



Landmark Case

OJEN ROEJ
ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

THE IPPERWASH INQUIRY

Prepared for the Ontario Justice Education Network by a Law Student

The Ipperwash Inquiry

Facts

On September 4, 1995, Chippewas from the Stoney Point Reserve began an occupation of Ipperwash Provincial Park, located in Grand Bend, ON. Two days later, an Aboriginal occupier, Anthony O'Brien George, also known as Dudley George, was killed during a confrontation between the Aboriginal occupiers and the Ontario Provincial Police. The Ipperwash Inquiry was established in 2003 by the government of Ontario to inquire and report on the events surrounding the death of Dudley George, and make recommendations on how to avoid violence under similar circumstances in the future.

Background

The ancestors of the Chippewas of Kettle Point and Stony Point First Nation had been living on the land that comprised Ipperwash Provincial Park since long before the British conquest in the mid-eighteenth century. In 1763, King George III of England issued the **Royal Proclamation**, which made the protection of Aboriginal lands an official policy of the Crown. However, over the years, the British and French slowly encroached on the territory of the Aboriginal people. In 1928, under questionable circumstances, the Chippewas of Kettle and Stony Point First Nation surrendered the shoreline at Stony Point. In 1936, the Province of Ontario purchased the lands and created Ipperwash Provincial Park. In 1937, the Chief of the Kettle and Stony Point First Nation notified the government of the existence of a burial site in the Park and asked that the site be protected. No action was taken by the Province to protect the site.

During World War II, the Department of National Defence (DND) decided to establish an army training camp on the Stoney Point Reserve. (It should be noted that there is one band, the Chippewas of Kettle and Stony Point First Nation, but two reserves, one known as Kettle Point, the other as Stony Point. These reserves are not contiguous.) The Kettle and Stony Point First Nation protested, pointing to the Crown's duty to protect Aboriginal lands as well as noting the deep emotional and spiritual connections that the Aboriginal people had to the land. Despite their protests, the DND **appropriated** the land but stated that if it did not require the reserve property after the war, it would negotiate the return of the land to the Aboriginal people at a fair price. The forced relocation of the Stony Point inhabitants was devastating to them. They lost their livelihood, sense of self-sufficiency, and suffered emotional turmoil as a result. The move also created friction between the Aboriginal people from the Stony Point **reserve** and those living on

the Kettle Point reserve, where they had been displaced. Their distress was heightened by the fact that the Canadian government had failed to protect their burial sites as promised.

For decades after World War II ended, the Aboriginal people made several attempts to negotiate with the government for the return of the Stoney Point Reserve. However, the DND maintained it still needed the camp for military training purposes. In 1993, some of the former residents of the Stoney Point reserve and their descendents decided to occupy a portion of the Stony Point lands that were being used for the army camp. The occupation of the military ranges of Camp Ipperwash was peaceful and in 1994, the DND announced that the land would be returned.

However, two years later the military remained on the land. By Spring 1995, the tensions between the Aboriginal people and the military personnel had escalated. Exhausted after numerous futile attempts to reclaim the land, the Aboriginal people decided to occupy the army barracks at Camp Ipperwash. They entered Camp Ipperwash on July 29, 1995, after which the military personnel finally departed. The Aboriginal people began planning their occupation of Ipperwash Provincial Park.

The OPP Prepare for Park Occupation

In August 1995, the OPP began to make preparations for the occupation of Ipperwash Provincial Park. Throughout the month, they developed a plan known as **Project Maple**, the objective of which was to “contain and negotiate a peaceful resolution”. However, there were major flaws in the OPP’s plans to respond to the occupation. First, there were no mechanisms put in place to communicate their objectives to the occupiers. The plan did not incorporate third party negotiators who may have been able to communicate more effectively with the Aboriginal people.

Furthermore, the OPP did not have a proper intelligence gathering system, which meant that unverified and incorrect information was used to make operational decisions. As a result, there was heightened potential for misunderstandings to occur between the Aboriginal people and the OPP.

The Occupation of Ipperwash Provincial Park

September 4, 1995

On September 4, 1995 the Aboriginal people entered Ipperwash Provincial Park with the intention of reclaiming the land occupied by their ancestors. Their reasons for doing so included a concern for the protection of **burial sites** located within the Park, and a frustration with the government for not returning the land that was promised to them. The Aboriginal occupiers firmly believed that they were reclaiming land to which they had an historical claim and that rightfully belonged to them.

