

"DISINFORMATION AND SMEAR:" THE USE OF STATE PROPAGANDA AND
MILITARY FORCE TO SUPPRESS ABORIGINAL TITLE AT THE 1995
GUSTAFSEN LAKE STANDOFF

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ABSTRACT

In the summer of 1995, eighteen protesters came into armed conflict with over 400 RCMP officers and soldiers in central British Columbia. The conflict escalated into one of the costliest police operations in Canadian history.

Many accounts of Aboriginal aggression provided by the RCMP are not consistent with evidence disclosed at the trial of the protesters. Moreover, the substance of the legal arguments at the heart of the Ts' Peten Defenders' resistance received little attention or serious analysis by state officials, police or the media.

The RCMP constructed the Ts' Peten Defenders as terrorists and downplayed the use of state force that included military weaponry, land explosives and police snipers, who received orders to shoot to kill. Serious questions remain about the role of the RCMP, who acted as the enforcement arm of state policies designed to constrain the effort to internationalize the Aboriginal title question.

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INTRODUCTION

After attending sessions of the trial of the Ts' Peten Defenders,¹ it became apparent to me that there were wide discrepancies between the accounts provided by the RCMP and the accounts provided by protesters regarding fundamental aspects of the Gustafsen Lake standoff. By contrasting what the RCMP told the press during the standoff with the evidence that emerged at the trial, I shall explore the hypothesis that the RCMP knowingly fabricated aspects of the press release accounts of Aboriginal aggression to turn popular opinion against the Ts' Peten Defenders and to create consent to use military personnel and equipment to remove the protesters.

The trial of those charged in connection with the Gustafsen Lake standoff was originally meant to determine the guilt or innocence of fourteen Native and four non-Native Ts' Peten Defenders. These protesters defended Sundance ceremonial grounds on the basis of deeply held spiritual and legal principles. At the trial, the Defenders provided a thoroughly researched and compelling legal interpretation of Canada's constitutional laws that express and safeguard Aboriginal rights.

Many of the Ts' Peten Defenders and their supporters have asserted that members of the RCMP as well as some officials in the British Columbia government acted unethically and illegally at Gustafsen Lake. In his autobiography, From Attica to Gustafsen Lake, 1995 Sundance Chief, and Mohawk activist, Splitting the Sky also alleges that the Canadian government broke its own constitutional laws by not honouring the Ts' Peten Defenders' assertion of Aboriginal title. There is compelling evidence that

he is right. (A full discussion of the historical and constitutional arguments is provided in the following chapter.)

In the book he published in 1999, the lawyer who acted for some of the Ts' Peten Defenders, Bruce Clark, who also counselled them from within the protest camp wrote, "The non-Native governments have no right to assume the jurisdiction to police it [the Sundance camp]. In contrast, the Indians have a *prima facie* right to defend the land from invasion."² For a time, the Ts' Peten Defenders apparently shared this view and were inspired in their stand by Clark's legal advice.³ Although their arguments were discredited by police and government officials, the Defenders were the latest in a long line of Aboriginal activists who have emphasized that there are deep and far-reaching implications of the Royal Proclamation of 1763 with reference to the Aboriginal title issue in British Columbia.

Regarding the constitutional stand taken by the Ts' Peten Defenders, and their use of armed force (characterized by Judge Joshephson as the use of "violence in a manner designed to compel a course of action upon government,")⁴ it is important to keep in mind that specific legal and political channels had been pursued for years by Aboriginal activists regarding unceded territory in British Columbia. Although the state has been willing to consider the issue of Aboriginal title within fairly narrow domestic parameters, Canada has flatly denied opening up the question of Aboriginal title to international arbitration. Moreover, there has been little reckoning with the evidence of class divisions within Native communities, which compromise the credibility of Native leadership who negotiate with the Canadian government. Two years before the Gustafsen Lake conflict, sociologist Menno Boldt suggested that the inability of the Canadian government to deal

substantively with Aboriginal title issues and grievances has left Native people across the country increasingly open to the use of force to forward their demands.⁵

With very few exceptions, the Aboriginal Tribal Council governments aligned themselves with state officials who discredited the Ts' Peten Defenders. The goal of the RCMP, state officials, and Tribal Council leaders appears to have been to discredit the Defenders' legal position by exaggerating their violent tendencies, using a technique RCMP officers referred to as "disinformation and smear."⁶ Then - British Columbia Attorney General, Ujjal Dosanjh argued that the conflict at Gustafsen Lake was a simple law and order issue and refused to investigate the protesters' legal interpretation that was fundamentally in conflict with the prevailing political reality in British Columbia. Dosanjh, who took his post less than a week before the standoff escalated, stated, "We fully support the RCMP. There is one law for all people in Canada."⁷

