

Haldimand County Police Services Board

(The Board)

Meeting: September 23, 2020

Purpose of Meeting:

Discussion with officials from the Solicitor General of Ontario's office and the Ontario Provincial Police in the matter of Police response and the enforcement of Court Orders involving the take over and work stoppage of the McKenzie Meadows construction site in Caledonia.

In addition, the Board seeks clarification on the OPP policy "A Framework for Police Preparedness for Indigenous Critical Incidents"

Synopsis of Concerns:

The OPP have identified the individuals who have illegally taken the building site of Losani Homes on McKenzie Road in Caledonia as protestors or occupiers. These individuals have identified themselves as Aboriginals acting on behalf of the traditional Chiefs of the Haudenosaunee people. These individuals have proclaimed it as their land and forced the construction crews off the site.

These people did not utilize the Canadian court system to argue their position about land ownership or obtain court orders or injunctions to stop construction. These people never participated in any of the public hearings about this land development located on and off Six Nations Territory in both Caledonia and Six Nations.

These people simply walked on to the property took control and in addition damaged equipment and supplies located on the site. (Sunday July 19, 2020)

The spokesperson for this group identified himself as Skylar Williams stating this is native land and he is taking it back. Skylar Williams should be known to the OPP as he was involved in the 2006 DCE land claim incident. Mr. Williams name is on page 198 and 199 of the book Helpless by Christie Blatchford. In the book Blatchford describes Williams as a violent person who was involved in terrorizing an elderly couple, and assaulting a CHCH news crew. In addition, the Elected Chief (at that time) David General and a Confederacy Chief Alan MacNaughton both condemned the actions and did not support Williams.

The Board would like to believe OPP officers would be aware of Mr. Williams's record as he is a local person. Mr. Williams credibility should have been suspect to the police because in 2007 it was publicly stated he had no support from the elected Six Nations Chief and a Traditional Confederacy Chief, Alan MacNaughton.

The Board requests what investigation was done by the OPP to determine if William's was actually there on his own accord, or that he was there on instructions from the Traditional Council of the Haudenosaunee people? In 2007 a Traditional Chief did not support Williams's methods of reclaiming land. What had changed to give the OPP officers a belief that Williams had any credibility?

It is apparent Williams has no intention of leaving the property. Williams has stated his group are known as “land defenders” from Six Nations. Williams has also renamed the property’s location as “1492 Land Back Lane.”

The Board would like clarification as to how the OPP determines Indigenous Critical Incidents. What parameters have to be met? Do the occupants have to represent a recognized Aboriginal Nation or is simply saying “Land Defenders” sufficient information for the OPP policy “A Framework for Police Preparedness for Indigenous Critical Incidents” (policy) to be followed? If one person of Aboriginal descent shows up with a tent and claims a piece of property as stolen Aboriginal land does your policy paper recognize this as a Land Claim? If not one person, how many people are required to seize land for the OPP policy to be applied?

The Board understands the reason why the OPP requested the owners of this property to obtain a court order to have these trespassers removed from the property. The Board understands and respects the fact that the rule of law in this country must be upheld. The Board understands that it would take several days in order for a court order to be obtained. The Board would like to know what the OPP did as per their policy paper on Indigenous Critical Incidents to convince or encourage Mr. Williams and his group to leave the property? The court order was eventually obtained by the property owners and the Board is aware that the OPP was requested to assist the Sherriff in removing Mr. Williams and his group from McKenzie Meadows. It is known by the Board that Mr. Williams did not respect the order of the Court and that Williams failed to comply with that order. Would the OPP agree with the Boards position that no one has a Charter right to disobey the rule of law and due process?

The Board also recognizes that Aboriginal people in Canada do have special rights granted to them under The Canadian Charter of Rights and Freedoms. The Board has found that these rights do not allow Aboriginal People any special rights or exemptions as it applies to committing criminal offences as outlined in the Canadian Criminal Code. Aboriginal people are susceptible to arrest and detention similar to any other Canadian. In fact, at the conclusion of the Ipperwash Inquiry Commissioner Sidney Linden stated: *“Police discretion is fundamental to reducing the potential for violence at Aboriginal occupations and protests. Discretion may involve whether, when or how enforcement action is taken to address alleged breaches of the law. This concept is easily misunderstood. It does not mean that anyone is above the law or that police services should have different standards for Aboriginal people. Nor does it mean that the rule of law and public order are somehow subservient to Aboriginal interests”.*

On August 05, 2020 the OPP assisted the Sherriff with a court order to remove Mr. Williams and his “land defenders”. This operation was headed by an OPP incident commander as per your policy paper. The OPP document “A Framework for Police Preparedness for Indigenous Critical incidents” is a policy paper and not an Operational Plan. The OPP had previous Aboriginal land claim experience in Caledonia and in addition had previous involvement in dealing with Mr. Williams. The OPP had time to formulate an operational plan that would/should include the possibility/likelihood of resistance by the “land defenders” and their supporters.

