

August 28, 2007

BY FAX AND REGULAR MAIL

Ontario Civilian Commission on Police Services
Public Complaints Bureau
1st Floor, 25 Grosvenor Street
Toronto, Ontario M7A 1Y6
fax: 1.888.311.7555

Re: OPP complaint dated April 04/07, OPP file 2531007-120

Dear OCCP:

I am writing to request that you review the decision of the Ontario Provincial Police in the above - noted complaint for the following reasons:

1. Investigation failed to address issues at root of my complaint.
2. False statement by subject officer.
3. Investigating officer excluded relevant evidence from consideration, failed to interview witnesses and relied on a false statement from a subject officer.
4. Investigation includes other mis-information and mis-characterizations.
5. New evidence: OPP took direction from native occupiers to violate rights of non-natives. Senior officer says OPP never had a problem with flag raisings until pressured by native occupiers.

1. Investigation failed to address issues at root of my complaint.

The investigating officer concluded that I was arrested under Section 31 of the Criminal Code to “*prevent a breach of the peace...that would have disrupted the peace between the [non-native] demonstrators and the [native] occupiers of DCE [Douglas Creek Estates].*” [OPP p13]

He failed, however, to even acknowledge a key issue, namely that the subject officers knew or ought to have known that two separate decisions of the Supreme Court protected my rights on Dec 16/06. One gives me the right to place a flag on a public utility pole, while the other states that third parties to land claims have NO duty to consult or accommodate the concerns of aboriginals. [My complaint p14-16, see **Ramsden v. Peterborough, 1993; Haida Nation v. British Columbia, 2004**]

The investigation failed to answer the question as to how the peaceful exercising of one’s rights is a criminal offence.

The investigation failed to address the obvious question as to why a flag placed by non-natives is a criminal offence, but one placed by natives is not.

The investigation failed to answer the question as to why the subject officers made no attempt to protect my right to place a Canadian flag on the subject poles. Why were officers not deployed toward the native occupiers instead of against the peaceful, non-native citizens?

The investigation failed to answer the fundamental question raised in my complaint: Do police officers have the right – contrary to the Supreme Court - to indefinitely suspend the constitutional rights of non-natives during aboriginal land claims as an alternative to protecting those rights? In Sections 2 and 3 of this letter I summarize evidence excluded by the investigating officer that shows that the events of Dec 16/06 were NOT part of a unique, unexpected, temporary situation where officers were forced to make quick decisions based on fast moving events on the ground, but were, in fact, part of a deliberate and systemic denial of non -native rights that continues to this day.

In Section 5, I outline new evidence that shows – as unbelievable as it may sound – that the OPP actually took direction from native occupiers to violate my/our rights. This subordination of police authority has so far led to the arrest of three non -native people, including me, who have committed no crimes.

The investigator says that Const. 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 native occupiers and their supporters and order would not have been easily maintained.*” [OPP p13]

It seems that the OPP’s investigator is saying – contrary to the Supreme Court’s decisions - that the rights of non-native citizens are subject to the whims of those who may or may not be prepared to use or threaten violence. This is a disturbing statement by a member of a police force, and I urge you to reject out of hand this argument against protecting fundamental human rights. It is akin to the police taking it upon themselves to permanently prohibit women from entering certain areas of town because criminals might attack them, to refuse to protect their right to walk where they wish, and to threaten them with arrest if they try to do so.

The photos attached to my complaint show that on the day I was arrested there were many, many OPP officers at the scene with - I suspect – many more in reserve. The investigator is asserting that, even with all these officers present, the OPP would have been unable to prevent violence against us. This, too, is a disturbing admission from an investigator for a major police force.

Furthermore, the words of the subject officers and of this investigation reveal a complete lack of empathy for my rights. They also reveal that the officers made no attempt whatsoever to accommodate and/or protect the right of non-natives to place flags on utility poles on Dec 16/06. In fact, the force has NEVER taken any measures to do so at any time, and officers continue to this day to threaten non-natives with arrest. This is, of course, in keeping with the directions and/or threats of native occupiers as explained in Section 5.

