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# Canada

## Why there must be a public inquiry into the police killing of Dudley George

### Introduction

On 6 September 1995, Dudley George, aged 38, was killed by a police sniper during a Native land protest at Ipperwash Provincial Park. The officer who fired the fatal shot was subsequently convicted of knowingly shooting an unarmed man. Amnesty International and numerous other bodies have raised serious questions about the circumstances of the shooting, including the role played by public officials in the police decision to use a high level of force against a relatively peaceful and not clearly illegal protest.

However, in the interceding eight years, the federal Government of Canada and the provincial Government of Ontario have resisted continuous calls in Canada internationally – including municipalities, churches, trade unions, media editorialists, political parties, human rights organizations, the provincial Ombudsman, indigenous peoples' organizations and United Nations entities – for a public inquiry into this event. Accordingly, the family of Dudley George have been left with no option but to launch a civil lawsuit against Michael Harris, the Ontario Premier at the time of the killing, members of his Cabinet and members of the police force. In the course of those proceedings, several documents have been disclosed which strongly indicate that the government may have directly controlled or sought to influence police operations during the Ipperwash protests, which preceded George's death.

Amnesty International believes that if the authorities wished to remove the protesters at Ipperwash, they had to do so within international human rights standards and domestic law. That is to say, it was incumbent upon the police force to use force as a last resort and only to the minimum extent necessary to protect lives and property. However, it is clear from the actions launched against the protesters on the evening of 6<sup>th</sup> September 1995 – a mere 2 days after the occupation had begun and in stark contrast to previous police policies of dealing with occupations peacefully – that the authorities had no intention of respecting the rights of the protesters and of using only minimum force.

The authorities took such forceful action before they had given themselves the time and opportunity to examine the protesters' right to occupy the land. Nor had they obtained legal permission to act to remove the protesters via a court injunction.

Amnesty International has recommended against such actions. In its 1992 report *Human rights violations against the Indigenous peoples of the Americas*, the organization recommended:

Since many [human rights] abuses against indigenous peoples occur during evictions, steps should be taken to ensure that evictions are not authorized and do not take place

except in accordance with fundamental principles of justice and relevant international standards, and taking full account of treaties and laws protecting the lands of indigenous peoples. When evictions do take place, measures should be taken to avoid the use of force and prevent abuses against indigenous peoples. Those occupying the contested land should be adequately informed about relevant court orders before any eviction takes place, and their opportunity to challenge the legality of the eviction order should be ensured. A competent judicial official should accompany police officers empowered to carry out the order. Police officers who carry out authorized evictions should be trained in and obliged to comply with international standards regarding the use of force...<sup>1</sup>

### **The land rights of Indigenous peoples: an ongoing problem inadequately addressed**

Indigenous peoples, including First Nations, Inuit and Métis peoples, make up roughly three percent of the Canadian population. However, except in the north of Quebec, and in the northern territories of Nunavut, the Northwest Territories and the Yukon, Indigenous peoples in Canada control very little of the land and resources of their original homelands.

In 1996, the Canadian government's Royal Commission on Aboriginal Peoples (RCAP) estimated that since Canadian Confederation in 1867, two-thirds of the land allocated to Indigenous peoples had been "whittled away" through sale, appropriation, fraud and theft. Currently, Indigenous peoples control less than one-half of one per cent of the land in southern Canada. According to the RCAP, the loss of control over lands and resources has been a central factor behind problems of poverty, ill-health and social stress now rampant in many Indigenous communities across Canada.<sup>2</sup>

The RCAP urged immediate government action to ensure fair and timely resolution of the hundreds of outstanding disputes over Indigenous land and resources, warning that: "Without adequate lands and resources, Aboriginal nations will be unable to build their communities and structure the employment opportunities necessary to achieve self-sufficiency. Currently on the margins of Canadian society, they will be pushed to the edge of economic, cultural and political extinction. The government must act forcefully, generously and swiftly to assure the economic, cultural and political survival of Aboriginal nations."<sup>3</sup>

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<sup>1</sup> Page 104, AI index AMR 01/08/92, published October 1992.

<sup>2</sup> Canada. Royal Commission on Aboriginal Peoples. Final Report of the Royal Commission on Aboriginal Peoples. 1996. CD-ROM version, record 7608.

<sup>3</sup> Ibid. Record number 8380.

In March 1990, the United Nations Human Rights Committee<sup>4</sup> ruled that the destructive impact of the resource development that has taken place in hunting and trapping territory of the Lubicon Cree of northern Alberta – while that land remained in dispute – amounted to a violation of the Lubicon’s fundamental human rights.<sup>5</sup> Although negotiations with the Lubicon are ongoing, the land dispute has still not been resolved.<sup>6</sup>

In 1998, the UN Committee on Economic, Social and Cultural Rights called on the Canadian government to “to take concrete and urgent steps to restore and respect an Aboriginal land and resource base adequate to achieve a sustainable Aboriginal economy and culture.”<sup>7</sup> This recommendation was echoed by the UN Human Rights Committee which in 1999 urged “decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation.”<sup>8</sup> In 2002, the UN Committee for the Elimination of Racial Discrimination expressed its concern over the slow progress toward implementing the recommendations of the RCAP.<sup>9</sup>