September 5, 1995

Although the OPP desired a “go slow” approach, it was clear that the Government of Ontario, led by then Premier Mike Harris, wanted to end the occupation as quickly as possible. The Premier’s office considered the occupation of Ipperwash to be a law enforcement issue rather than an Aboriginal rights issue. This attitude in the government was reinforced during a meeting on September 5th and was subsequently communicated to OPP officers at Ipperwash Provincial Park. This gave police

officers the difficult task of balancing the peaceful objectives of Project Maple with the political pressures of the government.

Throughout the day on September 5, 1995, there was a visible increase in the number of OPP cruisers and the amount of police surveillance around Ipperwash Provincial Park. The Aboriginal occupiers were aware of this and became anxious. The OPP's attempts to communicate with occupiers were unsuccessful because the Aboriginal occupiers feared that anyone who spoke to the police would be targeted and criminally charged. That evening, there was an altercation between the occupiers and the OPP, during which OPP officers directed racist and culturally insensitive remarks towards the occupiers. During that night, unverified reports of gunfire circulated among OPP officers and were communicated back to the provincial government. This faulty intelligence raised the anxiety levels of officers on the scene, as well as Ontario government officials.

September 6, 1995

On September 6, 1995, the OPP made another failed attempt to communicate with the Aboriginal occupiers. The OPP did not at any time make it clear to the occupiers that if they remained within the park boundaries, the OPP had no intention of entering the park. Throughout the day there was an increase in the number of unverified reports about the activities of the occupiers. By that evening, both parties were erroneously convinced that the other side was planning a violent confrontation. That night, the OPP's Crowd Management Unit (CMU) approached the park dressed in riot gear. The Aboriginal occupiers were anxious and frightened, and some were angered by the actions of the OPP. One occupier, Cecil Bernard George, ran at the OPP officers with a steel pipe, proclaiming that they were trespassing on sacred land. The OPP officers knocked him down and began to hit and kick him excessively in the head and the face. At this point, approximately 15 occupiers emerged from the park with the intentions of rescuing Cecil George from the beating.

In the ensuing confrontation, one OPP officer, Sergeant Ken Deane, claimed he saw two muzzle flashes coming from the bush area. He believed that they were from a single gun and were directed towards the OPP. Sergeant Deane shot at the muzzle flashes and, after stepping closer to the area, he saw someone walk onto the roadway with what he believed was a gun. This person was Dudley George. Sergeant Deane claimed that Mr. George had a gun, which was pointed in the direction of at least three police officers. He also **testified** that Mr. George's hand was near the trigger and that he "was a millisecond away from shooting one of [the] officers." Sergeant Deane proceeded to fire three rapid shots at Mr. George. He later testified that Mr. George's gun fell to the ground after he shot him and that he saw other Aboriginal people rush to Mr. George and carry him back into the park. He also testified that he did not attempt to retrieve the gun.

Dudley George was transported to the hospital by his brother, sister, and another individual, but the gunshots proved fatal. He was pronounced dead at 12:20AM on September 7, 1995 at Strathroy Hospital. Doctors believed Mr. George's heart had likely stopped beating ten to fifteen minutes prior to his arrival at the hospital.

During the inquiry into the Ipperwash Incident and the death of Dudley George, the judge concluded that Mr. George did not have a gun on the night of September 6th. There was no

evidence indicating that he had a firearm. Sergeant Deane's assertion that Dudley George had a gun and threw it on the road after being shot was determined to be implausible. In 1997, Sergeant Ken Deane was convicted of criminal negligence causing the death of Dudley George. Approximately three weeks before he was scheduled to testify at the Ipperwash **public inquiry**, he was killed in an automobile accident.

The Ipperwash Inquiry

The Ipperwash Inquiry was established by the Ontario government in 2003 to inquire and report on the death of Dudley George. Its mandate also included making recommendations on how to avoid violence in similar situations in the future.

Hearings began in July 2004 and ended in August 2006 and Justice Sidney Linden was appointed Commissioner of the public inquiry. The Commissioner divided the inquiry into two parts. The purpose of Part 1 was to inquire into and report on the events surrounding the death of Dudley George. Part 1 heard testimony from 139 witnesses. The purpose of Part 2 was to gather and analyze the information needed to make recommendations for preventing future incidents of violence. As of March 31, 2007, the cost of the public inquiry was \$13.3 million.