2. False statement by subject officer.

The investigating officer states that there is “*insufficient evidence*” to prove that my arrest was racially motivated. He quotes Const. Mobbs as saying that he gave no notice or thought to my race and that he took “*great exception*” to my allegations. Mobbs is also quoted as saying, “*if any of the occupiers had attempted similar action then they would also have been arrested for Breach of the Peace.*” [OPP p6]

On page 49 of a paper presented to the Ipperwash Inquiry entitled “Aboriginal Initiatives – Building Respectful Relationships,” the OPP’s definition of an aboriginal “critical incident” within their ‘Framework for Police Preparedness for Aboriginal Critical Incidents’ - currently in use in Caledonia - includes this situation: “*Any incident where the source of conflict may stem from assertions associated with Aboriginal, inherent or treaty rights.*” Const. Mobbs didn’t have

to “notice” my race or be told my race because he’s already been highly trained in a law enforcement environment that treats aboriginals differently from other racial groups during land claims. The Framework had already determined my race long before the subject officers arrested me. The whole purpose of the Framework is to give special care, consideration, respect and latitude to aboriginals and their rights, attention that is denied to other races.

Mobbs lied to this investigation when he said that native occupiers of DCE would be arrested for similar actions as mine. He knows full well that the arrest of aboriginals in Caledonia is absolutely prohibited without authorization from the Aboriginal Relations Team (ART) and/or the Major Events Liaison Team (MELT) and/or senior officers, and that authorization is highly unlikely. He knows full well that OPP officers in Caledonia are under strict orders not to arrest aboriginals committing crimes in full view of officers let alone arresting them for silly and imaginary ‘breaches of the peace’ such as wanting to put up flags or sitting on the road.

Included with the evidence attached to my complaint (excluded by the investigating officer; see Section 3) is a video of the ‘Chris Syrie incident’ of Jan 10/07, just several weeks after my arrest. Numerous OPP officers watched a native thug trespass onto Mr. Syrie’s property, assault Mr. Syrie’s step-father, throw his Canadian flag on the ground and then threaten Mr. Syrie toe-to-toe. Despite repeated requests to arrest the man, all officers stand around and wait for ART/MELT to arrive. The suspect is allowed to leave the scene with no attempt to identify or arrest him. [**My complaint, p19; see also evidence CD-ROM, item 17**]

The Commissioner of the Ipperwash Inquiry stated on page 87 of his Volume 2 Executive Summary the following: “*It [Framework for Police Preparedness for Aboriginal Critical Incidents] is an operational policy, intended to guide incident commanders and officers before, during and after such incidents. **The OPP has been applying the Framework at Caledonia.***” [my emphasis]

Since all OPP officers have received extensive training on the Framework, obviously, the officers involved in the Chris Syrie incident were applying the Framework when they allowed the native suspect to escape arrest or identification despite the crimes they witnessed. It is crystal clear from the video that they were following a strict ‘hands-off’ protocol for the native. Just as obviously, the subject officers were applying the Framework when they aggressively denied me my rights, ripped my flag from my hands and arrested me. The difference in treatment between natives who have actually committed crimes and law-abiding non-natives could not be clearer.

How does Mobbs explain the fact that OPP officers have NEVER stopped a native person from placing any of the numerous pro-native flags on the same utility poles denied to non-natives?

How does he explain the fact that – in sharp contrast to their aggressive arrests of 3 non-natives – OPP officers have NEVER arrested a native person for placing a flag, or for sitting on a road?

How does he explain the fact that OPP officers allowed natives to dig up the main road through Caledonia and block it for weeks without arresting a single person? It was nearly a full year later that they issued an arrest warrant – for one man.

How does Mobbs explain the fact that it was the OPP’s Provincial Emergency Response Team (PERT) – of which he was a member – that was called out to stop us from placing flags on Dec 16/06 without involvement of the ART or MELT teams? The answer, of course, is very simple – in accordance with their training the officers had already determined our race and that we were not of aboriginal heritage. Had we been a group of aboriginals protesting and attempting to assert

our rights, the ART or MELT teams would have been called by the subject officers as they know they are required to do.

