

Edward J. Hedican

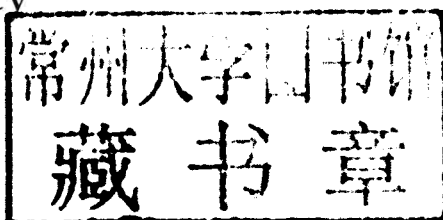
# IPPERWASH

The Tragic Failure  
of Canada's Aboriginal Policy

EDWARD J. HEDICAN

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UNIVERSITY OF TORONTO PRESS  
Toronto Buffalo London

© University of Toronto Press 2013  
Toronto Buffalo London  
www.utppublishing.com  
Printed in Canada

ISBN 978-1-4426-4046-7 (cloth)

ISBN 978-1-4426-1013-2 (paper)



Printed on acid-free, 100% post-consumer recycled paper with vegetable-based inks.

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### Library and Archives Canada Cataloguing in Publication

Hedican, Edward J.

Ipperwash : the tragic failure of Canada's Aboriginal policy / Edward J. Hedican.

Includes bibliographical references and index.

ISBN 978-1-4426-4046-7 (bound). – ISBN 978-1-4426-1013-2 (pbk.)

1. Native peoples – Government policy – Canada. 2. Native peoples – Canada – Claims. 3. Race discrimination – Canada. 4. Native peoples – Government policy – Ontario. 5. Ipperwash Incident, Ont., 1993–. 6. Race discrimination – Ontario. I. Title.

E78.O5H39 2013 305.897'0713 C2012-908098-5

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This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Awards to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

University of Toronto Press acknowledges the financial assistance to its publishing program of the Canada Council for the Arts and the Ontario Arts Council.



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University of Toronto Press acknowledges the financial support of the Government of Canada through the Canada Book Fund for its publishing activities.

## IPPERWASH

### The Tragic Failure of Canada's Aboriginal Policy

On 6 September 1995, Dudley George was shot by Ontario Provincial Police officer Kenneth Deane. He died shortly after midnight the next day. George had been participating in a protest over land claims in Ipperwash Provincial Park, which had been expropriated from the native Ojibwe after the Second World War. A confrontation erupted between members of the Kettle and Stony Point Band and officers of the OPP's Emergency Response Team, who had been instructed to use necessary force to disband the protest by Premier Mike Harris's government. George's death and the grievous mishandling of the protest led to the 2007 Ipperwash Inquiry.

Edward J. Hedican's *Ipperwash* provides an incisive examination of protest and dissent within the context of land claims disputes and Aboriginal rights. Hedican investigates how racism and government practices have affected Aboriginal resistance to policies, especially those that have resulted in the loss of Aboriginal lands and persistent socio-economic problems in Native communities. He offers a number of specific solutions and policy recommendations on how Aboriginal protests can be resolved using mediation and dispute management – instead of coercive force as was used to such tragic ends in Ipperwash Park.

EDWARD J. HEDICAN is a professor in the Department of Sociology and Anthropology at the University of Guelph. He is the author of *Applied Anthropology in Canada: Understanding Aboriginal Issues*.

*To my wife Valentina*

## Preface

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When the *Report of the Ipperwash Inquiry* was released to the public by the Ontario government, in May 2007, I was busy preparing a second edition for a book on applied anthropology and Aboriginal issues. As I read through this report it became obvious that the Ipperwash Inquiry should become a centrepiece of this revised edition. As I continued reading – the report comprises more than five hundred pages – I was rather startled at the degree of injustice suffered by the Stony and Kettle Point people.

The Chippewas (Anishinabe people) originally ceded title to over two million acres of land to the Crown in the Huron Tract Treaty of 1827. With this treaty, the Anishinabe relinquished 99 per cent of their traditional territory, therefore, retaining less than 1 per cent of their land. All of the signatories to the Huron Tract Treaty – Walpole Island, Sarnia, Kettle Point, and Stony Point – were treated as one large band. Eventually, in 1919, the Kettle and Stony Point Band was created and separated from the Sarnia and Walpole bands.

