



File ref: **2531007-0120**

August 2, 2007

Mark John Vandermaas
371 Vesta Place
London, ON N5Y 1G4

Dear Mr. Vandermaas:

A copy of the investigative report concerning your complaint against your arresting officers, Constable Mike Mobbs and Constable Stephan Beasley, is attached.

The investigation determined that there was insufficient evidence to indicate that the actions taken by the officers were inappropriate. I am satisfied that the officers conducted themselves appropriately and within Ontario Provincial Police policies and generally accepted police practices. The investigative report provides details and conclusions supporting my decision.

On behalf of Commissioner Julian Fantino, pursuant to Section 64(6) of the Police Services Act, it is my decision to take no further action in this matter.

You may submit a signed, written request within 30 days for a review of this decision to: the Ontario Civilian Commission on Police Services (OCCPS), Public Complaints Bureau, 1st Floor, 25 Grosvenor Street, Toronto, Ontario, M7A 1Y6, or by facsimile transmission to 416-314-2036 (Toronto) or, elsewhere in Ontario, 1-888-311-7555 (toll-free). The OCCPS is an agency of the Province of Ontario and not associated with this police service.

Yours truly,

A handwritten signature in black ink, appearing to read "M. MacLachlan".

jb
M. MacLachlan
Superintendent
Bureau Commander
/jb

- c: Provincial Constable Mr. (Michael) MOBBS #10575, 7O33 - FSB: PS: PERT
Unit Commander, 7O33 - FSB: PS: PERT
Provincial Constable S.G. (Stephen) BEASLEY #6894, 6G03 - HURON (Goderich (MI))
Detachment Commander, 6G03 - HURON (Goderich (MI))
(c. report)

Attach.



**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

Date of Incident: December 16, 2006

Date of Complaint: April 17, 2007

Date of Report: July 26, 2007

File Number: 2531007-0120

Complainant(s): Mark J Vandermaas
371 Vesta Place, London
N5Y 1G4
Ph: 519-457-0709

Respondent(s): Mike Mobbs
Constable - #10575
Provincial Emergency Response Team
OPP - Bolton

Stephan Beasley
Constable - #6894
Huron OPP - Goderich

Investigator: Robert (Bob) Knipf
Detective Staff Sergeant
Professional Standards Bureau
Ontario Provincial Police

Finding: Unsubstantiated

Summary Of Complaint

On December 16, 2006, the complainant, Mark Vandermaas (Vandermaas) participated in a flag raising rally in Caledonia near the site of the Douglas Creek Estates (DCE) where a First Nations land claim was and had been occurring. Vandermaas was a primary party to this rally and had spoken to the crowd of non-native persons in attendance for the rally.

At one point during the rally, Vandermaas and others avoided the police line intended to restrict their approach to the DCE and were crossing a field to get to

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

a hydro pole in the vicinity of DCE but on the opposite side of the roadway. The police intercepted and eventually resulted in Vandermaas taking a flag and sitting down on Argyle Street, which eventually resulted in Vandermaas being arrested to prevent a breach of the peace.

Mr. Vandermaas states in his letter of complaint that the Ontario Provincial Police (OPP) officers who arrested him violated his constitutional rights and unlawfully arrested him then proceeded to hold him for several hours in a jail cell.

Vandermaas contends the officers made their decision to violate his constitutional rights and arrested him only after determining his race and that he would not have been arrested if he had been of aboriginal heritage.

Allegations and Findings

1. Respondents violated Vandermaas's Constitutional Rights.
2. False arrest.
3. Improper detention

Investigation

Mr Vandermaas submitted a lengthy and well-documented letter of complaint consisting of 26 primary pages plus attachments.