The report from the Ipperwash Inquiry was made available to the public on May 31, 2007. It consists of four volumes:

- Volume 1: Investigation and Findings – concerning the death of Dudley George (Part 1 of the Inquiry)
- Volume 2: Policy Analysis – how to prevent violence in the future (Part 2 of the Inquiry)
- Volume 3: Inquiry Process – how to conduct Commissions of Inquiry
- Volume 4: Executive Summary

Recommendations from the Ipperwash Inquiry Report

The Report contains 100 recommendations. The following are some key areas that are covered:

- The provincial government must redouble efforts to build a peaceful and successful relationship with the Aboriginal peoples.
- Both the federal and provincial governments must realize that Aboriginal protests are about land and important treaty rights. They must respect these rights and take their treaty obligations seriously.
- In order to improve the efficiency, effectiveness and fairness of the land claims process, a Treaty Commission of Ontario should be established to assist the government and the First Nations people to settle land claims independently and impartially
- A provincial policy should be established requiring the government to consult with and accommodate First Nations people when government decisions impact natural resources
- The government should be more effective in protecting Aboriginal burial and heritage sites
- There should be more education for the general public about Aboriginal issues
- Police services dealing with Aboriginal protests must be more sensitive to the issues involved and be committed to ensuring a peaceful and fair resolution, keeping in mind the rights of the Aboriginal peoples

- The OPP should work with the federal and provincial governments as well as third parties to develop a peacekeeping approach in the event of an Aboriginal protest
- First Nations police services should be supported and sustained
- There must be a clear distinction between the role of the government and the role of police in dealing with these protests or there is the risk that it appears the government is influencing police operational decisions
- Efforts should be made to **build the capacity** of provincial government (For example, a new separate Ministry of Aboriginal Affairs)
- Efforts should be made to build the capacity of First Nations (For example, the Ontario Aboriginal Reconciliation Fund)

Conclusion

The events at Ipperwash Provincial Park resulted from a series of miscommunications between the OPP and the Aboriginal people occupying the Park. As a result, a death occurred that could have been avoided. The Ipperwash Inquiry is a step towards increasing understanding of the history of Aboriginal people and recognizing their constitutionally protected Aboriginal and treaty rights.

NB: Stony Point is spelled differently depending on the context. When referring to the First Nation, it is Chippewas of Kettle and **Stony** Point First Nation, but when referring to the Stoney Point reserve, or Aazhoozena as it is also known, it is spelled **Stoney**.



Classroom Discussion Questions

1. Do you feel people of Stony Point First Nation were justified in their decision to occupy Ipperwash Provincial Park? What other options, if any, did they have?
2. Put yourself in the position of the OPP. What could they have done to resolve the dispute differently? How could violence have been avoided?
3. During WWII, the Department of National Defence appropriated the land of the Kettle and Stony Point First Nation, stating it would return the land after the war at a fair price.
 - Why do you think the government was able to sell back the land to those whom it already belonged to?
 - What impact did this have on the people of Kettle and Stony Point First Nation?
 - What steps would you take if the government appropriated your home and then offered to sell it back to you?
4. Should Aboriginal burial grounds be considered protected land? Are these burial grounds more or less protected than cemeteries? Why do you think that is?
5. Agreements between the federal government and First Nations communities are based on a number of treaties signed between 1693 and 1956. These treaties included trust obligations between the two parties, which outlined promises made by the government about territory and land titles. For a change in land occupation to occur a new treaty needed to be created.
 - Do you think the federal government upheld their trust obligation in the case of the Kettle and Stony Point First Nation land claim dispute?
 - Are the OPP obliged to uphold trust obligations in the same way that the government is?
 - Do you think they were in violation of their trust obligation in the case of the occupation of Ipperwash Provincial Park?
6. Generally speaking, issues pertaining to Aboriginal land claims fall under federal government jurisdiction and the Indian Act. However, this case fell under provincial jurisdiction and the Natural Resources Transfer Act because it involved a provincial park.
 - Do you think the provincial or federal government should have dealt with the occupation at Ipperwash?
 - How do you think these jurisdictional differences contributed to the conflict?
 - Do you think the federal government should have been directly involved in the resolution process?
7. Why do you think the Ontario government viewed the Ipperwash occupation as a law enforcement issue rather than an Aboriginal rights issue?