Many of the conclusions I draw here regarding the evidence of the use of "disinformation and smear"⁸ techniques by the RCMP are discussed by British Columbia lawyer, Janice Switlo in her book, Gustafsen Lake Under Siege: Exposing the Truth Behind the Gustafsen Lake Standoff. Switlo worked with some Ts' Peten Defenders while they were preparing their legal defence in 1996. Her book was published as the Gustafsen Lake trial was still ongoing in 1997. Since then, more evidence has emerged, the bulk of which reinforces the substance of her allegation that the RCMP misrepresented the Ts' Peten Defenders as terrorists. Moreover, she argues that the harsh treatment of the protesters was part of an overall strategy she calls the "Aboriginal agenda" of the Canadian provincial and federal governments to "insulate Canada from international scrutiny."⁹

Although the efforts of the Canadian government to avoid serious domestic and international scrutiny of their actions at Gustafsen Lake have been largely successful, there has been a recent change. In October 2000, an Oregon state judge was asked to rule on the case of Ts' Peten Defender, James Pitawanakwat. Canada sought the extradition of Pitawanakwat from the United States State Department because of charges related to the violent conflict at Gustafsen Lake, which I also refer to as the Battle of Gustafsen Lake. Pitawanakwat argued that he and the Ts' Peten Defenders were engaged in the defence of ancestral lands and that the charges against him were a result of a principled political protest, not a terrorist action.¹⁰ After three weeks of reviewing court submissions, Justice Janet Stewart ruled that the charges against Pitawanakwat stemmed from a dispute that was manifestly political in nature and that Pitawanakwat was not bound by the request that he return to Canada. Justice Stewart endorsed the constitutional arguments that framed the Ts' Peten Defenders' stand and emphasized its important international and historical context by stating, "In a very fundamental sense, the Lake Gustafsen event is analogous to other separatist movements around the world, including the PIRA in Ireland, the Tamils in Sri Lanka, the Basques in Spain, as well as various insurrections in Eastern Europe and Africa. All are violent efforts by indigenous people to overthrow an occupying government to achieve self-rule."¹¹

Regarding Pitawanakwat's assertion that the Canadian government engaged in a "disinformation and smear"¹² campaign to prevent the media from learning and publicizing the true extent and political nature of the events at Gustafsen Lake,¹³ Justice Stewart simply stated she had reviewed evidence to this effect. I suggest here that there is solid and irrefutable evidence that an RCMP "disinformation and smear" campaign was

waged at Gustafsen Lake to obscure the constitutional issues the Ts' Peten Defenders raised.

I suggest that the use of state-sanctioned force at Gustafsen Lake constituted an assertion of hegemonic power to quell a threat to state legitimacy. Because solid legal principles animated the Ts' Peten Defenders' stand, it was in the interest of all levels of government to silence the protesters' arguments so as to maintain the political, social and economic status quo. The Ts' Peten Defenders' argument that a majority of British Columbia remains unceded territory posed a tremendous threat to both the state and the corporate sector in a province that depends upon trillions of dollars of resource extraction for its economic prosperity.

The enormous show of state-sanctioned force that was deployed at Gustafsen Lake begs serious questions. How did the Ts' Peten Defenders' occupation of several acres of ranch land in a remote part of British Columbia pose a serious threat to public safety, as the police claimed? Unlike other Aboriginal protests, they were not blocking access to natural resources. They were, however, calling into question the land tenure regime of the province. Were the actions of the RCMP motivated by the desires of the provincial and federal officials to leave buried the issue of Aboriginal title by silencing the political and legal assertions of the protesters?

My first aim in this thesis is to examine and review evidence regarding the allegations that the RCMP were engaged in a "disinformation or smear campaign" at Gustafsen Lake. My second aim is to analyse the motivations of police and state officials to quell dissent at Gustafsen Lake. I argue that because the Ts' Peten Defenders' compelling legal position posed a threat to state legitimacy, police and state officials

chose to discredit them through the use of propaganda and suppressed the protesters with a show of excessive force. Because vast amounts of private property and natural resources were at stake, the state had much to defend by discrediting the Ts' Peten Defenders' constitutional argument. By preventing other Aboriginal people in Canada from hearing a cohesive presentation of their argument, the state was marginalizing the Ts' Peten Defenders, with the result that they received relatively little support.

Since the end of the standoff, there have begun to emerge indications from members of the media who reported on the Battle of Gustafsen Lake that they felt manipulated by a heavy-handed police media strategy designed to discredit the Ts' Peten Defenders by inflaming popular opinion. Vancouver Province columnist Joey Thompson wrote:

When it came to covering the events clouding the 1995 Gustafsen Lake fiasco RCMP took reporters for a ride. We bought the Mounties' take on what was going down during that tense month-long summer siege. A lot of what we got – and dutifully reported – was crock. It's time we conceded that and apologized to the natives and citizens of BC.¹⁴

Why would the RCMP and the provincial and federal governments feel the need to misrepresent the legal and constitutional issues raised at Gustafsen Lake? Why would the RCMP engage in what CBC Ombudsman David Bazay refers to as manipulation and what RCMP officers refer to in their own video-taped discussions as a “disinformation and smear campaign?” Part of the motivation for the coercive tactics employed by police and state officials at Gustafsen Lake can be understood by exploring past episodes where the same tactics were used to suppress Aboriginal sovereignty struggles. Particularly in British Columbia, there is a long history of the use of state coercion to suppress essential aspects of the Aboriginal title issue. The Ts' Peten Defenders exist as part of a larger historical continuum. To fully understand the standoff, then, it is important to explore the

mixture of law, politics, history and spirituality that animated the Ts' Peten Defenders stand.