In contrast to Canada’s slow response to violations of Indigenous peoples’ rights, Indigenous communities that have sought to exercise land and resource rights (often reflected in historic treaties signed with the State) without awaiting the consent of governments have often been subjected to swift, aggressive and sometimes violent enforcement actions. For example, as Amnesty International has previously commented on, unnecessary and excessive force may have been used in 2000 in asserting federal jurisdiction over the lobster fishery at the Native community of Burnt Church in New Brunswick.<sup>10</sup>

Amnesty International has also expressed concern over the frequent failure to ensure full public accounting of the circumstances surrounding instances of police violence against Indigenous peoples. Amnesty International supports the recommendation made by the UN Committee against Torture in November 2000 that federal and provincial governments should also establish independent, civilian bodies to investigate allegations of torture, ill-treatment and other serious human rights violations at the hands of law enforcement officers and prison staff.

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<sup>4</sup> The expert body that monitors UN member states’ adherence to the International Covenant on Civil and Political Rights

<sup>5</sup> United Nations Human Rights Committee Communication No. 167/1984 : Canada. 10/05/90. CCPR/C/38/D/167/1984. *Ominayak and the Lubicon Lake Band v. Canada*.

<sup>6</sup> Also see *Canada: “Time is wasting”: Respect for the land rights of the Lubicon Cree long overdue*, Amnesty International publication AMR 20/001/2003, published April 2003.

<sup>7</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada. 10/12/98. E/C.12/1/Add.31

<sup>8</sup> Concluding observations of the Human Rights Committee: Canada. 07/04/99. CCPR/C/79/Add.105

<sup>9</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada. 01/11/2002. A/57/18

<sup>10</sup> *Without Discrimination: The Fundamental Right of All Canadians to Human Rights Protection. A Brief to the U.N. Committee on the Elimination of Racial Discrimination on the Occasion of the Examination of the Thirteenth and Fourteenth Periodic Reports Submitted by Canada*. July 2002. [http://www.amnesty.ca/library/canada/un\\_cerd.htm](http://www.amnesty.ca/library/canada/un_cerd.htm)

## **Background to the killing of Dudley George: the occupation of Ipperwash Provincial Park**

On 4<sup>th</sup> September 1995, Dudley George was part of a group of approximately 24 Natives who entered Ipperwash Provincial Park as part of a protest claiming that the land belonged to the Indigenous community.

The park is located on the shores of Lake Huron in the province of Ontario. It was part of a large piece of land guaranteed as Indigenous peoples reservation land by a Treaty signed in 1827 between the Native Chippewas and the British Crown. In 1927, part of the reservation was sold to the government of Ontario for the Provincial Park. The park contained an Indigenous burial ground which was desecrated when the park was built.

The remainder of the reserve was appropriated by the Department of National Defence to create a military base during World War II: the Camp Ipperwash military base. The Chippewas living there were involuntarily resettled to a nearby reservation pursuant to the *War Measures Act*, on the understanding that their land would be returned to them at the end of World War II hostilities. Despite this undertaking, embodied in a Cabinet Order, the land was never returned to them.

Approximately 50 years later, finding that all efforts to regain their reserve land had been in vain, on 27 May 1993 Indigenous people from Stoney Point occupied part of the military base that had been built on land appropriated from them in World War II. On 29 July 1995, they took over the rest of the base. The Canadian military withdrew from the base without confrontation. Technicians from the nearby military base reportedly introduced some of the protesters to the daily operations of the base so that equipment would not be damaged. Some of the protesters were awarded contracts with the federal Government to cut the grass and undertake maintenance activities.

## **Events of 4-6 September 1995**

On 4 September, approximately 24 reportedly unarmed Native men, women and children entered the park and occupied a small portion along the beach and parking lot. Their occupation posed no apparent danger to the public – and appeared to be symbolic – since the park had just closed at the end of the tourist season.

Reports suggest that the protest began peacefully. The protesters were joined by sympathisers for a picnic, which included children. The police had been alerted as early as May 1995 that an occupation of the park might happen.<sup>11</sup>

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<sup>11</sup> Source: *One Dead Indian*, pages 69 and 73. Author Peter Edwards, published by McClelland & Stewart Ltd 2003, ISBN 0-7710-3047-9.

The Ontario Provincial Police (OPP) had prepared a strategy code-named 'Project Maple' for use in the event that the park was occupied. Its aim, as stated in the police's document, was "to contain and negotiate a peaceful resolution". Thirteen negotiators would be available. Ambulances and caged buses would be on alert. In addition, any arrests were to be videotaped so that the OPP could counter any unjust accusations of brutality. The plan of OPP Acting Superintendent John Carson was to tell the Natives that the park was closed, that they were trespassing and that they should leave. If they refused to leave the park, a court injunction ordering them to leave would be sought.

Amnesty International was not present at the confrontation between the protesters and the police force. However, the organization has followed closely issues surrounding the investigation into Dudley George's death and related matters since September 1995 and has engaged in correspondence with the authorities to express its concerns and gain information.

The following description has been compiled from court actions, eye-witness statements, media reports and police accounts of events.

Despite the initially peaceful nature of the protests, the OPP sealed off the roads leading to the park.

The use of more aggressive policing methods appeared to increase tension and was followed by acts of violence. Officers arrived on the outskirts of the park. Some of the protesters dented three police vehicles and broke their windows with a hockey stick and rocks in the reported belief that the police cruisers were about to ram them. One protester also threw a flare in the direction of the police.

