



# Legalized MYTHS of illegal occupations

The Truth about  
Police Discretion, Duty to Consult  
and the 'Colour of Right'

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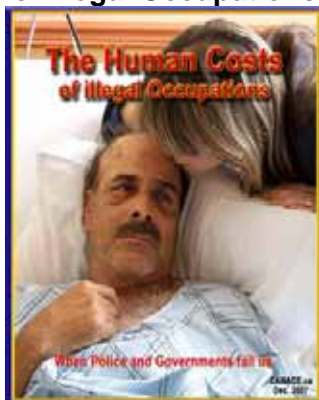
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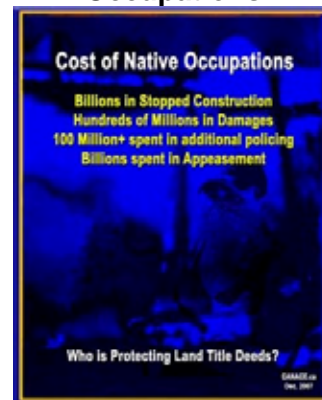
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### The Human Cost of illegal Occupations



### Cost of Native Occupations



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As the events of the past two years have unfolded in places affected by illegal occupations such as Caledonia and Deseronto certain 'principles' have, through press releases, media reports and rumour, emerged that appear to be the basis of decision making for the various parties involved be they native protesters, governments or police. These principles have become a part of people's consciousness, whether they are based on reality or not, and have been elevated almost to the status of Legal Truths. Without support from the courts however, they are nothing more than myths.

Many of these myths have the support of the OPP, the Ontario Government and Native groups because this allows for negotiation without the upholding of 'Rule of Law' during illegal occupations. In a climate of appeasement by both the OPP and the Ontario Government towards these illegal occupations, the last thing they desire is the exposure that their so-called 'legal' positions are nothing more than myth.

The greatest way to overcome a myth is to become educated on the issues. We are average people who have done our best to search out what judges and lawyers have said about the issues facing land owners during illegal occupations. This information is free for all who take the time to search sources such as Supreme Court rulings, the Ipperwash Inquiry Report, the Department of Justice and Law Society of Upper Canada databases. We are not lawyers, however, and we strongly recommend that you seek legal counsel regarding the points found within this report.

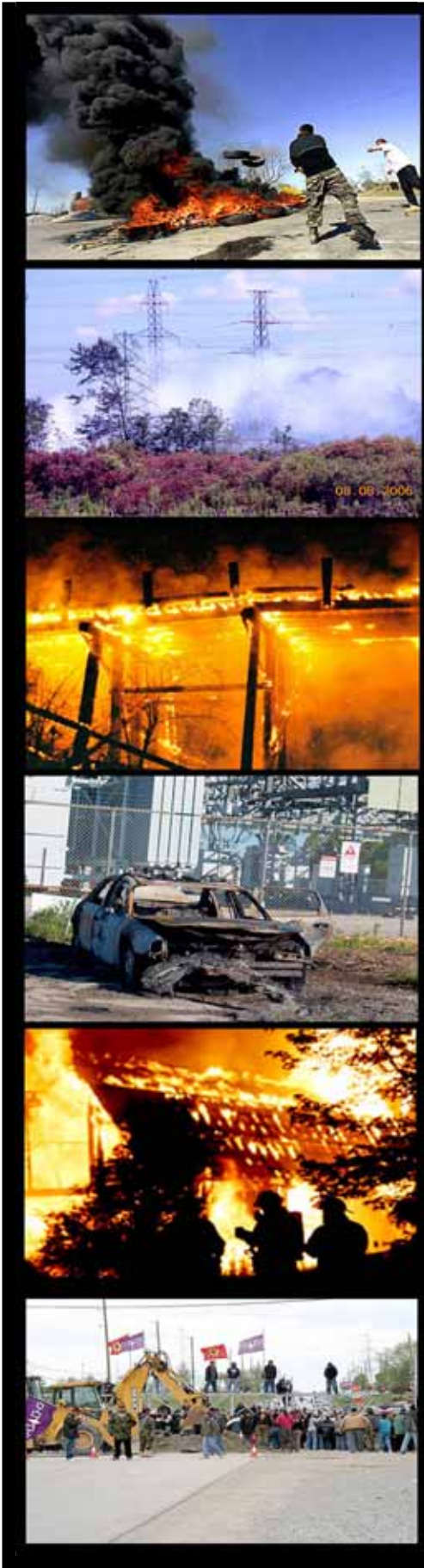
It is the lack of information that allows a myth to reach the status of being seen as law. Once businesses and property owners believe that a myth is law then decisions are no longer made from a legal point of view. This is dangerous in a democracy. Decisions must be made in accordance with the rule of law, and not influenced by politically expedient myths.

CANACE is committed to providing the public with information. In a modern society, information is real power. No longer are you subject to "old wives tales" or the latest myth produced by a special interest group; you can freely decide what is in your best interest based on weighing the information.

The next time someone, whether it is the OPP, the Ontario Government or HDI (Haudenosaunee Development Institute), presents one of the myths covered in this report, you – with advice from your lawyer – can make a decision based on facts.

In the end, our goal is merely to help empower businesses and property owners with the tools needed for better decision making. If this report helps you see the need to seek out better legal advice on the issues then we have done our job.

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## Legalized MYTHS of Illegal Occupations

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## Myth #1: Colour of Right

In the Spring 2007 edition of the Ontario Homebuilders Association magazine was an article entitled *HELD HOSTAGE* – an expression of frustration that builders are experiencing with Governments who have allowed Native protesters to shut down various construction sites after builders have invested significant resources to gain project approval.

For two years, the OPP have refused to enforce the Criminal Code of Canada, and have delayed or refused to obey court injunctions. We now have direct information that the OPP is aiding in the shutting down of construction sites by both encouraging Native Protesters and intimidating builders by providing both groups with false information regarding the legal argument called 'Colour of Right'.

There is no greater issue facing property owners in Ontario than the issue of whether Native Protesters are exempt from the Criminal Code of Canada.

The OPP claim that Native protesters have the legal right to enter onto private property, and to block and stop construction due to the 'Colour of Right' defence which is a legal concept meaning they are not breaking any laws due to their belief that they own the land.

Lawyers for the Ontario Ministry of the Attorney General submitted a legal opinion At the Ipperwash Inquiry regarding 'Colour of Right'. They defined the term 'Colour of Right' as:

As a defence to a criminal charge, colour of right involves a lack of *mens rea*. In that sense, colour of right is “an honest belief in a state of facts or law which, if it existed, would be a legal justification or excuse.” If upon all the evidence it may fairly be inferred that the accused acted under a genuine misconception of fact or law, there would be no offence committed because there is colour of right.

Attorney General's submission to Ipperwash Inquiry, June 28/06, Part 1 – Submissions on the Evidence, Colour of Right, p. 17

The Criminal Code does contain the term 'Colour of Right':

### Colour of right

(2) No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.

Criminal Code of Canada, Part IX, s. 429(2)

[http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l\\_XI-gb:s\\_446/en#anchorbo-ga:l\\_XI-gb:s\\_446](http://laws.justice.gc.ca/en/showdoc/cs/C-46/bo-ga:l_XI-gb:s_446/en#anchorbo-ga:l_XI-gb:s_446)

The first thing we need to be clear about is that 'Colour of Right' isn't something one group has while another group does not have. It isn't some right based on your race, skin colour, etc. Colour of Right has nothing to do with Native rights or land claims. It is a legal defence against criminal charges that any citizen may attempt to use in court.

**HELD HOSTAGE**  
Builders are learning to deal with the chaos and confusion of native land claims by MICHAEL B. DAVIE

**f**ew more than a year, *Calder* — a small town outside Hamilton — has resembled a battlefield caught in the glare of international attention: a divided community grappling with the impact of native land rights claims. Caught in the crossfire are builders who followed all the right procedures, got all the right permits and did all the right things — only to find it wasn't enough. And *Calder* is but one of a number of Ontario communities where approved development projects have collided with native land rights claims. There are 206 reserves in Ontario according to Indian and Northern Affairs Canada, and while most are peaceful, issues are certain to arise as development encroaches on any native lands. What are the lessons to be learned from such conflicts? What can government do to prevent such costly and destructive turmoil from arising? And when it does occur, what should be done to peacefully and fairly resolve it?

Calderian builder Don and John Herring suddenly found themselves embroiled in a Six Nations land rights claim dispute back on Feb. 28, 2006. Native protesters held a demonstration and then occupied land owned by the Herring brothers. The brothers operate Herring Industries Limited, developer of a 40-hectare site that was to become a residential subdivision known as Douglas Estates. The land parcel was once part of the 283,000-hectare Haldimand Tract running along the Grand River from its source to its terminus at Lake Erie. The Six Nations never was intended to assert land rights claims that are deemed bogus by a number of legal experts.

Centuries ago, the British relocated three Iroquois allies (today's Six Nations) in the American Revolutionary War to the Grand River tract in 1784 after the victorious Americans gained the native Iroquois lands in the Finger Lakes area of New York State. As lawyer John Haggopian notes, the Iroquois newcomers were allowed to settle on the Haldimand Tract land and make use of it, but the

Native protesters from the Haldimand Tract portion of the land, Haggopian notes the Iroquois newcomers had no treaty or aboriginal rights to the land they were allowed use of or leased, although the Six Nations today claims otherwise.

Native protesters from the Haldimand Tract portion of the land, Haggopian notes the Iroquois newcomers had no treaty or aboriginal rights to the land they were allowed use of or leased, although the Six Nations today claims otherwise.

## Colour of Right Examples:

- 1) Auto Theft: If you locked your keys in your car and you decide to smash the window to enter your car, can you be charged for causing the damage?
- 2) Break and Enter: If once again you find yourself locked out but this time it is your home and you decide to go around to the back window and break it to enter your home, can you be charged with Break and Enter?
- 3) Arson: You have a small old shed on your farm and one day you decide to burn it down along with some other trash. Can you be charged with arson?

When you remove the legal phrase 'Colour of Right' it becomes quite easy to understand that you cannot be arrested for trespassing on your own property, etc. This is what Colour of Right is all about. The added dimension 'Colour of Right' brings to the argument is what happens in the above cases when it is determined it wasn't your property but you absolutely believed it was?

Note that the Criminal Code states you must 'prove' that you acted with 'legal justification or excuse **and** with colour of right'. In such cases where you own the property it is quite easy to prove Colour of Right, but in every case it is up to the person committing the alleged offence to 'prove' Colour of Right. Here is another example that we feel might demonstrate 'colour of right' in action.

You grew up on a large farm and every month your father took you around the back edge of your farm to check the fences to ensure the cattle didn't get out. Years later your father dies and the farm is yours. One day you go to the back of your farm and see someone has broken down your fence, cut down some trees and started to build a shed. You take the time to check around town and no one knows anything about it. The next day you go and find more of your fence taken down and more trees cut down. You decide to demolish the shed, repair the fence and post a 'No Trespassing' sign.

A few days later a man shows up at your home with the police and you are charged with destroying his property because he has title deed to that land. It is then you discover that your father was wrong about where the property line was.

Your defence could be 'colour of right'. Everything you knew told you that the land was owned by you and thus you acted based on your legal right to that land.

Now change the above story to add in the following. While you were in town checking out who was building the shed you a real estate agent who tells you that Bob Smith just bought that land two weeks ago and had it surveyed.

Now suddenly you have some evidence that maybe you don't own the land and thus don't necessarily have full rights to that land. At this point, if you decide to take action and demolish the shed your 'colour of right' defence now has holes in it because you did have some information that demonstrated that someone else may have had legal title.

In Canada ownership is registered through the government whether it is registration of your car or an entry in the Land Registry for your home or business. These systems have been developed over many years for the direct purpose of avoiding the Colour of Right issue. Instead of people running around with some belief of ownership the Government created a registration system to clearly define it as clearly as possible. The Ontario government continues to this date to declare they legally support the current Land Titles system.

## Colour of Right - stated position of the Ontario Attorney General:

On June 28, 2006 lawyers from the Ontario Attorney General's office provided a closing submission to the Ipperwash Inquiry that specifically addressed the issue of whether Natives had a defence under 'Colour of Right' for their occupation of Ipperwash Provincial Park.

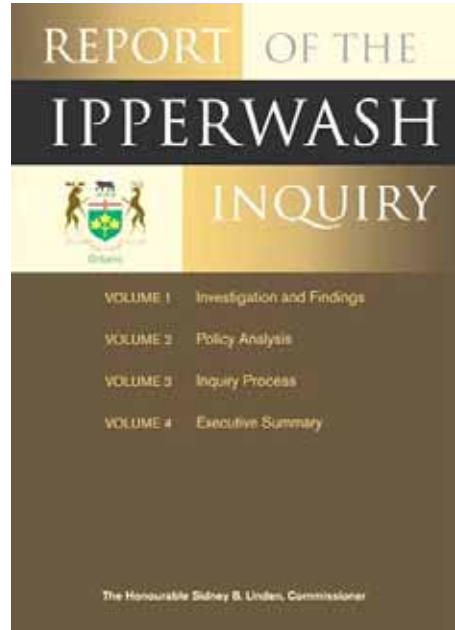
### Ministry of Attorney General submission to Ipperwash Inquiry, June 28/06, Part 1 – Evidence, Colour of Right, p. 17-25

[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/closing\\_submissions/pdf/ProvinceofOntario\\_ClosingSubmissions-1.pdf](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/closing_submissions/pdf/ProvinceofOntario_ClosingSubmissions-1.pdf)

### Colour of Right excerpt only:

<http://www.caedoniawakeupcall.com/documents/colourofright.pdf>

It should be noted, that at the time this legal opinion was prepared, the Attorney General was Michael Bryant - the present Minister of Aboriginal Affairs. This means the information that follows is coming from a Ministry under control of the current McGuinty Government and not from a Conservative Government and thus, cannot be blamed on Mike Harris.



This is very important to understand because if the current McGuinty government takes the legal position that Native protesters cannot use the Colour of Right defence to occupy disputed land then one must ask why the OPP are giving advice to landowners that directly contradicts the argument of their own Attorney General.

It is also important to note that the lawyers for the OPP are employed by the Attorney General's Legal Services Branch. This means that the OPP leadership is very well aware of the legal position of the Attorney General in regards to Colour of Right.

## Moral convictions and/or the denial of Canadian sovereignty

It takes more than just a belief to have the Colour of Right defence. The Attorney General addressed the moral belief that someone may have in their rights with the following statements, as submitted to the Ipperwash Inquiry:

50) The case of *R. v. Drainville* dealt with a protest over the construction of a road over lands in the Temagami area that the accused believed belonged to aboriginal people. In rejecting the defence of colour of right, the judge addressed the issue of moral claims and the rule of law:

“As noble and honourable his motives might be, they are really irrelevant in our considerations pertaining to "colour of right". Unless it can be demonstrated to this Court, that his honest belief in the existence of a state of facts, in this case title to the subject lands, is based on a mistake of fact or law, his defence cannot succeed on moral conviction alone. Moral convictions though deeply and honestly felt, cannot transform illegal actions into legal ones; only the "rule of law" must prevail.”

*R. v. Drainville* (1991), 5 C.R. (4<sup>th</sup>) 38 (Ont.Ct.(Prov.Div.)) at pp. 12-13

51. The test for the presence of an honest belief is subjective, but there must be an air of reality to the claim before the defence is put to the jury.

*R. v. DeMarco* (1973), 13 C.C.C. (2d) 369 (Ont. C.A.). - *R. v. Robertson* (1987), 58 C.R. (3d) 28 (S.C.C.).