In this work, I shall attempt to describe how a conflict between two men, Shuswap Faith Keeper Percy Rosette and American rancher Lyle James, escalated into a military confrontation that raised questions of law that resonate deeply with regard to Canada's constitution as well as in the forum of international law.

I shall try to provide a chronological exploration of the events that transpired at Gustafsen Lake in 1995 by employing trial disclosures, court testimony, press reports, and interviews. Although no single narrative could capture every aspect of this controversial and complex episode, I have attempted to pull together relevant documentation to explain the actions and motivations of the Ts' Peten Defenders whose motivations were not fully understood.

The complicity of the media in the RCMP "disinformation and smear" campaign is also examined. What role did the media play? Is there any accountability in the journalistic profession when reporters fall in line with a program of "disinformation and smear?"

I focus on four key elements of the standoff. I devote a chapter to a summary of the events of June, July and early August (before the camp was sealed off by the RCMP) then provide closer exploration of the events of 27 August, 4 September, and 13 September, each of which forms a chapter.

In chapter one, I attempt an overview of the events of mid-June to mid-August 1995, when the dispute remained a local conflict. As the conflict escalated the protesters stated publicly that they would view police action as an act of war that would be met with

“resistant force.”¹⁵ They also received legal advice that supported their position and quoted their lawyer who stated, “As a matter of strict law, you are acting within your existing legal rights by resisting the invasion.”¹⁶

In chapter two, I focus on the events leading up to and including 27 August when the RCMP told the national media gallery that they were ambushed by the Ts’ Peten Defenders. In their reportage of this incident, the RCMP skillfully mobilized public opinion by invoking ethnic stereotypes, alleging the Ts’ Peten Defenders had “ambushed” police officers. Only at the ensuing trial did such oversimplified stereotypes begin to deconstruct when the RCMP could not substantiate their press release accounts. In fact, RCMP evidence was so weak that no Ts’ Peten Defender was charged in connection with the alleged ambush on 27 August that had received huge headlines in 1995.¹⁷

In chapter three, I focus on the events of 4 September, when the RCMP alleged officers were “actively pursued”¹⁸ by Natives who fired shots that damaged the mirror of an RCMP Suburban and lodged a bullet in the vehicle’s headliner. Again the RCMP could not sustain the allegation in court. By the time that sentencing hearings were conducted at the ensuing trial, Defense Counsel stated confidently, “On 4 September, the RCMP said there was a shooting, we now know there wasn’t... Everything [all the trial evidence] fits in with a smear campaign.”¹⁹

The events of both 27 August and 4 September are crucial because the RCMP sent accounts of these alleged shootings to the Attorney General of British Columbia as well as to the Solicitor General of Canada to buttress their request for armaments and personnel from the Department of National Defence.²⁰ Trial evidence refutes the

accuracy many of these reports, copies of which are included here as appendices.

In chapter four, I focus on the events of 13 September 1995 when upper management in the Canadian Broadcasting Corporation (CBC) were told by RCMP Staff Sergeant Peter Montague that there were hostages in the Gustafsen Lake encampment. Montague told the CBC that only by airing a message in Shuswap could this life-threatening situation be ameliorated. Evidence collected here from transcripts of communications between RCMP officers confirms that that there was no hostage-taking situation and that the RCMP did in fact lie to CBC upper management as part of their larger strategy to demonize the Ts' Peten Defenders.²¹ Of particular note are insights provided by former head of CBC radio Jeffery Dvorkin, who emphasized that the "CBC Radio's journalistic independence had been breached" when "the CBC had been manipulated in order to help the police"²² on 13 September 1995. This event raises serious questions about the relationship between the CBC and the government and police on which it reports.

In the concluding chapter I discuss the motivation for the huge show of state-sanctioned police force at Gustafsen Lake and provide a brief overview of other events that transpired during the standoff that bear further research. Important questions arise about the accountability of the state officials and the police: To whom is the RCMP accountable, if anyone, for use of excessive force at Gustafsen Lake?