Complainant – Mark Vandermaas

- Vandermaas and a Mr. Gary McHale organized a March for Freedom event to protest the OPP's violation of Mr Chausse's rights and subsequent arrest.
- Vandermaas attended with a Canadian Flag on a 6-foot aluminum pole.
- Vandermaas attended the Canadian Tire Lot approximately a ½ kilometer from the occupied land at the Douglas Creek Estates.
- Media interviewed McHale and Vandermaas separately.
- Vandermaas addressed the crowd and admits he was more strident than he should have been but was trying to ensure everyone heard him. He told the crowd they were there for a man named Quinton Chausse who had been arrested by OPP for attempting to mount a Canadian Flag across from the occupied land.
- Vandermaas was also there because Ontario's Minister of Aboriginal Affairs said that Natives were different and deserved to be treated differently.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Vandermaas advised he was not going to allow a corrupt police force or self-serving politician from stopping citizens from raising a Canadian flag and promoting the idea that not all were equal.
- Vandermaas indicated he was prepared to go to jail.
- Vandermaas and McHale then crossed the street and into a field on the east side of Argyle Street and moved closer to the Native occupied land.
- The OPP were guarding a utility pole from approximately 30 protesters and the pole had a Mohawk Warrior Flag on it.
- McHale was approached by OPP officers.
- Vandermaas continued and walked up to the police line preventing persons from accessing the pole.
- The protesters were asking police to either let them hang the Canadian Flag or to take the Warrior's Flag down. The police refused both requests.
- Vandermaas was of the opinion that the Warrior's Flag was placed by organized criminals under the protection of the OPP.
- Vandermaas gave his flag to a couple of young ladies who wanted to ask the OPP to let them hang the flag. The OPP refused.
- Vandermaas also asked to hang the flag and was refused.
- Vandermaas indicated he had come to Caledonia to hang a Canadian Flag or go to jail trying and knew his arrest was likely if he tried.
- Vandermaas then walked to the middle of the northbound lane, sat down and placed the flagpole between his legs and faced a car.
- Almost immediately an OPP officer grabbed his pole and used enough force it broke as Vandermaas hung onto the pole.
- Vandermaas was then on his back holding a piece of the pole and the police requested he drop it, which he did.
- Police then asked Vandermaas if he was willing to stand up so they could remove him from the area. Vandermaas did so. This was approximately 1300 hours.
- Vandermaas was told by an officer he was being arrested for Breach of the Peace and read him his rights.
- Vandermaas was detained in a cell at the Cayuga OPP office until released at approximately 1600 hours.
- The Sergeant warned Vandermaas that if he returned to Caledonia he could possibly face charges.
- Vandermaas advised that after his release he met with his wife and another protester and after celebrating with a meal, he returned home.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Vandermaas indicated that in his opinion, other than dishonoring his Canadian Flag, the OPP officers treated him and all who came into contact with them on his behalf, with respect and professionalism once the initial arrest was made.
- Vandermaas believes his arrest was unlawful and dismisses the contention that officers, in this case were justified in detaining him to prevent his provoking violence and asked the question, who might actually be provoked to violence.
- Vandermaas believes his arrest was racially motivated based on his perception of the lack of OPP response to several incidents attributed to the Native Occupiers.

Respondent #1 – Cst Michael Mobbs (Mobbs)

- Mobbs is assigned to the OPP Emergency Response Team and as such provides an enhanced Emergency Response through specialized training including Public Order.
- On December 16, 2006, I was deployed, along with other members of both PERT and ERT, as a public order unit to the area of Caledonia for a planned protest at the ongoing Land Reclamation site of Douglas Creek Estates. We were advised that a rally was planned that day to remove a Mohawk Warrior Flag from the area across the street from the Douglas Creek Estates and erect a Canadian Flag.
- Mobbs's mission statement for the day was, "Maintain order and ensure public safety to the community, residents and police utilizing public order members as a physical Border to prevent a confrontation between occupiers and protesters. Ensure the safe and orderly flow along Argyle Street and prevent any demonstrators from shutting down the Roadway"
- We were advised that we would be staying in our vehicles and only to be deployed as needed. We also remained in our "soft Tac" uniform, which consisted of the standard OPP ERT uniform of blue tactical pants and shirt, baseball cap and standard patrol jacket.
- At approximately 1208 hrs, we were deployed to Argyle Street just south of the entrance into the Douglas Creek Estates, where a large group of protestors had gathered and were attempting to change the Mohawk Warrior flag to Canadian.
- It was believed that allowing this to take place would cause retaliation by the occupiers, which in turn could lead to a confrontation between the two groups.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Upon arrival we were met by a large crowd of people, many yelling and swearing at us.
- The protestors were informed that they would be allowed to conduct their protest but would not be allowed to block traffic or cross over to the Douglas Creek Estates.
- At approximately 1222 hrs, I observed a male party (complainant) approach our location carrying a Canadian flag on a metal pole. I advised him to step back from our location but he ignored me and pushed through us and immediately sat on the road.
- I advised the complainant to stand up and leave the area but he refused. I then took him by the arm and advised him he was under arrest for Breach of the Peace.
- The complainant initially resisted arrest at which time another officer removed the flagpole from him as it posed a threat as a weapon.
- The complainant then complied with my direction to stop resisting and stood up from the ground.
- The complainant was escorted by myself and another officer PC BEASLEY #6894 to a parked cruiser.
- As we were escorting him, he was yelling at the crowd to “sit down on the road” and that we “can’t stop them all”.
- At the cruiser I again advised the complainant of the reason for the arrest and although he was yelling at the crowd to continue protesting he was compliant.
- I conducted a search of the complainant and placed him in the rear of the cruiser and at 1226 hrs, I read him his Rights to Counsel, and asked him if he understood. He replied, “Yes, you guys did exactly what I wanted you to do”.
- I then informed him of the caution to which he stated he understood. The complainant was not handcuffed.
- At 1230 hrs, the complainant was turned over to prisoner transport and subsequently returned to the Cayuga Detachment. The complainant identified himself as Mark Vandermaas, 21Nov1956. 371 Vesta Place, London, Ontario.
- Upon turning the complainant over to Prisoner Escort I returned to the protest line but it was quite evident that with the organizers removed the rally was quickly dispersing.
- This concluded my dealings with the complainant and I have had no further contact with him since the incident.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Mr Vandermaas states, “these officers knew or ought to have known at the time of my arrest that I had committed no crime”.
- Mr. Vandermaas’ actions were in direct violation of section 30 of the Criminal Code. He was breaching the peace by his attempt to impede and block the use of Argyle Street by citizens using the road lawfully.
- I also believe that Mr. Vandermaas’ intention was to be arrested on that day. In his own words from his letter, he stated on two occasions that he knew his actions would probably result in his arrest.
- He also made statements to me stating “you guys did exactly what I wanted you to do”.
- I also take great exception to his allegation that the arrest was racially motivated.
- At no time did I actually notice or give thought to his race. Our role that day was simply to maintain peace and order.
- If Mr. Vandermaas had not breached our line and attempted to impede the safe and lawful flow of traffic he would not have been arrested.
- His actions were meant to incite and cause reaction.
- If any of the occupiers had attempted a similar action then they would also have been arrested for Breach of the Peace.

