

SAFE BY UNWANTED
HAVENS FOR BABIES

FAST TRAIN
TO GOVERNMENT
FUNDING

RCMP BRASS
NEEDS POLISH

FIFTY
MILLION MORE
MAPLE TREES?

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www.westernstandard.ca | July 2, 2007

WESTERN Standard



\$OLDIERS OF FORTUNE

How militancy
pays off for
Canada's
aboriginals

PROTECTION RACKET

AN ONTARIO JUDGE GLOSSES OVER ILLEGAL ABORIGINAL ACTS AT IPPERWASH. INDIAN BLOCKADERS NOW SEEM FREE TO EXTRACT DEMANDS FROM GOVERNMENT WITH IMPUNITY

BY KEVIN STEEL

Listen to Terry Nelson, chief of Manitoba's Anishinabe First Nation, and it's easy to see just how disruptive Canadian Indians' national day of protest, planned for June 29, might be. "There's 30,000 miles of railway lines in this country and more than 50,000 miles of [oil and gas] pipelines," Nelson told a reporter in early June. "The reality is that there's no army that can actually protect all that. Not the United States army, not the Canadian army, not any." This is the same Terry Nelson who had earlier stated, "There are only two ways of dealing with the white man. One, either you pick up a gun, or you stand between the white man and his money." Listen to Phil Fontaine, grand chief of the Assembly of First Nations, and it's immediately clear just how widespread the aboriginal commitment to illegal action is. "Many people ask why our people are so angry," Fontaine told the Canadian Club of Ottawa in mid-May. "At this point you must realize we have a right to be frustrated, concerned, angry—anger that's building and building." Fontaine is also on record saying he is powerless to stop any blockades.

But listen to elected officials, especially at Queen's Park in Toronto, and it's hard to see any sign of scrupulous commitment to upholding the laws of the land in the face of native illegality. Rather, as viewed in the light of inaction surrounding the ongoing Caledonia dispute and, more significantly, of recent de facto official approval

of native lawbreaking at Ipperwash, governments are essentially signalling that native lawbreakers will be rewarded, not punished for their actions.

That seems to be how Fontaine interpreted the findings, made public May 31, of Ontario Justice Sidney Linden's special investigation into the Ipperwash affair, in which native demonstrator Dudley George was shot and killed by a police officer after weeks of escalating native protests. "Clearly, the inquiry has found that nothing is to be gained by applying force to situations where people

legitimately feel their rights are at issue," Fontaine asserted. What Fontaine appears to be saying, then, is that as long as Indians feel they have the moral high ground, the government has no authority to apply the law against them.

The lack of focus by Linden on any native culpability at Ipperwash led influential *National Post* columnist Andrew Coyne to conclude that the report effectively legitimized illegal protest. "What we have here is nothing less than the normalization of lawlessness, the legitimization of violence as a means of political protest," Coyne wrote June 2. "And by a judge! Native radicals elsewhere can only take the appropriate clues and be emboldened."

If Coyne is correct, then Linden's Ipperwash report represents a milestone in Canadian legal and political history and, as such, bears close scrutiny, not only for what it examined and concluded, but also for what it ignored and the biases it betrayed.



In writing his report on the death of Dudley George in 1995, Ipperwash Commissioner Sidney Linden, above, failed to take into account the consequences of escalating aboriginal violence

lived exactly 400 feet away from where it happened, where Dudley was shot and died," says Mary-Lou LaPratte. The 62-year-old x-ray/ultrasound technician now lives in Sarnia, Ont. But for 18 years she lived with her husband in Ipperwash, from 1989 until March of this year. The "Dudley" she refers to is, of course, Dudley George, the native protester shot and killed by Ontario Provincial Police in Ipperwash Provincial Park on Sept. 6, 1995. That shooting was the subject of a \$25.7 million, four-year inquiry headed by retired judge Linden. Linden heard from 140 witnesses over 25 months.

But he didn't hear from LaPratte, even though she lived so close to the event. He didn't want to hear from her even though she was one of 103 cottagers originally sued by the band in 1992—they wanted title to her home and \$250,000 for trespassing on beachfront property the band had surrendered in the 1920s. The inquiry didn't call her to testify even though her house had been broken into by protesters.

his predecessor, Conservative premier Mike Harris, who was at the helm when George was killed. If true, then Linden, who was appointed to the bench in 1990 by Liberal attorney general Ian Scott, delivered on part of it. The retired judge found fault with the police and with the provincial and federal governments. But he never did find evidence that Harris had interfered. On the other hand, Linden consistently characterized the protest and occupation as justified and peaceful.