52. In *R. v. Roche*, the Court considered the “air of reality” requirement in relation to an aboriginal protest over land at the Goose Bay Airport. The court found that denial of the fact of Canadian sovereignty over the land and jurisdiction of the Canadian courts was “not a reasonable or practical assertion in the 1990’s”, and therefore did not assist the accused in asserting an air of reality.

It should be noted that the Attorney General quoted the legal case of *R. v. Roche* to point out that it doesn't matter whether aboriginals deny the fact of Canadian sovereignty or reject the jurisdiction of Canadian courts.

56. An aboriginal right does not exist merely because it has been asserted to exist. In the context of colour of right, there must be some basis for a belief in the existence of aboriginal title beyond a bare assertion.

*R. v. Billy [2005] B.C.D. Crim. 250.30.55.00-02 (B.C.S.C.) at pars.11, 15*

57. The case of *R. v. Billy* involved the blockade of the road to Sun Peaks, which had existed as a public highway for more than 20 years. The accused were convicted of intimidation at trial, and their appeal was dismissed. The appellate judge had this to say about the protesters’ bare assertion of ownership:

“Asserting aboriginal title on a roadway that has existed for some time, as the appellants in this case do, is not sufficient to raise a prima facie case as to their entitlement. The trial judge commented that the appellants’ claim was based on a “presumed entitlement” and that they “posit an entitlement to....lands which, rather than having title, they claim title.

.....The trial judge rightly concluded that a bare claim of ownership of the land was insufficient [to establish colour of right].”

*R. v. Billy [2005] B.C.D. Crim. 250.30.55.00-02 (B.C.S.C.) at pars.14, 15*

58. The case of *R. v. Penashue* also involved a protest at the Goose Bay airport by Innu. Aboriginal protestors gained entry to the airbase that had been in existence for over 40 years by rushing the gate and going under barriers, despite warnings by a security guard and a request by the R.C.M.P. that they leave the airbase. The trial judge reviewed the law with respect to colour of right and rejected the defence. In his decision, the learned judge observed that only legal means can be used to protest wrongs or assert rights:

“It is clear from the evidence that the accused was involved in a protest. Furthermore, even using a subjective test, while he felt he and his people owned the land it is clear he also knew that by fences, signs, a barricade, etc., that he was not authorized or permitted to go inside the fence and to do so would likely mean he was committing a breach of the law. I do not feel the accused honestly believed he was not doing something unlawful when he went onto the base...

**If the acts of the accused amounted to a defence in this case this would basically mean that if one believes in a cause, no matter what surrounding circumstances exist, illegal means can be used to promote that cause. There are obviously lawful methods to reacquire property that has been improperly possessed including civil proceedings...**

**Certainly no one can breach the criminal law even to protest a civil wrong committed against them. Only legal means can be used to protest such acts.**

*R v. Penashue (1991), 90 Nfld. & P.E.I.R. 207 (Nfld.Prov.Ct.) at pars. 27, 28, 38*

## **'No one can breach the criminal law even to protest a civil wrong...':**

The judge in the *R. v. Penashue* case above states that 'no one can breach the criminal law even to protest a civil wrong committed against them.'

Considering that 'colour of right' is a defence anyone could use, anyone with a strong belief in a cause could do illegal activities and justify it through a 'colour of right defence', which is what the judge in the case above points out. The court system allows you to bring cases forward to get results and thus personal criminal action versus civil legal action doesn't fall under the defence of 'colour of right'.

Let's say I allowed my neighbour to use my lawnmower and he refused to return it. Clearly it is owned by me and he is unlawfully refusing to return it, but does that mean I have the right to smash the window in his house so that I can enter his home and get my lawnmower from his basement?

We have civil courts and the police for such matters.

## **Burial site and Colour of Right:**

Furthermore, according to the Attorney General, the mere fact that there is a burial site on your land doesn't give Native people the 'colour of right' over your land.

67. Lawyers involved at the IMC meetings were of the opinion that the existence of a burial site in the Park did not create a colour of right issue or affect the availability of legal remedies, particularly an injunction.

Hutchison, Transcript of Evidence, Aug. 29/05, pp. 74-76  
Jai, Transcript of Evidence, Aug. 30/05, pp. 205-206  
McCabe, Transcript of Evidence, Sept. 29/05, p. 231  
Christie, Transcript of Evidence, Sept. 26/05, p. 75

## **Ministry of the Attorney General conclusion re 'Colour of Right' in Ipperwash**

73. It is submitted that the Province was aware of the issue of colour of right when the Interministerial Committee met in September of 1995, and that counsel fairly raised the possibility that the Aazhoodena might wish to argue they had colour of right when he appeared in court to seek an injunction.

**74. There is no jurisprudence, even as it has evolved to date [June 2006], that supports the view that the concept of "colour of right" entitled the Aazhoodena to act as they did in occupying Ipperwash Provincial Park in September, 1995.**

So the conclusion by the Attorney General's Office to the Ipperwash Inquiry is that Native protesters COULD NOT use the Colour of Right defence for the illegal occupation, and thus, all the violence that followed. This is the position of the Attorney General in June of 2006 at the very height of the violence in Caledonia. It was on June 9, 2006 when Native protesters in Caledonia swarmed a senior couple, attacked a camera crew, assaulted an OPP officer and USA border guards & ATF agents, and stole their vehicle. Currently the United States has one Native person in jail and another wanted for these crimes.

## **Aboriginal Colour of Right and Court Injunctions:**

Not only does the Attorney General of Ontario appear to present the completely opposite viewpoint regarding the colour of right to that of the OPP, courts in the past two years have repeatedly upheld

the title deeds of private property. If it is the OPP's position that Natives have colour of right over private ownership of the land then the simple logical question that needs to be asked is, Why do the courts continuously grant injunctions against Native occupations?

### **Henco's Douglas Creek Estates (DCE) Injunction:**

In Caledonia, Henco obtained an injunction against the occupation of their development called Douglas Creek Estates (DCE) and, after the Natives refused to obey the injunction the judge issued criminal contempt charges against the protesters. On April 20, 2006 the OPP were forced by the court to enter DCE and arrest several Native Protesters.

At no time did the Ontario Government state that the Natives had colour of right to occupy DCE and, in fact, the government spent \$21 million to buy out Henco and other developers so they could legally allow the Native Protesters to stay on DCE. Without the purchase by the Ontario Government of DCE the courts would have forced the OPP to continuously arrest Native Protesters found there.

Why would the government have to buy the DCE if the OPP are correct about colour of right?

Throughout court hearings with Judge Marshall, lawyers for the OPP addressed the issue of the 'Rule of Law' being upheld in Caledonia. Their proof that the OPP were in fact upholding the 'Rule of Law' was the fact that Native protesters were being arrested. On April 20, 2006, the OPP arrested 21 people who were occupying DCE. By July 20, 2006, OPP lawyers submitted a statement to the court which addressed the 'Rule of Law' issues in Caledonia. The OPP lawyers state the following:

39. ...In fact, as of July 21, 2006, the OPP has already laid 53 charges against 28 individuals for offences committed in connection with the occupation of Douglas Creek Estates and the barricades erected in Caledonia, including assault, intimidation, forcible confinement and attempted murder... the OPP remains actively engaged in keeping the peace and upholding the law in Caledonia.

Attorney General written submission on July 20, 2006. pg 17  
www.CaledoniaWakeUpCall.com\court\AGOWrittenSubmissions.pdf

In another development in Caledonia, Stirling Woods, the OPP moved in with full force in September 2007 and arrested 9 Native Protesters. Why would the OPP do this if they had colour of right as the OPP says they do?

Remember...OPP officers are telling builders that Native protesters cannot be arrested for trespassing or public mischief because of the colour of right defence. Why then do the courts repeatedly order the OPP to do exactly what the OPP claim they cannot do?

### **Injunction and imprisonment of Native Protesters in Sharbot Lake:**

CN Rail got an injunction in 2007 against a blockade in Deseronto, while Frontenac Ventures also received an injunction in Sharbot Lake. Native protesters refused to obey the injunction in Sharbot Lake and the judge sentenced one protester to 6 months in jail. Before Robert Lovelace was sentenced to jail he told the courts that it was the OPP who told him he had colour of right. The Kingston Whig Standard covered the details of the hearing with the following story:

**Former chief won't give up uranium mine battle** – Feb. 14, 2008 Kingston Whig Standard  
[\[Link to Story\]](#)

Robert Lovelace was testifying in Kingston's Superior Court with respect to contempt charges filed after he and other leaders from his community and Shabot Obaadjiwan First Nation, defied an interim injunction, through September last year, and a subsequent charge they've defied Justice Douglas Cunningham's permanent injunction issued in September...

At the time the protest camp was set up, Lovelace said there were discussions with the OPP and it was his belief that the police force's legal department had decided "we had colour of right and they would not remove us." Consequently, he didn't believe they were breaking the law, he said.

Justice Cunningham wanted to know who had told them they had any colour of right to be on those lands and Lovelace replied, "I believe it was the [OPP] Aboriginal Response Team."

Later, when Smitheman [lawyer for Frontenac Ventures] pressed him on the point, Lovelace provided no names, but told the court "my understanding was that it was a common understanding" between protesters and members of both the OPP ART embedded with them and the OPP's Major Events Liaison Team, which was dealing with their "settler" neighbours during the dispute with the prospecting company...

Earlier, under questioning by Ardoch Algonquin First Nation lawyer Christopher Reid, Lovelace explained that he has an obligation both to follow and to enforce Algonquin law. The consequences of doing otherwise, he said "would be the diminishment of me as a human being, as an Anishinabe man."

### **Six KI Native protesters sentenced to 6 months in jail:**

At another occupation in Ontario, this time near Thunder Bay, 6 members of a Native band were sentenced to 6 months in jail for contempt for their refusal to obey a court injunction. This was reported in the Thunder Bay Chronicle as follows:

**KI reps get 6 months for contempt** – March 18, 2008 – Thunder Bay Chronicle Journal [\[Link\]](#)

For their continued disobedience and defiance of a court order, six members of Kitchenuhmaykoosib Inninuwug (KI) First Nation were sentenced Monday to six-month jail terms in Thunder Bay's Superior Court.

Last Dec. 14, Justice Patrick Smith found Chief Donny Morris, Deputy Chief Jack MacKay, councillors Cecilia Begg, Darryl Sainnawap, Samuel McKay, Enus McKay and Evelyn Quequish, and committee member Bruce Sakakeep in contempt of a court order dated Oct. 25, 2007.

That order allowed Platinex, a junior exploration company, to proceed with Phase 1 of its drilling project and prevented members of KI from impeding, interfering or obstructing Platinex or its representatives access to the exploration property, which is not on the KI reserve but is claimed as part of KI's traditional lands.

When Platinex officials flew into the community on Nov. 6, 2007, a group of individuals, including those charged, prevented them from entering the airport building and threatened them with arrest if they trespassed on KI land, Smith said in his reasons for sentencing...

**"If two systems of law are allowed to exist – one for the aboriginals and one for the non-aboriginals – the rule of law will disappear and be replaced by chaos. The public will lose respect for, and confidence in, our courts and judicial system," Smith said.**



Five members of the KI group photographed in their prison clothes.

### **Colour of Right: Conclusions**

We have seen that the Attorney General of Ontario presented numerous court rulings that stated Native protesters do not have colour of right merely because they have a land claim filed or are in the midst of negotiation of a land claim. The Ministry's own legal opinion submitted to the Ipperwash Inquiry confirmed that there was 'no jurisprudence, even as it has evolved to date' that Native protesters could defend their occupation of Ipperwash Provincial Park under 'colour of right.'

The courts repeatedly uphold the private ownership of land and grant sole authority to the title deed holder to get injunctions against Native protesters. The OPP are forced by the courts to arrest Native protesters and these protesters are jailed for their actions.

There is a difference between the advice the OPP is giving builders and how judges in Ontario are ruling. In Canada it is the judges who determine what the law says, not the police.

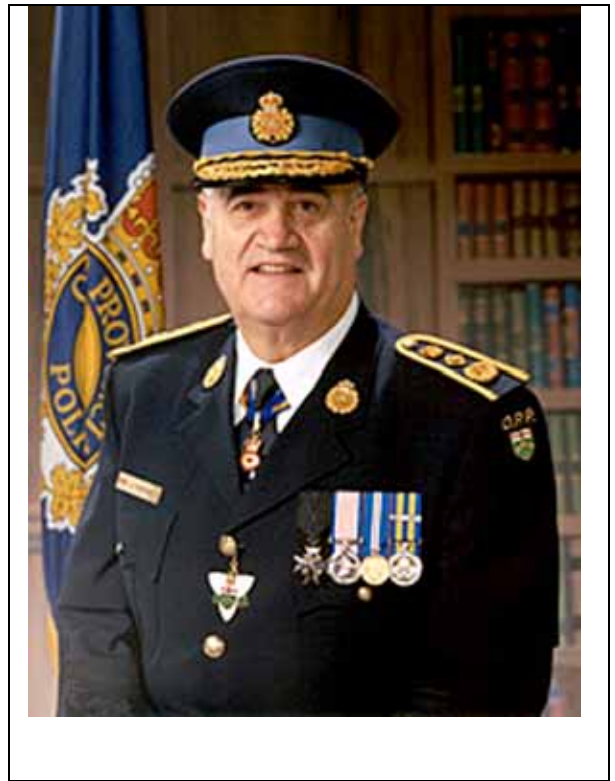
## Myth #2: Police Discretion

Since Mr. Fantino has become the Commissioner of the OPP, we have heard him use the following phrases regarding policing in Caledonia:

- 1) Police Discretion
- 2) We're just 'meat in a sandwich.'
- 3) I don't know what people expect from us.
- 4) We can't solve Land Claims.
- 5) We are peacekeepers.

Although there are many phrases Commissioner Fantino has used to explain why Native Protesters who commit criminal acts are not arrested, the only one that appears to make a legal argument is the concept of 'Police Discretion'.

It has become a myth that police discretion means that any and all criminal offenses can be overlooked due to the OPP's legal right to exercise 'discretion' in how it enforces the law. But is this true?



Justice Linden, Commissioner of the Ipperwash Inquiry, addresses the issue of police discretion and the absolute need for all police forces to exercising this discretion while carrying out their duties. The lawful use of police discretion is done for the benefit and safety of the public. Here are some key points that Justice Linden makes in the Ipperwash Inquiry Report regarding police discretion:

It does not mean that anyone is above the law or that police services should have different standards for Aboriginal peoples.

Nor does it mean that the rule of law and public order are somehow subservient to Aboriginal interests.

Police discretion at Aboriginal occupations and protests does not mean that law-breakers are never charged. It simple means that lawbreakers should be charged when it is neither dangerous nor needlessly provocative to do so.

In the context of an Aboriginal occupation or protest, I believe this means police must be certain to pursue protesters or others alleged to have committed serious offences.

Report of the Ipperwash Inquiry, Volume 2, p190-191  
[http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol\\_2/pdf/E\\_Vol\\_2\\_CH09.pdf](http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/pdf/E_Vol_2_CH09.pdf)

The full text and context of Commissioner Linden's statements reads as follows:

A final best practice is strategic exercise of police discretion. Police discretion is fundamental to reducing the potential for violence at Aboriginal occupations and protests. Discretion may involve whether, when, or how enforcement action is taken to address alleged breaches of the law. This concept is easily misunderstood. It does not mean that anyone is above the law or that police services should have different standards for Aboriginal peoples. Nor does it mean that the rule of law and public order are somehow subservient to Aboriginal interests. On the

contrary, the strategic exercise of police discretion is a legitimate practice of police services across the country and in almost every area of law enforcement.