¹ Both Native and non-Native people who were at the Gustafsen Lake Sundance camp in 1995 are referred to here by a number of names, all of which were used at different times in different contexts during the standoff. The term "Ts' Peten Defenders" is employed because "Ts' Peten" is the traditional Shuswap name for the land in dispute, which was considered a sacred burial ground where many Shuswap ancestors perished during the small pox epidemic. (In her Report to Gustafsen Lake Defense Team, dated 25 July 1996, Valerie Van Clieaf writes, "Secwepemc [traditional spelling for Shuswap] oral history points towards the presence of a large burial site at Gustafsen Lake.) The term "Sundancers" was used, often by sympathizers, and sometimes by the media, because members of the Sundance society had been at the Ts' Peten grounds for a Sundance for several years as part of an annual ceremonial cycle. The term Gustafsen

Lake "Defenders" is used with reference to the fact that there was an armed stand made "in defence of Sundance grounds." The generic name "protesters" is also employed because the camp did constitute a protest against the prevailing interpretation of constitutional law regarding land ownership at the disputed Sundance grounds as well as throughout much of British Columbia. Each is true in its own way according to the changing circumstances within the camp, as the activities varied from ceremonial and political, to armed defence that was deemed by the state to constitute "terrorism." The appellations "terrorists," "fanatics," "renegades," and "cultists" were often used by state officials and mainstream media to refer to those inside the Gustafsen Lake camp.

In legal documents, RCMP communiqués, and media reports, "Gustafsen Lake" is sometimes spelled, "Gustafson" Lake. I employ the former usage throughout most of this thesis because it appears to have become dominant.

² Bruce Clark, *Justice In Paradise*, (Montreal: McGill-Queen's University Press, 1999) p. 95

³ In his *Reasons for Judgment*, Gustafsen Lake trial judge, Bruce Josephson stated that "While it was known that no court in the country had acceded to their position, they [the accused] had advice from one lawyer licensed to practice law in some provinces that weapons could be employed in self defense, implying at least that this included defending possession of the land they were occupying." *Reasons for Judgment of the Honourable Mr. Justice Josephson, Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, 30 July 1997

⁴ *Ibid.*

⁵ See Menno Boldt, *Surviving as Indians: the challenge of self-government*, (Toronto: University of Toronto Press, 1993) p.165

⁶ See documentary film, *Above the Law 2*, director Mervyn Brown, distributed by AM Productions Inc. 48 East 6th Avenue, Vancouver, BC, Canada V5T 1J4. See also, Holly Horwood, "Mountie Regrets 'Smear' Remark: Gustafsen Trial Views Damning Tape," *Vancouver Province*, 21 January 1997

⁷ Paul Chapman, "RCMP on warpath, Shot fired at Mountie by natives 'an act of terrorism,'" *Vancouver Province*, 20 August 1995

⁸ See, Brown, *Above the Law 2*. See also, Holly Horwood, "Mountie Regrets 'Smear' Remark: Gustafsen Trial Views Damning Tape," *Vancouver Province*, 21 January 1997

⁹ Janice Switlo, *Gustafsen Lake Under Siege: Exposing the Truth Behind the Gustafsen Lake Standoff*, TIAC Communications Ltd.: (Peachland, British Columbia, 1997) p.151

¹⁰ *Judgment in the United States District Court For the District of Oregon*, United States of America, Plaintiff v James Allen Scott Pitawanakwat, Defendant, Stewart, Janice M., Magistrate Judge, 15 November 2000

¹¹ *Ibid.*

¹² See Brown, *Above the Law 2*. See also, Holly Horwood, *The Vancouver Province*, 21 January 1997, "Mountie Regrets 'Smear' Remark: Gustafsen Trial Views Damning Tape"

¹³ *Judgment in the United States District Court For the District of Oregon*, United States of America, Plaintiff v James Allen Scott Pitawanakwat, Defendant, Stewart, Janice M., Magistrate Judge, 15 November 2000, See Also, British Columbia NDP Convention February 2000, Policy Resolutions Justice and Legal Affairs L-2000-06 Gustafson Lake WHEREAS it is clear that the RCMP engaged in a deliberate program of misinformation with the public regarding the events at Gustafson Lake; and is clear that the RCMP engaged in a deliberate smear campaign against the participants at Gustafson Lake; and WHEREAS it is a matter of video and court record that they bragged about their ability to deceive the public with misinformation and smear tactics; and WHEREAS the RCMP sought to influence the effectiveness of the participant's legal counsel; and WHEREAS this is dangerous and subversive to the interests of the public good in a free and democratic society; THEREFORE BE IT RESOLVED the New Democratic Party of BC will urge the Provincial Government to establish a public and independent Commission of Inquiry into the events at Gustafson Lake, the role of the RCMP in this situation, and the apparent lack of accountability of this federal law enforcement body to the Provincial Attorney General and ultimately, the public of BC., Member from Okanagan Vernon, <http://www.bc.ndp.ca/Party/Resolutions/justice.htm>, 21 February 2000, 2118

¹⁴ Joey Thompson, "Media Should Apologize for Gullibility on Gustafsen Lake," *Vancouver Province*, 26 September 1997, A12

¹⁵ See Ts' Pcten Defenders press release, "Defenders of sacred Shuswap Sundance grounds preparing for RCMP assault," 15 July 1995