Beginning in 1912, the Aboriginal people were pressured by an Indian agent to surrender, for recreational development, their beachfront property at the Kettle Point Reserve. Eventually, in 1927, a local land developer purchased the beach property from the Department of Indian Affairs, despite objections by the Aboriginal residents. Additional shoreline property at the Stony Point Reserve was sold to another real estate developer and Sarnia politician in 1928, who later resold some of it as lots for \$10,000 a piece, realizing a handsome profit. When Ipperwash Provincial Park was created, in 1936, the chief and council of the Kettle and Stony Point Band notified the authorities of a burial site in the park, but no action was ever taken by the Ontario government to protect or preserve the burials.

In 1942, under the War Measures Act, more land was taken from the band to make a military base that was to be used by army cadets. Despite a promise that the land on which Camp Ipperwash was situated would be returned after the war ended, it was not returned, despite repeated requests by the original Aboriginal residents. The Stony and Kettle Point people, out of feelings of intense frustration, decided to occupy Ipperwash Provincial Park in September 1995. Under directions from Ontario's Premier Mike Harris, the Ontario Provincial Police responded with alarming force, and one of the Aboriginal protesters, Dudley George, was shot and killed by an OPP officer. The OPP officer, Kenneth "Tex" Deane, was subsequently found guilty of criminal negligence causing death for the killing of the unarmed protester and given a suspended sentence and community service. It took until November 2003, with a change of government, for an inquiry to be initiated under Commissioner Sidney Linden.

There are many aspects of the *Report of the Ipperwash Inquiry* that are deeply disturbing. Premier Mike Harris, for example, in a cabinet meeting, is reported by his attorney general in sworn testimony to have used the most egregious profanity when referring to the Aboriginal occupiers of the park. Unfortunately, even several OPP officers, in tape-recorded conversations that were presented to the inquiry as evidence, also used the same vulgar and culturally insensitive terms in reference to the Stony Point people as did Premier Harris.

My feelings of revulsion after reading the report did not stem from a sense of moral outrage. Rather, I felt deep disappointment that our elected officials and police officers should be so imbued with such antipathy and aversion towards the Aboriginal people involved in the protest. Previous to reading the *Report of the Ipperwash Inquiry*, I shared with many of my fellow Canadians pride in our tolerant country, believing that we are among the more unprejudiced, respectful, and charitable people of the world. This report has drastically changed my opinion on these matters, and I now believe that we are probably just as capable of racially oppressive acts as anyone else.

The Ipperwash Report is apt to cause one to reflect on the character of our society, and where it might be heading, and to ask some rather pertinent questions about how dissent is dealt with in Canada. Whatever happened to the right of peaceful protest? Is this not one of the guarantees under our Charter of Rights and Freedoms? Why does it seem that such hateful brutality is directed towards Aboriginal citizens of this

country by those in authority, by the very people who should be our paragons of tolerance, respect, and justice? It is sickening to read about the hateful invectives directed towards people whose ancestral lands were taken away from them and who now live, for the most part, in abject poverty. This book is written with the idea that it is about time that a serious academic investigation be taken into the underlying causes of the seemingly interminable First Nations protests and confrontations. The goal is not so much to seek solutions to these intractable issues, but to begin a basis for understanding, such that new Aboriginal policies might be initiated with a sense of respect and tolerance. But, before much meaningful change can take place, first we have to look at the situation as it exists now and at how it became the way it is.

I am indebted to several friends and colleagues for their continued support, especially Stan Barrett (professor emeritus, University of Guelph) and Philip Salzman (McGill University). In addition, a special thanks goes to Jaime Mishibinijima, former director of the Aboriginal Resource Centre, University of Guelph. Victor Gulewitch provided meaningful inside information from his ethnographic studies of the Ipperwash protest and the Stony Point First Nation. My sincere appreciation goes to the anonymous reviewers and to the staff of the University of Toronto Press for their helpful comments on earlier drafts of this manuscript. However, I have learned the most from the many students who have attended my course on Canadian Aboriginal peoples over the past three decades.