The situation still appeared relatively under control on 5 September. An official police log stated at 8:27am: "We are trying to contain it, objective to contain and resolve it peacefully. No one in the community is in any danger, as we have adequate [police] services present". However, the OPP presence increased. Officers were seen observing the park from a boat on Lake Huron and using a helicopter to videotape the activities of the protesters. According to one police estimate, only nine protesters remained at that point, many protesters having temporarily left the park.

There were no credible reports of the protesters being armed. Minutes of a Government meeting on 7 September 1995 indicate: "Armed? – No knowledge but no indication". Acting Superintendent John Carson later told the Special Investigations Unit (SIU): "At that point in time, were we expecting to come under fire? The answer would be no".

Despite the apparent lack of a clear armed threat, the OPP deployed armoured vehicles and military equipment. Police notes on 5<sup>th</sup> September, timed at 4:45pm state: "Insp. Carson reports that the military will be releasing a couple of vehicles to us....The military is

prepared to train two teams". The assistance of the military was code-named 'Panda'. An undated Department of National Defence document, stamped 'SECRET' states:

On order, LFCA [the Canadian military's Land Forces Central Area in North York] will sp [support] law enforcement operations in the IPPERWASH area....EXECUTION....Concept of Ops [operations].

(1) It is the aim of DND [Department of National Defence] (...) to avoid direct involvement by providing resources and advice to the OPP which will enable them to successfully accomplish their mission.

The OPP also sought the use of armoured vehicles and other support from the Canadian military. The vehicles and support were never used in the Ipperwash confrontation.

## **6<sup>th</sup> September: the confrontation begins**

At approximately 8pm on 6 September, all the lights in the park were turned off. By that time over 200 armed officers were positioned in the vicinity of the park. A riot squad in heavy armour was deployed. It marched on the protesters in rows of 25 to 30 and massively outnumbered the 15 to 20 remaining protesters. The riot police beat their steel batons against their shields as they advanced. Officers armed with laser-sighted sub-machine guns were also present.

The protesters reacted by directing powerful portable spotlights to the officers in an attempt to dazzle them. Taunts and insults were exchanged. The police forces marched in formation towards the park boundary until they were very close to the protesters.

Bernard George, an elected councillor with the nearby Kettle Point Band, was not part of the protest but had witnessed the build-up of armed police around the park. Fearing for the safety of the protesters, he advised the Natives to evacuate the women and children and walked towards the police, shouting: "You don't need guns. Leave the people alone in the park".

## **Allegations of beating by police officers**

The police advanced towards the protesters with their batons raised. Bernard George attempted, again to no avail, to convince the police to retreat. The police were allegedly ordered to "Go! Go! Go!" and charged a second time, striking the protesters. Bernard George fell to the ground. Eight to ten police officers allegedly circled him, kicked him and beat him with their batons while he shouted "I give up". He lost consciousness and was then allegedly dragged along the ground by his hair.



When questioned after the events by officers investigating the incident, no police officers could recall beating Bernard George or seeing other officers hit him.

Bernard George's injuries required several operations in the months that followed. He suffered at least 25 bruises consistent with severe blows from batons or boots on his back, groin and head. He also had bruises on his arms and legs and suffered serious lacerations to the head. Remarkably, Bernard George was charged with assault and mischief but was acquitted at trial in July 1996.

As Bernard George was allegedly being beaten, some of the demonstrators left the park to rescue him but they too were allegedly beaten with batons. Teenage protester Nicholas Cottrelle started a school bus and drove towards the police to interpose himself between the police and the protesters. Another teenage protester, Warren George, followed him in a car. As Nicholas Cottrelle drove towards the police some officers leaped into a ditch. Police officers opened fire on the bus and the car.

The only injury to police officers was one strained knee ligament and one twisted ankle.

### **The fatal shooting of Dudley George**

OPP marksman Acting Sergeant Kenneth Deane was one of eight Tactical Response Unit (TRU) or sniper team members stationed as protective back-up for the 32 members of the Crowd Management Unit. At about 11:45pm, Dudley George was on the roadway, some distance from the bus and the group of protesters, about 15 feet from the park. Deane fired three shots at him. The first appears to have missed George. The second grazed his leg as he started fleeing towards the park. The third shot hit George in the chest and he fell to his knees. He curled up in a foetal position and said "they got me", according to the testimony of a Native witness.

Fellow protesters dragged Dudley George inside the park, after which two of his siblings, Pierre and Carolyn, drove him to Strathroy-Middlesex Hospital in a private vehicle with one flat tire. They alleged that their efforts en route to summon an ambulance were in vain. On arrival, at the hospital, both were arrested and advised that they might be charged with attempted murder, despite their repeated protests that their brother who was in the back of the car, required immediate assistance. They were not able to ensure that their brother received medical attention. Instead, they were taken away and held for 12 hours before being released.

Dudley George was pronounced dead at 12:45am on 7 September 1995. He was killed by a hollow-tipped 'mushroom' bullet designed to expand upon contact with the flesh thereby causing maximum injury. The post mortem examination, carried out by pathologist Dr. Shkrum, concluded that George had died from blood loss.