As the report does make clear, there have actually been several parcels of land under contention at Ipperwash over the past 80 years. First, there were land surrenders of beachfront property in 1927 and 1928. The Kettle and Stoney Point Indians sold this land through the Department of Indian Affairs and received payment for it. Then in 1936, the Ontario government bought some of this beachfront from developers and established the provincial park. And finally there was the military base. This large tract of land was appropriated in 1942 by the Department of Defence



Native militancy is often lawful, as it was in this 1999 demonstration in New Brunswick over hunting and fishing rights. But illegal blockades and occupations have become a common way for aboriginals to advance their cause.

Actually, none of the residents who lived in the area were called to testify at the Ipperwash Inquiry. All they were allowed was a 90-minute town hall meeting with the commissioner and the inquiry's lead counsel. And nothing of substance that was said at that meeting ended up in Linden's report.

LaPratte believes the story of what happened to the residents of Ipperwash didn't fit with the desired narrative, so they were cast aside. Ontario Liberal Premier Dalton McGuinty set up the Ipperwash Inquiry mere weeks after he was elected in 2003, a move LaPratte believes was based on McGuinty's desire to smear

to set up a training facility for troops during the Second World War. It was taken after a payment of \$50,000 was made to the band; the government also promised to sell the land back to the band once it was no longer needed.

In 1980, with the military still occupying the reserve lands, the federal government offered \$2.5 million in compensation and interest, along with a promise to give, not sell as was the original deal, the land back to the band when it became available. Essentially, it was this last alleged injustice related to the military lands that Linden used in his report to justify the native occupation

NATIVE AFFAIRS

of the provincial park. There's a reason he had to stretch the logic: three years after the death of George, the natives had lost a Supreme Court case in which they had tried to reclaim the park and beachfront lands.

According to LaPratte, the trouble started in 1992. That's when the Kettle and Stoney Point First Nations launched lawsuits against the cottagers on the beachfront, seeking title to the land and \$250,000 apiece from the homeowners for trespassing. The band also sued the banks that held the mortgages. This made it difficult for the homeowners to raise money for their defence, or to get credit of any sort.

That's also when the intimidation started. "They would come onto the property holding a board and say, 'If you don't leave the front of your property, I will be back with 50 warriors and we will get you out.' That kind of thing," LaPratte recalls. "It doesn't sound like much now, but at the time it was extremely scary because when we called the police, they told us the Crown attorneys had tied their hands and that they couldn't do a thing; because the natives sincerely thought they owned our property and our homes—under 'colour of right'—we could not charge them with anything." In a more serious incident, one resident was beaten over the head with a lead pipe and suffered neurological damage.

"By the spring of 1993, we knew we were in trouble. We knew the police were not going to help us," says LaPratte. (This was well before Mike Harris became premier. The NDP, led by Bob Rae, was the party in power from Oct. 1, 1990 to June 26, 1995. Harris was in office for just over two months when George was killed.) At that point, a split in the band occurred and protesters from the Stoney band, led by Chief Carl George, occupied the military base, upset that the land had actually been promised to the Kettle band. "We all knew Carl George, and it was a peaceful protest," LaPratte says. "But then, pretty soon the natives were fighting themselves at the base. By '95 there were other people in charge and a lot of natives there that didn't even belong to the area and really had no interest in the land. The situation had started to change and, by '95, that's when things became super violent."

The twist to all this is that the lawyer for the cottagers, Derry Millar, who won the case in 1998 at the Supreme Court level, ended up as the lead counsel for the Ipperwash Inquiry. Linden did not seem bothered by this apparent conflict of interest. Millar himself disagrees with the contention that the residents of the area were ignored. "What the public hearings attempted to do was to look at what happened at the army camp and at the provincial park," he says. "Certainly the commissioner was aware of the concerns of some cottagers."

Mark Vandermaas runs a website called The Ipperwash Papers that is seeking to publicize the events surrounding the George killing that the inquiry ignored. "To suggest that Mary-Lou LaPratte wasn't called as a witness because she didn't live close enough to the shooting is disingenuous, considering she lived 400 feet away," Vandermaas says. "It seems to me that Derry Millar is trying to put forth the argument that the Ipperwash Inquiry was all about the five or six hours surrounding Dudley George's death. I thought the inquiry was about trying to find out how he died and why he died." Certainly that might include some of the violence witnessed by some of the residents.

