate of Dudley George and George Family Group:

In the course of its investigation, the Inquiry has acquired a great deal of evidence regarding the circumstances that led to the shooting of Dudley George in 1995. The investigation has been under way since the commission was created and is continuing. The parties to the Inquiry, including the Government of Ontario, the Ontario Provincial Police, the individuals and the First Nations groups have cooperated in providing material that will form the basis of the evidentiary hearings that have now started.

As is the practice in public inquiries, the evidence is being disclosed in a timely manner to all the parties with standing on a confidential basis. The parties have all signed a confidentiality agreement. All of the evidence, including the material referred to this morning, will be made public during the course of the Inquiry. The proper forum for disclosing evidence is before the Commissioner in the Inquiry hearing room where it can be presented and tested by cross-examination. This will insure that the Inquiry proceeds in an orderly fashion and in a manner that is fair to all parties.

The evidence that the inquiry has acquired is voluminous. It includes more than 5,000 hours of video and audio tapes, thousands of documents, photographs and related material. Commission counsel and Inquiry staff have been working continuously to identify documents that are relevant for presentation at the Inquiry. The majority of these documents have already been disclosed to the parties.

The evidentiary hearings started in Forest, Ont. in July and continue next Wednesday.

More information about the Inquiry is available on its web page at: www.ipperwashinquiry.ca

For further information: Peter Rehak, Media Contact: (416) 212-6876, cell: (416) 992-0679; For interviews, Susan Vella, Commission Counsel: (416) 314-9224

Attention News Editors:

Ipperwash Inquiry to hold consultation on Aboriginal Burial and other Sacred Sites in Toronto on December 8, 2005

TORONTO, Dec. 5 /CNW/ - The Ipperwash Inquiry will hold a consultation about aboriginal burial and other sacred sites in Ontario on Thursday, December 8, 2005, in Toronto.

The event will be held at the Metropolitan Hotel, 108 Chestnut Street, Toronto, from 9:00 a.m. to 4:15 p.m.

The Inquiry was established by the Government of Ontario to inquire into and report on events surrounding the death of Dudley George who was shot and killed by an Ontario Provincial Police officer in 1995 during a protest at Ipperwash Provincial Park.

The Inquiry also has a mandate to make recommendations directed at avoiding violence in similar circumstances. It is holding evidentiary hearings in Forest dealing with the circumstances of the incident. In order to fulfill the second part of its mandate, it has commissioned a number of research papers and has held a number of meetings and symposia. Details are available on the Inquiry's web page www.ipperwashinquiry.ca.

At the consultation on December 8, Professor Darlene Johnston of the University of Toronto will give a brief overview of her paper, Aboriginal Burial and Other Sacred Sites in Ontario, commissioned by the Inquiry. Professor Johnston is a member of the Inquiry' advisory panel.

The meeting will feature two panels. One will provide a broad overview of the issues, the second will consider specific examples. The panelists who have been scheduled include:

- Elder Fred Plain. Fred Plain is from Aamjiwnaang First Nation. Mr. Plain is the Elder for the Chiefs of Ontario, and is a former chief of his community;
- Ron Williamson, Chief Archaeologist and Managing Partner of Archaeological Services Inc.;
- Chief Franklin Paibomsai, Chief of Whitefish River First Nation, representing the Chiefs of Ontario
- David Donnelly, counsel to the Huron-Wendat First Nation in the recent discovery of an Aboriginal ossuary in York Region;
- Paul Jones, Band Councillor, Chippewas of Nawash Unceded First Nation
- Mark Frawley, Chair of the Niagara Escarpment Commission
- Frances Sanderson, a former member of the First Nations Burial Committee of Toronto and was involved in drafting the 1998 guideline, entitled "Discovery of Human Remains - Best Practices."

The Inquiry is particularly interested in identifying best practices and policies that lead to peaceful and constructive resolutions of potential conflicts.

Media are invited to cover the event but space is limited.

For further information: Nye Thomas (Director of Policy), (416) 314-9219; Noelle Spotton (Policy Counsel), (416) 314-9472; Peter Rehak (Media Liaison), (416) 314-9355

Attention News/Assignment Editors:

OPP presents forum on Aboriginal policing to Ipperwash Inquiry

TORONTO, Jan. 23 /CNW/ - The Ontario Provincial Police will present a two-day forum titled "Aboriginal Initiatives - Building Respectful Relationships" to the Ipperwash Inquiry on January 26 and 27.

The Inquiry is examining on the events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations at Ipperwash Provincial Park and later died. The inquiry is also to make recommendations that would avoid violence in similar circumstances.

The OPP forum is one of many events dealing with topics relevant to the second part of its mandate. Details are available on the Inquiry's website: http://www.ipperwashinquiry.ca/policy_part/meetings/index.html.

The OPP event will be held at Kimball Hall in Forest, the site of the evidentiary hearings that have been under way for more than a year. The session on January 26 will run from 9 a.m. to 4:30 p.m. and on January 27 from 9 a.m. to 3:30 p.m.

The OPP session will focus on relations between aboriginals and police and will include presentations by OPP Commissioner Gwen Boniface, recently retired Chief of Police Wes Luloff of the Nishnawbe-Aski Police Services, and others. The session will include panel discussions and video presentations.