### **Initial official version of events**

The day after the shooting, OPP Commissioner Thomas O'Grady issued a press release calling the death of Dudley George an "isolated incident" and stating that the Natives had fired on the police, who then returned fire. In a press release dated 8 September 1995, the OPP called the event the "attempted murder of OPP officers". The federal Government echoed the OPP at the end of 1995 when, in response to a query from the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, it repeated that the OPP had returned fire after being fired upon first.

However, leaked papers released on 3 March 1997 by lawyers representing the George family reveal that this was not the case. OPP transcripts from the night Dudley George was shot show that the OPP knew, when they marched on the protesters, that none were armed and that they merely carried sticks.

No firearms were recovered from the protesters and no police officers or police equipment were hit with gunfire. No non-police bullets or shell casings were ever found, and no non-police bullet marks were discovered on the site. No physical evidence of protester firearms being in the park has ever been identified or suggested.

Two weeks after Dudley's death, the SIU began to investigate. The SIU is a civilian agency comprising experts in a number of fields (e.g. forensics and ballistics). They are mandated to investigate all cases of civilian deaths or serious injuries possibly resulting from criminal offences committed by police officers. They deal only with the culpability of individual officers, not with wider questions of policy.

The SIU initially attempted to gain access to photographs of the officers present at Ipperwash to show to Bernard George and others in an attempt to identify the police officers involved. However, the Ontario Province Police Association objected and sought a court injunction to prevent the release of the photographs. The SIU then dropped its attempts to get the photographs.

On 23<sup>rd</sup> July 1996, the SIU announced that OPP Sgt Kenneth Deane was to be charged with criminal negligence causing death. Ballistics tests formally matched the fatal bullet to Deane's gun.

### **The trial of Kenneth Deane**

Kenneth Deane went on trial on 1 April 1997. During his testimony, Deane said that it was not the bus or car being driven towards the police that prompted him to shoot Dudley George. He claimed that he had seen muzzle flashes aimed at police from a sandy area outside the park and that Dudley came out from that area onto the road, pointing a gun at police officers. "I observed him shoulder a rifle and in a half-crouched position, scanned [the rifle] over our position", Deane declared. Deane then fired three shots "as quick as I could". Deane also

claimed that Dudley threw his weapon away despite being fatally wounded. However, Deane did not try to recover the weapon.

However, Deane's notes – presumably made soon after the shooting – made no mention of muzzle flashes or opening fire on an armed man. During the trial, police witnesses claimed that Deane had told them about shooting a man with a weapon, but this appeared nowhere in their notes either. In addition, there was no evidence of their taking any immediate steps to look into the situation.

Deane's evidence was contradicted by the testimony of Sgt Hebblethwaite, who was standing a short distance behind Deane at the time of the shooting. Hebblethwaite testified that he did not see any muzzle flashes. Further, Judge Hugh Fraser found that Sgt Hebblethwaite had "no difficulty distinguishing what he recognised to be a pole or a stick" in the hands of Dudley George.

For Deane to be found not guilty, the defence had to convince the court that he had an honest belief that George was "scanning" officers with a weapon. However, on 28 April 1997, the judge found that George had no weapons on him when he was shot and that Deane knew that when he shot George. The judge concluded that: "the story of the rifle and the muzzle flashes were concocted 'ex post facto' [after the event] in an ill-fated attempt to disguise the fact that an unarmed man had been shot". The judge found that in presenting his version of events, Deane had lied not only to the court but also to the OPP and SIU. He was found guilty, as charged, of criminal negligence causing death. He faced a maximum sentence of life in prison.

However, five weeks later, Deane received a conditional sentence of two years minus one day which he would serve outside of prison and was required to perform 180 hours of community service. He was also prohibited from carrying a firearm during the period of his sentence. Deane appealed his conviction but in January 2002 the provincial Court of Appeal and eventually the Supreme Court of Canada ruled against him.

Some years after the shooting and once his appeals were exhausted, Deane was also finally subject to disciplinary procedures under the Police Services Act, after which he was found guilty of discreditable conduct. The adjudicator concluded: "What could possibly be more shocking to society than to have a sworn, fully trained and experienced police officer, while on duty, in full uniform, using a police-issued firearm, kill an unarmed citizen? This is further aggravated by the fact that the sworn police officer was found by the presiding criminal court Justice to have concocted and fabricated his evidence". Deane was ordered to resign or face immediate dismissal. He resigned in September 2002.

The charge laid against Acting Sergeant Deane of criminal negligence causing death does not appear to be in accordance of the seriousness of the incident. A trained officer, who clearly targeted an unarmed individual with a sophisticated weapon and fired, resulting in a death, must surely be more than merely "negligent". Furthermore, the sentence handed down

to Acting Sergeant Deane also appears inconsistent with both the facts of the case and the findings of the trial judge. Having found that Deane created the story of George being armed – which presumably means George was shot in cold blood since he was known to present no threat – the judge went on to sentence Deane to a non-custodial sentence.

Amnesty International remains dismayed that Acting Sergeant Deane was charged with a crime inconsistent with the gravity of the case and that, despite it involving the death of an unarmed man, he received such an extraordinarily light sentence. The lack of a custodial sentence is in stark contrast to the sentence of six months' imprisonment imposed on native protester Warren George for assaulting police officers (see below).