Respondent #2 – Cst Steve Beasley (Beasley)

- On December 16th, 2007 I proceeded from Huron Detachment to Cayuga detachment for briefing regarding a protest march in Caledonia.
- After receiving the briefing I proceeded with my partner P/C Kevin Grainger to our position at the Baptist Church on Argyle Street, Caledonia at 1105 hours.
- P/C Grainger and I stood by and were approximately 300 metres south of where the protesters were gathering at the Canadian Tire parking lot.
- Sometime after 1105 hours the protesters began to move in a south-easterly manner by entering a field on the east side of Argyle Street and were making their way southward.
- Vehicular traffic was still flowing in each direction on Argyle Street.
- P/C Grainger and I were joined in with other O.P.P. officers in forming a line on Argyle Street. It was my belief that police were attempting to keep the protesters from reaching the entrance to the Douglas Creek Estates, which was approximately 200 metres to the south on Argyle Street.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- While I was standing on Argyle Street facing east I noticed a large white male (approximately 6 feet tall, 275 lbs) subject carrying a Canadian flag approach the police line from the east ditch on Argyle Street.
- The male lay down on the yellow line in the middle of Argyle Street.
- I assisted PERT member (Mobbs) with the arrest of Vandermaas.
- Myself and 3 other officers each grabbed a limb of the male and removed him from the centre of the roadway as traffic was still traveling on Argyle Street and I was concerned for the safety of the male and passing motorists.
- I had been to Caledonia on two previous occasions for weeklong duties and was aware of the sensitive nature of the issues.
- An officer later known to me as P/C Mike Mobbs arrested the male for Breach of the Peace at 1222 hours.
- P/C Mobbs and myself escorted the male off of the roadway and northward towards an O.P.P. cruiser that was parked alongside of the roadway.
- At 1226 hours P/C Mobbs advised the male that he was under arrest for breach of the Peace and explained that he had the right to retain and instruct counsel without delay.
- The male-later identified as Mark Vandermaas advised he understood the charge and of his charter rights.
- While walking him off the roadway to the cruiser he was very cooperative and did not resist in any manner.
- He advised that he was happy that a cameraman was walking alongside of us and was photographing us.
- He advised me that I did a good job and thanked me as we waited for the Offender Transport Unit van to attend our location so that he could be transported to a holding area. At 1232 hours Vandermaas was turned over to the Offender Transport Unit and I resumed my duties on Argyle Street.