Police discretion allows police services to balance the often competing demands placed upon them and to decide, in appropriate circumstances, that it is wiser to delay the enforcement of a particular law or the laying of charges against specific persons in the larger interest of public safety or public order. For example, no reasonable person would suggest that the police should immediately execute an arrest warrant against a dangerous criminal if doing so would mean putting innocent bystanders at risk. Everyone would agree that the better approach would be for police to use their discretion to ensure that the arrest can be made safely. Police discretion at Aboriginal occupations and protests does not mean that law-breakers are never charged. It simply means that law-breakers should be charged when it is neither dangerous nor needlessly provocative to do so...

Police discretion must always be exercised within the law. It must also be exercised in a principled, consistent manner and with a view to larger, long-term police and societal objectives. In the context of an Aboriginal occupation or protest, I believe this means police must be certain to pursue protesters or others alleged to have committed serious offences.

To summarize, Justice Linden is saying that the legal use of police discretion is not to refuse to lay criminal charges, but that the laying of charges should be done when there is no direct concern for public safety. It is one thing to delay the arrest of a dangerous criminal due to concern over the immediate public safety of innocent bystanders versus allowing a dangerous criminal to roam the streets for weeks or months without arresting him.

We see nothing in Justice Linden's statements that would conclude that a delay of months and in some cases a year before laying criminal charges is justified by the legal concept of police discretion.

### **The duties of an OPP officer:**

Section One of Ontario's *Police Services Act* sets out the framework for the conduct of police officers:

#### **Declaration of principles**

1. Police services shall be provided throughout Ontario in accordance with the following principles:
  1. The need to ensure the safety and security of all persons and property in Ontario.
  2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
  3. The need for co-operation between the providers of police services and the communities they serve.
  4. The importance of respect for victims of crime and understanding of their needs.
  5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.
  6. The need to ensure that police forces are representative of the communities they serve.

R.S.O. 1990, c. P.15, s. 1.

Police Services Act, Section 1, Declaration of Principles  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p15\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm)

Section 45 of the Act states that officers are required to swear or affirm an Oath of Office: [emphasis added]:

I solemnly affirm that I will be loyal to Her Majesty the Queen and to Canada, and that **I will uphold the Constitution of Canada** and that I will, to the best of my ability, **preserve the peace, prevent offences** and discharge my other duties...faithfully, **impartially and according to law**.

Police Services Act, s. 45, Oaths of office and secrecy  
Ontario Regulation 114/91, Oaths and Affirmations  
<http://www.canlii.org/on/laws/regu/1991r.144/20080421/whole.html>

Section 42 of the Act lists the duties of a police officer [emphasis added]:

42 (1) The duties of a police officer include,

- (a) **preserving the peace;**
- (b) **preventing crimes and other offences** and providing assistance and encouragement to other persons in their prevention;
- (c) **assisting victims of crime;**
- (d) **apprehending criminals** and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties; ,
- (g) performing lawful duties that the chief of police assigns;
- (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;
- (i) completing the prescribed training.

Police Services Act, S. 42, Duties of police officer  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p15\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm)

In his Jan 12/07 Plaintiff's Factum for the Caledonia Class Action John Findlay speaks to the issue of the unreasonable use of 'discretion' by including a precedent highlighting the dangers of 'surrendering to the dictates of unlawful pressure groups" and the importance of not permitting a 'wide measure of discretion' to those dictates:

"... One thread runs consistently throughout all the case law: the recognition that public authorities must beware of surrendering to the dictates of unlawful pressure groups. The implication of such surrender for the rule of law can hardly be exaggerated. Of course, on occasion, a variation or even short-term suspension of services may be justified. As suggested in certain of the authorities, that may be a lawful response. But it is one thing to respond to unlawful threats, quite another to submit to them - the difference, although perhaps difficult to define, will generally be easy to recognize. Tempting though it may be for public authorities to yield too readily to threats of disruption, they must expect the courts to review any such decision with particular rigour - this is not an area where they can be permitted a wide measure of discretion. As when fundamental human rights are in play, the courts will adopt a more interventionist role."

Phoenix Aviation v. Coventry Airport [1995] E.W.J. No. 4488, Book of Authorities, Tab 38  
As cited in Caledonia Class Action Plaintiff's Factum, Jan 12/07  
[www.caledoniaclassaction.com](http://www.caledoniaclassaction.com)

Contrary to Commissioner Fantino's message that OPP officers are simply to maintain the peace, the *Ontario Police Service Act* does list out the duties of a police officer in expectations that officers will fulfill their obligations. They include: preserving the peace; preventing offences; assisting victims of crime and apprehending criminals. Officers cannot pick and chose which duties they are willing to perform and which they are not.

## **The Canadian Constitution:**

As noted above, the Oath of Office for Ontario police officers states that each officer will 'uphold the Constitution of Canada' [emphasis added]:

SCHEDULE B  
CONSTITUTION ACT, 1982

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and  
**the rule of law:**

The following are Rights and Freedoms guaranteed every person in Canada.

*Legal Rights*

**7.** Everyone has the right to life, liberty and **security of the person** and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

*Equality Rights*

**15.** (1) Every individual is **equal before and under the law** and has the **right to the equal protection and equal benefit of the law** without discrimination and, in particular, without discrimination based on **race**, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

*Enforcement*

**24.** (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

*General*

**25.** The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

**26.** The guarantee in this Charter of certain rights and freedoms shall not be construed as

denying the existence of any other rights or freedoms that exist in Canada.

**27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.**

### **The 'Rule of Law':**

On July 5, 2006 the Attorney General provided a written submission to Justice Marshall regarding Henco's Injunction in Caledonia with respect to the occupation of the Douglas Creek Estates. Page 17 contains references regarding the 'Rule of Law' from the Supreme Court:

#### (a) The Rule of Law

41. The rule of law, the fundamental postulate of Canada's constitutional structure, recognizes that every man, woman, and child, regardless of race, colour, so socio-economic status, is subject to the laws of the land. In *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, the Supreme court of Canada has maintained that;

71 [T]he rule of law [embraces] three principles. The first, recognizes that "the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power": Reference re Manitoba Language Rights, at p. 748. The second "requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order": Reference re Manitoba Language Rights, at p. 749. The third requires that "the relationship between the state and the individual... be regulated by law."

*Reference re Secession of Quebec*, [1998] 2 S.C.R. 317 at para. 71  
<http://scc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>

The Attorney General, however, left out paragraph #70 of the Court's decision which seems particularly applicable to the situation faced by citizens living in towns like Caledonia - torn apart by ongoing lawlessness due to OPP failure to enforce the law [emphasis added]:

70. The principles of constitutionalism and the rule of law lie at the root of our system of government. The rule of law, as observed in *Roncarelli v. Duplessis*, [1959 CanLII 1 \(S.C.C.\)](#), [1959] S.C.R. 121, at p. 142, is "a fundamental postulate of our constitutional structure"... **At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs.** It provides a shield for individuals from arbitrary state action.

*Reference re Secession of Quebec*, [1998] 2 S.C.R. 317 at para. 70  
<http://scc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>

The Supreme Court has held that all citizens and governments are subject to the law, and that maintaining the rule of law is the most fundamental requirement of maintaining an orderly society.

### **Can one commit crimes for a 'just' cause, or out of frustration as a 'last resort?'**

The supremacy of the rule of law was brilliantly defended by The Honourable Mr. Justice Low of the British Columbia Supreme Court while providing his reasons for sentencing 24 protesters who ignored a court order to stop their blockade of a road in connection with an environmental protest. In these excerpts, Justice Low addresses the key issues of concern to victims of land claim protests everywhere:

#### 1. Committing crimes in the name of a 'just cause.'

2. Committing crimes out of frustration as an action of 'last resort.'
3. How the physical interference of the rights of others can lead to violence.
4. The fragility of the rule of law.
5. The responsibilities citizens have to one another.
6. How preserving the rule of law preserves everyone's rights under the Charter.

Justice Low [emphasis added]:

Today I have the unpleasant task of fixing sentences for 24 people convicted of criminal contempt of court. Another will be sentenced on November 1st; yet another has not shown up for sentencing and a warrant has been authorized for his arrest.

The principle of general deterrence demands that I impose gaol sentences with respect to all but the youngest of the accused before me now. It saddens me to have to do so, but I make no apology for it.

**Some of the accused before me attempt to explain their illegal actions with arguments about the nobility of their environmental cause and their high moral purpose. Without taking sides on the environmental issue, I respect their dedication and their energy. However, I deplore their willingness to break the law. They are passionate about their concerns, but no more than I am about the democratic principles to which they do violence.** They live in, or are visiting, a democratic state. They have a wide range of rights and freedoms within that state. They also have responsibilities, which include respecting the legal rights of others and obeying the law. There can be no lawful justification for their illegal conduct in blocking the road, as opposed to lawfully protesting at its side or elsewhere.

The court stands neutral on the political issue relating to logging... There is no conflict between the position the accused take on the logging issue and the position the court must take on the law. The law does not stand in the way of their substantial democratic rights to attempt to persuade society of the rightness of their cause. This case is not about free speech. I am quite sure that the people of this province do not have to be told that these proceedings are not politically-directed, as was thought by some of the accused early in the trial. This court is doing its job, as it always does, on an independent basis, by weighing the evidence, making findings of fact and applying the law to those facts.

This is not an area in which the court has a discretion. The law does not permit the court to forgive a breach of the law once the breach is properly proved. Each of us must obey the law.

These democratic principles are eloquently stated by Mr. Justice Wood in *R. v. Bridges* (No. 2), (1989) 48 C.C.C. (3d), 545, (B.C.S.C.), commencing at p. 547. He was speaking directly to the accused people before him for sentencing and I will quote from his judgment at some length. He said:

"What is very much at issue and before this court is the future survival of the rule of law. **It is the rule of law which distinguishes civilized society from anarchy. Everything which we have today, and which we cherish in this free and democratic state, we have because of the rule of law. Freedom of religion and freedom of expression exist today because of the rule of law.** Your right to hold the beliefs you do, to espouse those beliefs with the fervour which you do, and to attempt to persuade others to your point of view, exists only because of the rule of law. Without the rule of law there is only the rule of might. Without the rule of law the Canadian Charter of Rights and Freedoms, which some of you sought to invoke, would be nothing but another piece of parchment adrift in the timeless evolution of man's history.

The rule of law exists in this society only because the overwhelming majority of citizens, irrespective of their different views on religion, morality or science, agree to be bound by the law. That agreement, which cannot be found recorded in any conventional sense, has survived the deepest and most profound conflicts of religion, morality and science. In that sense it might be thought that its strength is overwhelming and its future secure. But that is not the case at all, for the continued existence of that agreement is threatened by its own inherent fragility. That fragility was described by former Chief Justice Ferris of this court in the celebrated case of Canadian Transport Co. Ltd. v. Alsbury (1952), 6 W.W.R. (N.S.) 473 (B.C.S.C.), to which counsel have referred. I quote from page 478:

**'Once our laws are flouted and orders of our courts treated with contempt the whole fabric of our freedom is destroyed. We can then only revert to conditions of the Dark Ages when the only law recognized was that of might. One law broken and the breach thereof ignored, is but an invitation to ignore further laws and this, if continued, can only result in the breakdown of the freedom under the law which we so greatly prize.'**

**Many of you, while assuring me of your respect for the law, have characterized your contemptuous conduct as an act of last resort stemming from frustration brought on by the failure of government to act upon your views and to change the law accordingly. The fragility of the rule of law is such that none of us who seek to enjoy its benefits can be permitted the occasional anarchical holiday from its mandate, no matter how compelling or how persuasive may be the cause that such anarchy seeks to advance.** Furthermore it is only through the rule of law that any meaningful, lasting or effective change can be wrought in the law. Thus it is that by seeking to change the law by deliberately disobeying it you threaten the continued existence of the very instrument, indeed the only instrument through which you may eventually achieve the end you seek. Such conduct is not only illegal, it is completely self-defeating.

Many of you apologize for any embarrassment or inconvenience that your actions may have caused the court. Your conduct does not embarrass this court, it challenges its very existence. The breach of an order of this court is not a crime against the judge who issued it, it is an attack upon the institution itself - that institution which alone stands between the rule of law and anarchy. The inherent jurisdiction of this court to punish for contempt does not exist for the purpose of preserving judicial vanity. It is a sole device by which the court can ensure its own effectiveness in the struggle to preserve the rule of law. Thus it is that the more serious the contempt the more serious the threat to the rule of law. In the whole spectrum of conduct classified as contemptuous, there can be none more sinister or more threatening than that of organized, large scale, deliberate defiance of an order of the court."

These principles are not abstract or theoretical concepts. They do not exist for judicial comfort. They exist for the benefit of all members of the democracy in which we live and they should be cherished and jealously defended by everybody. They are basic principles of our society which affect people in all walks of life and in all their activities. I cannot emphasize this point better than by quoting from a letter published on the editorial page of the Victoria Times Colonist on October 7, 1993, following publication of a ruling given a week earlier by Mr. Justice Bouck during the first trial. The writer, Phyllis Matheson, referring I think to the law giving MacMillan Bloedel the right to log, said this:

"Many people feel that the law in question is not a good one, but the fact remains that it is the law and as such should not be broken. The democratic system provides legal methods for changing laws."

It has been said many times during this trial that the protest of August 9th was peaceful and non-violent. That is so. But neither the organizers of an illegal protest nor the people involved in it

can guarantee no violence. Physical interference with the rights of others is physically confrontational and can, and often does, lead to assaults of one kind or another by either the protestors or by those whose rights are unlawfully interfered with. That is one of the reasons why the courts grant injunctions. The courts always have a duty to apply the law in such a way as to attempt to ensure peace, order and public safety. In the present circumstances, that duty can be discharged only by the imposition of general deterrence sentences.

Macmillan Bloedel Limited v. Simpson, 1993 CanLII 1533 (BC S.C.)  
<http://www.canlii.org/en/bc/besc/doc/1993/1993canlii1533/1993canlii1533.html>

While OPP officers may occasionally be justified in delaying arrests, their one-sided, biased refusal to enforce the law against native protesters who commit crime after crime is offensive to the courts, the Ontario Police Act, and to the Canadian Constitution.

### **Latest Example of Race-Based 'Police Discretion': Caledonia Blockade – April 2008**

On April 25, 2008 Native protesters once again blocked a highway and railway line in Caledonia. This time it was because they were trying to pressure the OPP to stop enforcing the law in Deseronto after the arrest of Shawn Brant and 9 other Native Protesters.

Once again we saw that the OPP - who claim to be able to arrest Natives in Deseronto because it wasn't part of a land claim protest - was unable to open the road and arrest Natives in Caledonia whose stated purpose of the blockade had nothing to do with land claims. The following is a press release from Six Nations which clearly states their agenda to intimidate the OPP into not enforcing the law:

Released by: Six Nations of the Grand River Men's Council  
Date: April 26, 2008

Six Nations of the Grand River Territory - The road blockade of what is known as the Highway 6 Bypass continues today, as community members from the Haudenosaunee Six Nations Territory stand in solidarity with the Mohawk community of Tyendinaga. There are no immediate plans to take down the blockade.

The bypass blockade began last evening (Friday, April 25) around 4:00 p.m. after reports that the OPP drew guns on a group of Mohawk people near a quarry on the Tyendinaga Territory. The Mohawks there have been protecting the quarry and keeping a local mining company off the land, as negotiations with the Canadian government proceed.