### **Legal proceedings against other protesters**

Nicholas Cottrelle and Warren George were charged with assault. Warren George was also charged with discharging a firearm and possession of a weapon but charges were dropped prior to trial. Warren George was sentenced to six months imprisonment for assaulting police officers.

Nicholas Cottrelle, who drove the school bus towards the police in response to the police baton beating of Bernard George, was charged with assault, but was found to have acted in self-defence and acquitted. However, Warren George was convicted of criminal negligence and assault with a weapon (a car) and dangerous driving. He was sentenced to six months in jail and banned from driving for two years. George was also charged with discharging a firearm and possession of weapon. Although the prosecution dropped these charges before trial, and no evidence was presented that he had a gun during the confrontation, he was also prohibited from possessing firearms.

About two dozen Natives were also charged with "forcible detainer" (for "detaining" the park). However, all those charges were subsequently withdrawn because, the Prosecution conceded, the Natives had acted under "colour of right", namely an honestly-held belief in a particular state of facts which if it existed, would, at law justify or excuse the act done. Their honest belief in the existence of a burial ground (regardless of whether it actually existed) was sufficient, the prosecution accepted.

### **The relatives of Dudley George: Seeking the truth in the civil courts**

From the outset, Dudley George's family has been calling for a public inquiry into the events that led to his death.

The Ontario government has always refused to call an inquiry on the grounds that there were pending court proceedings, for instance Deane's appeal. As a result of their refusal, six months after Dudley George's death, his family brought a civil wrongful death lawsuit

against Michael Harris, the then Ontario Premier, members of his Cabinet and members of the OPP.

The Statement of Claim sets out the following principal grounds for the lawsuit:

- the police's use of force was wholly excessive given that the Natives were unarmed, essentially peaceful and not disturbing members of the public;
- the police committed assault, battery and trespass on Dudley George;
- the police were negligent, in particular because they failed to inform themselves of the protesters' unarmed status, failed to exercise due restraint, consumed alcohol, initiated an unwarranted mass attack, shot unarmed Dudley George and failed to ascertain that he was unarmed;
- Harris inappropriately "ordered the OPP to utilize its Tactical Response Unit with the express purpose and intent of taking severe action against the Protesters at Ipperwash Provincial Park, thereby deliberately deciding against the employment of patience, negotiation and other non-violent policing techniques";
- Harris and senior politicians ordered or allowed the Tactical Response Unit to use force, including deadly force, and permitted members of the OPP to shoot at unarmed Dudley George.

The government of Ontario, the OPP, and the individual defendants including Premier Harris, denied all of the above. After Dudley's death, Michael Harris categorically denied any political involvement in the killing, stating that the OPP acted independently at Ipperwash stating on 29 May 1996: "At no time - at no time, was there any direction by any political staff or any politicians as to what the OPP should do or how they should carry out their job". Similarly, he told the legislature, on 5 November 1996: "At no time did the police receive any instructions from anybody that I know in my caucus or my office or me or the cabinet". Harris also denied the existence of any evidence of government involvement on 5 February 1997: "There were no files, there were no records because we had no involvement".

However, government meeting notes, police log notes and other documents disclosed in the context of the civil lawsuit suggest political involvement in the Ipperwash decision-making process. The George family obtained notes taken at meetings that took place on 5 and 6 September 1995. The meetings were attended by several Government agencies including the Ministry of the Attorney General's office, the Solicitor General's office, the Ministry of Natural Resources and the Premier's office. One key meeting was held in the Premier's personal office on the afternoon of 6 September specifically to discuss Ipperwash and included several Cabinet members and their aides.

In November 2001, despite the government's attempt to block their release, the Commissioner of Ontario's Freedom of Information and Protection of Privacy Commission ordered the release of 40 affidavits. Over 40 people including Mike Harris, Chris Hodgson (Minister of Natural Resources), Deb Hutton (Harris's senior aide), Charles Harnick (then

Attorney General), Robert Runciman (then Solicitor General) and Ron Fox (Special Adviser for First Nations' policy) swore that they had no knowledge of any records concerning the 6 September meeting and that neither the Premier nor any of his staff ordered the OPP to use force that day. Amnesty International finds the claim that no record was made of a meeting involving so many high-ranking state officials highly questionable.

The Commissioner suggested that the Government officials were less than forthcoming during his investigation. They refused to answer direct questions and required him "to accept indirect answers derived from the evidence it chooses to submit", he stated to the media.

### **Evidence of government involvement at Ipperwash**

However, despite the claims made by Premier Harris and others in authority, evidence has emerged that the Government of Ontario was directly involved in the situation at Ipperwash.

An entry, made in a police log at the Ipperwash Command Post on 5 September reads: "09:25 hours (...) S/Sgt Lacroix has been in contact with Marcel Beaubien, local Member of Parliament. He is updating the Premier on the situation".

Harris denied this in the legislature in mid-1996: "We knew nothing of any OPP build-up. It was not our business(...). My staff heard nothing of any build-up. I was informed of no build-up". However, this was contradicted by Marcel Beaubien who, one year after the events, told the media that he was at the OPP command centre and gave the Premier's office constant updates of the events at the Ipperwash Provincial Park.

