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## Policing Aboriginal Protests and Confrontations: Some Policy Recommendations

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# Policing Aboriginal Protests and Confrontations: Some Policy Recommendations

## **Abstract**

This paper discusses the role of police forces in Aboriginal protests and confrontations. It takes as a case study the Report of the Ipperwash Inquiry, which was released on May 31, 2007. In 1995 Dudley George, a member of the Stoney Point First Nation, was shot by an Ontario Provincial Police officer during a protest at Ipperwash Provincial Park. Five recommendations are proposed in this paper to reduce the inherent tensions in such protests, focusing on methods of mediation and conflict resolution. In particular, it is proposed that during such protests a more extensive use be made of Aboriginal persons with training and skills in mediation and negotiations in order to improve communication between police and First Nations protesters. It is also evident that government officials need to become more actively involved in resolving land claims, especially before they become flashpoints for violence, and to remove such disputes from the realm of criminal activity to matters of civil litigation.

## **Keywords**

Aboriginal protests, mediation, conflict resolution, policy recommendations

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## **Policing Aboriginal Protests and Confrontations: Some Policy Recommendations**

Many Canadians no doubt wonder why there are so many protests and confrontations involving Aboriginal people in this country. Hardly a month goes by, especially during the summer, when one does not read about a highway, bridge, or border crossing being blockaded. There are confrontations with police over burial grounds, land claims of various sorts, and construction sites. Some of the protesters are armed with rifles, and police are frequently forced to protect themselves and the public with tactical equipment. At times, shots are fired at one another—in Canada both police officers and protesters have been killed during these sorts of confrontations.

The wider question in these protest cases is: Why are there not adequate means of conflict resolution that would avert such violent confrontations, which endanger people's lives? The political leaders of this country, both at the provincial and federal levels, appear reticent about becoming involved, at least until the confrontation goes too far and results in property damage and personal injury. Why, also, are the officers of the various police forces placed in harm's way without adequate guidelines as to their appropriate conduct in such incidents? Certainly, Aboriginal protests pose an ambiguous situation for the police who are apt to feel uncomfortable with the idea that they are forced to act as mediators between First Nations people and government officials in what are, in many cases, land claims negotiations that are essentially matters of civil litigation.

This paper is an exploration of the issue of policing Aboriginal protests and confrontations, using the occupation of Ipperwash Provincial Park in 1995 and the events surrounding the death of Stoney Point resident Dudley George as a case study. An investigation into George's death resulted in the *Report of the Ipperwash Inquiry*, which was released on May 31, 2007. This report contains many recommendations that are worth considering in relation to the role of police forces in Aboriginal conflicts. The purpose of this paper, then, is to engage in a discussion of possible methods of mediation and negotiation that could serve to ameliorate or reduce the potential for conflict in First Nations protests. Six policy recommendations are then proposed, which have the potential to reduce the inherent conflict between police forces and Aboriginal protesters by utilizing methods of mediation, negotiation, and dispute resolution.

### **Police-Aboriginal Confrontations: A Brief History**

#### **Anicinabe Park, Ontario**

During the summer of 1974 near Kenora, Ontario, the Ojibway Warrior Society took possession of Anicinabe Park. About 150 members of the Warrior Society, many armed with hunting rifles and shotguns, claimed that the Department of Indian Affairs had illegally sold the 14-acre park property to Kenora in 1959. The Minister of Indian Affairs, Judd Buchanan, issued a ruling that the park property, purchased by the department in 1929 from a Kenora resident, never constituted an Indian reserve. On this basis, Minister Buchanan indicated that insufficient grounds existed to support the Ojibway Indians' claim to the park ("Occupation at Anicinabe," 1975).

There was a nervous tension among everyone involved. Almost 150 members of the Ontario Provincial Police (OPP) were poised to enter the park, reinforced by a contingent of the Kenora police constabulary. Most of the OPP officers had been flown in from Toronto and Thunder Bay on chartered flights ("Occupation at Anicinabe," 1975). Inspector Walter Mychalshyn of the Kenora police explained, "this is different—this is a confrontation situation and we don't want a shootout." Lois Cameron, one of the leaders of the Ojibway Warrior Society, was joined by Dennis Banks and a few associates, who had arrived from Wounded Knee, South Dakota, to lend their support. The term "pan-Indian" was just coming into use and was meant to imply that cultural differences among the Aboriginal peoples of North America are a secondary consideration to the shared experiences of colonial suppression and dispossession of ancestral lands (Belanger, 2010).

Eventually, various Ontario Aboriginal organizations became involved, such as the Union of Ontario Indians, Grand Council Treaty 3, and the Association of Iroquois and Allied Tribes, and requested that the province set up a joint committee at the ministerial level to examine the situation. Members of the four Aboriginal groups met with Premier William Harris and the Ontario cabinet to seek a mechanism for continuing discussions with the provincial government. With these developments, Louis Cameron and other members of the Ojibwa Warrior Society agreed to end the occupation of Anicinabe Park when weapons charges against them were dropped and proposals for a negotiated settlement of the land claim were instituted (“Davis presented Indians’ problems,” 1975).

### **Oka, Quebec**

Probably the most famous clash between Aboriginal protesters and police took place near Oka, Quebec during the summer of 1990. The so-called “Oka Crisis” was ostensibly a dispute over a relatively small piece of land designated for the expansion of a golf course. However, as with many of these sorts of disputes, the history behind the Oka Crisis is a long and involved one (York & Pindera, 1991). The disputed area comprising some 40 acres of land was the site of a Mohawk cemetery and a portion of pine forest. The dispute emerged in full force when the Mohawk decided to barricade the location on July 11, 1990. Almost immediately, Oka’s mayor, Jean Ouelette, asked the Quebec Provincial Police (QPP) to intervene in the dispute (Ciaccia, 2000).

The QPP attempted to storm the barricade but was repulsed by the Mohawk protesters who, by this time, had armed themselves. During the attack on the barricade, tear gas canisters were directed at the Mohawks and a series of shots rang out—it was never determined from which side—and during the barrage of bullets 31 year old Corporal Marcel Lemay was shot and killed. The police withdrew at this point, abandoning several of their cruisers.