Six Nations of the Grand River Men's Council spokesperson Degonudogee points out that the local action is peaceful, despite the fact that he has personally seen photos of police with guns drawn on women and children in Tyendinaga.

"The armed presence of the OPP that are surrounding the quarry in Tyendinaga is alarming, and tensions are rising because of it," said Degonudogee. "We are united in this action with our Haudenosaunee people." He cited reports that approximately 200 armed provincial police, with up to 100 additional SWAT team members, are still surrounding the group of Mohawks near the Tyendinaga quarry.

Degonudogee pointed out that the OPP don't seem to understand that this is one whole Confederacy across the land. "It's not just little, tiny reserves that can be abused or intimidated by the OPP; they have to understand that they (Tyendinaga) have support here." The Highway 6 blockade is being manned by community members of all six of the Haudenosaunee nations of the Grand River Territory and is organized by the Men's Council of Six Nations of the Grand.

Degonudogee said the solidarity blockade is proof that the words of the Great Peacemaker are still in use today. The Peacemaker illustrated the weakness of one nation by breaking a single arrow. Then he held five arrows in a bundle to represent the original five nations and couldn't break it, so the people could see the power in unity.

Degonudogee added, "The blockade here will continue not by our choice, but by the choice of the OPP, if they continue their attack."

### **Possible 'Terrorism' as defined by the Criminal Code:**

When any group states that their purpose is to force the OPP to stop their 'attack', which everyone else understands as simply the enforcement of the law, and then makes clear their intention to back their stated agenda with criminal behaviour such actions need to be regarded seriously as possibly meeting the definition of 'Terrorism' as defined by the Criminal Code. The willful blocking of highways and railways to force the OPP not to enforce the law is illegal in this country, and dangerous to the public good.

Is anyone surprised that Native protesters in Caledonia once again can threaten police, government and the public with criminal acts with impunity. We think not.

The OPP told the public they shut down the highway in Caledonia only as a safety precaution and not because the Native protesters have blocked the highway. As the photos below show the OPP is lying outright to the public and media as they have done so many times over the past two years.



On June 1, 2006 (two weeks before CANACE Executive Director Gary McHale got involved in the Caledonia situation) lawyers were starting to raise the issue of terrorism in Judge Marshall's courtroom in the Douglas Creek Estates dispute:

Then we go to Section 42, Your Honour, of the Police Services Act which says, "The duties of a police officer include: (a) preserving the peace; (b) preventing crimes and other offences." And this is what I initially, Your Honour, wrote to the local O.P.P. about and indeed more recently to the Commissioner, that in our submission there are crimes and other offences being committed out there which they're taking no steps to prevent. We have situations involving trespassing, intimidation, arson, break enter and theft, violent property destruction. I happened to read the definition of terrorism in the Criminal Code the other night. And you know, what's going on almost seems to fall within that rather drastic section of the Code.

Henco & Railink Canada v. Haudenosaunee Confederacy, Transcript of Proceedings at Special Hearing, June 01/06, p86  
Remarks by Ed McCarthy, Counsel for Haldimand Law Association  
<http://www.caledoniawakeupcall.com/court/Transcript-Marshall-June0106.pdf>

## **Aboriginal Affairs Minister Michael Bryant: special treatment for 'indigenous insurgents'**

It appears to be the position of Michael Bryant that Native people should never be labeled as 'terrorists.' Mr. Bryant is the current Minister of Aboriginal Affairs but he was the Attorney General of Ontario from 2003 to 2007. The following quotes are from Mr. Bryant's thesis as a candidate for his Master of Law degree at Harvard Law School in May of 1994. The topic being discussed below is the 1990 Native Protest in Oka, Quebec:

Contributing to this extensive deployment was the Mohawk's own fortifications. At the time of the July 11 S.Q. raid, the Mohawks had approximately 75 men armed with shotguns, high powered and semi-automatic pistols, a magnum revolver, assault and semi-automatic AK-47 rifles, a fully automatic machine gun, and several thousand rounds of ammunition. Over time, the Mohawk Warriors made more contributions to their arsenal, including a semi-automatic machine gun capable of firing 450-600 rounds per minute and of penetrating an APC. After a preliminary assessment of Mohawk fortifications and arms, the Army concluded that the Mohawks were "a highly organized paramilitary force." Although newspapers reported that Mohawks had as many as 6000 guns, the more plausible figure of 500-600 was reported by Geoffrey York's text. Guns and ammunition continued to be smuggled in during the crisis, with a shipment of 80 AK-47s arriving in Kahnawake on the third or fourth week of the standoff. A number of decoys were also set, leading to television reports, for example, of a M72 rocket launcher. Similarly, it was never determined whether the wiring located on Mercier Bridge was actually an explosive or a hoax. A number of tank traps were set to halt APCs progress, and the bush in the Pines around Highway 138 was littered with lethal traps, resembling those the Vietnam veteran Warriors had perfected in that war. At its peak, as many as 500-600 Mohawks armed the fourteen bunkers and barricades surrounding the disputed territory. [pg 28-29]

...there are good reasons for pause before lumping indigenous insurgents together with terrorists. This intuitive hesitation is supported by international legal doctrine suggesting that indigenous peoples carry some special international legal status importing special treatment. [pg 51]

Legal Aspects of Chiapas, Oka & Wounded Knee conflicts: Intranational Armed Conflicts between Indigenous Peoples and States, Michael J. Bryant, LL.M Candidate, Harvard Law School, May 03/94  
<http://www.caledoniawakeupcall.com/canace/Bryan%20LLM-Thesis-1-cover.jpg>

## **Another example of racially-based policing**

In sharp contrast to how Native lawbreakers are treated, and the 'special status' envisioned by Bryant for 'indigenous insurgents,' when non-Native people organized a legal convoy to a Queen's Park protest on May 02/07 - which was attended by Mayor Trainer and a council member - the OPP attempted to intimidate participants by handing out the document reprinted below:

### **NOTICE TO PARTICIPANTS CALEDONIA CONVOY PROTEST - MAY 02, 2007**

The Ontario Provincial Police has a mandated responsibility through law, to provide policing function on Provincial Highways in the Province of Ontario. Actions that constitute a deliberate interference with traffic on thoroughfare will not be permitted. Intentionally impeding traffic on Provincial Highways may constitute violations of the following:

#### **HIGHWAY TRAFFIC ACT (including but not limited to)**

Section 130	Careless Driving
Section 134(1)	Disobey Officer Directing Traffic

Section 147(1)	Fail to Keep Right When Driving Less Than Normal Speed
Reg. 627 Sec 1(1)	Pedestrian Using Controlled-Access Highway
Rec 170(12)	Interfere with Traffic

**CRIMINAL CODE OF CANADA (including but not limited to)**

Section 31(1)	Breach of Peace
Section 129	Obstructing a Peace Officer
Section 175	Causing a Disturbance
Section 219	Criminal Negligence
Section 249(1)	Dangerous Driving
Section 423(1)	Intimidation
Section 430(1)	Mischief
Section 430(5.1)	Mischief Endangering Life

These offences are punishable upon conviction by fine and/or imprisonment. Additionally, the Highway Traffic Act authorizes for the towing and impounding of vehicles under these circumstances.

**K. MacDONALD - SUPERINTENDENT - HIGHWAY SAFETY DIVISION**

**Peacekeeping vs. Law Enforcement**

On the day of the Caledonia Convoy, Premier McGuinty made a joke about issuing ‘blue helmets’ to the OPP:

Some days I feel like issuing the OPP blue helmets. They are peacekeepers caught up in a difficult, protracted dispute which predates Confederation.

Ontario Premier Dalton McGuinty, CityTV News, May 02/07  
<http://www.caledoniawakeupcall.com/media/city-may2.wmv>

The following excerpts are from a letter to the Premier in response to his ‘joke’ by two CANACE co-founders who have both served on United Nations peacekeeping forces:

Dear Mr. Premier:

As former members of the Canadian Forces who have actually served in United Nations peacekeeping missions, we would like to explain the difference between ‘peacekeeping’ and ‘law enforcement’ to you and Commissioner Fantino:

**‘Law Enforcement’** is a role performed by police officers in a functioning, vibrant, healthy, First World democracy in order to preserve the Rule of Law and protect law-abiding citizens from criminals irrespective of their race, religion, national origin or grievance. It requires that citizens respect both the law and the willingness of police officers to enforce it justly.

**‘Peacekeeping’** is a role performed mainly by soldiers trained to kill, and is used as a deterrent to prevent warring factions from killing one another and/or innocent civilians during civil war in failed states where the Rule of Law has broken down, or in the aftermath of international warfare to prevent further hostilities.

Mr. McGuinty, any Premier who jokes about issuing blue helmets to an Ontario police force should stop and carefully consider the rationale behind such a statement. It implies that you are acknowledging the breakdown of law and order in Ontario while at the same time your Solicitor General refuses to intervene by replacing Commissioner. Fantino with a leader who will order his officers to enforce the law equally, and respect the Constitutional rights of Ontario's citizens and the decisions of the Supreme Court of Canada.

Your statement further implies that the Rule of Law and the rights of law-abiding citizens are to be suspended whenever or wherever natives utter the words, 'land claim.' This is completely unacceptable in a free and democratic society. The police must enforce the law and they must do it fairly without regard to race or grievance. To do otherwise is madness. The alternative to the Rule of Law is eventual civil war, something we are certain that you do not wish to be part of your legacy as Premier of Ontario.

If our governments and our police do not enforce the law as we wait for the federal government to resolve land claims, we may well find soldiers with blue helmets in our midst one day, and the Premier of the day will not be joking about it. Of that you can be quite sure.

Letter to Premier Dalton McGuinty, May 08/07 by:  
Mark Vandermaas, Canadian Forces (ret), Canadian Contingent United Nations Emergency Force Middle East, 1978  
Merlyn Kinrade, Royal Canadian Navy (ret), HMCS Magnificent, United Nations Force, Port Said, Egypt, 1956

## Conclusions

The OPP were able to find Criminal Code offences that would authorize them to arrest non-Natives for the very crimes Native protesters were committing in Caledonia on April 25/08 – indeed, for the last two years - with impunity. Unfortunately, racial considerations mean that – contrary to the Charter of Rights, the Human Rights Code and the Police Services Act – non-natives who commit even the most minor of offences during a protest face charges while Native protesters who use intimidation and/or violence against police officers (as they did on Dec 01/07) escape charges for the more serious crimes.

There can be little doubt that if non-Natives had organized a blockade of the highway (as some Caledonia residents had threatened to do in retaliation for the Six Nations blockade) with the goal of intimidating the police or government, within 15 minutes the OPP would have had the road opened and the participants arrested and charged but, according to McGuinty and Fantino there is no Race-Based policing in Caledonia.

It is clear from the sources cited that Native protesters are not exempt from the law, and that the courts jealously protect the rule of law for the benefit of all Canadians, including Aboriginals. Even the Commissioner of the Ipperwash Inquiry stated that Aboriginal protesters should not be immune from the law.

Based on the experiences of the people of Caledonia, and the apparent lack of legal justification for the OPP's so-called 'peacekeeping' approach - it is hard not to conclude that the OPP are badly abusing their right to exercise 'discretion' in the performance of their duties.

It is offensive to those who have actually served on peacekeeping missions to hear the Premier and the OPP Commissioner talk of 'peacekeeping' as if it were a higher and more refined form of policing suitable for a First World democracy with a long and proud history of honouring the rule of law.

## Myth #3: Government Cannot Direct Police Services

Myth #3 breaks down into two separate myths the Government is trying to get the public to believe in:

1. Myth 'A': Government CANNOT play any role in directing the OPP.
2. Myth 'B': Government is currently NOT directing the OPP.

Both myths are false because in our democracy there is a role for government to direct the affairs of police services in Ontario and second, there is considerable evidence to show that the OPP and the McGuinty government are, in fact, directly working together regarding the police service in Ontario.

### Does the Government have a role in Policing issues?

Below is the section of the Police Services Act that applies to the Solicitor General of Ontario (now called Minister of Community Safety and Correctional Services). As we see in the Act the Solicitor General is to monitor policing - which we doubt means to 'review once every couple of years' - to ensure compliance to prescribed standard of service and to issued directives and guidelines.

No one is suggesting that the government provide the police with a list of names of people to arrest but the government does have a duty to ensure the police are enforcing the law and are doing so based on the prescribed standards of service in the Police Services Act:

- 3 (1) This act shall be administered by the Solicitor General.
- (2) The Solicitor General shall,
  - (a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;
  - (b) monitor boards and police forces to ensure that they comply with prescribed standards of service;
  - (e) conduct a system of inspection and review of police forces across Ontario;
  - (j) issue directives and guidelines respecting policy matters;**

Ontario Police Services Act, R.S.O. 1990, Part 1, Solicitor General, s. 3(1,2)  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90p15\\_e.htm#BK4](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p15_e.htm#BK4)

In addition to the Solicitor General's role in police oversight, the government also has influence over police services by virtue of the fact that the OPP Commissioner is appointed by the McGuinty government. Premier McGuinty has extended Mr. Fantino's contract for another year which shows that the OPP is operating in accordance with the government's wishes.

### Commissioner Fantino and the McGuinty government are already working together:

The McGuinty government has repeatedly stated, in response to the howls of outrage over the OPP's refusal to enforce the law, that it does not interfere with policing matters. This is simply not true.

The evidence for direct involvement of the McGuinty Government has been made clear thanks to Mr. Fantino himself. Mr. Fantino provided evidence that he was in direct contact with McGuinty's office when he sent a threatening email to silence Haldimand Council back on April 07, 2007 and copied senior members closest to the Premier's office.

Mr. Fantino's email was sent to Haldimand Council, senior OPP officers, and...

- 1) Tony Dean - Secretary of the Cabinet (Deputy Premier of Ontario)
- 2) Chris Morley – Press Secretary for Premier McGuinty
- 3) Peter Wilkinson - Chief of Staff to Premier McGuinty

Here is Commissioner Fantino's email to Haldimand Council:

**Subject:** FW: McHale Communications

-----Original Message-----

From: Fantino, Julian (JUS)

Sent: April 7, 2007 5:09 PM

Cc: Ward, Katherine (JUS); Newman, Deborah (JUS); Dean, Tony (CAB); Wilkinson, Peter (OPO); Lewis, Chris D. (JUS); Dennis, Bill (JUS); Cain, John (JUS); McLean, D. G. (JUS); Howe, Angie (JUS); Morley, Chris (OPO); Laing, Paul (JUS)  
Subject: McHale Communications

Mayor Trainer and Members of Council:

I have been made aware of a deeply disturbing communication posted at 11:40am this date on McHale's "Caledonia Wake Up Call" web site apparently as a follow-up to an earlier McHale rant in which among other things he criticized Councillor Grice for a demonstrated lack of support to his cause on behalf of Caledonia.

In this latest e-mail, McHale also reported the full content of an alleged e-mail dated April 5, 2007 that he received from Councillor Grice in response to his criticism in which among other strange comments, Councillor Grice commends McHale on his efforts in Caledonia. In fact the comments are perceived to actually encourage McHale.

I have no intentions of entering into a debate with Councillor Grice about Charter rights and freedoms of speech and the like which he apparently framed in the April 5 e-mail to McHale. My primary concern is solely focused on preserving the peace in Caledonia and nothing more; a concern that very much includes preventing provocations that could lead to renewed violence such as has happened in the past. An informed and responsible person would understand all this and more.

In the context of a situation that is not of our doing and one that is not for us to resolve, I am also concerned about the safety of my officers, many of whom have already been injured in their efforts to preserve the peace in a very volatile and dangerous environment. It may not be apparent to our critics and those with special agendas of their own that the OPP, all of us, have worked tirelessly on the front lines and beyond to simply maintain order in an otherwise chaotic and very turbulent situation; made especially difficult every time McHale and his followers come to town.