The entry in the police log timed 18:42 suggests decision-making was at a high level:

Marcel Beubien (sic) advised that he had sent a fax to the Premier advising of his intentions and that he wanted a return phone call regarding his intentions. Insp. Carson advised that there is a court hearing for an injunction at 9:00am., 07 Sep 95. Marcel Beubien (sic) aware of situation.(...) Marcel Beubien (sic) states that he doesn't mind taking controversy, if situation can't be handled by police services, something has to be done to handle the situation.

In January 1997, 28 pages of faxes sent by Beaubien to the Premier's office at the beginning of the occupation were released following a Freedom of Information request by members of the legislature.

In the faxes, Beaubien appeared unwilling to use non-violent methods to resolve the dispute:

We are not dealing with your decent native citizens, we are dealing with thugs (...). How can we negotiate with irresponsible, law-breaking dissidents? We must come to our senses and take back control (...)"

In contrast with what appeared to be a political intention to take immediate action against the protesters, according to the faxes, Inspector Carson seemed to be in favour of waiting to obtain a court injunction: "Insp Carson advised that things are [moving] towards the court order...Carson (...) wants everything that can be done to stress the point of no one getting hurt".

The government of Ontario was seeking an 'ex parte' injunction (whereby the Natives would not be represented in court) to remove the Natives from the park. This injunction was also part of the plan of the OPP under the 'Project Maple' strategy. These plans to obtain an injunction are inconsistent with the OPP seeking to forcibly remove the protesters on 6 September 1995, with the knowledge that the provincial government would be seeking a court injunction the following morning.

A police log book also records the observations of Les Kobayashi, the park Superintendent: "Les Kobayashi advises that there is great communication between the M.N.R [Ministry of Natural Resources] and the O.P.P [Ontario Provincial Police]"

Further evidence of government involvement was included in Document no.11,774, produced during the civil proceedings initiated by the George family. The document was a transcript of a meeting that took place on 6 September, the day of the police action against the protesters. According to the document, among those present were Harris, his senior aide Deb Hutton, Chris Hodgson and OPP Commissioner Thomas O'Grady, Ron Fox and Larry Taman (Deputy Minister in the Ministry of the Attorney General). The memo mentions that Taman had "cautioned about rushing in with an 'ex parte' injunction" and was "eloquent" in his arguments but that "the Premier and Hodgson came out strong".

### **The government orders the protesters removed "ASAP"**

Early in 1997, a document dated 5 September 1995 from the inter-ministerial committee monitoring the situation at the park was released. It suggested that the government had been involved in planning a response to the occupation: "The province will take steps to remove the occupiers ASAP. The OPP have the discretion as to how to proceed with removing the [Natives] from the park".

Harris explained to reporters in March 1997 that the government "felt there was an illegal occupation of the park". He explained that that "our goal was to get this settled as quickly as possible (...), to get [the park] back in the hands of the rightful owners, the Ministry of Natural Resources". His words, and the document from the inter-ministerial committee,

suggest that, at the very least, public officials were putting pressure on the OPP to remove the protesters and may have been directly instructing them to remove the protesters by force.

Another document suggests that Harris was directly involved in giving orders to remove the Natives from the park. An email dated 5 September 1995, sent, after an emergency meeting, by Julie Jai (a senior legal adviser to the government) to Yan Lazor, director of legal services for the Ontario Native Affairs Secretariat, stated: "Deb Hutton had already spoken to the Premier, and MNR [Ministry of Natural Resources] had already spoken to their minister. The Premier's views are quite hawkish on this and he would like action to be taken **ASAP to remove the occupiers**" (emphasis added). Jai's notes of the 5 September meeting also state: "Prem feels the longer they occupy it, the more support they'll get - he wants them out in a day or 2".

A government memo dated 6 September 1995, only hours before Dudley George was shot dead, states: "mtg re Ipperwash. AG instructed by P. that "he desires removal within 24hrs" - instructions to seek injunction".

The evidence that the Premier's office clearly sought to instruct the OPP to remove the protesters by force is overwhelming. The OPP's previous intention to end the occupation peacefully via negotiation was clearly contradicted by the authorities' instructions to remove the protesters at the earliest possible moment.

## **Calls for an inquiry ignored**

Whenever a loss of life at the hands of state agents occurs, it is vital that the full facts of the event, and the circumstances leading to the killing, are fully investigated and the findings made known to the public. The evidence – much of it uncovered in the context of the civil lawsuit – points to a very strong *prima facie* (at first sight) case that the government of Ontario interfered in police operations during the Ipperwash occupation.

Since June 1996, Amnesty International has been calling on the Ontario government to launch a public inquiry into the events at Ipperwash.

In a letter to Michael Harris dated 3 June 1996, Amnesty International listed detailed questions requesting further information regarding the events of 6 September 1995 and the subsequent investigations by the authorities. In his reply dated 1 August 1996, Harris refused to provide answers, stating:

As this matter [criminal charges against Deane] is now before the courts, I hope you will understand that, as Premier, it would be inappropriate for me to comment further.



He also assured the organization that "the OPP acts independently of government direction or control". The recently disclosed evidence, only some of which is detailed above, seems to suggest otherwise.

Amnesty International continued to press the Premier for a full, independent, impartial public inquiry into the death of Dudley George. In a letter dated 4 October 2000, Harris suggested that the civil lawsuit could adequately replace an inquiry: "(...) there is already a case before the courts in which the very issues with which you are concerned - the circumstances surrounding the death of Mr. George and related matters - are being litigated". He added that the Superior Court of Justice, before which the case is appearing, is "an independent, impartial tribunal" and that the case is taking place in an "open" and "public" forum.

