

## **Ipperwash: Time for a new approach to land rights**

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What would he be thinking? Close to eleven years ago Dudley George was shot dead by a police sniper during a peaceful land rights protest in Ipperwash Provincial Park. What would he be thinking today as the public inquiry looking into his 1995 killing draws to an end? Would he be thinking that after so many years, justice is finally within reach?

The range of witnesses, amount of testimony and mountain of documentation has been enormous. The wealth of experience and expertise available to the Commission has been impressive. That has been amply on display this week as Commissioner Linden has heard closing submissions from the many parties directly involved in the inquiry, including Dudley's family, the Ontario Provincial Police, former Premier Mike Harris, and former Attorney General Charles Harnick, as well as a range of organizations who are deeply concerned about the crucial issues being examined.

Over these past two years the Commissioner has grappled with many issues, including policing, racism and government accountability. At the heart of the issues examined by the inquiry, though, is the issue of land. For land was and remains at the root of the tragedy that led to the killing of Dudley George. Justice, therefore, will primarily come through ensuring that the longstanding violation of the land rights of Dudley George and his people are remedied.

Aboriginal land and resource disputes are by no means an uncommon occurrence in Canada. The current heated conflict at Caledonia is a clear reminder of that. What is often overlooked, however, is that the disputes are not just about dollars and cents. At stake in these disputes are essential human rights, protected in the Canadian Constitution and international law.

Land and resource rights have been legally established in many cases. But frequently the existence of such rights is either ignored or contested by governments across the country. That does not in itself mean that the right is not legitimate. It does mean however that the right has not been officially recognized in a manner that is readily protected by the justice system. Meanwhile, efforts by Indigenous peoples to assert those rights, perhaps by occupying lands in protest or hunting in contravention of licensing regulations, are readily characterized as acts of common criminality. That is what happened to Dudley George and others involved in the Ipperwash protest.

Without a doubt the immediate and prominent labeling of the Ipperwash protest as an illegal act is a key factor in an aggressive and rapidly escalating police operation which ultimately resulted in the killing of Dudley George.

There appears to be no dispute that the lands at the heart of the Ipperwash dispute had originally been promised to the Indigenous community at Stoney Point in perpetuity for their exclusive use as reserve lands in a detailed written Treaty agreement with the Crown in 1827. It is also clear that the Treaty lands were taken away a century later, in part by pure force through expropriation, and in part through a 1928 “surrender” process under the unilaterally imposed *Indian Act*, a process marked by lack of consent and by apparent illegal Indian Agent land speculation. That is why Dudley George took the stand that he did. The original clear agreement that Dudley’s people would always have a homeland was ignored. This is the reality that the Canadian justice system must address.

As the Ipperwash Inquiry draws to a close, it is time for a new approach to resolving land and resource disputes in the country.

There is a legitimate role for conventional approaches to law enforcement in the midst of protests or disputes of this nature. Clearly, for instance, police must act when there is evidence of impending or actual violence, whoever the perpetrators or victims of that violence may be, provided police action is proportional and even-handed.

However, there is also a pressing need for a conceptual shift within government, police and the courts. Attempts by Indigenous peoples to assert land and resource rights, including through acts such as apparent trespass which might otherwise be considered illegal, should be approached in part with a human rights perspective in mind. Some officials and commentators argue that this is unacceptable and even dangerous as it risks putting Indigenous peoples above and beyond the law. In fact, it ensures that the entirety of “law” governs, certainly incorporating the legal obligation to protect human rights, including the specific rights of Indigenous peoples.

Canada’s binding obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* have been described by the Committee on the Elimination of Racial Discrimination as a duty to “recognize and protect the rights of Indigenous peoples to own, develop, control and use their communal lands and territories... and, where they have been deprived of their lands ... without their free and informed consent, to take steps to return those lands and territories.”

The Ipperwash Treaty lands on which Dudley George was protesting seem to fit that description, but the obvious question of whether they should simply be returned to the native community is a question long ignored.

If there had been an appropriate and effective means to resolve the underlying land dispute at Ipperwash in a fair and timely manner, with an acknowledgement that lost Treaty lands might need to be returned to indigenous communities, the deadly events of September 5, 1995 almost certainly would not have happened. What better way to evidence the dawn of a new approach than to ensure redress of the particular land rights violations at the heart of the Ipperwash tragedy? Return of these lands would offer powerful redress as well to Dudley George's family, as his death came about due to his efforts to recover that land and assert the rights of his people.