Witness #1 – Jeff Parkinson (Parkinson)

- Parkinson resides in Delhi.
- Became interested in the Caledonia occupation after attending a rally last October and was impressed by Gary McHale and appalled by some of the ladies stories.
- Presently looks after two web sites for the “Caledonia Wake-Up Call”, a web site attributed to Gary McHale.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Claims he does investigative reporting for the web site and Caledonia issues but has no formal training.
- Attended the rally on December 16th, 2006. The objective was to place a Canadian Flag on a utility pole between the Canadian Tire and the DCE.
- OPP formed a human barricade on west side of road so a group of the protesters and rally members walked to the east side of Argyle Street and into a field and walked toward the direction of the DCE.
- OPP called for back up and ran down road to intercept protesters and initially just walked along with protesters.
- Some OPP officers stopped Gary McHale and Parkinson and other protesters continued on to the hydro pole.
- There were 60-70 protesters.
- At the pole, Mark Vandermaas gave his flag to a couple of young girls thinking if anyone could get through it would be them. They were unsuccessful.
- The crowd was chanting to the OPP to let the girls through their human line.
- Distracted briefly and when he looked back, Vandermaas had retrieved his flag and was now sitting on Argyle Street. Due to crowd, Parkinson had only caught a glimpse of Vandermaas and could not see or hear what was going on as the crowd was screaming.
- Three officers were present and one was trying to take the flagpole out of Vandermaas's hand.
- Saw police walking Vandermaas down the road. Vandermaas appeared calm.
- Vandermaas was not handcuffed but hands held behind his back.

Witness #2 – Nancy Martinello (Nancy)

- Nancy advised that as a resident of Caledonia there was a flag raising taking place in Caledonia on December 16th. Her 14-year-old son and 13-year-old daughter and herself met the other residents from the area for the flag raising at the Canadian Tire parking lot. Nancy had a flag on a pole and her son a ball with a flag on it.
- Nancy advised Gary McHale and Mark Vandermaas were there and although she doesn't know them personally, she is aware of who they are.
- Vandermaas was speaking to the crowd and McHale was emphasizing the event should be peaceful.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Person's around Caledonia of unknown names were around Nancy and had commented nothing was happening because the OPP had formed a human chain not allowing anyone to go further by foot so they were leaving.
- Nancy advised the front entrance of the Douglas Creek Estates (DCE) is on the west side of Argyle and the crowd's plan was to erect a flag directly across from the Estates property on a hydro pole. (Note: DCE is occupied by First Nations persons making claim to the land and have been doing so for some time which has, from time to time, resulted in conflict between the occupiers and local residents of Caledonia.)
- Nancy told McHale what she heard about people leaving and he asked her if she was with him and she replied she was. He asked to use her flag.
- She told her children to follow her and she followed McHale across Argyle from the west to the east in an area beyond the police line.
- Then they attempted to walk across a field when the OPP crossed the street toward them. McHale broke away and continued to walk and they went after and surrounded Gary and he was arrested.
- Nancy advised she then made the decision that she was going to try to go as far as she could through the field and do what she could do without a flag.
- As she did so the children followed and the OPP surrounded them but kept their distance and closed in.
- The OPP asked what she was doing and she responded she was crossing a field and they asked her to stop several times.
- Nancy advised them she and her son were playing with the beach ball and not doing anything illegal and then she carried on.
- Nancy advised an officer stopped dead in his tracks so when Nancy's son turned around he banged into him. He told Nancy's son to get his hands off of him and they exchanged words. Nancy's son said, "You are the one who banged into me; You keep your hands off of me."
- Nancy then told her kids that if any officers attempted to do anything or touch them they were to go to their knees and assume a praying position. She told the officers she was sure people had cameras and they would look silly trying to arrest a mother and her two children.
- Nancy claimed the officers backed off and she continued across the field.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

- Nancy got to a fire hydrant and other people had now crossed the field and the police now formed a human chain blocking access to the pole where the protesters were wanting to raise a flag.
- Nancy was aware the OPP human chain was to stop people from going any further just like it had been intended to stop the people from getting further than they had initially.
- Nancy now had no flag so she borrowed one from another local. Nancy then got on top of the fire hydrant and was waiving the flag. More people had come in and Vandermaas also came over.
- Someone suggested to let the daughter of Nancy and another young girl see if they can raise the flag and Vandermaas told the children he would go with them if they were afraid. The group approached the officers and Vandermaas told the officer's what the young girls wanted to do and the officers said 'No. Step Back.'
- Vandermaas asked why they could not hang a flag and still the officer said to the girls to get the flag out of his face and the crowd started to heckle the officers.
- Nancy advised Vandermaas asked to borrow their flag and he went toward the shoulder of the road and Nancy lost sight of him.
- Vandermaas was arrested but Nancy did not see what had occurred to cause the arrest or the actual arrest. She heard he had sat on the road.
- Nancy advised that after McHale and Vandermaas were arrested, the crowd dispersed and the officer left the area. Nancy was surprised because anyone could have raised a flag then.
- Nancy was convinced the officers had been there to prevent the flag raising to prove to the people that there is two-tier justice.
- Nancy was asked why she thought the OPP were preventing persons from raising the flags and she did not want her response recorded.
- Nancy admits that tempers were hot during the event.
- Nancy admits later driving by the DCE entrance where native ladies were around a fire and she exchanged words with them as she passed as she went by and as she came back again.