In December 2000 Amnesty International replied that a civil lawsuit could not replace a public inquiry and pointed out the differences between the two: first, the scope of the civil case is severely restricted by the applicable rules of procedure. Second, in a civil case the burden of proof rests upon the plaintiffs. Furthermore, in this case, the plaintiffs have extremely limited resources. This in itself is an impediment to the facts being fully and impartially investigated. Third, an exclusively civil approach could allow individuals to use judicial procedures to jeopardise the court's effectiveness.

In the same letter, Amnesty International submitted that there was no legal obstacle to a public inquiry taking place whilst legal proceedings were pending. In December 2000, only the appeals of Deane and a Native protester were pending and, since they focused on specific actions of isolated individuals, they were no impediment to the establishment of a public inquiry. Prominent members of the legal profession supported this view: in a memorandum dated 15 June 2000, Susan Swift, a researcher at the Library of the Legislature wrote: "The case law would suggest there is no impediment to the calling of a public inquiry into the Dudley George matter at this time". No reply was received to this correspondence.

Amnesty International continues to press for an inquiry. On 18 June 2003, the organization wrote to the current Ontario Premier, Ernie Eves<sup>12</sup> and reiterated that "Amnesty International is not aware of any legal impediment that would prohibit the government from launching the inquiry, even while civil matters are still pending". Amnesty International also observed that governments in Canada have allowed inquiries and court proceedings to run simultaneously. In particular, the government of Ontario initiated the Walkerton Inquiry even though civil lawsuits were outstanding.<sup>13</sup> To date, no response has been received.

The consensus is that legal proceedings and a public inquiry can run concurrently. However, in view of the government's constant assertion that they cannot, the George family

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<sup>12</sup> In 2002, Premier Mike Harris resigned as premier.

<sup>13</sup> The public Walkerton Inquiry examined the background of several deaths caused by the contamination of water supplies in the Walkerton area in May 2000.

have indicated, from the outset, that they would be willing to suspend and ultimately discontinue their civil suit if a fair public inquiry was carried out. The government replied that this was not possible because too much funding has gone into the proceedings for them to be discontinued.

Moreover, some Government representatives appear to be taking a hostile approach to the George's families' attempts to seek justice through the civil courts. During a preliminary hearing for the civil proceedings, the Government's legal representative appeared to refer to the George family as "terrorists", stating: "Well, governments don't bargain with terrorists and I'm not here to bargain with the plaintiffs today". When challenged about his remarks, the lawyer responded "I'm just saying, governments don't bargain with terrorists. I'm not here to bargain with the plaintiffs on these matters. I am asking questions."<sup>14</sup>

### **The federal government: ignoring its responsibilities**

Amnesty International also called for an inquiry by the federal authorities in a letter to the Prime Minister of Canada, Jean Chrétien, dated 22 September 2000. The Prime Minister placed the authority to open an inquiry onto the provincial government of Ontario, stating:

While the Government of Canada has the authority to call for public inquiries into matters within federal jurisdiction, it does not have the authority to conduct inquiries into the allegations of misconduct by provincial officials and the province's police force.

In April 1999, the United Nations Human Rights Committee also added its voice in calling for a public inquiry in their *Concluding observations of the Human Rights Committee*, which stated:

The Committee is deeply concerned that the State party so far has failed to hold a thorough public inquiry into the death of an aboriginal activist who was shot dead by provincial police during a peaceful demonstration regarding land claims in September 1995, in Ipperwash. The Committee strongly urges the State party to establish a public inquiry into all aspects of this matter, including the role and responsibility of public officials.<sup>15</sup>

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<sup>14</sup> Source: "'Terrorist' remark insult to family", *Toronto Star*, 9 July 2002, quoting from the record of the law suit.

<sup>15</sup> Index CCPR/C/79/Add.105.

It is the responsibility of the federal government to ensure that Canada meets its obligations and commitments specified in international laws and standards pertaining to human rights.<sup>16</sup>

Amnesty International believes that the authorities' failure to fully clarify the circumstances of Dudley George's death and to fully determine responsibilities is in violation of its international obligations under international laws and standards relating to police behaviour and the protection of the right to life. Article 6 (1) of the International Covenant on Civil and Political Rights, states that "No one shall be arbitrarily deprived of his life@.

Detailed standards aimed at preventing the arbitrary deprivation of life can be found in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and in the UN Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions, Principle 9 of which states that:

there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, **and any pattern or practice which may have brought about that death.** It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide. (Emphasis added.)

It has been authoritatively argued that the federal Government does, in fact, have jurisdiction under its "peace, order and good government" jurisdiction as well as under s.91 (24) of the BNA Act.

In a published opinion, Associate Professor of Law at Toronto's York University, Bruce Ryder, stated his belief that the federal Government had the authority to establish an inquiry.<sup>17</sup> Professor Ryder was of the opinion that matters of this nature are of:

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<sup>16</sup> For example, Article 28 of the American Convention on Human Rights states *inter alia*: "Where a State Party is constituted as a Federal State, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of the Convention."