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University of Guelph



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IPPERWASH

The Tragic Failure of Canada's Aboriginal Policy



## Introduction

The ultimate failure to include Indians raises the basic question of how the demands of the Indians at the consultation meetings were presented by the policy-makers inside government. It also requires us to understand how “the Indian problem” was defined by the policy-makers and the public, for defining the problem that a policy is to solve is the first and the most crucial step in policy-making.

– Sally M. Weaver, *Making Canadian Indian Policy* (1981: 11)

The essential argument of this book is that Canada’s Aboriginal policy is fundamentally flawed. Patently, this is the case when an unarmed citizen, as was Dudley George, is shot and killed by the Ontario Provincial Police (OPP) while protesting the occupation of his community’s land. We would probably all agree that in a civilized society acts of civil disobedience such as land claims protests should not entail the killing of its citizens by the armed representatives of the state. If the basic tenet is accepted that the policy of the Canadian government towards Aboriginal persons is a flawed one, then we are compelled to ask the following two questions: first, how did the policy get this way, and second, what can be done about it?

As a case study, the *Report of the Ipperwash Inquiry* (Linden 2007) provides an excellent opportunity to scrutinize issues associated with the far too frequent instances of Aboriginal political mobilization concerning Native rights and land claims, as well as the overall implications of the report for contemporary Aboriginal policy in Canada. Especially this is true with regard to dispute resolution and the various

mechanisms that could be used to ameliorate conflict between Aboriginal and non-Aboriginal people. The overall aim of this book is to use the Ipperwash incident to discuss Canada's policy towards Aboriginal First Nations and to assess its effectiveness. Several approaches are examined that have the potential to mitigate the interminable cycle of Aboriginal acts of resistance to this policy, especially when it comes to land claims and treaty rights in Canada.

### **Ipperwash as a Case Study**

The death of Dudley George, on 6 September 1995, was hardly a national news item at the time.<sup>1</sup> Certainly, the protest by people of the Stony Point First Nation and the ongoing tensions with the Ontario Provincial Police did not compare with the horrific scenes portrayed on television several years earlier at Oka, Quebec. We were not shown Iroquois women bravely confronting tanks, Canadian soldiers firing their rifles at Aboriginal protesters, or the foggy confusion of tear gas and gunshots.

In 1995, few Canadians would have been aware that Ipperwash Provincial Park was anything other than a family campground. They would not have understood the centuries of frustration that lay behind its establishment. Originally, the park was part of more than two million acres of land given up to the British by the Chippewas (or Anishinabe) of the area by the 1827 Huron Tract Treaty. In 1912 and 1928, members of the Kettle and Stony Point reserves were pressured by Indian agents and the Department of Indian Affairs (DIA) to give up their beachfront property, eventually leading to the creation of Ipperwash Provincial Park, in 1936. Aboriginal burial sites on the park property were no longer maintained because of access issues. In 1942, further Aboriginal land was confiscated, and reserve residents evicted, by the Department of National Defence using the War Measures Act to create Camp Ipperwash, a military training base for army cadets.

On Labour Day Monday 1995, a handful of men and women from the Kettle Point and Stony Point reserves waited until the closing of Ipperwash Provincial Park for the season before occupying it with the intention of laying claim to lands which, in their minds, had been unjustly taken away from them. In a confrontation two days later between the Indigenous protesters and the OPP, Acting Sergeant Ken Deane fired three rifle shots at Dudley George, one of the protesters, which killed him. Deane would later claim that Dudley George had aimed a rifle at

him, and fearing for his life, he had shot at Dudley George to protect himself. A rifle purportedly belonging to Dudley George was never recovered from the scene, and in fact, fellow officers later testified that they had not seen a rifle in Dudley George's possession. In 1997, Ken Deane was convicted of criminal negligence causing death; Deane subsequently died in a car accident, in February 2006.