8. One of the recommendations concluded that the federal government should issue a public apology with appropriate compensation for failing to honour its promise to return the land more than 60 years ago. What do you think would qualify as “appropriate compensation”?
9. Another recommendation concluded that the federal government should immediately return the former army camp to the people of the Kettle and Stony Point First Nation.
 - Should the government be required to give back all lands to Aboriginal people that were agreed upon and signed for under the various treaties?
 - What are some advantages and disadvantages of doing so?



The Ipperwash Inquiry: Background Sheet

Legal issues Addressed by the Inquiry

- Colour of Right – belief that an act is lawful although the belief may be based on a mistake of fact (you may want to look at Wesley Pue’s paper for the Inquiry, which discusses colour of right in Aboriginal claims context:
http://www.ipperwashinquiry.ca/policy_part/research/pdf/Pue.pdf)
- Fiduciary Duty of the Government – honour of the government is at stake in its dealings with Aboriginal peoples. (for a more complete definition of “fiduciary duty” in this context, see p. 31 of Michael Coyle’s paper for the Ipperwash Inquiry:
http://www.ipperwashinquiry.ca/policy_part/research/pdf/Coyle.pdf)
- Aboriginal Treaty Rights – land claims vs. other rights claims (hunting, fishing, etc)

Aboriginal rights (see *Van der Peet and Powley*- OJEN Landmark Case)

- For an activity to be an Aboriginal right, it must be an element of a practice, custom or tradition which is integral to the distinctive culture of the Aboriginal community claiming the right e.g. hunting and fishing;
- For First Nations and Inuit communities, the activity must have existed at the time of first contact with Europeans, and for Métis it must have existed prior to the time of effective European control;
- Continuity with current practice; modern form of historical practice.

Aboriginal title (see *Delgamuukw, Bernard and Marshall*- OJEN Landmark Case)

- Exists where an Aboriginal community occupied land exclusively prior to the Crown asserting sovereignty over the land; continuity.
- A right to the exclusive use and occupation of the land itself.
- A particular type of Aboriginal right.

In Ontario, many Aboriginal rights have been modified or surrendered through treaties.

Treaty Rights (see *Badger, Mikisew, and Marshall*- OJEN Landmark Case)

- Are the specific rights embodied in the treaties Aboriginal people entered into with Crown governments;
- Matters that treaty rights often relate to include:
 - The creation of reserves;
 - The payment of money;

- The continued right to hunt, fish and trap subject to the terms of the treaty.
- Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation:
 - "... a treaty is a solemn agreement between the Crown and the Indians, an agreement the nature of which is sacred." (*Sioui*, 1990)
- Common intention; extrinsic evidence; integrity of the Crown; uncertainties, ambiguities resolved in favour of the Aboriginal party

Recommended Websites

The Ipperwash Inquiry

<http://www.ipperwashinquiry.ca>

Indian and Northern Affairs Canada

<http://www.ainc-inac.gc.ca>

Ontario Ministry of Aboriginal Affairs

<http://www.aboriginalaffairs.gov.on.ca>

Aboriginal Canada Portal

<http://www.aboriginalcanada.gc.ca>

Library and Archives Canada – Aboriginal Resources and Services

<http://www.collectionscanada.gc.ca/aboriginal/>

Government of Canada

<http://canada.gc.ca>



The Ipperwash Inquiry: Timeline of Events

1763 -	
1928 -	
1936-1937-	
1993-	
1994-	
July 29, 1995 -	
September 4, 1995-	
September 5, 1995-	
September 6, 1995-	
1997-	
2003-2004-	
May 31, 2007-	



The Ipperwash Inquiry: Worksheet 1

Using the case summary, the background sheet, your textbook, or the *Criminal Code*, define the following terms. Some terms are in **bold** typeface in the case summary.

Royal

Proclamation

Appropriate

Aboriginal Treaty

Land Claim

Burial Sites

Testify

Public Inquiry

Aboriginal Rights

Capacity Building

Aboriginal Title

Treaty Rights

Reserve



The Ipperwash Inquiry: Worksheet 2

Aboriginal people continue to struggle to preserve their culture, language, and economic well-being. The national government has enacted laws and policies that have at times protected and at other times destroyed indigenous cultural institutions. Land claims have long been a central issue for Aboriginal people trying to preserve their rights pertaining to land.

Using the background sheet, your textbook, or library resources, research and answer the following questions.