It did not take long for the Mohawks behind the barricade to be joined by supporters from other Aboriginal communities in Canada and the United States. Before long, the QPP had established their own blockade, which served to curtail access to Kenesatake and Oka. In addition, other Mohawks set up a blockade at the Mercier Bridge to the island of Montreal, which caused huge traffic difficulties and disgruntled drivers. Even as far away as British Columbia (BC), the Seton Lake Band supported the Mohawk cause by blockading the BC railway line, provoking a confrontation with officers of the Royal Canadian Mounted Police (RCMP). Eventually, the QPP felt that they were losing ground between the disputing parties and called in the RCMP. The Mohawk warriors soon overpowered the RCMP, and 14 officers were sent to hospital with various injuries (Frideres & Gadacz, 2008).

Further confrontations developed when Quebec Premier Robert Bourassa invoked the National Defence Act and sent federal troops to Oka. He argued that the same sort of situation had occurred two decades earlier when the Canadian army was mobilized to quell the “October Crisis<sup>1</sup>.” Unlike the earlier confrontation with the QPP, no shots were fired between the Mohawks and the army. The Mohawks eventually dismantled their blockade at Oka and returned to their reserve when the expansion of the golf course was cancelled. The standoff lasted 78 days. The monetary costs of the police and military actions were high. The decision to bring in the Canadian army cost \$83 million and, altogether, the expenditure for the Province of Quebec amounted to \$112 million. Of course, the greatest cost of all was the loss of Corporal Marcel Lemay’s life. In June of 2000, the federal government signed an agreement with the Mohawks giving them legal jurisdiction

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<sup>1</sup> The October Crisis in 1970 involved the kidnapping of two government officials, British Trade Commissioner James Cross and Quebec’s Minister of Labour Pierre Laporte. The kidnappings occurred in the Montreal metropolitan area by members of the Front de Liberation du Quebec (FLQ). The circumstances culminated in the only peacetime use of the War Measures Act in Canadian history (Tetley, 2006).

over approximately 960 acres of property (“Oka Crisis,” 2000). Many were no doubt wondering why this settlement could not have been negotiated in the first place, without endangering the lives of so many people.

### **Gustafsen Lake, British Columbia**

An armed confrontation between Aboriginal protesters and the police occurred in 1995 at Gustafsen Lake in northern British Columbia. This was the site of an Aboriginal land dispute that erupted when a local rancher attempted to force members of the Secwepemc (Shuswap) Sundance Society, who were participating in a ceremony, off his land. The Defenders of the Shuswap Nation refused to leave the property and, subsequently, the Attorney General of British Columbia, Ujjal Dosanjh, declared that the occupation constituted a strictly criminal action, rather than a land claim dispute (Lambertus, 2004).

What occurred over the ensuing summer months of 1995 was one of the largest police actions ever conducted in Canadian history. Several hundred RCMP officers confronted the Shuswap groups with tactical assault training, two helicopters, and nine armoured personnel carriers. The defender group, led by Jones William (Wolverine) Ignace, consisted of about twenty men and women armed with several hunting rifles. British Columbia Premier Mike Harcourt claimed from the outset that the Defenders did not have any claim to the Sundance site and Staff Sergeant Peter Montague, who was the local RCMP commander for the region, offered his opinion that they were nothing more than “terrorists, criminals, and thugs” (Milloy, 1995, p. 1).

The RCMP cordoned off the area to the Gustafsen Lake site with a barricade. Two officers were shot while attempting to move a log in order to reinforce the barricade but were uninjured because of their chest protectors. With the threat of escalating violence, Assembly of First Nations Grand Chief Ovide Mercredi visited the camp and appealed for calm from both parties. He disputed the BC government and RCMP characterization of the Defenders by saying that “the individuals are not terrorists, they are people with strong convictions... they are not criminals” (Platiel, 1996).

After a standoff that lasted four months and involved a shootout with the police, Ignace and his Defenders were persuaded to give up their occupation by a Stoney Point medicine man named John Stevens. In all, eighteen Aboriginal and non-Aboriginal persons were charged following the occupation with various weapons offences; fifteen of them received jail terms of six months to eight years. Three of the defendants attempted to appeal their convictions on the grounds that Canadian courts did not have jurisdiction over the Gustafsen Lake property, since it was considered expropriated Aboriginal lands, but the Supreme Court of British Columbia refused to hear the appeals. The occupation and subsequent standoff cost \$5.5 million of taxpayers’ money (Milloy, 1995).

### **Caledonia, Ontario**

More recently, the Caledonia, Ontario confrontation of 2006 received significant media attention. The dispute involved 40 acres of land purchased by Henco Industries in 1995. The Six Nations sued the federal government over this land transfer, claiming that they had never surrendered the property. In February 2006, members of the Six Nations reserve set up tents and a wooden building on the property. Various court orders were issued against the Aboriginal occupiers, including a contempt of court charge, which led to the OPP arresting twenty-one members of the protest group. With these arrests, even more protesters arrived on the scene and a barricade of burning tires and dumped gravel was erected blocking off the main road into Caledonia, a small town situated about 20 kilometres southwest of Hamilton (“Attempted Murder,” 2006).

News media flocked to Caledonia in 2006 and provided coverage of that summer’s Aboriginal protests and occupations in southern Ontario. In a CBC interview on April 25<sup>th</sup>, Mayor Marie Trainer commented that residents of the town were being hurt economically by the occupation because the non-Aboriginal citizens did not have money flowing automatically into their accounts, but, rather, had to work for it (“Caledonia Barricades,” 2006). The Aboriginal protesters saw this statement as not only a very insulting comment, but

racist as well because it insinuated that the Aboriginal protesters were all on social assistance. Within a day the former premier of the province, David Peterson, was appointed to help negotiate a settlement to the dispute (“Ontario Buys,” 2006).