Had we been aboriginals, the ART/MELT teams would have respectfully met with us and discussed the important issues at stake. They would have been very co-operative in taking steps to protect our rights; my flag would not have been violently ripped out of my hands without warning and I would not have been arrested for a non-crime.

The evidence of systemic discrimination against non-natives under the Framework is overwhelming. Just the Chris Syrie video alone shows clearly that OPP officers are under strict orders not to detain, arrest or identify natives even when crimes are committed right in front of them. Mobbs knows this because he has been trained to know. Mobb's statement to the investigating officer, therefore, that he would arrest a native occupier for trying to put up a flag or for sitting on the road in protest, therefore, is a blatant lie. It has never happened in Caledonia, and it would never be allowed under present OPP operating protocols.

3. Investigating officer excluded relevant evidence from consideration, failed to interview witnesses and relied on a false statement from a subject officer.

The investigating officer states, *"Nothing in Vandermaas' evidence suggests this [racial discrimination] to be anything other than his opinion ..."* *"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."* [OPP p12]

Ignoring past actions of the OPP is most convenient from their point of view, but I believe that it is most unreasonable to allow it. On Dec 02/06 the OPP arrested a non-native resident for attempting to place a flag on a utility pole. On Dec 16th they arrested two more non-natives for the same 'offence.' On Jan 20/07 the OPP again prevented non-natives from exercising their right to place flags, and even today, the OPP threaten arrests against any non-natives who wish to place flags while continuing to allow natives to do so.

When one looks at the events in isolation as the investigating officer would have you do, it may seem perfectly reasonable to argue that police were engaged in a unique, short-lived operation where reasonable restrictions on the freedoms of citizens were necessary and decisions were made based strictly upon events on the ground. But, these are not the facts in my case or in the cases listed above. My evidence shows that the OPP have implemented a race-based policing system in Caledonia in which the subject officers were willing participants. For the investigating officer to simply disregard compelling evidence of systemic racial profiling is not reasonable.

My evidence shows that the OPP treat natives very differently from non-natives, and were doing so on the day I was arrested. The evidence shows that, contrary to the assertions of Const. Mobbs and the investigating officer, my race was THE determining factor in the violations of my rights and arrest. An objective review of my evidence clearly supports my belief that had I been of native heritage holding a Mohawk Warriors flag, I would have been allowed to place a flag on the utility pole, and I would not have been arrested by the subject officers.

I find it disturbing that the investigating officer excluded important evidence from his investigation and then claimed that there was nothing in my evidence to support my complaints of racial bias and violations of my rights other than my opinion.

The investigating officer failed to interview Mr. Jim Anderson, witness to the Chris Syrie incident, the video of which proves, beyond all reasonable doubt, that OPP officers operating under the Framework are engaged in systemic racial policing practices and are NOT allowed to arrest native suspects as Const. Mobbs asserted they would be in a similar situation as mine.

The investigating officer failed to interview Gary McHale, the other man who was arrested with on Dec 16th. and co-organizer of the flag-raising event. I suspect that Mr. McHale was not interviewed because he might have provided additional evidence to contradict the officers involved in the preparation of this complaint such as that outlined in Section 5 of this letter.

The investigating officer failed to interview the area's MPP, Toby Barrett, who was listed as a witness to a previous arrest of a non-native resident attempting to raise a flag, and who is more than qualified to provide information about the double-standard of law enforcement by the OPP.

The investigating officer failed to interview lawyer John Findlay, author of the Caledonia Class Action lawsuit. He was listed as a witness due to his extensive knowledge of OPP history in Caledonia and their failures to protect the rights and property of non-natives.

Given the extensive evidence provided with my complaint; and given his failure to interview witnesses; and given his position with the OPP Professional Standards Bureau, I find it very difficult to believe that the investigating officer did not know that OPP officers in Caledonia are under strict orders not to arrest native suspects, and, therefore, that Mobb's assertion that native protesters would be treated the same as non-natives was false.