Witness #2 – Lisa Parent (Lisa)

- Lisa identified by Vandermaas as a potential witness.
- Lisa spoken to and advised she did not witness or hear any comments associated to Vandermaas's arrest.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

Other Evidence

1. Prisoner Security Check

- Indicates Vandermaas lodged at Cayuga OPP at 1301 hrs on 16 Dec 2007.
- Indicates Vandermaas released at 1541 hrs on 16 Dec 2007.

2. Photo's Provided by Vandermaas

- Show Vandermaas in cruiser after arrest smiling broadly and waving.
- OPP officer holding or guiding lady off street. She too is smiling.
- Photo of Mohawk Flag on Pole. Vandermaas in foreground.
- Photo of OPP line.
- Photo of Pole with OPP officer around it.
- Photo of large crowd and police around pole.

3. Preventing Breach Of Peace

30. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace.

R.S., c. C-34, s. 30.

Arrest for breach of peace

31. (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

Conclusions

Cst Beasley's involvement in this matter was simply to be acting in good faith in assisting Cst Mobbs, the Provincial Emergency Response Team Member, in making Mobbs's arrest of Vandermaas.

Cst Mobbs is the primary respondent as he is the officer making the arrest of Vandermaas at the time of the incident.

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

Allegation #1 – Respondents Violated Vandermaas's Constitutional Rights

Vandermaas suggests that he was arrested and his rights violated because of his race and therefore feels it was racially motivated.

Nothing in Vandermaas's evidence suggests this to be anything other than his opinion and does not identify any comment or action by the officers involved which would support the allegation that his arrest was racially motivated. Past events mentioned by Vandermaas to prove his opinion are simply that, in the past, and the circumstances cannot be compared and the author restricted his findings to the events under investigation only.

Cst Mobbs advised he gave no notice or thought to Vandermaas's race and was simply trying to maintain peace and order. Mobbs contends if any of the Native occupiers of the DCE had attempted similar action they too would have been detained.

Vandermaas was appropriately advised the reason for his arrest, given his right to council, which he chose not to exercise, and was cautioned.

The allegation that Vandermaas's arrest was racially motivated and his constitutional rights violated is unsubstantiated due to the lack of sufficient evidence.

Allegation #2 – False Arrest

Cst Mobbs's mission was to prevent a confrontation between the rally protesters and the DCE occupiers by maintaining order as well as to ensure the safe traffic flow along Argyle Street and to prevent the demonstrators from shutting down the roadway.

When Vandermaas laid down on the traveled portion of Argyle Street with traffic present, he was directed by Mobbs to stand up and leave the area. Vandermaas refused.

To have allowed Vandermaas to continue blocking the roadway and would have impeded the safe passage of vehicles as well as endanger Vandermaas himself. Mobbs was also of the opinion to have allowed Vandermaas to raise his Canadian Flag or to have removed the Warriors Flag would have incited the

**Professional Standards Bureau
Investigation Report
File # 2531007-0120**

Native occupiers and their supporters and order would not have been easily maintained.

In keeping with Section 31 of the Criminal Code, Cst Mobbs properly arrested Vandermaas to prevent a breach of the peace which is what Vandermaas expected and had indicated he was willing to do. Although Vandermaas was not overtly violent or inciting violence, he was himself acting, and advocating others to act, in a manner that potentially would have disrupted the peace between the demonstrators and the occupiers of DCE.

Following the arrest of the rally organizers, Mr McHale and Vandermaas, the rally protesters dispersed and the area was peacefully secured.

The allegation of Cst Mobbs having made a false arrest is unsubstantiated based on the lack of sufficient evidence.

Allegation #3 – Improper Detention.

Based on the conclusion that Vandermaas's arrest for Breach of the Peace was lawful, his detention also was also lawful for a period of time to ensure the breach of the peace could not be repeated or renewed.

Vandermaas's detention of approx. 3 hours is not unreasonable for the purpose of waiting for the protest area to be cleared of remaining protesters waiting for leadership to renew their quest.

The allegation of improper detention is unsubstantiated based on the lack of sufficient evidence to support the allegation.

Robert J. Knipf

Robert (Bob) Knipf
Detective Staff Sergeant
Professional Standards Bureau
Ontario Provincial Police