It took the Ontario government eight years, until 12 November 2003, to begin an investigation into the death of Dudley George, under the Public Inquiries Act. The mandate of this inquiry was to report specifically on the events surrounding the death of Dudley George, and to suggest recommendations that would serve to prevent similar violent confrontations in the future. The course of this investigation, termed the Ipperwash Inquiry, was headed by the Hon. Sidney B. Linden between the years 2004 and 2006, and its final report was released by Ontario's Attorney General Michael Bryant on 31 May 2007.

The Ipperwash Inquiry was one of the most expensive hearings in Canadian history, costing \$13.3 million, but not nearly as expensive as the \$63 million (see Hedican 2008b: 140–55) spent on the Royal Commission on Aboriginal Peoples (RCAP), established in 1991. Together, the Ipperwash Inquiry and the RCAP made about five hundred recommendations and interviewed several thousand witnesses. The *Report of the Ipperwash Inquiry* (Linden 2007) alone comprised over five hundred pages, in a complicated arrangement of reports on evidentiary hearings, policy analysis, executive summaries, and a hundred recommendations. The Ipperwash Report was available for but a short time on the Internet and from the Ontario government on CDs, before they rather quickly were sold out; thus, the report was not available for much public scrutiny. It is hard to imagine how, without going to a lot of trouble, concerned Canadians, even those with an above average education, could get to the bottom of the vast historical and contemporary circumstances that contributed to the death of Dudley George.

## Dissent and Society

In addition to that of public accessibility, there are wider issues about the Ipperwash Inquiry that are important to Canadian society. One has to do with the suppression of legitimate public dissent in society. As these lines are being written, we are being inundated with horrific media scenes from Syria of brutal beatings and shootings of unarmed citizens. Such news coverage from halfway around the world seems

distant from our northern “peaceable” society. But are we, in Canada, any different, when dealing with internal dissent? There has been a history, whether we want to recognize this or not, of using similar force as recently witnessed in Syria and Iran to suppress public dissent in Canada. Salient examples are the government-sanctioned violence in putting down the 1919 general strike in Winnipeg and the brutality with which Aboriginal protests were suppressed at Oka and Ipperwash.

This book is an investigation of the wider issues of how dissent is dealt with in Canadian society, and how peaceful resolutions to such conflicts might be achieved, without a resort to killing and beating Canadian citizens. The question here is: how can Canadians legitimately see themselves to be living in a civilized society if its citizens are pumelled into submission when they have no access to the institutionalized mechanisms to resolve such disputes?

James Tully’s (2008) monograph entitled *Public Philosophy in a New Key: Democracy and Civic Freedom*, in terms of how it addresses the relationship between power and governance, is enlightening and informative. “From the perspective of the governed,” he writes, “the exercise of power always opens up a diverse field of potential ways of thinking and acting in response” (p. 23). Citizens, as individuals and as groups, may act in a cooperative manner, in accordance with societal rules, or they may challenge a relation of governance and enter into negotiation or deliberation in an attempt to solve the problem(s). However, when institutions of reform are either unavailable or they fail because those who exercise power can subvert or bypass them, the governed may turn to acts of resistance. Resistance may take the form of escape or confrontation, with a strategy of struggle, as a way of challenging domination that is experienced as oppressive.

Tully submits, “In confrontations of this kind (such as struggles of direct action, liberation, decolonization, revolt, revolution, globalization from below), the relations of governance are disrupted and the relatively stable interplay of partners in a practice of governance gives way to the different logic of relations of confrontation among adversaries in strategies of struggle” (p. 24). The goal of the governed in such confrontations and struggles is to attempt to implement new relations of governance and new practices of freedom.

Would it be accurate to characterize Aboriginal protests as acts of civil disobedience? If we follow Burstein’s (2008) definition, *civil disobedience* can be regarded as a “deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws of questionable

legitimacy or morality" (p. 391). It can also refer to "any type of conduct where the offender has intentionally broken the law for the purpose of trying to affect positive social change" (p. 376). According to Burstein, civil disobedience "presents a unique challenge for the justice system, as it involves the actions of normally law-abiding citizens seeking to change public policy by illegal means or, worse, by interfering with the lawful interests of other citizens" (p. 375).