The Board is aware that the “land defenders” did retaliate from being removed by police from the construction site. The Board has been advised that the number of people to respond to Mr. Williams cry for help was approximately 100 people. Upon review of pictures seen in the media the majority of responders appear to have been young people possibly in their late teens or a little older.

Members of the Board viewed video's on Facebook of the carnage that erupted as a result of the failed OPP plan to remove the trespassers. The blocking of roads, burning of tires, destruction of infrastructure and the police inability to intervene and arrest those responsible.

The Board is disappointed and concerned in the lack of response by the OPP. The OPP is a professional police agency. The OPP has been involved in similar incidents in the past and know very well what could happen during the removal of these "land defenders". The OPP's failure to not have enough resources and/or properly prepare for the removal of these protestors placed the safety of the citizens of Caledonia at risk and that is unacceptable to the Board.

As of August 05, 2020, these people who claim to be peaceful Aboriginals and only want to take back alleged Aboriginal land have crossed a line. They have openly disobeyed orders of the court. They have committed acts of aggression and intimidation which by Canadian Criminal Code definition are acts of Terrorism. These Aboriginals are not protestors, they are now by legal definition Terrorists.

The citizens of Caledonia were at risk and for two weeks they could not use public roads for two access routes into or out of town. Arglye street heading south out of town was blocked and the highway #6 north and south by-pass was also blocked. It was reported in the media these blockades were eventually lifted by the goodwill of the Haudenosaunee people on August 20, 2020.

The Board believes these acts of aggression, violence and intimidation are not being addressed by the OPP in an appropriate manner or time frame. The OPP has stated to the Media that they are negotiating with the Aboriginals and they are following their policy on Indigenous critical incidents. The OPP is a law enforcement agency – the Board finds it difficult to understand what the OPP has to offer or negotiate once a court order is issued by the courts for protestors to leave. What can the OPP offer to the Aboriginals that would entice them to leave the site and surrender their selves to police for the crimes they have committed? The Board would like to know how long will the OPP talk with these particular people? Does the OPP have any particular timeline or does the policy allow this illegal occupation to go on indefinitely?

The Canadian Charter of Rights and Freedoms indicates that Canada is founded upon principles that recognize the supremacy of God and the rule of law. The Charter also guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In the development of this Aboriginal Critical Incident policy was it the intention of the OPP to not enforce court injunctions? Did the OPP intend to apply a two-tier application of the law, giving Aboriginals special status above Non-Aboriginals when committing criminal acts? What protection of Charter Rights does the OPP policy paper give to victims like Losani Homes? What protection of Charter Rights does the OPP policy paper give to construction workers who are unable to work as a result of the OPP following this policy?

The OPP is a policing agency; their mission statement is pretty simple – to serve our province by protecting its citizens, upholding the law and preserving public safety.

The Board needs to understand how the OPP believes they are fulfilling their mission statement as it relates to protecting the rights of Losani Homes to own property and conduct business? The Board needs to understand how the OPP are upholding the law by not arresting people who disobey court

orders, who destroy public infrastructure, who use intimidation and commits acts of violence? The Board needs to understand how allowing people to block roads, forcing others to use class B roads not designed to handle the increased volume of traffic is preserving public safety? The Board also needs to understand how patrolling Caledonia and observing Aboriginals committing crimes with no arrests made contiguous to the offense is an acceptable police practice.

Six Nations and Haldimand County would be the lightning rod for the majority of Aboriginal unrest or critical incidents in Ontario. Since 2006 there was the DCE incident, the Stirling Woods incident, the highway #3 Cayuga Bridge incident and numerous road blockages on highway #6 in and around the Caledonia area. Now in 2020 we have the McKenzie Meadows incident.

The Board is of the belief that the OPP have an Aboriginal Liaison Officer assigned to Six Nations.