In May 2006, the blockade of the road into Caledonia was partially removed to allow emergency vehicles to enter. Subsequently, a group of the town’s residents, calling themselves the Caledonia Citizens’ Alliance, confronted the Aboriginal protesters at the site of the blockade. The two groups traded insults and punches before the police arrived to break up the skirmish. Confrontations continued throughout the day, with injuries being sustained by all parties, including OPP officers. The escalation of violence continued when vandals sent a burning truck into a hydro substation, causing a power outage and substantial damage. Later, a state of emergency was declared (Brown & Morse, 2006).

Several altercations ensued into the month of June 2006, including one involving Aboriginal people and Caledonia residents in the downtown area in which a police cruiser drove through a line of protesters. At about the same time, protesters assaulted news camera operators when they refused to relinquish their videotapes. In another incident, a United States (US) Border patrol vehicle, which had attempted to intervene in what they observed as an assault on OPP officers, was attacked by Six Nations protesters. Eventually, six protesters were issued warrants involving 14 charges ranging from attempted murder to theft of a motor vehicle (“Attempted Murder,” 2006).

Shortly after that, the provincial government announced that it had negotiated the purchase of the disputed Douglas Estates property from Henco Industries at a cost of \$21.1 million and would provide \$1 million in additional compensation for the Caledonia businesses that had suffered losses as a result of the protest (“Ontario Buys,” 2006). In a further announcement on March 29, 2007, the federal government said that it was contributing \$15.8 million to Ontario’s purchase of the disputed property. On June 15, 2009, some residents of Caledonia announced that they were forming unarmed “militias,” which would attempt to enforce laws that they thought the OPP was not willing or able to enforce. Caledonia residents also expressed a fear that Aboriginal protesters had been digging on the site in an attempt to undermine the town’s water supply (Ferguson, 2007). Meanwhile, with the disputed property now in the hands of the provincial government, its fate is unclear.

In summary, the cases discussed here are meant for illustrative purposes. Many more similar instances could also have been presented, such as the Teme-Augama logging blockade (1988), the Innus occupation of the Goose Bay Air Base (1988), the Lubicon Cree confrontation (1988), the Burnt Church fishing dispute (2002), the Grassy Narrows blockade of Highway 17 (2006), or the Akwesasne border confrontation (2009). The purpose of this discussion is primarily to place the following presentation of the Ipperwash case in a wider perspective, but also to illustrate several commonalities of the Aboriginal-police confrontations that have occurred over the last several decades.

All of these cases would appear to follow a similar pattern. First, a frustrated group of Aboriginal people lay claim to a particular piece of property, which they suggest has been removed illegally from their possession. Confrontations are apt to ensue, leading to conflicts between the protesters, police, and possibly local non-Aboriginal residents. At times, firearms are discharged and deaths have occurred in such instances. Eventually, with an escalation of violence, provincial authorities intervene and frequently a monetary settlement is reached. Of course, the larger question has to do with the matter of why a settlement could not have been negotiated initially to prevent the injurious consequences and ill will that such cases engender.

## The Ipperwash Provincial Park Confrontation

The mandate of the Ipperwash Inquiry of 2007 was to investigate the events surrounding the death of Dudley George, a member of the Stoney<sup>2</sup> Point First Nation in Ontario, who was shot by an OPP officer in 1995 during a protest at Ipperwash Provincial Park.<sup>3</sup> The Inquiry was also asked to make recommendations that would avoid violence in similar circumstances in the future. Commissioner Sidney B. Linden separated the Inquiry into two phases that ran concurrently. The first phase, termed the “evidentiary hearings,” dealt with the events surrounding the death of Dudley George, and the second phase, termed “policy and research”, was concerned with finding ways to avoid conflict between the police and Aboriginal people in future protests (Beare & Murray, 2005; Hedican, 2008a; Hedican, 2008b; Ipperwash Inquiry, 2007).

The confrontation began when a number of Aboriginal people gathered at Ipperwash Provincial Park on Labour Day, September 4, 1995, to protest the refusal of the federal government to return the Stoney Point Reserve to its original inhabitants. This reserve had been appropriated by the federal government under the War Measures Act to be used as a military training site with the promise that the reserve lands would be returned to the original inhabitants after World War II (Koehler, 1996). However, over the ensuing five decades the appropriated reserve land was not returned. Frustrated with the government’s intransigence in returning the land, an occupation of the park was planned by the Stoney Point residents.<sup>4</sup>

A confrontation occurred two days later, on September 6, 1995, between the Aboriginal protesters and the OPP during which Dudley George was shot and killed by a police officer named Ken Deane. At the time of the park occupation, OPP officers believed that the protesters were armed, based on information provided by a Councillor of the Stoney Point Band, Gerald George, who indicated that the camp occupiers were in possession of “AK-47s with 30 round mag duct taped to the back, mini Rugers 14s, and hunting rifles” (Ipperwash Inquiry, 2007, p. 55).<sup>5</sup> There was never any evidence produced during the subsequent investigation indicating that the protesters were armed with anything other than some rocks and baseball bats; consequently, the Ipperwash Inquiry concluded that a “fundamental problem was that the information about guns was not authenticated or verified by OPP intelligence officers” (Ipperwash Inquiry, 2007, p. 56).

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<sup>2</sup> The Report of the Ipperwash Inquiry uses “Stoney Point” and “Stony Point”, often both spellings on the same page. It is not known if the writer(s) of this report were aware of this inconsistency or whether these two terms were regarded as synonymous or interchangeable with one another. The use of the term “Stoney Point” in this paper is, therefore, of somewhat arbitrary usage.

<sup>3</sup> There were no news reporters at the scene of Dudley George’s death or at the protest of Ipperwash Provincial Park. Subsequent news coverage was based on interviews conducted with OPP officers and not with the Aboriginal protesters themselves.

<sup>4</sup> The promise states that “if, at the termination of the war, no further use of the area is required by the Department of National Defence, negotiations will be entered into with the Department of Indian Affairs to transfer the lands back to the Indians at a reasonable price determined by mutual agreement” (Koehler, 1996). In its tabled report in March 1992, the Standing Committee on Aboriginal People recommended that the appropriated lands be returned to its former Aboriginal inhabitants. The report indicated that the federal government’s reasons for continuing to occupy the lands were “spurious and without substance” (Steckley & Cummins, 2008, p. 205; see also Hamilton, 1998). In addition, the army cadet camp, which was formerly based on the site, was no longer used after the summer of 1993 because of the growing unrest and the occupation of an adjacent piece of land. The summer training facility was subsequently moved to Canadian Forces Base Borden.