¹⁶ See Ts' Peten Defenders press release, "Defenders of sacred Shuswap Sundance grounds preparing for RCMP assault," 19 July 1995

¹⁷ Sheryl Yeager, "Mounties Actions Anger Mercredi," Vancouver Sun, 28 August 1995

¹⁸ See Vancouver Sun, A1, 6 September 1995

¹⁹ Ben Mahony court notes, George Wool's address to the court during sentencing hearings, 10 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

²⁰ Request for military support in writing in letter from J.D. Farrell, Deputy Commissioner, Commanding "E" division, "E" Division Headquarters, 657 West 37th Avenue, Vancouver, BC, V5Z 1K6, to Attorney General Dosanjh, dated 25 August 1995 requesting Armoured Personnel Carriers from the military, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

²¹ See *Splitting the Sky, From Attica to Gustafsen Lake*, unpublished manuscript, Xerox copy, Chapter 6, p. 321, 337, 357. This document was acquired in draft form as a personal collection from the author. Each chapter of this lengthy document carries its own pagination.

²² See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999

CHAPTER ONE

HISTORICAL CONTEXT

In many ways, the physical confrontation at Gustafsen Lake was a result of conflicting interpretations of constitutional law. Before examining a body of evidence that demonstrates that the state employed its federal police force as part of a program of propaganda to suppress the Ts' Peten Defenders' legal position, it is important to examine the particulars of the legal issues related to Aboriginal title in British Columbia. While the Defenders' legal position posed a threat to the legitimacy of the Canadian and British Columbian governments, state officials strongly asserted they retained jurisdiction to police the Sundance grounds.

Although their protest was often portrayed as an unprincipled violent action, the Defenders' legal position was thoroughly researched and straightforward. Guarantees made to Aboriginal people by the British Crown that stem from the Royal Proclamation of 1763 form the essential point of departure for the Ts' Peten Defenders' convincing assertion that Aboriginal title has not been extinguished throughout a majority of British Columbia. To buttress their stand, the Defenders connected a series of legal and constitutional reference points dating from 1537 to 1982. They asserted that it was the governments of Canada and British Columbia, and the Mounted Police who acted on their behalf, who were the invaders at Gustafsen Lake. The Defenders stated plainly that where no Treaty has been signed with Aboriginal leaders, Canadian governments have no jurisdiction. Moreover, they asserted that Aboriginal Tribal Council governments have no jurisdiction in untreatied lands because their funding and governing authority comes only from the federal government.

The Defenders asserted that neither Canada nor British Columbia were in a position to arbitrate this dispute because these governments are in a conflict of interest

situation in that Canadian courts cannot rule on the jurisdiction of lands and resources for which they are contesting. The Defenders asserted that the unresolved controversy over the question of Aboriginal title in British Columbia could only be satisfactorily resolved by placing the legal and historical facts before a panel of international arbitrators.¹

The British Crown established the legal principle underlying the Defenders' petition for third-party settlement in 1704. In that year, there was a land dispute between members of the Mohegan First Nation and the British colony of Connecticut. The Mohegan Nation argued that the Connecticut courts were unfit to settle the dispute because the Connecticut body could not rule on the jurisdiction of land and resources for which they were competing. The Mohegans successfully appealed to the British Crown by arguing that the Connecticut court was in a conflict of interest situation. To arbitrate the dispute, Queen Anne created a Privy Council court in 1704. The Ts' Peten Defenders argued that a comparable independent and impartial tribunal was required to settle the title dispute between the Ts' Peten Defenders and the governments of British Columbia and Canada.²

Fifty-nine years after the Mohegan-Connecticut land dispute, the British sovereign issued the Royal Proclamation of 1763.³ This Proclamation expressed many of the core principles underlying the assertion that the grounds at Gustafsen Lake remain reserved by the British Crown for Aboriginal people. In issuing the Proclamation, King George formalized relationships with Native allies, in part to mollify Aboriginal forces associated with Ottawa Chief Pontiac, who had taken over several English posts in retaliation for British incursion into Aboriginal ancestral lands.⁴ The Proclamation signified a renewal of close diplomatic, military and economic relationships between the

British Crown and Aboriginal allies that proved strategic in the defence of British North America from both French and American forces.⁵

Although the Ts' Peten Defenders stated categorically that the Royal Proclamation of 1763 provides a legal guarantee that binds the Crown to protect Aboriginal rights in unceded territories in British Columbia, others disagree. The Royal Proclamation of 1763 has been viewed from several different historical perspectives and its interpretation has been the subject of much controversy. Differing interpretations of history, sometimes motivated by political agendas, have led to different interpretations of the meaning and substance of the Proclamation of 1763.