That violence was considerable. As Coyne pointed out, "... in almost every case where police and natives clashed, the violence

was initiated by the natives. ... So the police badly mishandled the occupation, yes. But had this particular group of natives not taken it into their heads to break the law, defy their band council and seized the provincial park, they would never have come into conflict with the police. Yet throughout his report, Judge Linden takes the existence of this and other such native occupations as a given."

Whitney Lackenbauer is a professor of history at the University of Waterloo. His 2006 book, *Battle Grounds: The Canadian Military and Aboriginal Lands*, takes a detailed look at Ipperwash. "If I had any major concern about what they presented, it was, despite all the length, a real lack of appreciation of the [divisions within the] native community itself," Lackenbauer says of Linden's 78-page executive summary.

Lackenbauer also disagrees with the report's suggestion that the military had other suitable land available in the area. Lackenbauer says his examination of archival records shows the military had been trying unsuccessfully for years to find an alternative parcel. "So it's a report that, while it certainly sets up a case of tremendous hardship that the appropriation had on the community, it does so in a way that in some respects plays quite loose with the historical record," Lackenbauer says.



Mohawk protesters blocked a road at Marysville, Ont., last year in support of an illegal native Indian blockade at Caledonia. The failure of provincial authorities to end the unlawful action has set a worrisome precedent

One conclusion, then, is that Linden was selective with the historical record and ignored potentially important testimony, thereby exonerating the protesters. But then McGuinity's government stands accused of creating pretty much the same conditions in ongoing problem areas such as Caledonia, where Indian protesters have occupied a subdivision since April of 2006. The police have ignored a judge's order to have the protesters removed, and

many have accused the McGuinity government of being weak-kneed. Since the occupation began, bridges have been burned down, police cars destroyed and residents assaulted, all with no charges being laid against protesters. This is not to say all native grievances lack merit. But, as the country prepares for the June 29 day of action, it does raise questions about the response of successive Canadian governments to those grievances. Some of those questions were answered June 12 when Prime Minister Stephen Harper announced a plan to settle natives' specific claims in a timely fashion. Specific claims deal with alleged failures of the federal government with respect to treaty obligations; these differ from comprehensive claims that are based on unextinguished aboriginal rights such as hunting and fishing. At the end of 2006, there was a backlog of 861 specific claims. With Fontaine at his side, Harper said the government would work with the AFN to draft a bill to create a new independent land claims commission staffed by impartial judges. The government would give the commission \$250 million a year for 10 years to settle claims.

Tom Flanagan, a political science professor at the University of Calgary and former Conservative government insider, correctly predicted in early June that the Tories would establish an independent tribunal to expedite the specific claims, a tribunal he fears will not demand a high standard of evidence, similar to what Ottawa did in response to aboriginal claims of abuse in residential schools. When thousands of natives signed up to sue, the federal government realized trials would be too costly to litigate, so the government paid out \$2 billion to claimants—claimants who did not have to prove any abuse.

"The typical specific claim involves a set of facts that took place 100 year ago or more, in some cases 200 years ago," Flanagan says. If it involves land surrenders, often the claim will be that the Indian agent didn't properly notify the adult male members of the band to approve it, or he didn't explain the deal clearly, or that the band didn't get their money in a timely fashion. What would often happen is that the land would be surrendered to the Crown and the Crown would resell it and the proceeds would go to the band. Sometimes the resale fell through. Then there are complaints about the size of reserves: whether everybody got counted when the reserve was assigned.

"How do you prove some of these things?" Flanagan asks. "Trying to prove more than 100 years ago that the Indian agent did or did not notify everybody to come to a meeting on Sept. 19, 1904, is often beyond human power."

Significantly, the Chrétien government passed legislation in 2003 to set up such a tribunal, but the Assembly of First Nations rejected the idea because it put limits on individual payouts and tied the number of payouts to an annual budget. The native leaders wanted no limits. Paul Martin came to power and never had the legislation proclaimed.

Flanagan says that, in one way, it's good the bill was never proclaimed, because it lacked a deadline for filing—an omission that would have virtually guaranteed the process would have gone on forever. "Give me a team of historians and lawyers," Flanagan says, "and I could generate 10,000 claims."

It was not known at press time whether the proposed legislation would include a filing deadline. Also unknown was whether the announcement would avert the aboriginals' June 29 day of action, although the AFN's website was still promoting the national protest after Harper's announcement. Perhaps appeasement will buy short-term peace. The long-term implications are anyone's guess. **WSJ**