<sup>5</sup> Gerald George’s description of the different firearms apparently possessed by the Ipperwash Park occupiers was recorded in a notebook by Detective Constable Dew, who referred to Gerald George as an “anonymous source.” Mr. George was also the source of other misinformation when it was reported to the OPP that damage had been done to the Band Councillor’s car by a group of park occupiers. The damage to the Councillor’s car was caused by a rock thrown by one of the occupiers who took exception to an article Councillor George had written in a local newspaper disapproving of the occupation. A rumour was also started that the occupiers had smashed the vehicle of a female driver with a baseball bat, but, according to the Ipperwash report by Justice Sidney Linden, the information was “false and misleading,” as indicated by a transcript of his comments before the Inquiry on September 19, 2007 (Ipperwash Inquiry, 2007, p. 56).

Another problem stemmed from the lack of knowledge that OPP officers had about the reasons for the occupation of the park, which was limited to the vague claim that a sacred burial ground existed on the park property.<sup>6</sup> At approximately 9:00 p.m. on September 6<sup>th</sup>, the OPP closed the roads leading to Ipperwash Park. Thirty-two OPP officers from the Crowd Management Unit (CMU), an additional eight officers assigned as an arrest team, two canine teams, and two prison vans assembled at the park boundary. The CMU commander and his force were attired in “hard Tac” equipment, which included batons, guns, helmets, visors, bulletproof vests, and other protective equipment.

As darkness settled in at approximately 10:30 p.m., the unit of 40 officers marched into the park in a tight “box formation.” The Aboriginal protesters then began yelling that officers were standing on sacred ground. An Aboriginal man struck an officer on the edge of his helmet with a steel pole breaking the Plexiglas shield in half. The officer responded by striking the man’s shoulder area with his baton, sending the man reeling to the ground. A number of other confrontations broke out in the virtual darkness. Acting Sergeant Ken Deane claimed that he saw a muzzle flash originating from the interior of a bus, driven by a sixteen-year old boy. Several officers opened fire on the approaching vehicle, firing rounds into the driver’s compartment. Deane also claimed that Dudley George shouldered a rifle in a half-crouched position pointed at several OPP officers. Ken Deane then fired three shots at Dudley George in rapid succession.

Ken Deane claimed that Dudley George’s gun fell to the ground after he was shot, but Deane did not attempt to retrieve the rifle despite the danger that such a weapon could have posed for other officers. However, at a subsequent inquiry other officers could not corroborate Deane’s version of the events, as they did not see a firearm being carried by George. The Ipperwash Inquiry (2007) did not accept Acting Sergeant Deane’s version of the events. They concluded unequivocally that “Dudley George did not have a rifle or firearm in the confrontation with the police on the night of September 6, 1995” (p. 72). Ken Deane died in a car accident shortly before he was scheduled to testify at the Ipperwash Inquiry. In 1997, he was convicted of criminal negligence causing the death of Dudley George (Ipperwash Inquiry, 2007).

Several of the most prominent recommendations of the Ipperwash Inquiry deal with matters pertaining to police planning for responding to Aboriginal protests and occupations. One, in particular, suggests that in such incidences discussion with negotiators would probably serve to ameliorate the potential for conflict:

The Ontario Secretariat for Aboriginal Affairs,<sup>7</sup> in consultation with Aboriginal organizations, should compile a list of available negotiators and facilitators who could assist the government to quickly and peacefully resolve Aboriginal issues that emerge. (Ipperwash Inquiry, 2007, p. 96)<sup>8</sup>

The issue that prompted the occupation of Ipperwash Park was not very well understood by the OPP. The police were apparently only aware that the Aboriginal protesters were in the park illegally and that Ontario

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<sup>6</sup> A Ministry of Natural Resources memo from 1972 claimed that there was no evidence of a burial mound; however, a later memo claimed that the 1972 methodology “does not agree with current archaeological survey standards” (cited in Edwards, 2003, p. 249). There are also many government letters from the 1930s mentioning finding graves on the site, in addition to the park superintendent’s wife’s report of finding bones in the park in 1950

<sup>7</sup> In June 2007, a stand-alone Ministry of Aboriginal Affairs was created to replace the Ontario Secretariat of Aboriginal Affairs. The website ([www.aboriginalaffairs.gov.on.ca](http://www.aboriginalaffairs.gov.on.ca)) has a section on current lands claims and related negotiations.

<sup>8</sup> In addition, three other roles are listed:

- Maintain contact within Aboriginal communities throughout the province;
- Remain current on Aboriginal issues;
- Provide informed advice to OPP Executive and Incident Commanders regarding Aboriginal issues (OPP, 2006, p. 3).

Premier Mike Harris and his Cabinet wanted the occupiers removed in an expedient manner.<sup>9</sup> A facilitator or go-between could have communicated to the OPP and government representatives the reasons for the occupation of Ipperwash Park, which, in turn, could have set in motion a series of actions that might possibly have diffused the situation and avoided the tragic consequences.

### Framework for Police Preparedness for Aboriginal Critical Incidents

Towards the end of the Ipperwash Inquiry, the OPP (2006) presented its *Framework for Police Preparedness for Aboriginal Critical Incidents* (referred to below as the *Framework*). The document was said to be a key element of the OPP strategy to improve the policing of First Nations protests, confrontations, and blockades. The OPP has asserted that it had applied the principles of the *Framework* for several years before formally adopting it as policy early in 2006 (OPP, 2006).

Release of the *Framework* document was timely because, although the mandate of the Ipperwash Inquiry was to inquire into the circumstances of the shooting of Dudley George, a more general concern was to investigate the policing of protests and blockades by First Nations people in Ontario. As such, the mandate of the Inquiry was to make recommendations directed at avoiding further violence between the police and Aboriginal protesters. However, Commissioner Linden expressed concern about the sustainability of the *Framework*, adopting a wait-and-see approach to its possible effectiveness as an OPP policy initiative (OPP, 2006).