4. Investigation contains other mis-information and mis-characterizations.

A. Mis-characterization: Investigating officer concludes that I was “*properly arrested to prevent a breach of the peace which is what Vandermaas expected and had indicated he was willing to do.*” [OPP p13]

This conclusion is utterly baseless. There is no evidence to support the investigator's contention that I intended to commit the criminal code offence of 'Breaching the Peace.' The evidence clearly shows that I went to Caledonia simply to peacefully and lawfully exercise my right to place a flag on a utility pole in support of the Caledonia citizen who had been arrested on Dec 02/06 for attempting to do the same thing. There is no doubt that I fully expected to be unlawfully arrested while attempting to raise my flag, just as the Caledonia resident had been, but I never intended to commit a crime and did not commit one. In fact, in one of the few accurate characterizations of my actions, the investigating officer himself states, “... *Vandermaas was not overtly violent or inciting violence...*”

Finally, one must note that the investigator's statement that I planned to breach the peace is based on the nonsensical argument that exercising one's rights during an aboriginal land claim is a criminal act. Again, the Supreme Court in *Haida Nation v. British Columbia* has held that 3rd parties to land claims have NO duty to consult or accommodate aboriginal concerns. [My complaint p15-16, see *Haida Nation v. British Columbia, 2004*]

B. Misinformation: Const. Mobbs states, “*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.*”

Firstly, Const. Mobbs did not charge me with a traffic related offence. Secondly, the investigating officer concluded that I was arrested under Section 31 of the Criminal Code to “*prevent a breach*

of the peace...that would have disrupted the peace between the [non-native] demonstrators and the [native] occupiers of DCE [Douglas Creek Estates].” [OPP p13]

This statement itself is proof that the OPP did not arrest me for sitting on the road; they arrested me because I wanted to exercise my rights and because the exercising of those rights might have offended native occupiers prepared to use violence.

If the subject officers had not prevented non -natives, including me, from exercising our right to place a flag on a utility pole, there would have been no confrontation, and no one would have been arrested. **[My complaint, p19-20]**

C. Mis-information: Investigating officer says, “...*he was directed by Mobbs to stand up and leave the area. Vandermaas refused.*” **[OPP p12]**

Const. Mobbs says, “*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.*” **[OPP p5]**

I do not believe in using violence against police officers, nor do I believe in disobeying their orders no matter how much I might disagree with them. I was never ordered to back away from any police line. After having a brief discussion with an officer at the utility pole, I calmly walked over and sat down on the road. I would not and did not “push through” any police line. I did not even notice a police line by the road. I made no physical contact with any officers until I was arrested. No officer spoke with me or asked me to stand up until after an OPP officer standing behind me wrenched my flag from my hands without warning using enough force to break the aluminum pole in two pieces. I could not see who was grabbing my flag behind me and so I held on to it. After it broke into two pieces I was then asked to drop the remaining broken piece which I did immediately. I was asked if I would stand up, and I did so immediately. At no time did I refuse orders from the police before, during or after my arrest. At no time was I threatening with my flag. At no time did I “resist arrest.” I was not arrested for resisting arrest and I was not charged with resisting arrest. In fact, Const. Beasley stated, “*While walking him off the roadway...he was very cooperative and did not resist in any manner*” **[OPP p7].”**

D. Mis-information: Const. Mobbs says, “*We were advised that a rally was planned that day to remove a Mohawk Warrior flag from the area across from the Douglas Creek Estates and erect a Canadian flag.*” He later says, “...*we were deployed to Argyle Street just south of the entrance into Douglas Creek Estates, where a large group of protesters gathered and were attempting to change the Mohawk Warrior flag to Canadian.*” **[OPP p4]**

Who advised Const. Mobbs that we planned to remove a Mohawk Warrior flag? Mr. McHale and I were the organizers of the Dec 16/06 protest. I did no promotion whatsoever for the event, but McHale did. At no time did he promote or encourage any effort to replace a Mohawk Warrior flag with a Canadian one. In fact, as much as we disagree with the violent tactics used by the occupiers, we do not have the right to take their property without permission. We only wanted to place our Canadian flag on the same poles OPP officers allowed natives to place their flags.

Even native media knew we were not attempting to remove native flags. Six Nations radio station CKRZ issued a release on Dec 15/06 saying, in part: “*A Richmond Hill man is organizing a*

morning protest where people will hang Canadian flags across the road from the occupation... Gary McHale says he expects the provincial police will prevent them from hanging Canadian flags which he says shows aboriginals are treated differently .”