Several questions would seem to follow, such as: Does it matter at all whether a protester's acts have actually led to some social good? Should the courts in such instances consider what alternative means could have been used by a protester with a goal of achieving some social improvement? In the case of Aboriginal protesters, to what extent should the court consider the history of frustration that has ensued over the protracted negotiations over land claims, or situations in which lands were removed from Aboriginal control and possession through illegal or unscrupulous means? There is also the context of the protest to consider: what about when a peaceful protest turns violent or when there is provocation or there are perceived threats during the course of a confrontation? In other words, are there justifications for civil disobedience, and if there are, what might they be? Burstein concludes, "While Canadian sentencing courts have consistently held that the noble motives behind civil disobedience cannot serve to excuse liability, there is much less agreement on how those motives may affect the punishment which follows the finding of guilt" (p. 380).

Whether civil disobedience produces harmful effects on or benefits society at large depends on one's vantage point, on one's convictions or beliefs concerning social justice (Beare 2008: 17–18). Nations can be born out of acts of civil disobedience, but also great social harm may result. Are militants engaged in acts civil disobedience to be regarded as noble heroes or incorrigible villains? Gandhi's philosophy of non-violent resistance might be regarded as an example of the former, and Toronto's G-20 summit protest in the summer of 2010 as a case of the latter. In Canada, high-profile acts of civil disobedience involved the Doukhobors in the mid-twentieth century and, in 1970, civil disobedience in Quebec led to the "October Crisis." Of interest and concern in the present study is the characterization of Aboriginal protests and confrontations, in terms of their legitimacy, and the response to such acts of civil disobedience by government officials, the Canadian army, and Canada's police forces. In such instances, which party is on the high moral, or even legal, ground? The contention here is that this is a



nebulous area politically, legally, socially, and morally. When it comes to the courts, how do they balance citizens' rights to engage in acts of civil disobedience against other citizens' rights to be protected by the law (Burstein 2008: 376)?

In the context of Aboriginal and treaty rights, relations between the government and the police are an important matter. When dissent, in the form of protest, is voiced over how the government treats Aboriginal rights issues, and Aboriginal protesters and police interact, pretty much inevitably, there are policing problems to be considered. Aboriginal activists feel they have a right to engage in such protests, under the right to freedom of speech and the right to peaceful assembly. Aside from any Aboriginal or treaty rights that may justify acts of resistance, Aboriginal protesters have a "right to free expression [which] is grounded in a conception of a liberal democracy, and of the conditions necessary for the promotion of values and ideals highly esteemed by those living in and through a liberal democratic structure" (Christie 2007: 156). Indeed, it could be suggested that Aboriginal protesters are exercising their constitutionally protected right to free speech. What then is the appropriate nature of police activity in face of Aboriginal dissent, and what is the nature of the relationship between the actions that the police take and the decisions made by the government? As Christie argues, "Inappropriate police activity in relation to the Aboriginal protest may lead to questions about the relationship between the police and the government in power (especially ... if it appears the government inappropriately directed the police in this matter)" (p. 155).

The Aboriginal mobilization at Ipperwash Provincial Park and the shooting death of Dudley George brings into question the relationship between police activity and decisions made by the provincial government in power at the time. As Beare (2008) explains, "One can trace, for example, the refusal of the Conservative party in Ontario to hold an inquiry into the shooting of Dudley George at Ipperwash and the campaign promise made by the Liberal party that culminated in an inquiry after their election" (p. 19). The Ipperwash Inquiry demonstrated the tensions between social scientific perspectives and a more restricted legalistic view of the events involved in the Aboriginal protest. Concerning the relationship between politics and policing, on the one hand, lawyers are apt to point to case law as an interpretation, while social scientists such as criminologists are more interested in the "working relationship" between the police and government (p. 26). This working relationship that can be found in social scientific research would