Perhaps the most important question is whether or not the OPP sincerely intends to adopt the principles, as set out in the *Framework*, as an official policy proposal for handling Native protests – or will the document be used only to appease public concerns and deflect criticism. The proposals set out in the *Framework* are certainly worth noting. The document begins by stating that:

The Ontario Provincial Police (OPP) is committed to safeguarding the individual rights enshrined within the Federal and Provincial laws, inclusive of those specifically respecting the rights of Aboriginal persons of Canada as set out in the Canadian Charter of Rights and Freedoms. The OPP recognizes that conflicts may arise as Aboriginal communities and the various levels of government work to resolve outstanding issues associated with matters such as land claims, self-determination, and Aboriginal treaty rights, which may relate to education, hunting, and fishing. (OPP, 2006, p. 2)

While the *Framework* notes that “critical incidents are often unavoidable,” the document outlines several significant approaches that would serve to diffuse or ameliorate such incidents. The *Framework* does, however, point out that “disputes may, and often do, originate with government agencies other than the police, this framework applies to the negotiation and mediation of police-related issues surrounding a dispute” (OPP, 2006, p. 3). In other words, the OPP attempts to make it quite clear that it is up to the government and Aboriginal communities to solve their problems themselves – these parties should not expect the OPP to do such work for them.

The role of the OPP during Aboriginal protests is, therefore, seen as an intercalary one in which they facilitate negotiations, but the OPP is not responsible for the outcome. This process, as suggested in the *Framework*, would be facilitated by an Aboriginal Liaison Operations Officer who would be a member of the OPP reporting to the Office of the Commissioner. The purpose of this role is: (a) to foster trusting relationships

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<sup>9</sup> A claim was made that Premier Harris used derogatory profanity in reference to the Stoney Point protesters, which the Premier denied. The issue over Premier Harris’ denial became the object of public attention in February 2006 when CTV aired a television movie called *One Dead Indian*, which was based on a book by the same name written by Peter Edwards, a *Toronto Star* reporter (Edwards, 2003). Premier Harris’ alleged use of the f-word in reference to the Aboriginal protesters of Ipperwash Park was made, ironically, on Valentine’s Day. On the date of the release of the Ipperwash Inquiry report, Mike Harris referred to the Ipperwash allegations as “malicious and petty” (“Ipperwash Allegations,” 2007).

between the OPP and Aboriginal communities; and (b) to assist in facilitating communications during an Aboriginal-related dispute, conflict, or critical incident. There is also mention of a Critical Incident Mediator who: (a) meets with Aboriginal representatives and communicates police interests; (b) listens for and identifies key issues and interests of the Aboriginal representatives; and (c) develops in concert with the Incident Commander a mutually acceptable and lasting resolution strategy (OPP, 2006, p. 4).

### **Chiefs of Ontario Response to the *Framework for Police Preparedness for Aboriginal Critical Incidents***

The Chiefs of Ontario (COO) organization met in 2006 to provide a critical response to the OPP's *Framework* (Chiefs of Ontario, 2006). In this response it was made clear that "the Chiefs of Ontario do not endorse the framework; rather, it is our intent to provide constructive suggestions" (p. 1). The COO response focuses on the Critical Incident procedures proposed by the OPP. The Chiefs recognize, as indicated in the *Framework*, that disputes may, and often do, originate with government agencies other than the police. Therefore, the *Framework* is limited to the negotiation and mediation of police-related issues surrounding a dispute.

A critical aspect of this negotiation or mediation process focuses on the ability of the newly created Aboriginal Liaison Operations Officer, the Aboriginal Relations Team, and the Incident Commander to work in collaboration with one another. The Chiefs indicate, however, that the *Framework* only reflects this collaboration at the Critical Incident level. They suggest that what happens at the pre-Critical Incident level – the crucial events leading up to a crisis point – is just as important. As the Chiefs of Ontario (2006) suggest, "local First Nation police service must play a lead role pre-critical as they will be in the best position to prevent conflicts from arising, what to look for and what can be done are further articulated with the framework document" (p. 2). In other words, the Chiefs are proposing a much more enhanced role for Aboriginal police officers than has previously been the case in protests and demonstrations.

### **Involving Aboriginal People in Conflict Management**

The overall point that the Chiefs of Ontario are making is that, in the future, it is imperative that Aboriginal people be involved in the planning process of police action in Aboriginal protests so that the situation can be diffused before it leads to the disastrous results that occurred at Ipperwash Park. In fact, evidence presented at the Ipperwash Inquiry indicated that negotiators were apparently available on the night that Dudley George was shot, but the OPP had not asked for their advice or intervention. The Base Commander at Camp Ipperwash, Captain Smith, had made contact with Robert Antone, a First Nations negotiator trained in conflict resolution and crisis management who had been involved in the 1990 Oka Crisis in Quebec. Along with Bruce Elijah, a First Nations negotiator and peacekeeper from the Oneida First Nation, Mr. Antone had also facilitated a cross-cultural awareness training session with the military on July 12 and 13, 1995, with the goal of building a better relationship between the Stoney Point people who were occupying the artillery range and military personnel. Captain Smith made it quite clear that he did not want a physical confrontation with First Nations people, so, with the assistance of Robert Antone and Bruce Elijah, the military left the camp on July 29, 1995 (Ipperwash Inquiry, 2007).

It was also pointed out in testimony at the Inquiry that OPP Inspector Carson did not make an attempt to contact representatives of the Assembly of First Nations, the Chiefs of Ontario, or the Union of Ontario Indians for assistance. He also did not ask Chief Tom Bressette if anyone on the Stoney Point Band Council could help initiate negotiations with the Ipperwash Park occupiers. Furthermore, Inspector Carson did not seek out the assistance of the OPP's First Nations police branch in an attempt to open communications with the Aboriginal protesters. He did approach local OPP officers, but they unfortunately lacked the appropriate negotiation skills to become involved (Ipperwash Inquiry, 2007).