It is also very relevant and worthy of note that I highlight the extraordinary policing costs that are borne by Ontario taxpayers every time the situation in Caledonia escalates. And now, apparently, we have Councillor Grice commending someone that he knows is a lightning rod for confrontation and potential violence. Just as troubling, Councillor Grice has now added another aggravating political dimension to his previous "anti OPP" rhetoric.

Be that as it may, in the context of the latest comments attributed to Councillor Grice which have the real potential of further inflaming an already volatile situation for the police, and on behalf of the men and women of the OPP I feel a sense of duty to advise you that going forward, in the event any of my

officers are injured as a result of further forays into the community by McHale and his followers my position in response will be the following:

- 1) I will publicly hold accountable Councillor Grice AND Haldimand County along with McHale;
- 2) I will support any injured officer in the pursuit of civil redress;
- 3) I will forward the ensuing related costs of policing to Haldimand County, and
- 4) I will strongly recommend to my Minister that the OPP contract with Haldimand County NOT be renewed once the current contract expires.

As much as we, the OPP, sympathise with the Citizens of Caledonia and the difficult political position you face we believe that in the context of the situation that prevails in Caledonia, comments such as those attributed to Councillor Grice are gravely detrimental to the morale and safety of my officers and much more. When I appeared before you several months back I came away believing that we had a mutual understanding about the detrimental effect that McHale and his followers were having on Caledonia. I know that Councillor Grice has some personal issues that he finds particularly aggravating, however, we never expected that he would fall prey to McHale's propaganda and it is now up to you as a Council to deal with the fall-out.

Yours truly,

J. Fantino,  
Commissioner

Monte Kwinter, then the Solicitor General/Minister of Public Safety and Correctional Services, hired a consultant to advise how to go about handling complaints against the Commissioner since a number had been submitted. Since the government had never had any such complaints, the process was untested.

The consultant's task was solely to inform Minister Kwinter on how to proceed with the complaints. He was NOT tasked with conducting the investigation, only to make recommendations for a process to deal with them. Prior to any report being written however, Mr. Kwinter suddenly informed the media he had reviewed the evidence and studied the reports and cleared Mr. Fantino of any wrong doing.

Even the Minister's consultant was surprised that Mr. Fantino had been cleared since he was still in the process of gathering information. In fact, the consultant phoned Mayor Trainer to ask her more questions the same day as Kwinter's announcement, and it was she who informed him that Mr. Fantino had already been cleared. The Mayor found out herself when she was contacted a few minutes earlier by a Canadian Press reporter wanting to know how she felt about the complaints being dismissed. Still later the same day Mayor Trainer received a phone call from the consultant informing her that he 'had to write the report as instructed' and that there was no further reason for him to gather evidence.

### **Fantino tries to influence Mayor of Haldimand to remain silent - again**

What is not commonly known is that the complaints against Fantino were dismissed just three days after the Mayor complained to the Minister's consultant on June 25/07 that Fantino had yet again tried to influence her not to criticize the OPP. Fantino made the attempt even as the consultant was trying to determine how to deal with the existing complaints against the Commissioner!

The following is the transcript of Haldimand Mayor Trainer's testimony when questioned by CANACE co-founder Gary McHale at the Cayuga Courthouse on Dec. 24, 2007 regarding Fantino's April 7th email:

- Q. Were you not on TV talking about the e-mail that Fantino sent to Haldimand Council where you said on TV and radio...
- A. You're right.
- Q. ...that you felt threatened by Fantino?
- A. Yes. Yes, you're correct.
- Q. In that e-mail, did you think it was appropriate for the police force to be threatening elected officials?
- A. Most inappropriate.
- Q. What was Fantino, in your view, attempting to do?
- A. To intimidate.
- Q. To what end?
- A. Maybe to keep us quiet.
- Q. In that particular e-mail, did Fantino use my name [Gary McHale] repeatedly?
- A. Yes.
- Q. And, in that e-mail, did not Fantino state that Council had to gain control over Council, Councillor Grice because of his positive statements?
- A. I don't have the e-mail in front of me but it, it did say something like that.
- Q. Didn't, didn't Mr. Fantino threaten to sue council members and the council if any further positive statements were made?
- A. Yes, No, if was if, if one of his officers were injured, he would hold the, Councilor Grice and the County accountable.
- Q. And again, the e-mail was motivated because Councilor Grice made positive statements about me in public?
- A. That's correct.

It is clear from Fantino's threatening email and from the Mayor's testimony that Mr. Fantino was directly involved in attempting to silence elected officials and that the Mayor felt intimidated by it. Furthermore, Mr. Fantino kept senior members of the McGuinty government informed on his abuse of power, which is how many have seen it. The Canadian Taxpayer's Federation and MPP Peter Kormos called for Mr. Fantino to be fired over this incident.

Mayor Trainer met with senior officials with the Ontario Ombudsman's office to provide evidence regarding the facts above. Unfortunately, the Ombudsman's office decided that looking into the circumstance surrounding the manner in which the complaints were dismissed would violate their mandate which, unfortunately, does not permit them to investigate police matters. That did not stop the Ombudsman from letting the public know how unhappy he was over how Mr. Kwinter had privately investigated the whole event.

Prior to the meeting with Mayor Trainer the Ombudsman spoke out against how the Ontario government was handling the complaint against Commissioner Fantino. In a Star editorial on June 27, 2007 titled '*Province trying to avoid Ombudsman*' we read the following:

The problem, he says, is that the government is deliberately trying to skirt his office to avoid his scathing criticisms.

"From the government's perspective, the risk is much more contained when you go out and hire a contractor," Marin said last week.

Marin's assessment stems from the Ministry of Community Safety hiring an outside investigator, at added cost to taxpayers, to investigate the actions of OPP Commissioner Julian Fantino in relation to the land claim issue in Caledonia.

According to the description on the Ontario Ombudsman's website, it's Marin's job to "ensure the accountability of government through effective oversight of the administration of government services in the province."

As such, there should be no need to incur the extra expense to hire outside investigators or consultants to do the same thing, which is what the Ministry of Community Safety has done.

At the heart of this matter is one thing: accountability.

The McGuinty government has proven adept at blatantly detouring controversy by simply avoiding that which is controversial.

The Hamilton Spectator ran this story from the Canadian Press on June 21, 2007:

### **Liberals squandering cash on outside investigations: Marin**

Ontario ombudsman Andre Marin, right, says the Liberal government is circumventing his office and squandering tax dollars by hiring outsiders to investigate public complaints because it wants to maintain control over the investigations.

He said the government is "queasy" about referring public complaints to his office -- even when the province finds itself in a conflict of interest as it does with a current set of complaints against Ontario Provincial Police Commissioner Julian Fantino.

Community Safety Minister Monte Kwinter, left, has hired an outside lawyer to investigate whether Fantino breached the province's Police Services Act when he wrote an e-mail to politicians in Caledonia, suggesting they were encouraging divisive rallies against the policing of the ongoing aboriginal occupation there.

In the e-mail -- copied to senior bureaucrats and staff in Kwinter's office -- Fantino suggested he would back any lawsuit brought against the town and would not recommend that OPP renew their contract to police the town if any of his officers were injured.

The e-mail was interpreted as a "threat" by Haldimand County Mayor Marie Trainer.

Although Fantino was cleared of all complaints - including several unrelated to his email – there was the distinct appearance and odour of some serious conflicts of interest at play in the affair:

1. Fantino's threatening email was sent to senior members of McGuinty's government. It is hard to imagine why a Commissioner who is threatening elected officials to force them to remain silent on a topic of provincial, even national importance, would feel the need to inform senior members of the government unless he believed they approved of such behaviour. The

question the public should ask is how did these senior members of government respond when they received copies of Fantino's email?

2. Why were all the complaints against Fantino abruptly dismissed just 3 days after Mayor Trainer's second complaint to the Minister's consultant about Fantino? Why were they dismissed before the Minister's own consultant had written his report? Before any investigation into them had taken place?

3. Since McGuinty's government cleared Fantino of any wrongdoing it must be of the view that Fantino acted within its guidelines of acceptable conduct when he threatened Haldimand Council.

### **McGuinty's Government is involved in policing matters in Caledonia:**

Premier McGuinty's government has repeatedly claimed that it doesn't direct the operations of the OPP and yet, the evidence is growing that the OPP are doing exactly what McGuinty's government is telling them to do. There are a number of occasions where McGuinty speaks on an issue regarding Caledonia, followed by Mr. Fantino who then spends a few weeks repeating the message.

The best example of this is when McGuinty appeared in an interview in early 2007 with Fantino at his side and claimed that Caledonia was a Federal problem because land claims is a Federal issue. For weeks Mr. Fantino repeated that message on TV, radio and in newspaper interviews.

Some of the most disturbing allegations against Liberal cabinet ministers involve former Attorney General Michael Bryant; former Solicitor General/Minister of Community Safety and Correctional Services Monte Kwinter; and former Aboriginal Affairs Minister David Ramsay for alleged 'misfeasance' in connection with deals not to prosecute native criminals and not to call in the military to protect Caledonia during the height of aboriginal lawlessness.

### **Former Minister for Aboriginal Affairs makes deal not to prosecute native criminals**

In the Statement of Claim for the \$12Million lawsuit by Caledonia residents Dave Brown and Dana Chatwell against former OPP Commissioner Gwen Boniface, Julian Fantino, Brian Haggith and the Province of Ontario the following allegations are made against David Ramsay, former Minister for Aboriginal Affairs:

113. The agreement by the Minister of Aboriginal Affairs made with the native protestors and the Haudenosaunee Six Nations Confederacy and Council on or about April 21, 2006, not to proceed any further with any criminal charges arising from the raid by the O.P.P. on April 20, 2006 is outside of his authority and improperly interferes with the lawful duties of police officers of the O.P.P., the duties of Commissioner Boniface, Commissioner Fantino, and Inspector Haggith and the duties and obligations of the Attorney General of Ontario and constitutes misfeasance in public office.

Brown, Chatwell Statement of Claim, July 18/07, p47, para 113  
<http://voiceofcanada.files.wordpress.com/2008/02/chatwell-amended.pdf>

The Caledonia Class Action lawsuit similarly contains a list of various government ministers alleged to be liable for violating their duties in connection with the lawlessness in Caledonia. Included in this list is the Attorney General of Ontario for approving the deal not to prosecute native criminals:

139. Liability of the Attorney General

140. Under s. 5 of the Ministry of the Attorney General Act, the Attorney General of Ontario is required to see that the administration of public affairs is in accordance with the law.

Ministry of the Attorney General, 4ctR, .S.O.1 990,c . M.17 s. 5(b)

141. The Amended Statement of Claim pleads that the Attorney General was aware and acquiesced in the actions of the Minister of Aboriginal Affairs and thereby violated his statutory duty under the Ministry of the Attorney General Act.

Amended Statement of Claim Motion Record, p41, Tab 8, para. 81

Caledonia Class Action, Ammended Plaintiff's Factum, May 01/08 p.41  
www.caledoniaclassaction.com

The Attorney General referred to here is, of course, the current Aboriginal Affairs Minister Michael Bryant in his former capacity.

Why is the Minister for Aboriginal Affairs entering into any agreement that has to do with policing issues? Why would Mr. Ramsey believe that the OPP would follow an agreement his ministry would sign unless the Ontario Government was going to force the OPP to abide by Mr. Ramsey's agreement?

Since when does Aboriginal Affairs arrange for agreements regarding criminal charges? This is not only a direct interference with the operation of the OPP, but interference with the justice system itself.

### **Interference with policing by present Minister of Aboriginal Affairs**

This alleged interference by an Aboriginal Affairs Minister in Caledonia policing issues is not limited to events in 2006 but is also alleged to have occurred during the Deseronto/Caledonia crises that occurred during the week of April 25, 2008 when Six Nations protesters blockaded a main Caledonia highway to force the OPP to cease law enforcement activities during an ugly confrontation with natives in Deseronto who have a history of violent attacks on police and military personnel.

Both Karen Best, a reporter for the Dunnville Chronicle, and Jim Windle, reporter for the Tekawennake News, reported that the current Aboriginal Affairs Minister Michael Bryant was thanked by Six Nations Chief Bill Montour for helping to get the OPP to back down in both Caledonia and Deseronto. Haldimand MPP Toby Barrett raised the 'interference' issue at Queen's Park on May 5, 2008 as recorded by the Legislative Hansard:

**Mr. Toby Barrett:** To the Minister of Aboriginal Affairs: Last week you said in this House and I quote: "I think the member knows that nobody in this House—no MPP, no member of government is walking around with a holster and cuffs. I think the member knows that it's up to police officers to investigate that duty."

Minister, I would like to quote an article from last week's Dunnville Chronicle: "Over the weekend, Six Nations Band Chief, Bill Montour, told Aboriginal Affairs minister Michael Bryant, that the blockade was not criminal activity and said this could become something all party does not want it to be. He gave credit to Bryant for talking to the Solicitor General who reportedly told the OPP to stand down."

Minister, did you talk to the Solicitor General about having the OPP stand down?

**Hon. Michael Bryant:** No.

**Mr. Toby Barrett:** Thank you, minister.

We know that the Dunnville Chronicle stated last week that Six Nations' Chief, Bill Montour "gave credit to Michael Bryant for talking to the Solicitor General who reportedly told the OPP to stand down."

There's another article I would like to report. It was written last week by Jim Windle—I know Jim, he's read more articles on Six Nations than any other journalist. This article states and he referred to Chief Montour, "then thanked Bryant for taking his advice and asking the OPP about standing down in Tyendinaga and Caledonia." Two newspapers and two different reporters saying the same the same thing.

I ask you again: Did you ask the Solicitor General to interfere or were you, were you yourself, asking the OPP about standing down and in Tyendinaga and Caledonia? Given your previous statements, these two reports are—

**The Speaker (Hon. Steve Peters):** Thank you.

**Hon. Michael Bryant:** Well, no again to that one as well.

Mr. Bryant was the Attorney General from 2003 to 2007. It was he who allegedly OK'd deals not to prosecute native criminals made by David Ramsay in April 2006, and now it appears that he is still trying to direct the affairs of the OPP today. Unfortunately, Mr. Bryant didn't stop at giving native criminals a free pass, the Brown-Chatwell suit also alleges he played a role in ensuring the military would not be called in to protect frantic residents in Caledonia from the lawlessness...

### **Former Solicitor General makes deal not to call in military to protect Caledonia**

Other Ministers in McGuinty's Government have also weighed in to influence policing in Caledonia or at least to limit the options that the OPP would have. On May 03, 2006, the former Minister of Community Safety and Correctional Services Monte Kwinter provided a written undertaking to the protesters and to the Haudenosaunee Six Nations Confederacy Council that the Crown would not ask the Federal Government to provide military support to the O.P.P. with respect to Douglas Creek Estates in Caledonia. Monte Kwinter states in the letter the following:

I wish to advise you that I have sent a letter to my federal counterpart where I have specifically stated that I am not asking for military support from the federal government in relation to outstanding matters concerning the Douglas Creek lands in Caledonia. I trust that this letter may assist in the local resolution of outstanding issues.