It has long been argued that the Proclamation was not meant to apply to colonies such as British Columbia that came into being after 1763. State officials have sometimes argued that the present tense employed in that part of the Proclamation that extends rights only to "indians with whom we are connected," means that these rights were not meant to extend to those Indians with whom the British would come into contact after 1763. This argument is problematic in a number of ways. Firstly, despite its present-tense phraseology, the Proclamation was later applied during the signing of the numbered Treaties between 1871 and 1921. Secondly, as Brian Slattery observed, "Imperial enactments... were normally given a prospective application so as to apply not only to colonies and territories held when the legislation was enacted, but also to those acquired subsequently, unless this result was clearly excluded."⁶

The question of where and to whom the Royal Proclamation applies hinges upon the interpretation of several key phrases in the decree. In issuing the Proclamation, the Crown unilaterally ordered extradition from Aboriginal Hunting Grounds and "affirmed

and continued the exclusive use of Aboriginal peoples within the Hunting Grounds.”⁷

The contentious issue then is to determine what geographical area constitutes these

“Hunting Grounds.” As Olive Dickason writes,

In its words, it [the Royal Proclamation of 1763] applied to those lands “to the Westward of the sources of the Rivers which fall into the Sea from the West and North West,” which hardly clarified the situation. It included lands within established colonies that had not yet been ceded or purchased or set aside for Amerindians. It did not apply to Rupert’s Land, whatever its boundaries were, deemed to be under the jurisdiction of the HBC [Hudson’s Bay Company]...⁸

Crown officials have often interpreted the above phrases to mean that the Royal Proclamation of 1763 did not (and still does not) apply to what was then Rupert’s Land. Despite the assertion that the Proclamation did not apply to land deemed to be under the jurisdiction of the Hudson’s Bay Company in 1763, when that territory was later consolidated into the Dominion of Canada, the principles of the Proclamation were applied. Dickason writes that the application of the Royal Proclamation of 1763 to Rupert’s Land, leading to the numbered Treaties may have been based on the view that “Treaties were a moral, not a legal, obligation; in practical terms they were viewed as a means of avoiding conflict.” She summarizes, “In any event, Canada’s promise to Britain to honour the provisions of the Proclamation of 1763 led directly to the numbered Treaties...”⁹ Because the principles inherent in the Proclamation were applied to Rupert’s Land when it became part of the Dominion, and after the Royal Proclamation of 1763, it follows logically that the Proclamation should also have been applied in British Columbia upon its entrance into Confederation.

Lawyers hired by British Columbia argued that the Proclamation of 1763 did not apply to British Columbia in the 1964 court case, *Regina v. White and Bob* and again in 1969 when the Nisga’a Tribal Council argued that the Proclamation did apply on the

Pacific coast. Although the Nisga'a initially lost in the Supreme Court of British Columbia, they appealed their case to the Supreme Court of Canada where six of seven judges ruled against the province. Three judges "accepted the Proclamation as extending to the Pacific and as affirming pre-existing Aboriginal title as a legal right."¹⁰

The application of the Royal Proclamation to untreated lands in British Columbia ran counter to the notions of racial superiority that were a prominent feature of the British Columbian government's rejection of Aboriginal title rights. As Paul Tennant writes in Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989, Aboriginal rights were often rejected in British Columbia on the basis that "Indians were too simple and unsophisticated before contact to be regarded as having individual or collective rights. This assumption is hostile to Indians, taking them to have been primitive creatures with no more rights than other wildlife."¹¹ A second assertion "does not deny that Indians may have once had rights, but it denies legitimacy to present-day descendants as claimants of those rights."¹² Government lawyers have invoked this second argument and emphasized that cultural change and innovation has been so dramatic in changing Aboriginal peoples that guarantees once made no longer apply.¹³

In strictly legal terms, the Royal Proclamation of 1763 has often been interpreted to buttress the argument that underlying title remains with the British sovereign although settlement is precluded until Aboriginal hereditary chiefs of ancestral territories cede land through a Treaty.¹⁴ Although the underlying title remains with the Crown according to Mr. Justice Strong in his Supreme Court opinion in the 1888 case of *St. Catherine Milling and Lumber v. the Queen*, Paul Tennant qualifies Justice Strong's assumption of British sovereignty by stating,

The Proclamation does not take its assertion of British sovereignty as incompatible with continuing [Indian] land ownership. Precisely the opposite is the case. The nations or tribes are clearly recognized as 'in possession of' the lands they have used and occupied. British sovereignty and continuity of pre-existing Indian land ownership go hand in hand. On this principle the Proclamation is unequivocal.¹⁵

There are two other important aspects to the St. Catherine's case. Although earlier in the century, the Proclamation was viewed as an instrument that recognized the pre-existence of Aboriginal rights, "the [judicial] committee [in the St. Catherine's case] ruled that Aboriginal title had no pre-existence, but was created, through the Proclamation, by the British authorities themselves." Moreover, as the Crown was viewed as the creator of Aboriginal rights stemming from the Royal Proclamation, it followed that these rights could be viewed as remaining intact only at the pleasure of the Crown who maintained the right to unilaterally dispose of them.¹⁶ A second important implication of the St. Catherine's decision, according to Tennant, is that shortly thereafter "British Columbian Indians discovered the Proclamation, took it to mean what it said, and proceeded to develop their optimistic faith in British justice."¹⁷