The question as to why Aboriginal negotiators were not employed to ameliorate the tensions during the confrontations at Ipperwash Park in September 1995 remains. The Inquiry report indicated that Cyndy Elder

of *Approaches Mediation* called the OPP at about 4:00 p.m. to offer her assistance to Inspector Carson. This First Nations mediator explained to Sergeant DrummelSmith that she had contact with Inspector Carson in August 1995 after the army camp occupation. At the time, Ms. Elder was involved with the Gustafsen Lake protest in British Columbia, so her services might have been used to diffuse the tension at Ipperwash Park. Sergeant DrummelSmith promised to convey her message to Inspector Carson. Testimony indicated that Inspector Carson was “too busy to return Ms. Elder’s call that day...The best I can do is some time tomorrow,” but tomorrow was too late and a significant opportunity to establish lines of communication with the park occupiers was lost (Ipperwash Inquiry, 2007, p. 36). Meanwhile, Inspector Carson left at 7:00 p.m. on September 6<sup>th</sup> for dinner at the private home of friends in Forest, Ontario, with orders to those left in charge to “basically sit tight” (Ipperwash Inquiry, 2007, pp. 36-37).

### **“Project Maple”: Crisis Negotiation at Ipperwash Park**

During the Ipperwash Inquiry, the OPP mounted a vigorous rebuttal to the charge that its members were negligent in enacting the role of peacekeepers or negotiators in the dispute at Ipperwash Park (Ontario Provincial Police Association [OPPA], 2006). In particular, the OPPA vehemently objected to the intercalary role in which its members were placed between the Ontario government and the Aboriginal protesters. According to the OPPA submission, police officers see their role as peacekeepers, but not as land claims negotiators. The officers have no training in dispute negotiation, and conflicts are inherently dangerous to both the police and protesters given the fact that one or both sides carry firearms. As the OPPA (2006) submission points out, “many of the police officers who testified expressed their displeasure with the role assigned to them as interveners in what was and continues to be a civil dispute over property rights between First Nations people and the federal and provincial governments” (p.14).

During the Ipperwash dispute, an attempt was made to develop a contingency plan to contain the possible outbreak of violence. In a meeting of senior OPP officers on September 1, 1995, a plan called “Project Maple” was developed to deal with the possibility of an extended stand-off at Ipperwash Provincial Park (OPPA, 2006). The primary objective of Project Maple was “to contain and negotiate a peaceful solution” (p. 15). The project plans included an organizational chart setting out a structure involving the Incident Commander, senior officers, and other various police units, including the Emergency Response Team and Tactical Rescue Unit. Each of the various components of this structure was asked to develop a logistical plan should their participation be required.

The OPPA submission to the Ipperwash Inquiry makes it quite clear that the term “crisis negotiation” has a specific meaning as far as Project Maple was concerned. As explained in the OPPA (2006) submission, “police crisis negotiation is not synonymous to land claims negotiation. Rather, police crisis negotiations apply only in very specific, limited situations. Crisis negotiators may only respond when directed to do so by an Incident Commander” (p. 46). The Incident Commander will involve the crisis negotiating team under situations that fit the following criteria: (a) there must be a threat to life, such as when a person is barricaded or in a hostage situation, and (b) the individual refuses to attorn<sup>10</sup> to the local police. Crisis negotiators are not employed short of a threat to life. According to the OPPA submission, therefore, the criteria for the use of crisis negotiators were not met during the events at Ipperwash Park and as such were not employed.

According to this submission, then, the OPP has a specific set of terms of reference when it comes to crisis negotiation and this does not apply to land claims negotiations because there is not (usually) a threat to life. However, it is evident from the Ipperwash confrontation on September 6, 1995 that there exists a lacuna between the rather strict or specific usage of the OPP’s term crisis negotiations and a less circumscribed view

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<sup>10</sup> The use of the term “attorn” in the OPPA (2006, p. 46) submission is puzzling, since it means to “transfer” in some sense, such as its alternative form ‘attorney’ meaning to act on one’s behalf (i.e., to transfer authority). Perhaps the meaning intended, given the context, is to acknowledge the police as a higher authority, such as in acknowledging a new landlord.

of what constitutes a crisis. If the OPP was led to believe that on the evening of the confrontation the Aboriginal protesters were armed, then one might suppose that such a situation posed a threat to life.

The fact that it was never proven that the Aboriginal occupiers were armed in any manner, save for several baseball bats and a collection of stones, does not diminish the fact that the OPP had grounds to believe that someone's life would be threatened under such circumstances. Otherwise, the OPP's use of such hard-Tac equipment, along with their firearms, hardly seems justified in the face of unarmed opponents. Furthermore, it is unfortunate that OPP personnel highly trained to deal with crisis management were not utilized, regardless of the strict terms of reference under which the negotiation team could be deployed. Given the fact that an Aboriginal protester was fatally wounded during the confrontation, it would seem highly reasonable that, in the future, the terms of reference regarding "crisis negotiator" be subject to more flexibility and better judgement.

Certainly, the intent of the crisis negotiation process is not at fault. According to the OPPA (2006) submission, "to develop trust with the subject... an effective negotiator receives information directly from the subject of the negotiation process as part of the process of building trust and rapport" (p. 47). What remains to be done, then, is to incorporate these laudable objectives into realistic terms of reference so that in the future unarmed land claims protesters are not shot by the very authorities seeking their "trust and rapport."

### **Dissent and Society**

The shooting of Dudley George and the Aboriginal protest at Ipperwash Park brings into question the relationship between the police officers' behaviour and actions taken by the government in power at the time. Beare (2008) observes that "one can trace, for example, the refusal of the Conservative Party in Ontario to hold an inquiry into the shooting of Dudley George at Ipperwash and the campaign promise made by the Liberal party that culminated in an inquiry after their election" (p.19). Concerning the relationship between politics and policing, on the one hand, lawyers are apt to point to case law as an interpretation, while, on the other, social scientists, such as criminologists, are more interested in the "working relationship" between the police and government (Beare, 2008, p. 26). The Ipperwash Inquiry, therefore, demonstrates the tensions between social scientific perspectives and the more restricted legalistic view of the events involved in Aboriginal protests and the larger arena of dissent and society.