Letter to Haudenosaunee Six Nations Confederacy Council, May 03/06 by:  
Monte Kwinter, Minister of Community Services and Correctional Services  
<http://www.caledoniawakeupcall.com/documents/NoMilitary-May03-06.pdf>

The solicitor acting for Caledonia residents Dave Brown and Dana Chatwell provides a startling overview of alleged interference in policing by three McGuinty cabinet ministers and their potential liability for doing so:

#### Misfeasance in Public Office

113. The agreement by the Minister of Aboriginal Affairs made with the native protestors and the Haudenosaunee Six Nations Confederacy and Council on or about April 21, 2006, not to proceed any further with any criminal charges arising from the raid by the O.P.P. on April 20,

2006 is outside of his authority and improperly interferes with the lawful duties of police officers of the O.P.P., the duties of Commissioner Boniface, Commissioner Fantino, and Inspector Haggith and the duties and obligations of the Attorney General of Ontario and constitutes misfeasance in public office.

114. The Plaintiffs plead that the agreement made by the Minister of Aboriginal Affairs was made with the knowledge and acquiescence of the Attorney General of Ontario and that such acquiescence constitutes a violation of s. 5(b) of the Ministry of the Attorney General Act, R.S.O. 1990, c. M.17, as an administration of public affairs that is contrary to law and constitutes misfeasance in public office.

115. Under s. 3(2) of the Police Services Act, the Solicitor General for Ontario, now the Minister of Community Safety and Correctional Services, has a duty to ensure that adequate and effective police services are provided at the municipal and provincial levels. The Minister has failed to ensure that the O.P.P. has sufficient police services to carry out the following:

- a. the enforcement of the Orders of Justice Barry H. Matheson dated March 3, 2006 and the Orders of Justice T. David Marshall dated March 9, 17 and 28, 2006;
- b. to ensure that Argyle Street south was free of nuisance and open for passage; and
- c. protect the Plaintiffs.

116. The written undertaking given by the Minister of Community Safety and Correctional Services to the native protestors and the Haudenosaunee Six Nations Confederacy and Council on May 3, 2006 not to ask the federal government to provide military support to the O.P.P. at Douglas Creek Estates was in excess of his authority as Minister of Community Safety and Correctional Services and was a wrongful interference with the lawful duties of Commissioners Boniface and Fantino and Inspector Haggith and constitutes misfeasance in public office.

117. The Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services and the Attorney General must carry out their duties within the authority provided to them by their governing legislation.

118. The Plaintiffs plead that the O.P.P., Commissioners Boniface and Fantino, and Inspector Haggith have not exercised their discretion but have abdicated their responsibilities and duties and have simply complied with the direction of politicians, of native protestors and of the Haudenosaunee Six Nations Confederacy Council or other native groups.

119. The Minister of Community Safety and Correctional Services, the Minister of Aboriginal Affairs, the Attorney General, and the O.P.P. engaged in a course of conduct which actively protected and condoned unlawful and criminal conduct and activity of the protestors and failed to protect the rights of the Plaintiffs as citizens of Canada, Ontario and Haldimand County, denying the Plaintiffs the equal protection that they are entitled to under the law in a free and democratic society. Said conduct constitutes misfeasance in public office.

120. The installation of the surveillance camera in the kitchen of the Residence, the deliberate misrepresentation with respect to the installation of surveillance cameras by the O.P.P. and the O.P.P. misleading the Plaintiffs in order to obtain the Plaintiff's keys to the Residence constitute an abuse of public office and misfeasance in public office by the O.P.P.

121. The conduct of Commissioner Boniface, Commissioner Fantino, Inspector Haggith, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, the Attorney General, and the O.P.P. as pleaded herein was deliberate conduct in the capacity as

public officers which was known to them to be inconsistent with the obligations of their office and which constituted a breach of statutory provisions for improper purposes or motives. The improper purposes or motives include political gain, designing and implementing plans for police work which protects unlawful conduct, a desire to see the Plaintiffs removed from the area of Douglas Creek Estates, and because the Plaintiffs refused to comply with the desires and wishes of the said public officers, among other things.

122. Commissioner Boniface, Commissioner Fantino, Inspector Haggith, the Minister of Aboriginal Affairs, the Minister of Community Safety and Correctional Services, and the Attorney General and the officers of the O.P.P. were aware that their conduct was likely to harm the Plaintiffs. They acted with conscious disregard for the Plaintiffs and their conduct contributed to the damages suffered by the Plaintiffs.

123. Pursuant to the Proceedings Against the Crown Act, Her Majesty the Queen in Right of Ontario is liable for the torts committed by her servants and agents as described herein.

Brown, Chatwell Statement of Claim, July 18/07, p47, para 113  
<http://voiceofcanada.files.wordpress.com/2008/02/chatwell-amended.pdf>

News of the Brown-Chatwell lawsuit and some of the outrageous conduct alleged to have been committed by the OPP – including the placement of a video camera in the Brown-Chatwell home without their consent - was reported by media in the weeks prior to the October 2007 election. Despite the looming election, however, not a single media outlet – to the best of our knowledge - thought it important to report the serious allegations against three of McGuinty's cabinet ministers.

## Summary

- Government may play a role in directing the police to uphold the law as required by the Ontario Police Services Act, the Charter of Rights, and the Human Rights Code.
- The McGuinty government has interfered with policing in Caledonia in an allegedly illegal manner, and continues to do so.
- Commissioner Fantino has made several attempts to influence and/or intimidate Haldimand officials into remaining silent on matters of interest to their constituents .

## Myth #4: Constitutional Supremacy of Aboriginal rights

### Constitutional supremacy of the rule of law

#### Preamble to the Canadian Charter of Rights and Freedoms

[http://laws.justice.gc.ca/en/const/annex\\_e.html#l](http://laws.justice.gc.ca/en/const/annex_e.html#l)

*Whereas Canada is founded on principles that recognize the supremacy of God and the rule of law:*

It is from this important affirmation that Canada is a nation of laws that all rights flow, including the special rights of Aboriginals.

### Aboriginal rights under s. 35(1) of the Constitution Act

The unique relationship of Aboriginals with and within Canada is recognized with a special protection for their traditional rights built into Section 35(1) of the Constitution Act.

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Section 25 of the Charter of Rights takes this into account:

#### s. 25 of Canadian Charter of Rights and Freedoms

[http://laws.justice.gc.ca/en/const/annex\\_e.html#l](http://laws.justice.gc.ca/en/const/annex_e.html#l)

The guarantee of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada.

But, what are Aboriginal rights? Do they include the right to commit crimes against non-Aboriginals? The right to violate the Charter rights of other citizens? Are they subject to limitations? Does a right granted to one Aboriginal group apply to all?

### Definition of Aboriginal Rights – *R. v. Van der Peet*

The Supreme Court decision in the case of *R. v. Van der Peet* upheld the conviction of a native who was charged with illegally selling 10 salmon. The decision includes an exhaustive discussion of the history and nature of Aboriginal rights as guaranteed in the Constitution:

#### **R. v. Van der Peet, [1996]**

<http://scc.lexum.umontreal.ca/en/1996/1996rcs2-507/1996rcs2-507.html>

#### *The Aboriginal Right*

(Para 4) To be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right. A number of factors must be considered in applying the “integral to a distinctive culture” test. The court must take into account the perspective of the aboriginal peoples, but that perspective must be framed in terms cognizable to the Canadian legal and constitutional structure.

(Para 7) The practices, customs and traditions which constitute aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact with European society.

(Para 10) Courts considering a claim to the existence of an aboriginal right must focus specifically on the practices, customs and traditions of the particular aboriginal group claiming the right. Claims to aboriginal rights are not to be determined on a general basis.

(Para 13) A practice, custom or tradition will not meet the standard for recognition of an aboriginal right, however, where it arose solely as a response to European influences.

93. Having concluded that the aboriginal rights of the Sto:lo do not include the right to exchange fish for money or other goods, I would dismiss the appeal and affirm the decision of the Court of Appeal restoring the trial judge's conviction of the appellant for violating s. 61(1) of the Fisheries Act.

## Limitations on Aboriginal Rights – R. v. Badger

### R. v. Badger, [1996]

<http://scc.lexum.umontreal.ca/en/1996/1996rcs1-771/1996rcs1-771.html>

Three natives were charged for hunting for food on privately owned lands within tracts surrendered during a treaty. Two had their convictions upheld, the third was acquitted. The Badger decision, as in Van der Peet, clearly shows that governments have the authority to limit Aboriginal rights for the good of society.

(Para 8) The appeals of Messrs. Badger and Kiyawasew must be dismissed. The land was being visibly used. Since they did not have a right of access to these particular tracts of land, their treaty right to hunt for food did not extend there. The limitations on hunting set out in the Act accordingly did not infringe upon their existing right and were properly applied. The geographical limitations upon the Treaty right to hunt for food did not affect Mr. Ominayak who was hunting on land not being put to any visible use.

(Para 10) The public safety regulations, which formed the first step of a two-step licensing scheme, did not infringe any aboriginal or treaty rights. These regulations required all hunters to take gun safety courses and pass hunting competency tests and accordingly protected all hunters, including Indians. Reasonable regulations aimed at ensuring safety do not infringe aboriginal or treaty rights to hunt for food.

(Para 18) The *Sparrow* test, developed in the context of s. 35(1), protects aboriginal rights while also permitting governments to legislate for legitimate purposes where the legislation is a justifiable infringement on those protected rights.

## Conclusions

The guidance offered by the Supreme Court of Canada in *R. v. Van der Peet* and *R. v. Badger* appears to support the following general conclusions:

- Claims for Aboriginal rights must be based on customs and practices linked back to before contact with European society.
- Reasonable limits may be placed on Aboriginal rights.

- Aboriginal rights are determined on an individual band basis, and are not granted generally to all Aboriginals.
- Aboriginal rights do not include the right to violate the Charter rights of other Canadian citizens. If it is reasonable to place a limit on the selling of fish, or to require natives to take gun safety courses it must be concluded that Aboriginal rights do not include the use of violence, intimidation, or other criminal acts against society.

### **Native claims subject to same laws - *Canada v. Lameman***

In *Canada v. Lameman*, the Supreme Court of Canada held that the Aboriginal claim should be dismissed because it had no chance of succeeding due to the fact that it was statute-barred under the Limitations Act. The court reaffirmed an earlier Supreme Court decision that said Aboriginal claims are subject to the Act as would any other before the Court.

#### **Canada (Attorney General) v. Lameman, [2008]**

<http://scc.lexum.umontreal.ca/en/2008/2008scc14/2008scc14.html>

[13] This Court emphasized in *Wewaykum Indian Band v. Canada*, [2002] 4 S.C.R. 245, 2002 SCC 79, that the rules on limitation periods apply to Aboriginal claims. The policy behind limitation periods is to strike a balance between protecting the defendant's entitlement, after a time, to organize his affairs without fearing a suit, and treating the plaintiff fairly with regard to his circumstances. This policy applies as much to Aboriginal claims as to other claims, as stated at para. 121 of *Wewaykum*:

[14] Pursuant to s. 13 of the *Limitations Act*, S.A. 1996, c. L-15.1, Aboriginal claims are governed by the previous *Limitation of Actions Act*.

[19] A motion for summary judgment must be judged on the basis of the pleadings and materials actually before the judge, not on suppositions about what might be pleaded or proved in the future. **This applies to Aboriginal claims as much as to any others.** [Authors' emphasis]

### **Summary**

- The guidance offered by the Supreme Court of Canada in *Canada v. Lameman* appears to support the conclusion that natives are accorded no special privileges or exemptions under the law with respect to the processing of land claims.

### **Conclusions**

- Aboriginal rights as guaranteed by the Constitution are subject to the supremacy of the rule of law, and to strict limitations that do not include the right to violate the Charter rights of other citizens.

## Myth # 5: 'Duty to Consult and Accommodate'

### *Haida Nation v. British Columbia*

Several Supreme Court decisions have held the Crown to a high standard in consulting with native peoples and accommodating their concerns. The *Haida Nation* case, below was intended by the Court to set out a framework for fulfilling these duties in cases where land is subject to a "credible but unproven claim." The action was brought by a native group against the Province of British Columbia and a forestry company named Weyerhaeuser with respect to its contract to cut timber on Crown land under claim.

#### **Haida Nation v. British Columbia (Minister of Forests) [2004]**

<http://scc.lexum.umontreal.ca/en/2004/2004scc73/2004scc73.html>

##### *B. The Source of a Duty to Consult and Accommodate*

25. Put simply, Canada's Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by s. 35 of the *Constitution Act, 1982*. The honour of the Crown requires that these rights be determined, recognized and respected. This, in turn, requires the Crown, acting honourably, to participate in processes of negotiation. While this process continues, the honour of the Crown may require it to consult and, where indicated, accommodate Aboriginal interests

37. Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate.

(Intro, para 6) "...the [Crown's] duty to consult and accommodate applies to the provincial government."

### **Do third parties have a duty to consult and accommodate?**

The 'Duty to Consult' as set out in *Haida* is often quoted by native media and people as imposing an obligation on landowners to consult with them before improving their properties. Developers have been accused by natives of breaking the law by failing or refusing to do so, and have had their worksites shut down by illegal occupations under threat of violence should they continue to work without paying demanded fees.

The Supreme Court, however, specifically addressed this issue, providing clear statements that third parties have NO duty to consult or accommodate, that only the Crown is obligated to do so, and only the Crown is liable for failing to do so.

### **Limitations on the duty to consult and accommodate**

- 56. "...third parties are under no duty to consult or accommodate Aboriginal concerns..."
- 10. "The duty to consult and, if appropriate, accommodate cannot be discharged by delegation to Weyerhaeuser. Nor does Weyerhaeuser owe any independent duty to consult with or accommodate the Haida people's concerns...."
- (Intro, para 5) Third parties cannot be held liable for failing to discharge the Crown's duty to consult and accommodate. The honour of the Crown cannot be delegated, and the legal responsibility for consultation and accommodation rests with the Crown.

- 55. Finally, it is suggested...that third parties should be held to the duty in order to provide an effective remedy. The first difficulty with this suggestion is that remedies do not dictate liability. Once liability is found, the question of remedy arises. But the remedy tail cannot wag the liability dog. We cannot sue a rich person, simply because the person has deep pockets or can provide a desired result.
- (Intro, para 4) The Crown is not under a duty to reach an agreement; rather, the commitment is to a meaningful process of consultation in good faith.
- 42. As for Aboriginal claimants, they must not frustrate the Crown's reasonable good faith attempts, nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached.
- 50. "...the Crown must balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests."
- 48. This process [of consultation] does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal "consent" spoken of in *Delgamuukw* is appropriate only in cases of established rights, and then by no means in every case. Rather what is required is a process of balancing interests, of give and take.
- 53. The Crown alone remains legally responsible for the consequences of its actions and interactions with third parties, that affect Aboriginal interests. The Crown may delegate procedural aspects of consultation to industry proponents seeking a particular development; this is not infrequently done in environmental assessments. However, the ultimate legal responsibility for consultation and accommodation rests with the Crown.

## A lawyer's opinion

Lawyer John Findlay of Findlay McCarthy is a Caledonia resident, and author of the Caledonia Class Action suit which is seeking damages on behalf of those who were affected by the lawlessness of native protesters associated with their occupation of the Douglas Creek Estates in 2006, and the failure of the Ontario Provincial Police to properly address it.

Findlay cites *Haida Nation* in his Plaintiff's Factum as he argues that the courts have not sanctioned government or police to abandon their responsibilities to protect citizens during land claim disputes. He also provides his interpretation of the Supreme Court's decision with respect to the rights of third parties.

### **Caledonia Class Action Plaintiff's Factum, Jan 12/07**

John Findlay, Findlay McCarthy

<http://www.caledoniaclassaction.com/plaintiffs%20factum.pdf>

77. The line of cases which impose upon the Province of Ontario a duty to consult with Aboriginal peoples and accommodate their interest where Aboriginal claims are being made stops short of imposing a duty upon the Crown to act in the Aboriginal group's interest, as a fiduciary, and does not in any way sanction breaches of the law or authorize Crown authorities to abrogate their duties.