In the minds of the Gustafsen Lake Defenders and their legal counsel, there was no question as to whether the principles of the Proclamation of 1763 applied. Although their interpretation is only one of many, there is no question that there is logic and coherence to the position that the Royal Proclamation of 1763 has important implications regarding Aboriginal title rights at Gustafsen Lake. Because there are no Treaties for the vast majority of British Columbia, there is a compelling legal argument that the Gustafsen Lake Sundance camp, like the other untreatied lands in British Columbia remain "reserved for Indians" according to the Royal Proclamation of 1763 which states further that:

The several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of Them, as their hunting grounds... And we do further expressly conjoin and require all Officers whatever, as well as Military as those Employed in the Management and Direction of Indian Affairs, within the Territories, reserved as aforesaid for the use of the said Indians to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders or other Felonies or Misdemeanors shall fly from Justice...¹⁸

The Proclamation binds all representatives of the British Crown to defend the rights of Aboriginal peoples in lands “not having been ceded to or purchased by us.” (Lands where no Treaty has been signed are referred to here as “unceded” or “untreated.” According the Royal Proclamation of 1763, unceded territories remain reserved to the Indians as their hunting grounds.)¹⁹ Moreover, those who contravene the Proclamation by establishing settlements before acquiring consent from Aboriginal hereditary chiefs stand liable according to this same 1763 decree to be charged with “Treason” and “Misprisions of Treason.” The Ts’ Peten Defenders asserted that the governments of British Columbia and Canada had clearly contravened the Proclamation and should therefore be held accountable for the legal consequences of treasonous crimes committed against Native peoples in unceded territories.

Since British Columbia joined the Dominion of Canada in 1871, Aboriginal leaders in British Columbia have made repeated demands for a legal decision regarding the specific legal nature of Aboriginal title rights, stemming from the Royal Proclamation of 1763. Many Native activists have viewed the Proclamation as a useful legal and political tool to push for an expansion or validation of their title rights. In contrast, state officials have often attempted to downplay the implications of the Proclamation, especially in British Columbia.

According to Native activists who have advocated for a clear legal ruling regarding Aboriginal title rights, stemming from the 1763 Proclamation, government intransigence has been a consistent theme in the history of British Columbia. In The Fourth World: An Indian Reality, George Manuel, former president of the National Indian Brotherhood, claims, "Throughout the century since the [British Columbia] Terms of Union were drawn up the BC land question has been raised through every channel that appeared to open from time to time. The response almost invariably was to close that channel."²⁰

It is to the federal government that Aboriginal people in British Columbia have petitioned for legal recourse regarding the question of Aboriginal title because of the guarantees made by the Dominion Government when British Columbia was consolidated into the national framework in 1871. According to these Terms of Union:

The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.²¹

Since these Terms of Union bind the Dominion Government to pursue "a policy as liberal as that hitherto pursued by the British Columbia Government," it is important to determine what the policy was regarding Aboriginal title before 1871. In the context of the actions of colonial officials in the years before the 1867 Confederation Act, it appears that it was the policy of British Columbia to follow the precedent set in the rest of the Dominion that involved securing permission from Aboriginal peoples before settling lands consolidated as part of British North America. James Douglas, the first colonial Governor of British Columbia, followed the fundamental principle, espoused in the Royal Proclamation of 1763, that Native people have the right to use and occupy traditional

lands or to receive compensation for the loss of these lands. Douglas observed this principle in the early 1850's, when he negotiated fourteen Treaties with Native Nations, thus confirming that Aboriginal consent should be secured before settlement could legally transpire.²² Notwithstanding, much settlement did take place in areas not framed by Treaty negotiations in the colony of British Columbia, between 1849 and 1871.

After the Douglas Treaties, no more Treaties were signed with Native peoples in British Columbia although there was no repeal of the legal principles inherent in the 1763 Royal Proclamation. The actions of Douglas indicate that some Aboriginal people did, in fact, enjoy legal protection from the Crown. For example, in an address to the Legislative Assembly on Vancouver Island on 12 August 1856, Douglas referred to Native peoples as wards of the Crown, and proposed to treat them "with justice and forbearance, and by rigidly protecting their civil and agrarian rights."²³

When Douglas retired in 1864, and was replaced by Joseph Trutch, the effect was profound. Trutch did not recognize Aboriginal rights and title²⁴ and reinterpreted the Douglas agreements in order to reduce the land allotment to Native people.²⁵ The Ts' Peten Defenders sought redress regarding the actions of Trutch and those that followed him who dispossessed Native peoples in contravention of the rule of constitutional law.