QUESTIONS

1. What is a land claim?
2. Explain the meaning of Aboriginal Rights, Treaty Rights, and Aboriginal Title.
3. What is the purpose of treaties?
4. What is the role of the federal government in land claims?
5. What is the role of the provincial government in land claims?
6. What types of land claims are there in Canada? In Ontario?
7. How does the government resolve land claim disputes?
8. What effect do land claims have on the public?
9. What is the total number of outstanding land claims in Canada?
10. Identify three land claims currently under dispute and describe the main issues in each situation.
11. Research one land claim dispute that has already been resolved. Explain the history of the land claim, the main issues being disputed, and the resolution that was reached.



The Ipperwash Inquiry: Worksheet 3

The Ipperwash Inquiry report was made public on May 31, 2007. All of the testimony, transcripts, and commissioned research from the hearing is available for download from the Inquiry website at: www.ipperwashinquiry.ca.

Browse the website and read some of the research papers available. Using the available information as references, write a 3-4 page paper in response to ONE of the following questions.

1. What is the relationship between Aboriginal people and the criminal justice system and how is it reflected in the events that occurred at Ipperwash Provincial Park.
2. How did the relationship between the government and the police, and the police and the Aboriginal people, impact the events at Ipperwash Provincial Park?



The Ipperwash Inquiry: Worksheet 4

One of the recommendations from the Ipperwash Inquiry suggests “there should be more education for the general public about Aboriginal issues.”

Working with a partner, design a public education campaign that will encourage Canadians to be more knowledgeable and aware of issues facing Aboriginal people. You may focus on one particular issue, such as land claims, or incorporate more than one issue into the campaign. It should include a visual and a written component. Present your campaign to the class upon completion.

Visual Component

- Design and develop a visual representation of the issue(s) you are focusing on
- This could be a poster, video, dramatic performance, website, painting, sculpture, advertisement, photograph, PowerPoint, or other medium of your choosing
- Present your visual component during your presentation and identify how it will fit into your overall public education campaign (i.e. where will it be displayed, what audience does it target, what message does it convey, etc.)

Written Component

- Prepare a 1-2 page report which includes the following:
 - A description of the issue(s) your campaign focuses on and why they are relevant to the Aboriginal community
 - The reasons why the public should be made more knowledgeable of the issue(s)
 - What audience your campaign targets
 - How you will convey your message and why this will be effective (i.e. television, magazine, art show, street performance, internet, theatre show, etc.)
 - The effects you hope the campaign will have on the community



The Ipperwash Inquiry: Worksheet 5

The Federal government provides certain benefits to all Canadian citizens, such as universal healthcare and education programs. In addition to these, federal government programs and services are offered specifically to Registered Indians to address the history and living conditions of Aboriginal people.

A. Using the following websites, research the programs and services that are offered to Registered Indians and those that are offered to Canadian citizens who are not Registered Indians. Use the chart on the following page to record the information.

RECOMMENDED WEBSITES

You Wanted To Know – Federal Programs and Services For Registered Indians

http://www.ainc-inac.gc.ca/pr/pub/ywtk/youkn_e.pdf

Government of Canada

<http://canada.gc.ca>

Government of Ontario

<http://www.gov.on.ca>

Indian and Northern Affairs Canada

<http://www.ainc-inac.gc.ca>

Ontario Ministry of Aboriginal Affairs

<http://www.aboriginalaffairs.gov.on.ca>

Aboriginal Canada Portal

<http://www.aboriginalcanada.gc.ca>

Health Canada

<http://www.hc-sc.gc.ca>

B. Using the information you collected in Part A, hold small-group debates about whether the government is meeting its treaty obligations in the provision of services to Aboriginal Canadians. Meet with the other groups arguing the same position and share your findings from Part A. Prepare an opening statement and choose a spokesperson to present your group's main ideas to the opposing side. Each group will have 5 minutes to make rebuttals to the opening statements. Once each member of the group has participated in the rebuttals, choose someone to summarize the group's arguments in a closing statement.

During the debate:

- Organize your information clearly and systematically
- Present arguments to support your position
- Provide facts and examples to support your arguments
- Actively participate in presenting your group's argument

Name: _____

Federal Program/ Service	Registered Indians	Non-Registered Indians
Treaty Obligations		
Taxes		
Housing		
Social Assistance/ Welfare		
Education		
Healthcare		