5. New evidence: OPP took direction from native occupiers to violate rights of non-natives. Senior officer says OPP never had a problem with flag raisings until pressured by native occupiers.

In section 3, I commented on the failure of the investigating officer to interview the other man arrested with me on Dec 16/06, Mr. Gary McHale. Had he done so, he might have received evidence in Mr. McHale’s possession that proves Inspector McLean of the Caledonia detachment never had a problem with non-natives putting up flags across from DCE, and that it was pressure from the occupiers that caused his officers to prevent us from doing so. This evidence is in the form of a conversation between Inspector McLean and Haldimand Mayor Marie Trainer and a resident that was taped by the resident. This conversation occurred after I submitted my complaint to OPP Professional Standards.

Not only do McLean’s statements confirm that our actions were lawful, but also that the OPP violated our rights and arrested us because of instructions and/or threats from native occupiers. If the police were, in fact, threatened by these occupiers then they should have dealt appropriately with those threats instead of violating our rights and freedom. McLean’s admission also shows that the OPP made no attempt or preparations to protect our rights; they simply took direction from the native occupiers. This is akin to the police violating the rights of black people and arresting them on orders or threats from white gang members despite knowing that the black citizens were not acting illegally.

Since Inspector McLean is the Caledonia Detachment Commander and has been extensively trained in applying the Framework, one must assume, therefore, that taking direction from native occupiers is official OPP policy. I have access to additional evidence in the form of audio recordings of OPP/DCE occupiers radio traffic that support this statement.

I believe that OPP activities conducted against law-abiding non-natives under the direction or intimidation of native occupiers represent a gross violation of human rights. I will be sending this evidence to the Ontario Human Rights Commission to supplement the complaint I filed with them on July 18/07.

Summary

When stripped of the mis-characterizations, the mis-information and the attempt to downplay important and relevant evidence of systemic racial policing practices, the OPP ‘investigation’ into my complaint is little more than an official attempt to obfuscate the truth.

Inspector McLean’s startling admission that he had no problems with non-natives raising flags until receiving pressure from native occupiers proves that OPP officers have subordinated their authority to the occupiers by following their instructions to violate the rights of non-native citizens, and by arresting us for non-existent “breaches of the peace.”

The truth is, despite Const. Mobb’s false statement to the investigator - as exposed in Section 2 - the subject officers would never have stopped me from placing a flag, never have allowed the flag to be torn from my hands, and never have arrested me if I had been of aboriginal heritage.

The truth is that if anyone breached the peace on Dec 16/06, it was the officers who followed directions from native occupiers and formed lines against law-abiding citizens to prevent us from exercising our rights. Had they not done so, there would have been no arrests including mine.

As stated in my complaint, I am a reasonable man. If the police were actively engaged in a short-lived law enforcement action (i.e. hostage taking, arresting criminals, etc.) lasting a few hours or days, it would not be reasonable for me to inject myself into the situation, and the officers would be justified in temporarily preventing me from exercising my rights. This is not the case here. My complaint is a direct result of deliberate, systemic discrimination that persists to this day in direct contravention of two Supreme Court decisions, and Ontario's Human Rights Code. The OPP's own investigation shows that the subject officers were willing participants in this discrimination in that they made no attempt whatsoever to protect my right to raise a flag.

I urge you to read the documents and view the videos attached as evidence to my complaint. If there is any doubt in your mind afterwards that the OPP are conducting systemic, race-based policing operations I would be more than pleased to have a member of the OCCPS accompany me during an attempt to place a Canadian flag on a utility pole in Caledonia. I believe this would provide convincing evidence as to who is telling the truth with respect to this complaint and who is not. Even a simple telephone call to Caledonia Detachment Commander Inspector McLean could verify my claim that he only decided to stop non-natives from putting up flags due to pressure and/or threats from native occupiers.

I ask OCCPS to conduct an independent investigation into my complaint. I believe that the issues associated with my complaint are important ones that deserve intense civilian scrutiny. I welcome the opportunity to personally respond to any concerns you may have.

Thank you for listening.

Respectfully,

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