James Tully's (2008) discourse on aspects of democracy and freedom offers an enlightening and informative discussion on the relationship between power and governance. Tully (2008) suggests, for example, that "from the perspective of the governed, the exercise of power always opens up a diverse field of potential ways of thinking and acting in response" (p. 23). Some of the ways of "acting in response," he suggests, include challenging a relation of governance or entering into negotiation or deliberation with an attempt at problem solving. However, there are instances when institutions of reform are not available or those in power attempt to bypass or subvert them, in which case the governed may engage in acts of civil disobedience or other forms of resistance.

A question that emerges from the present discussion concerns whether or not it would be accurate to characterize Aboriginal protests as acts of civil disobedience. Civil disobedience has been defined as a "deliberate, but non-violent, act of law breaking to call attention to a particular law or set of laws of questionable legitimacy or morality" (Burstein, 2008, p. 391). It can also refer to "any type of conduct where the offender has intentionally broken the law for the purpose of trying to affect positive social change" (Burstein, 2008, p. 376). In this sense, civil disobedience is a challenge to the justice system because it involves actions by what are usually regarded as law-abiding citizens who seek to change some law or public policy by illegal means and who may unlawfully interfere with the interests of other citizens.

In the case of Aboriginal protests, then, there is a question about the extent to which the court should consider the history of frustration over the protracted land claims negotiations or situations in which Aboriginal control and possession over land has been removed through illegal or unscrupulous means. In other words, does it matter if a protester's acts could actually lead to some public good, and should the courts in such instances consider if alternative means could have been used by protesters in an attempt to achieve their goals? As far as the "justifications" for civil disobedience are concerned, Burstein (2008) concludes that "while Canadian sentencing courts have consistently held that the noble motives behind civil disobedience cannot serve to excuse liability, there is much less agreement on how these motives may affect the punishment which follows the finding of guilt" (p. 380).

An important matter relating to police-government relations in the context of Aboriginal and treaty rights involves the policing issues that need to be considered. Aboriginal protesters feel that they have a right to voice their dissent and the right to peaceful assembly in a democratic society. Christie (2007) explains that Aboriginal protesters have a "right to free expression [which] is grounded in a conception of a liberal democracy, and of the conditions necessary for the promotion of values and ideals highly esteemed by those living in and through a liberal democratic structure" (p. 156). There is, therefore, a question about the appropriate nature of police activity in relation to Aboriginal protests, and about the nature of the relationship between the actions of the police and decisions made by the government, which could be interpreted as a suppression of legitimate dissent.

As Christie (2007) explains further, "inappropriate police activity, in relation to the Aboriginal protest, may lead to questions about the relationship between the police and the government in power (especially... if it appears the government inappropriately directed the police in this matter)" (p. 155). In a concluding statement on the subject of politics and policing, Beare (2007) remarks that "the relationship between the police and politics is deep, varied, and sporadic... acknowledging these links is critical to any approach that aims to bring predictability and accountability, let alone independence, to this ongoing interchange" (p. 364). One could, therefore, state that there are wider issues regarding the Ipperwash Inquiry that are ultimately important to Canadian society in a larger context, such as the relationship between the powers exercised by the police and the government and how these interact in situations of Aboriginal protests.

### Conclusion

The Ipperwash land claim was eventually settled in 1998 with a \$26 million agreement. Each member of the Stoney and Kettle Point First Nation received between \$150,000 and \$400,000. The land of the Camp Ipperwash military base was cleaned up and returned to the band members. On December 20, 2007, the Ontario government announced plans to return the Ipperwash Park property to its original owners, the Chippewa of Stoney and Kettle Point. Aboriginal Affairs Minister Michael Bryant explained that initially the land comprising the park would be co-managed by the province and the Stoney and Kettle Point First Nations with a gradual assumption of control by the Aboriginal peoples (Gillespie, 2007). Ipperwash Park was officially turned over to the Chippewa on May 28, 2009, when Ontario Aboriginal Affairs Minister Brad Duguid formally signed over control of Ipperwash Park to the Kettle and Stoney Point band members (McCaffery, 2009).

The recommendations of the Ipperwash Inquiry, if acted upon by the Government of Ontario, could potentially lead to constructive changes in the laws and public institutions of the province. Legislative changes, in turn, might well diminish the need for such enervating protests over land claims and could lead to more peaceful relationships between Aboriginal and non-Aboriginal people regarding the ownership and control of land. In Canada, there are many unresolved treaty and land claims issues because, as the Ipperwash Inquiry (2007) report reiterates, "nearly all of the lands and inland waters in Ontario are subject to treaties between First Nations and the British and Canadian governments. These treaties are not, as some believe, relics of the distant past. They are living agreements, and the understandings on which they are based continue to have full force of law in Canada today" (p. 80).

Under the topic of lessons learned, there is much that could be said concerning Aboriginal protests and confrontations. If, for example, the appropriated lands belonging to the Stoney and Kettle Point First Nation had been promptly returned as initially promised to the original owners of the Ipperwash military camp shortly after the war, it would have saved decades of grief and frustration. Instead, the federal government, in particular the Department of National Defence, went back on its promise to return the disputed lands. As a result, sixty years of needless confrontation between band members and the forces of the Canadian military and the OPP followed.

When the police are involved in Aboriginal protests and confrontations over land claims, there will likely be a certain degree of heightened emotion that complicates the resolution of such matters. As far as the Ipperwash Park confrontation is concerned, we are led to question why our elected representatives did not move towards the eventual settlement in a more expeditious manner. Ipperwash is, however, just one of hundreds of land claims, and the track record of the federal government in resolving these claims is not very good, leaving open the potential for further deadly confrontations.