*Haida Nation v. British Columbia (Minister of Forests)* [2004] S.C.J. No. 70, Book of Authorities, Tab 39

NOTE: A 'fiduciary' is "a person or body to whom power or property is entrusted for the benefit of another" who is owed various duties. A real estate agent, for example, owes his/her client the fiduciary duties of accountability; confidentiality; competence; good faith/full disclosure; loyalty and obedience.

*Ontario Real Estate Association, Real Estate Encyclopedia, 2002, p237-239*

78. The Supreme Court of Canada has made it clear that third parties to Aboriginal treaty claims have no duty to consult or accommodate the group that is making the claim. Further, third parties are not subject to any duty or are required to make any accommodation to enable the Province to obtain a remedy to an Aboriginal claim. It is up to the Province to find that remedy without affecting or compromising third party interests.

*Haida Nation v. British Columbia (Minister of Forests) [2004], per McLachlin C.J. at paras 52 to 56*

Caledonia Class Action Plaintiff's Factum, Jan 12/07  
<http://www.caledoniaclassaction.com/plaintiffs%20factum.pdf>

## Summary

- The Crown – federal and provincial governments – has a duty to treat native people honourably and to consult with them for credible claims that are not yet proven.
- Natives must act in good faith and not frustrate the consultation process.
- The Crown is not under a duty to reach an agreement, only to consult in good faith.
- It is the Crown that has the duty and legal liability to consult and accommodate the concerns of aboriginals, not third parties such as municipalities and private property owners.
- Natives cannot impose a duty or liability on third parties such as builders they are not subject to simply because it's easy or convenient.
- Natives do not have veto over development.

## Applying the Haida Nation decision - TRTFN v. British Columbia

### Taku River Tlingit First Nation v. British Columbia, [2004]

<http://scc.lexum.umontreal.ca/en/2004/2004scc74/2004scc74.html>

The *Taku River Tlingit First Nation* (TRTFN) decision by the Supreme Court applied the *Haida Nation* precedent in dismissing an action brought to stop Redfern Resources Ltd. from building a road through their traditional territory in connection with their reopening of an old mine.

(Intro, para 3) The TRTFN's claim is relatively strong, supported by a *prima facie* case, as attested to by its inclusion in the Province's treaty negotiation process. While the proposed road is to occupy only a small portion of the territory over which the TRTFN asserts title, the potential for negative derivative impacts on the TRTFN's claims is high.

22. On the principles discussed in *Haida*, these facts mean that the honour of the Crown placed the Province under a duty to consult with the TRTFN in making the decision to reopen the Tulsequah Chief Mine. It did so, and proceeded to make accommodations. The Province was not under a duty to reach agreement with the TRTFN, and its failure to do so did not breach the obligations of good faith that it owed the TRTFN.

## Summary

- The Court ruled that the Province had done their best to consult and accommodate, and that it was under no duty to reach an agreement with the TRTFN even though there was a strong case supporting the land claim, and even though there was a potential for serious damage to the TRTFN interests.
- The Court refers to the “Province’s” duty and the “Crown’s” obligations throughout the TRTFN decision, reflecting the *Haida* doctrine that third parties, i.e. Redfern Resources, had no duty to consult or accommodate Aboriginal concerns.

## Conclusions

The guidance offered by the Supreme Court of Canada in *Haida Nation* and *Taku River Tlingit First Nation* appears to support several general conclusions:

- The Crown – provincial and federal governments – have the duty to consult and accommodate, not third parties.
- Native groups cannot impose a duty on third parties – be it a municipality, business, individual or land owner - to live up to the obligations of the Crown. They have no right to demand money in return for the right to build. No right to trespass and occupy private property or commit other criminal acts. No right to interfere in the operation of a business. They must take up their dispute with the Crown, not with the third party.
- Third parties are subject to the laws of the Crown, not to the demands – legal or illegal - of native groups.
- The business of the province does not come to a stop when a land claim has been made.

## Myth # 6: Land Owners Can do Nothing About Illegal Occupations

### Join CANACE as a Member Advocate – for free

In light of recent events in Caledonia and Deseronto, some people have written to us wondering what they can do to help us restore Ontario as a place where all people are equal before the law. We have other, very practical steps you can take, but your first step is to join CANACE for free and add your name to our growing list of Member Advocates.

Here's why...

#### 1. CANACE was there from the beginning

For more than 18 months, the people who founded the Canadian Advocates for Charter Equality (CANACE) have – with vital support of proud and patriotic Canadians in and outside of Caledonia – dedicated many thousands of hours to researching, exposing and protesting the lies used by the OPP and the McGuinty government to justify the racially-based policing practices that have torn apart Ontario communities and traumatized thousands of lives, native and non-native – in the process.

#### 2. CANACE exposes the lies behind racially-based policing

CANACE has taken the lead in exposing lies by the Ontario Provincial Police and the McGuinty government that are so ambitious in their scope and so serious in their ramifications for Ontario and for Canada that it is difficult to believe they could possibly be true:

1. In early 2007 we began an investigation into allegations by long-time Ipperwash resident and community leader Mary-Lou LaPratte that the Ipperwash Inquiry had suppressed evidence from residents. On March 14, 2007 we presented our findings at a Queen's Park news conference when we released our [Ipperwash Papers project](http://www.ipperwashpapers.ca) (www.ipperwashpapers.ca). The suppression of evidence was worse than we thought, and it's impact on the rest of Ontario facing land claim disputes has been disastrous.

I urge you to read CANACE's 2-page summary report, '[Ontario Deserves a Full and Fair Inquiry Into Landclaim Lawlessness](http://ucare.files.wordpress.com/2008/04/handout-ipperwash-april22-08.pdf),' (http://ucare.files.wordpress.com/2008/04/handout-ipperwash-april22-08.pdf) on the failures of the Ipperwash Inquiry so you can understand the vital importance of helping us to pressure MPPs to expose the truth before lives are lost and more communities victimized.

2. Land owners have reported that OPP officers are telling them they cannot remove native occupiers from their property because they have the right to occupy private property under the 'colour of right' which, under unique and rare circumstances, may provide a defence to an honest mistake in using someone's land without permission.

While conducting research into this so-called 'defence,' we discovered the stunning legal opinion cited in this report submitted to the Ipperwash Inquiry by Ontario's Ministry of the Attorney General that proves, not only has the OPP been lying about the validity of the 'colour of right' as a defence to native occupations, they are doing so with the full knowledge of the Ontario government.

CANACE provided the Mayor of Haldimand with a copy of this document and she, in turn, was able to expose the truth by confronting Aboriginal Affairs Minister, Michael Bryant on April 22, 2008 by reading the final paragraph from the opinion which concluded as follows:

*“There is no jurisprudence, even as it has evolved to date, that supports the view that the concept of “colour of right” entitled the Aazhoodena to act as they did in occupying Ipperwash Provincial Park in September, 1995.”*

Mr. Bryant, who was none other than Ontario’s Attorney General at the time of the Ipperwash Inquiry, was stunned by the Mayor’s question and stumbled through a disjointed, muddled reply that said, in essence, We don’t care what the law is, we’re going to do things our way. A transcript of the Minister’s reply can be found in the CANACE report, ‘[Proof of Race Based Policing in Ontario](http://ucare.files.wordpress.com/2008/04/report-proof-racebased-policing-apr2708.pdf).’ (<http://ucare.files.wordpress.com/2008/04/report-proof-racebased-policing-apr2708.pdf>)

CANACE research and activism forced the Minister of Aboriginal Affairs to reveal – for all to see - the government’s complete lack of respect for the law and for innocent victims of native crimes. Although ‘*Legalized MYTHS of Illegal Occupations*’ was already planned for release, we felt the need to release this evidence as soon as possible via ‘*Proof of Race Based Policing in Ontario*.’ It was downloaded more than 4,600 times within the first three days of its release.

### **3. CANACE gathers and shares evidence**

CANACE is like an iceberg; our most effective activities are rarely visible. In addition to our organized public protests, most of our time is spent working behind the scenes using various legal means to hold the government and OPP accountable. We have used private prosecutions, Small Claims Court actions, complaints to bodies such as the Ontario Human Rights Commission, the Ombudsman’s Office and to the Ontario Civilian Commission on Police Services as tools to oppose race-based policing.

We lobby both media and politicians, providing information and evidence behind the scenes, doing our best to convince them to take strong stands on the rule of law on behalf of the citizens of Ontario. We also keep CSIS informed of potential terror threats from native extremists using our various sources.

Thanks to CANACE activism in the face of ongoing occupations and associated lawlessness the mainstream media have now realized that innocent residents are the true victims in land claim disputes, and that native extremism poses a great danger to Canada. One only has to look at recent news coverage to know that enormous scrutiny is slowly being brought to bear on those responsible for allowing Ontario to descend into chaos. Canadian media and government agencies are the biggest users of our various websites.

### **4. CANACE educates the public on the dangers of native extremism and OPP policies**

Our evidence is also shared publicly to educate Canadians about the dangers of allowing lawlessness to be used instead of the courts. We presented evidence associated with the economic costs of landclaim lawlessness in our first report, *The Cost of Native Occupations*. Our second report, *The Human Costs of Illegal Occupations*, explains how innocents in Caledonia and Ipperwash –native and non-native – have paid the awful price for OPP and government negligence. This report has been downloaded over 20,000 times since its release in December 2007.

- [The Human Costs of Illegal Occupations](http://www.caledoniawakeupcall.com/canace/HumanCost.pdf) (<http://www.caledoniawakeupcall.com/canace/HumanCost.pdf>)
- [The Cost of Native Occupations](http://www.caledoniawakeupcall.com/canace/CostofNativeOccupations.pdf) (<http://www.caledoniawakeupcall.com/canace/CostofNativeOccupations.pdf>)

## 5. CANACE believes that non-violent resistance will defeat those who violate our rights

If you live in or near a town affected by native lawlessness, resist the urge to take the law into your own hands. Resist the urge to say or write words of hate. CANACE believes in the use of non-violent protest. It is the only way. We are inspired by one of the greatest civil rights leaders in history who could have easily chosen the path of hate and violence, but is remembered today for shocking the conscience of his country by encouraging Black people to confront injustice with love and non-violence.

Dr. King could have chosen the path urged on him by well meaning people who would have preferred that he do nothing, but this path was just as unconscionable to him as the use of violence. The images of Blacks being attacked by police dogs and fire hoses simply for demanding the dignity of human rights did more to bring about change than guns or meaningless letters to politicians begging for justice could ever have accomplished.

You can make a difference by joining CANACE and supporting our work in lobbying politicians and media to hold those responsible for this shameful period in Ontario's history accountable for their conduct.

### **You can help your community and Canada by helping CANACE**

Ontario communities need your voice, and they need it NOW. The best way to support the struggle to restore the rule of law and justice is to join the Canadian Advocates for Charter Equality by becoming a Member Advocate, and you can even do it for free at [www.CANACE.ca/](http://www.CANACE.ca/).

## **Private Prosecutions Under the Criminal Code of Canada**

When OPP officers have refused to lay criminal charges against native lawbreakers, CANACE founders have used 'private prosecutions' to file charges with the court. The process involves gathering evidence, swearing out a 'private information' before a Justice of the Peace and then presenting evidence before a judge.

Private prosecutions are, according to the Department of Justice Canada, an important constitutional safeguard:

### **Department of Justice Canada**

The Federal Prosecution Service DESKBOOK, Part VI, s. 26.1  
<http://canada.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch26.html#26>

The right of a private citizen to lay an information, and the right and duty of the Attorney General to supervise criminal prosecutions are both fundamental parts of our criminal justice system. The right of a citizen to institute a prosecution for a breach of the law has been called "a valuable constitutional safeguard against inertia or partiality on the part of authority."

If your development is experiencing illegal occupations or work stoppages, please review the 'Your Help is Needed' form at the end of this report with your lawyer and decide if you wish to authorize CANACE to enter your property and gather evidence so that we, if warranted, can lay charges under the Criminal Code of Canada on behalf of the people of Ontario.

As noted above, CANACE has experience in filing private prosecutions however, you too, have a similar right.

Here are some sections of the Criminal Code that could be applicable to a land owner coping with illegal occupations or work stoppages:

**Mischief**

**430.** (1) Every one commits mischief who wilfully

(a) destroys or damages property;

(b) renders property dangerous, useless, inoperative or ineffective;

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

**Punishment**

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.

***DEFENCE OF PROPERTY***

**Defence of personal property**

**38.** (1) Every one who is in peaceable possession of personal property, and every one lawfully assisting him, is justified

(a) in preventing a trespasser from taking it, or

(b) in taking it from a trespasser who has taken it,

if he does not strike or cause bodily harm to the trespasser.

**Assault by trespasser**

(2) Where a person who is in peaceable possession of personal property lays hands on it, a trespasser who persists in attempting to keep it or take it from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation.

R.S., c. C-34, s. 38.

**Defence with claim of right**

**39.** (1) Every one who is in peaceable possession of personal property under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending that possession, even against a person entitled by law to possession of it, if he uses no more force than is necessary.

**Defence without claim of right**

(2) Every one who is in peaceable possession of personal property, but does not claim it as of right or does not act under the authority of a person who claims it as of right, is not justified or protected from criminal responsibility for defending his possession against a person who is entitled by law to possession of it.

R.S., c. C-34, s. 39.

### **Defence of dwelling**

**40.** Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority.

R.S., c. C-34, s. 40.

### **Defence of house or real property**

**41.** (1) Every one who is in peaceable possession of a dwelling-house or real property, and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.

### **Assault by trespasser**

(2) A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling-house or real property, or a person lawfully assisting him or acting under his authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation.

R.S., c. C-34, s. 41.

### **Assertion of right to house or real property**

**42.** (1) Every one is justified in peaceably entering a dwelling-house or real property by day to take possession of it if he, or a person under whose authority he acts, is lawfully entitled to possession of it.

### **Assault in case of lawful entry**

(2) Where a person

(a) not having peaceable possession of a dwelling-house or real property under a claim of right, or

(b) not acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,

assaults a person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be without justification or provocation.

### **Trespasser provoking assault**

(3) Where a person

(a) having peaceable possession of a dwelling-house or real property under a claim of right, or

(b) acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,

assaults any person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be provoked by the person who is entering.

R.S., c. C-34, s. 42.

### **Trespassing at night**

**177.** Every one who, without lawful excuse, the proof of which lies on him, loiters or prowls at night on the property of another person near a dwelling-house situated on that property is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 173.

### **Theft**

**322.** (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

### **Disguise with intent**

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., 1985, c. C-46, s. 351; R.S., 1985, c. 27 (1st Supp.), s. 48.

## ***BREAKING AND ENTERING***

### **Breaking and entering with intent, committing offence or breaking out**

**348.** (1) Every one who

(a) breaks and enters a place with intent to commit an indictable offence therein,

(b) breaks and enters a place and commits an indictable offence therein, or

(c) breaks out of a place after

(i) committing an indictable offence therein, or

(ii) entering the place with intent to commit an indictable offence therein,

is guilty

(d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life, and

(e) if the offence is committed in relation to a place other than a dwelling-house, of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

### **Presumptions**

(2) For the purposes of proceedings under this section, evidence that an accused

(a) broke and entered a place or attempted to break and enter a place is, in the absence of evidence to the contrary, proof that he broke and entered the place or attempted to do so, as the case may be, with intent to commit an indictable offence therein; or

(b) broke out of a place is, in the absence of any evidence to the contrary, proof that he broke out after

(i) committing an indictable offence therein, or

(ii) entering with intent to commit an indictable offence therein.