In the OPP policy on Aboriginal incidents there is a section intitled "Framework Application" "Conflict Cycle". In that section it identifies Pre-Critical Incident Stage and what to look for. The policy instructs an officer about being informed, knowing if there are competing power struggles within the native community; any high probability that an ongoing initiative or event could lead to conflict or crisis. The document also indicates what an officer may do. - be informed about issues of concern; build positive trusting relationships with members of all communities, First Nations police services and other agencies; the document goes on and stresses the important of communication and trust.

The Board wants to know if the OPP follows the policy as written and requests to know how the OPP applied the principles of the Pre-Critical Incident Stage of the Framework to this incident and Six Nations?

The construction site of McKenzie Meadows was no secret and was several years in the planning and development stage. The development of land and land Claim issues are an important issue to both the elected council and the hereditary council of Six Nations. What conversations did your Aboriginal Liaison Officer have with the leaders of both councils? Did the OPP Aboriginal Liaison Officer make appropriate notifications through established chain of command?

The Board understands the importance for communication and why it is written in the Aboriginal Critical Incident policy. Policies are important for any agency as they provide a plan, or course of action. It appears the OPP didn't follow their plan as written, there were no warnings received and the illegal land take over happened which created an Aboriginal critical incident in Caledonia. Once the incident occurred it appears the OPP reverted to the plan as a reason for not enforcing the law in a conventional manner.

The Board has received numerous complaints of discontent about the OPP response from the citizens in Caledonia. The citizens are frustrated and angry and they perceive that Aboriginals can at any time be violent, block roads, set fires, and disrupt the lives of all who live in Caledonia. The difficult issue for people to understand is that these crimes were being committed under the watchful eyes of the OPP with no arrests being made.

Conclusion - Position of the Board:

The Board believes that when anyone commits any criminal act whether Aboriginal or not, they must be held accountable and dealt with in a consistent manner. Police Officers in Ontario have a sworn duty to prevent crime, enforce our laws, help victims, keep public order and respond to emergencies.

It is the position of the Board that the OPP policy “A Framework for Police Preparedness for Indigenous Critical Incidents” needs to be revised. This policy was used in 2006 for the DCE occupation and it wasn’t successful as occupiers still control the site currently in 2020. The Commissioner for the Ipperwash enquiry Mr. Justice, Sidney Linden stated in regards to the OPP use of their framework for the DCE occupation that it *“raises important political, financial and operational questions about the sustainability of this approach, whether it is a best practice or not.”* *The Framework should be subject to independent, third -party evaluation noting that “the reaction of many Ontarians to the policing at Caledonia” demonstrated the need for “transparent and publicly accessible policies and with explanations for police decision-making.”* In addition, the late Mr. Justice David Marshall in 2006 stated at a court hearing in relation to the DCE occupation *“Lest one should go away thinking that this is entirely happy on all sides, I can assure that it is not. Early on in this unfortunate matter, after the injunctions were issued and criminal warrants issued, a number of decisions were made to resort to negotiation, temporizing and generally not getting on with enforcing the court’s order, the law. – The negotiating, the temporizing, has emboldened the contenders, which has resulted in damage – physical, social, commercial, and damage to the very fabric of both communities involved, as well as damaging the reputation and the reliance on the Superior Court of Justice. This, unfortunately, has fostered disrespect rather than respect for the administration of Justice in our county.”*

The policy as written doesn’t work as it fails to address lawlessness as it occurs. Police arrests are not made contemporaneously to the offense. The focus of mediation and dialogue with the goal of a peaceful resolution is an admirable goal. A peaceful resolution should create a lasting resolution but unfortunately the OPP policy on Aboriginal Critical incidents doesn’t seem to work in Caledonia. The Board’s concern is that the policy document fails to address the issue of an incident going from peaceful to becoming lawless. The policy fails to address the noncompliance of occupiers in following orders of the court.

The Board recommends that the OPP revise the document and only rely on that document during the initial stages of a critical incident as it is not an operational plan. When circumstances change and criminal acts start to occur it is incumbent upon the OPP to develop an operational plan in order to make arrests, restore order and preserve public safety.

Haldimand Police Services Board:

Mr. Bernie CORBETT, Chair

Mr. Brian HAGGITH, Vice Chair

Mr. Dan LAWRENCE, Member

Mr. Kerry BOON, Member