The present mechanism for resolving land claims is far too expensive and cumbersome. The federal government made a commitment to spend \$355 million on resolving land claims between 1991 and 1995, which amounts to four times the amount spent in the late 1980s (Frideres & Gadacz, 2008, p. 237). In addition, the Department of Indian and Northern Affairs was given complete authority by the Treasury Board to approve settlements up to \$7 million without the Board's approval. The hope was that in the first few years of the new millennium about 250 outstanding claims would be settled. Unfortunately, by 2008, fewer than 30 of these land claims had been resolved, with a backlog of new cases mounting in an almost exponential manner. In Ontario, for example, it takes an average of 6.5 years to review a claim once all the research is complete. On average, it takes 15 years to settle a claim. If there are further complications, then a claim takes an average of 19.2 years to be resolved (Coyle, 2005). Clearly, the present approach to settling land claims in Canada has little hope of succeeding, guaranteeing further frustration, discontent, and a disaffected Aboriginal population.

Since land claims in Canada can be a particularly slow process at times, Aboriginal populations have taken to more direct action. Every year across Canada, there are an ever-increasing number of Aboriginal protests over land. Roads and railways are blockaded; marches to Ottawa take place; and buildings and parcels of land are occupied. In many instances, the protests lead to confrontations with local police, the OPP, the RCMP, and the Canadian military. These protests sometimes lead to the injury or death of the protesters or those who confront them. Rarely during these episodes are proper rules of engagement or conduct utilized.

When emotions run high and frustration mounts, the gathered assembly begins to appear like a mob out of control. Why do the same unfortunate scenarios play themselves out in Canada over and over again without order or resolution? In a civil society that Canada purports to be, there should be ways to resolve such disputes other than by the use of force and violence. The Ipperwash Inquiry reveals in a stark manner the deeply felt anger and frustration that results when provincial and federal governments fail to deal constructively with extant treaty obligations and shows the untenable position that police are forced into when asked to intercede in the seemingly inevitable protests and confrontations that result from this failure.

The proposal of the Ipperwash Inquiry to establish a provincial Treaty Commission and a Ministry of Aboriginal Affairs has the potential to deal constructively with disputes over treaty rights and other unresolved issues concerning burial and heritage sites. It will be necessary, however, that trust of Aboriginal peoples be regained so that they do not feel they are merely land claims adversaries of federal and provincial governments, as has been the case with much previous litigation. If a number of the key Ipperwash proposals were implemented, it would serve to mitigate the deleterious consequences of a failure to take seriously Canada's legal obligations towards First Nations people. These proposals also have the potential to prevent further needless loss of life, such as the tragic death of Dudley George.

It is for this reason that recent government initiatives, such as Manitoba's *Aboriginal Justice Implementation Commission* (n.d.), the ongoing *Truth and Reconciliation Commission of Canada* (n.d.), and Canada's *Justice at Last* (Aboriginal Affairs and Northern Development Canada [AANDC], 2007) action plan are particularly welcome. *Justice at Last* has been developed under Canada's Specific Claims Policy in recognition that the "Crown has sometimes failed to uphold its lawful obligations under historic treaties or has mismanaged First Nation funds or other assets for which it is responsible under the *Indian Act*" (AANDC, 2007, p. 1). The Specific Claims Policy attempts to resolve historical grievances through negotiation. As the Canadian government admits, the ongoing specific claims process has been "slow, cumbersome, and costly," (AANDC, 2007, p. 1) and has, therefore, been largely responsible for frustrations suffered by First Nations people in resolving their unsettled land claims. The Government of Canada acknowledges that "the number of unsettled claims in the federal system has doubled since 1993 and there is a growing backlog of claims awaiting attention or action" (AANDC, 2007, p. 1).

In an attempt to alleviate these difficulties, the *Justice at Last* approach will be based on the recommendations of the 2006 Standing Senate Committee on Aboriginal People's Special Study of the Specific Claims Process. The Specific Claims process has adopted a four priority approach, involving: (a) the creation of an independent tribunal, (b) a more transparent arrangement for financial compensation, (c) a measure to ensure faster processing of small claims, and (d) better use of current dispute resolution services, such as the Indian Specific Claims Commission (ISCC).

### Policy Recommendations

The foregoing discussion of police involvement in Aboriginal protests and confrontations suggests the adoption of the following policy recommendations in order to ameliorate conflict.

- Police should be briefed as fully as possible about the reasons for Aboriginal protests in which they are involved. Especially important would be information, as in the case of Ipperwash and Oka, where such protests concern burial sites or other locations considered sacred by First Nations people, which could lead to a heightened sense of emotion on the protesters' part and an intense desire to protect these areas at all cost.
- Aboriginal persons with training in negotiation and mediation should be utilized whenever possible in First Nations confrontations to serve as a buffer between police and protesters and to further communication between the two conflicting parties.
- Police who are involved in Aboriginal protests are advised to wear the customary attire for regular duty and be armed as they would in everyday situations, unless there is verifiable and concrete information that Aboriginal protesters are themselves armed. The Ipperwash case highlights the tragic results of a reliance on misinformation and hearsay reports.
- It is highly advisable that there be on the ground involvement of qualified government officials who have expertise in land claims negotiations in Aboriginal protests as a means of diffusing tensions and creating an atmosphere in which there is an expectation of imminent government action on particular claims. Such involvement by government officials would also have the tendency to remove the Aboriginal protest from the criminal realm to that of civil litigation.
- The protest site should be isolated in such a way that the situation is not further aggravated by persons not directly involved in the Aboriginal dispute, such as townspeople or even other Aboriginal people who have arrived from distant places to give their support to local protests. Such additional individuals tend to unnecessarily increase tension and magnify a local dispute into a much larger arena, which becomes virtually impossible to resolve. In other words, the

smaller the crowd and the more specific the dispute, the more effectively such situations can be managed.

- From an international perspective, the circumstance surrounding the Aboriginal protest at Ipperwash Park suggests that legitimate, non-violent dissent should not be suppressed by violent means. When peaceful dissent is suppressed in such a manner, there is a tendency for resistance to counteract this exercise of power. In a liberal democratic state, or in a country which sees itself in this light, reforms need to be instituted that allow for the resolution of dispute through a reasoned interchange of ideas and negotiation, rather than through the exercise of force and power in an attempt to suppress the voice of the dissenters.

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