### **Definition of “place”**

(3) For the purposes of this section and section 351, "place" means

(a) a dwelling-house;

(b) a building or structure or any part thereof, other than a dwelling-house;

(c) a railway vehicle, a vessel, an aircraft or a trailer; or

(d) a pen or an enclosure in which fur-bearing animals are kept in captivity for breeding or commercial purposes.

R.S., 1985, c. C-46, s. 348; R.S., 1985, c. 27 (1st Supp.), s. 47; 1997, c. 18, s. 20.

### **Aggravating circumstance — home invasion**

**348.1** If a person is convicted of an offence under any of subsection 279(2) or sections 343, 346 and 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,

(a) knew that or was reckless as to whether the dwelling-house was occupied; and

(b) used violence or threats of violence to a person or property.

2002, c. 13, s. 15.

### **Being unlawfully in dwelling-house**

**349.** (1) Every person who, without lawful excuse, the proof of which lies on that person, enters or is in a dwelling-house with intent to commit an indictable offence in it is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.

## **Presumption**

(2) For the purposes of proceedings under this section, evidence that an accused, without lawful excuse, entered or was in a dwelling-house is, in the absence of any evidence to the contrary, proof that he entered or was in the dwelling-house with intent to commit an indictable offence therein.

R.S., 1985, c. C-46, s. 349; 1997, c. 18, s. 21.

## **Entrance**

**350.** For the purposes of sections 348 and 349,

(a) a person enters as soon as any part of his body or any part of an instrument that he uses is within any thing that is being entered; and

(b) a person shall be deemed to have broken and entered if

(i) he obtained entrance by a threat or an artifice or by collusion with a person within, or

(ii) he entered without lawful justification or excuse, the proof of which lies on him, by a permanent or temporary opening.

R.S., c. C-34, s. 308.

## **Possession of break-in instrument**

**351.** (1) Every one who, without lawful excuse, the proof of which lies on him, has in his possession any instrument suitable for the purpose of breaking into any place, motor vehicle, vault or safe under circumstances that give rise to a reasonable inference that the instrument has been used or is or was intended to be used for any such purpose, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

## **Disguise with intent**

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

R.S., 1985, c. C-46, s. 351; R.S., 1985, c. 27 (1st Supp.), s. 48.

## **Extortion**

**346.** (1) Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

### **Extortion**

(1.1) Every person who commits extortion is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

### **Colour of right**

(2) No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.

### **Occupant injuring building**

**441.** Every one who, wilfully and to the prejudice of a mortgagee or an owner, pulls down, demolishes or removes all or any part of a dwelling-house or other building of which he is in possession or occupation, or severs from the freehold any fixture fixed therein or thereto, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

### **Arson — damage to property**

**434.** Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 434; 1990, c. 15, s. 1.

### **Arson — own property**

**434.1** Every person who intentionally or recklessly causes damage by fire or explosion to property that is owned, in whole or in part, by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years, where the fire or explosion seriously threatens the health, safety or property of another person.

1990, c. 15, s. 1.

## The 'Barrett' Proclamation

### HALDIMAND PROCLAMATION FOR PEACE, ORDER AND GOOD GOVERNMENT

February 2008

WHEREAS, since February 28, 2006, people across Haldimand County and beyond have been subjected to arson, extortion, barricades, land seizures, occupations, militant protests, and related harassment, intimidation, mob violence and threats to public safety.

AND WHEREAS, the community safety, social and economic life, of Haldimand and neighbouring residents, has declined because of the climate of fear, chaos and uncertainty generated by various acts of lawlessness and related intimidation.

AND WHEREAS, there is a perception, and evidence, of two categories of law, of justice, of police protection, and government action based on one's race and geographical location within Haldimand County and beyond.

AND WHEREAS, the lawlessness, and the less than adequate prevention and response on the part of police and other government authorities regarding these illegal acts appears to be tolerated, and perhaps condoned, by provincial and federal government policy.

AND WHEREAS, both the provincial and federal governments have legislative, regulatory, enforcement, decision-making and policy-making capability beyond the mandate and scope of Haldimand County.

NOW THEREFORE, BE IT HEREBY RESOLVED, that Haldimand County, in support of all of its residents, proclaim and request, with utmost urgency, that the following actions be taken where mandated at the provincial and federal level:

1. Restore police patrol, response and enforcement as well as justice, order and the rule of law, including court injunctions, throughout Haldimand County regardless of one's race or geographical location.
2. Cease all land dispute negotiations and related actions until extortion, and illegal occupations and protests are terminated.
3. Budget and publicly set timelines and deadlines to continue to resolve legitimate land disputes expeditiously within a climate of openness, mutual respect, and justice for all affected.
4. Compensate individuals, businesses and the municipality for loss, insecurity, economic decline, and any other collateral damage stemming from provincial and federal decisions and policy, or lack thereof, that have eroded peace, order and good government in Haldimand County and beyond.

**Respectfully submitted, Toby Barrett, MPP Haldimand-Norfolk — February 11, 2008**

## **The Barrett Proclamation – an historic declaration against race-based policing**

The Barrett Proclamation, which acknowledged the realities of OPP race-based policing and its devastating effects in Caledonia and Haldimand County is surely one of the most stunning documents ever written by a Member of a Provincial Parliament in Canada.

Unfortunately, Haldimand Council voted not to ratify Toby Barrett's proclamation. Since that time, however, events in Deseronto and Caledonia may cause the council to reconsider their position. CANACE believes that builders and the public should pressure their respective municipal councils to ratify the Barrett Proclamation immediately, and request that it be presented in the Ontario Legislature in order that those who have brought such shame and lawlessness to our province can know that the people of Ontario will never rest until the rule of law is safe once again in Canada.

CANACE thanks Toby Barrett for speaking at the inaugural 'March for Freedom' protest on October 15, 2006; for making the Queen's Park Media Studio available to us for three news conferences; for his historic 'Haldimand Proclamation for Peace, Order and Good Government;' and for attending, and speaking at, the first public presentation of '*Legalized MYTHS of Illegal Occupations*' on May 07, 2008.

## Conclusion

In a democracy each of us must take a pro-active role in the defence of freedom, peace and liberty as Judge Marshall explained in a Cayuga courtroom on Aug. 8, 2006 when he stated:

I am reading this judgment in open court because it is a matter of such importance to the communities and to this court.

Ladies and gentleman we speak of the Rule of Law. This case deals with an issue that is arguably the pre-eminent condition of freedom and peace in a democratic society. It is upheld wherever in the world there is liberty.

The Rule of Law is a principle not well known to people, but this case shows its importance, not just to the communities involved here but also the Rule of Law should be appreciated by all Canadians.

The Rule of Law for our purposes can be simply stated. It is the rule that every citizen from the prime minister to the poorest of our people is equally subject to and must obey the law.

It is a rule of general application. Whenever it is broken – even in a small way, we say there is injustice. We see the unfairness. It is a rule that is woven into every part of our social contract to live peacefully together. Even the small tear in the cloth of our justice system spoils the whole fabric of society.

Who is responsible for upholding the Rule of Law? The answer, of course, is, each of us. I and each of my neighbours are equally responsible.

But the courts have a central role. It is the courts who are the arbiters. The crown and the police play a role – but the courts have the difficult role of applying equally to everyone the laws passed by our elected representatives.

Judge Marshall Ruling on Aug 8, 2006 pg.2 – pg 15 in file  
<http://www.caledoniawakeupcall.com/court/MotionRecord-VolI.pdf>

### **The McGuinty/OPP approach isn't working**

The McGuinty/OPP approach to land claim lawlessness is not working. Recent events in Deseronto and Caledonia leave no doubt that the situation is escalating out of control, that someone will be killed if the current approach of dealing with land claim disputes is not stopped in its tracks.

After reading this report you may well come to the same conclusion as we did – that the McGuinty government has perpetrated the greatest, most expensive fraud in Canadian history in terms of economic and human costs. As CANACE's Director of Research, Mark Vandermaas said while preparing this report, "Once you strip away the myths and the lies they are predicated upon, the so-called 'justification' of race-based policing offered by the OPP and the McGuinty government is nothing more than liberalist-ideology-gone-insane hidden inside a house of cards surrounded by smoke and mirrors." The inescapable truth is, there was no legal justification for abandoning the citizens of Caledonia, Deseronto or Ipperwash to the rule of thugs. None.

Not only is the McGuinty/OPP approach not working, it never had a chance of doing so in the first place and now, thousands of people are paying the price for this failure to comprehend the basic principles of democracy.

## **It is time to stand together and demand an end to race-based policing**

The people behind CANACE - with the vital support of proud and loyal Canadians in and outside Caledonia - have devoted nearly two years of our lives to researching and exposing the truth about race-based policing at great personal cost. It is time that we work together. We must share our knowledge and stand up to demand the following:

1. That the 'Barrett Proclamation' be unanimously endorsed by the Opposition, and that it be presented in the Legislature as a demand, on behalf of the people of Ontario, that an end be put to racially-based policing. People in various communities need to pressure their local council members to endorse this proclamation in order to demonstrate unity and help raise public awareness.
2. That Julian Fantino and Michael Bryant be required to resign their positions as Commissioner of the OPP and Minister of Aboriginal Affairs respectively.
3. That the OPP be immediately ordered to enforce the law without regard to race or grievance; and that the Ombudsman's office and/or the Ontario Human Rights Commission be given a mandate - through emergency legislation if required - to oversee the eradication of racially and politically-based policies and practices within the force.
4. That an independent inquiry be held to make recommendations to ensure this shameful chapter in Ontario's history can never be repeated, and to make recommendations - respecting the rights of all citizens - for meeting our obligations to native peoples.

### **What to do Next**

A. Join CANACE to demonstrate unity, and to help create a larger movement to hold police and government accountable. Visit [www.canace.ca/](http://www.canace.ca/) to become a CANACE Advocate for free. Your financial support is most welcome as the lack of funds is a serious and chronic problem for the cause and for our families. Any support you provide helps to make reports like this - and the necessary activism, research and gathering of evidence - possible.

B. If your development is experiencing illegal occupations or work stoppages, please review the form on the following page with your lawyer and decide if you wish to authorize CANACE to enter your property and gather evidence so that we, if warranted, can lay charges under the Criminal Code of Canada on behalf of the people of Ontario.

C. Invite CANACE to speak to your group or organization. We stand ready to share with you some of our hard-won knowledge, experience and vast documentation we have accumulated during the struggle to restore the rule of law to Ontario. More importantly, we would like to share our vision and ideas for creating a province where the rights of all citizens – native and non-native – are respected, where violence and lawlessness are but a distant memory.

Please contact Gary McHale or Mark Vandermaas at [info@canace.ca](mailto:info@canace.ca) to make arrangements.

D. Become informed. If you have not already done so, please invest some time to read these CANACE reports available at [www.CANACE.ca](http://www.CANACE.ca):

- [The Human Costs of Illegal Occupations](#)
- [Ontario Deserves a Full and Fair Inquiry Into Landclaim Lawlessness](#)
- [How YOU can help restore justice in Ontario](#)

# Canadian Advocates for Charter Equality



When Freedom demands action

[www.CANACE.ca](http://www.CANACE.ca)

## Your Help is Needed

### Department of Justice Canada

The Federal Prosecution Service DESKBOOK, Part VI, s. 26.1  
<http://canada.justice.gc.ca/eng/dept-min/pub/fps-sfp/fpd/ch26.html#26>

The right of a private citizen to lay an information, and the right and duty of the Attorney General to supervise criminal prosecutions are both fundamental parts of our criminal justice system. The right of a citizen to institute a prosecution for a breach of the law has been called "a valuable constitutional safeguard against inertia or partiality on the part of authority."

As average citizens we are able to file private prosecution charges under the Criminal Code of Canada when we have evidence a crime has been committed. To be more efficient at this it would help us greatly if you would agree to the statements below.

I, \_\_\_\_\_

as the owner of \_\_\_\_\_  
name & address of development

in \_\_\_\_\_ Ontario, as of \_\_\_\_\_  
date

hereby agree that **CANACE and/or it's Founding Members including, but not limited to: Gary McHale, Mark Vandermaas, Jeff Parkinson and Merlyn Kinrade**

has/have my permission to use this signed document as evidence that I have not authorized any protester(s) or person(s) to trespass on or block access to my property listed above. Furthermore, I understand and agree that this form and the evidence gathered may be used to lay criminal charges against any person(s) who unlawfully hinders or delays development of my property.

I authorize CANACE to photograph or videotape my property and to have full access to my property to gather the evidence required.

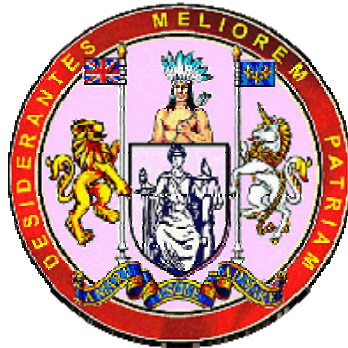
I have authority to bind the company.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

This report has been produced by CANACE, a non-profit organization committed to serving the Canadian public and protecting people against violations of the Charter of Rights and Freedoms.

## Canadian Advocates for Charter Equality www.CANACE.ca



### Three founding nations - One Constitution

CANACE – Canadian Advocates for Charter Equality - was formed after it became clear that all levels of Government were unwilling to deal with the ongoing violence and lawlessness that was occurring during illegal occupations. CANACE's mandate is a solid long-term strategy to bring about – through peaceful means - a change to the political will in Canada. CANACE was the inevitable evolution from average people on the street protesting to get media attention into a nation wide association committed to the fundamental belief that United We Stand, Divided We Fall.

CANACE was formed to accomplish Six Goals:

- 1) **Public Advocacy:** The history and ongoing problems of Ipperwash demonstrated that when the public is unaware of a situation the politicians will do little to help. Therefore, we work to ensure that the public is repeatedly reminded of both the economic & human cost of illegal occupations in Ontario.
- 2) **Educate the Public:** For the public to be able to have an informed opinion on the issues we are the only source that provides a forum for all sides to express their opinions. We are the only group that posts the views from all sides on our website and allow all sides to speak out at our public gatherings. We believe that democracy demands an educated public before there can truly be a political will for change.
- 3) **Legal Challenges:** Any long-term strategy needs to apply additional legal pressure on law enforcement agencies and governments. As such we actively gather evidence for Police Complaints, Human Rights Complaints and for Lawsuits. When police and governments try to intimidate people or defame people's character, their actions are directly countered by the various legal means within our Democracy.
- 4) **Uniting People:** The situation in Caledonia is not the problem but merely the symptoms of a greater problem within government and the real problem will not be resolved until there is a change in government attitudes. Such a change in attitudes will only occur when Canadians unite and demand change. No politicians will stand against institutionalized injustice until the public demands they do so.
- 5) **Ending Discrimination in Law Enforcement and Government Attitudes:** As Canadians we claim to believe in equality irrespective of race, religion or national origin. We must, therefore, bring about an end to all race-based policies within the police and government mindset.
- 6) **Valid Land Claims should be resolved immediately:** Not all claims are valid and as such the Government should immediately end any negotiations on any such claims and allow the courts to settle them. If needed special courts should be set up to fast track these claims. All valid claims should have a time limit applied to them and if they are not settled they should be passed to the courts. Far too many people with their own agendas, on both sides, have a vested interest to ensure land claims negotiations continue for years. Such claims should not be hijacked for personal gain.