<sup>17</sup> The opinion was requested by the Coalition for a Public Inquiry into the Death of Dudley George. The opinion was given in March 1999 and can be found at <http://www.web.ca/~inquiry/opinion.htm>

...shared federal and provincial responsibility. In areas of shared jurisdiction in relation to Aboriginal peoples or Aboriginal lands, it is the federal government that is vested with the primary constitutional responsibility for securing the welfare of Aboriginal peoples. The federal *Inquiries Act* empowers the federal Cabinet to establish an inquiry into any matter relating to “good government” or the nation’s “public business”...Therefore, the federal government has the power to initiate a public inquiry into the circumstances surrounding the fatal shooting of Mr. Dudley George...

### **Conclusions: many questions left unanswered, a full public inquiry still needed to establish the facts**

Eight years after the death of Dudley George and despite evidence of Government interference in the Ipperwash events, neither the provincial nor the federal Governments have established a public inquiry. Yet many questions remain unanswered, including:

- Why, and by whom, was the OPP ordered to deploy increasing numbers of armed forces?
- Why did the OPP attack the protesters, using lethal force, when the protesters offered no obvious violent threat and apparently possessed no weapons?
- Why did the OPP abandon plans to wait for a properly obtain court injunction under its “Project Maple” and instead choose to attack the demonstrators after dark?
- Why were none of the 13 negotiators utilised, as outlined in the “Project Maple”?
- Why was Dudley George deliberately shot given that he was unarmed and not in close proximity with the group of protesters at the time?
- Why can no officer recall seeing or taking part in the medically-verified beating of Bernard George with blunt objects?
- Why was Marcel Beaubien, Conservative MPP, at the OPP command post just hours before the killing?
- Why were the computer files of Superintendent Ron Fox, who was working in the Solicitor General’s office at the time, erased with no backup copies available?
- Why did the OPP and federal government mistakenly announce that the officers were fired upon first, and why has this statement never been corrected or withdrawn in response to judicial findings to the contrary?
- Why have the governments of Ontario and Canada constantly refused to call a public inquiry even though there are no legal obstructions to holding one?

The civil lawsuit brought by the relatives is scheduled to commence in September 2003, after considerable obstruction from the Government. For example, the authorities have attempted to block the release of information by fighting to keep meeting notes away from the media. The authorities have repeatedly brought court motions to have the George family’s Statement of Claim struck out, always unsuccessfully, but imposing enormous legal costs on the George family. On one occasion, after repeatedly accepting in writing that key court

documents had been served within time limits, the province changed its position and argued in court that the documents had been three days late and that therefore the Claim should be thrown out. The Court ruled that service had been within time limits, but the province appealed to the Court of Appeal. On the day before the hearing, the province dropped its appeal. The province also failed to disclose any documents to the George family for years, forcing the George family to go repeatedly to court to obtain ordinary document disclosure.

The Government's lack of cooperation is at odds with Premier Harris's stated eagerness to have the lawsuit proceed on the grounds that the "free-wheeling accusations" against himself and his Government will be proven wrong.

As this paper was being completed, more evidence of the Government's unwillingness to be open and transparent came out. According to media reports, the Assistant Commissioner of Ontario's Freedom of Information and Protection of Privacy had written to the Attorney General and the Minister of Public Safety and Security asking why more than 220 photos and video images of the events at Ipperwash had been kept from the public.<sup>18</sup> The Assistant Commissioner cautioned the ministers that it was an offence to "wilfully obstruct" or "wilfully fail to comply with an order from" the Commissioner and that "It is clear that the Ministry and the Attorney General did not provide me with accurate information throughout my inquiries."

The Government also continues to hold positions not supported by any evidence known to Amnesty International. The provincial Government rejects the finding of Judge Fraser in the Deane trial that the Natives were unarmed and continues to claim that the protesters fired upon the police, despite no evidence being available to support the accusation. The Natives' claim of the existence of a burial ground within the Park has been confirmed by four federal documents dating back to the 1930s (and the federal government). They were released one week after George's death. Despite these documents, the government of Ontario rejects the Natives' claim to the land, calling them "illegal occupiers".

If the tragic events at Ipperwash are not to be repeated, it must be fully understood how and why they happened in the first place. Why an apparently peaceful occupation escalated into a violent confrontation between police and protesters, resulting in a man's death, is a vital and important question. The full chain of command and ultimate responsibility must be accurately established.

The government of Ontario has provided excuse after excuse for not initiating a full and independent public inquiry. With the passing of time, each excuse has ceased to be relevant – if indeed it ever was. The same is true of the Federal authorities, who have failed to fulfil their obligations under international law.

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<sup>18</sup> Source: "Ipperwash photo battle escalates", *Toronto Star*, 23 August 2003, "Ontario government accused of withholding videotapes", *Globe and Mail*, 26 August 2003.

On sentencing Deane, Judge Fraser remarked: “The decision to embark on this ill-fated mission was not Sergeant Deane’s”. The family of Dudley George have the right to know exactly whose decision it was. Society as a whole has the right to know the full truth about the circumstances of the killing and those responsible for it. This event has left a question mark over the propriety of the governments and elected officials involved. The time is long overdue for a full, impartial public inquiry into the events at Ipperwash and the killing of Dudley George to be carried out, if not on the authority of the government of Ontario then on the established authority of the government of Canada. To fail to do so is to compound the injustice, and also to flout the clear requirements of Canada’s obligations under international law.