Another organization with a province-wide mandate, the Chiefs of Ontario, will present a forum in the spring.

The OPP session will include a discussion of the OPP's draft paper, "Framework for Police Preparedness to Aboriginal Critical Incidents."

The event is open to all parties with standing at the Inquiry, to interested organizations, members of the community in and around Forest, and the general public.

The event is open to the media. The electronic pool feed will be available.

Information about the Inquiry is available at: www.ipperwashinquiry.ca

For further information: Nye Thomas, Director, Policy and Research, Ipperwash Inquiry, (416) 314-9219; for media arrangements: Peter Rehak, (416) 314-9355

Attention News/Assignment Editors:

Chiefs of Ontario to present forum on Aboriginal issues to Ipperwash Inquiry on March 8 and 9, 2006

TORONTO, March 6 /CNW/ - The Chiefs of Ontario, a coordinating body for 134 First Nation communities in the province, will present a two-day forum to the Ipperwash Inquiry on March 8 and 9 dealing with issues that include land claims policy, the criminal justice system, aboriginal occupations and relations between aboriginals and the police.

The Inquiry is examining the events surrounding the death of Dudley George, who was shot in 1995 during a protest by First Nations at Ipperwash Provincial Park. The Inquiry is also to make recommendations that would avoid violence in similar circumstances.

The Chiefs of Ontario forum is one of many events dealing with topics relevant to the second part of its mandate. Details are available on the Inquiry's website: http://www.ipperwashinquiry.ca/policy_part/meetings/index.html.

The Chiefs of Ontario event will be held at Kimball Hall in Forest, the site of the evidentiary hearings. The session on March 8 will run from 9 a.m. to about 4:45 p.m. and on March 9 from 9 a.m. to about 3:45 p.m.

The purpose of the forum is for the Chiefs of Ontario to identify systemic issues affecting First Nations and government relations, and to make recommendations to address these issues. The forum will include panel discussions. Some of the panelists are:

- Ontario Regional Chief Angus Toulouse
- Deputy Grand Council Chief Nelson Toulouse, Union of Ontario Indians
- Grand Chief Denise Stonefish, Association of Iroquois & Allied Indians
- Deputy Grand Chief Alvin Fiddler, Nishnawbe Aski Nation
- Grand Chief Arnold Gardner, Grand Council Treaty No. 3
- Chief Dr. Dean Jacobs, Bkejwanong Territory (Walpole Island)
- Chief William Phillips, Mohawks of Akwesasne
- Grand Chief Stan J. Louttit, Mushkegowuk Tribal Council
- Chief Dave General, Six Nations of the Grand River
- Chief Isadore Day, Serpent River First Nation
- Ron George, Aboriginal Liaison Officer, OPP

This event is the second of two special presentations to the Inquiry on issues relevant to the Inquiry's policy and research mandate. The first presentation was by the Ontario Provincial Police on January 26 and 27, 2006.

The event is open to all parties with standing at the Inquiry, to interested organizations, members of the community in and around Forest, and to the general public.

The event will be webcast live at: www.ipperwashinquiry.ca

The event is open to the media. The electronic pool feed will be available.

Information about the Inquiry is available at: www.ipperwashinquiry.ca

For further information: Noelle Spotton, Policy Counsel, Ipperwash Inquiry, (416) 314-9472; for media arrangements: Peter Rehak, (416) 314-9355

Inquiry Statistics

Key Dates

Order-in-Council establishing the Commission and appointing Honourable Justice Sidney B. Linden as Commissioner	November 12, 2003
Hearings re: applications for standing and funding	April 20 – 23, 2004
First day of evidentiary hearings	July 13, 2004
Last day of evidentiary hearings	June 28, 2006
Oral submissions by parties with standing	August 20 - 24, 2006
Closing to mark end of evidentiary hearings	August 24, 2006

Number of Parties with Standing

Part 1 Standing only	2
Part 1 & Part 2 Standing	15
Part 2 Standing only	12

Part 1 – Evidentiary/Investigative Phase

Number of witnesses	139[1]
Number of exhibits	1,876
Number of pages of transcripts	60,000
Number of documents in Inquiry database	over 23,000
Number of hearing days	229

Part 2 – Policy and Research Phase

Number of research papers commissioned by the Inquiry	21
Number of research projects undertaken by parties	15

[1] Evidence was heard from 139 witnesses; the evidence of two witnesses, who died after the Inquiry was called, was read into the record.

[2] This figure does not include six papers written by experts for the Osgoode Hall Law School Symposium on Police/Government Relations, co-sponsored with the Inquiry. Those papers will be published separately, by an academic publisher, following completion of the Inquiry.

Number of public consultations, symposia, etc.	19

Commission's Expenditures as at March 31, 2007, by fiscal year

	(thousands)
November 12, 2003 – March 31, 2004	$ 381.8
April 1, 2004 – March 31, 2005	$ 4,185.9
April 1, 2005 – March 31, 2006	$ 5,266.9
April 1, 2006 – March 31, 2007	$ 3,485.9
Total	$13,320.5