For more than a century before the standoff at Gustafsen Lake, there have been repeated assertions by Aboriginal representatives that Canada did not follow its own constitutional laws regarding Aboriginal title in untreated territories in British Columbia. In 1913, the Nisga'a Land Committee presented a petition to the Privy Council in London, which foreshadowed the demands of the Ts' Peten Defenders. Nearly half of the Nisga'a petition focused on the Royal Proclamation of 1763 and its implications

regarding Aboriginal title.²⁶ In 1916, another attempt was made to have the implications of the Royal Proclamation clarified when the Allied Tribes of British Columbia made efforts to have the Aboriginal title question addressed by a committee of the British government. State officials likely viewed the legal and political arguments stemming from the Proclamation of 1763 as a threat to state interests and reacted accordingly. In an attempt to prevent the Allied tribes from having a hearing with a judicial committee in London, a special joint Senate-House committee was established in Canada (in the words of the Canadian officials) “to have the question settled.”²⁷

The Allied tribes’ efforts were thwarted when members of the Senate-House committee suppressed an important document²⁸ titled, Papers Connected with the Indian Land Question²⁹ that supported the Allied Tribes position.

As Paul Tennant writes,

There was abundant evidence that Indians had claimed title from the beginning and had demanded Treaties as early as 1887 in the north coast hearings. The Papers Connected with the Indian Land Question, which the officials had kept away from the Indians, showed that both Douglas and colonial secretaries had considered the Indians to have title.³⁰

The suppression of this important document paved the way for the joint Senate-House committee’s decision to reject the Allied Tribes’ petition.

The result of a decade of tireless organizing by Andy Paull and Peter Kelly of the Allied tribes was that their attempts to internationalize their dispute were thwarted by members of the Department of Indian Affairs and agents of the Crown in 1926. In the following year, the Indian Act was amended to prevent the Allied Tribes and all other Aboriginal people in Canada from pursuing the question of Aboriginal title. Section 141 of the Act effectively suppressed legal reckoning with the same issue, which the Ts’ Peten Defenders raised in 1995. Section 141 made it illegal for:

Every person who, without the consent of the Superintendent General... solicits or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band or Indians... for the recovery of any claim or money for the benefit of said tribe...³¹

The 1876 Indian Act created the elected governments that replaced hereditary governments. However, in lands where there is no Treaty, (like the Sundance grounds) these Indian Act governments have questionable legal authority. The Ts' Peten Defenders told RCMP officers who investigated the Gustafsen Lake dispute that Tribal Chief and Council governments were in a dubious legal position because the domestic legislation (the Indian Act) that established Tribal Council authority conflicted with constitutional law (the Royal Proclamation of 1763, and Constitution Acts, 1867, and 1982). They also connected the imposition of these Indian Act governments with the larger project of subjugating Canada's Aboriginal peoples, which constitute crimes punishable under the 1948 Genocide convention.³²

The Defenders implored the Mounted Police to defend the sanctity of the rule of law by protecting the Sundance camp not only from threats made by ranch-hands but also from the legal establishment that denied the exercise of existing Aboriginal rights. The Defenders asserted that the Canadian government had broken its own laws by failing to honour its fiduciary duty (formal relationship of alliance) with Native peoples to defend Aboriginal constitutional rights.

Although the specific legal arguments made by the Ts' Peten Defenders with reference to the validity of Indian Act governments and the specific nature of Aboriginal title rights implied in the Royal Proclamation of 1763 have not been accepted in all quarters, Aboriginal rights in general have received increasing validation in recent decades by a number of court cases. In 1973, the Calder case

established that Aboriginal rights were not extinguished when British Columbia entered Confederation.³³ In 1984, the Guerin case confirmed that the federal government has a “fiduciary responsibility” to safeguard Aboriginal interests and rights. According to Section 91, class 24 of the 1867 Confederation Act, this duty to honour and affirm Aboriginal rights was defined as a responsibility of the federal government.³⁴

The fiduciary responsibility of the Canadian government to safeguard Aboriginal rights as outlined in the 1867 Constitution Act was entrenched in Section 25 of the Charter of Rights and Freedoms, within the 1982 Constitution Act.³⁵

The Defenders made the legal case that it was the duty of the Crown’s representatives to follow sections 25 and 35 of the 1982 Constitution Act, which reaffirmed Aboriginal rights articulated in the 1763 Proclamation. In this context, the RCMP remained legally bound to side with their Aboriginal allies at Gustafsen Lake against illegal incursions into unceded territory by ranchers as well as by the British Columbia legal establishment.

As the standoff was beginning, the Ts’ Peten Defenders outlined the legal basis for the assertion that the Mounted Police are constitutionally bound to honour the historical ally relationship between Aboriginal peoples and the British Crown. In his 8 August 1995 letter to Sergeant Sarrich, Bruce Clark told RCMP Staff Sergeant Sarrich that if the RCMP deviated from the honouring of the Ts’ Peten Defenders’ rights they were engaging in criminality:

My clients and I now turn to you, the police, for protection against a legal establishment that in willful blindness has set its face against the rule of law. There is no middle ground. You may choose just to follow

orders that are criminal or, alternatively, to defend the rule of law against those orders.³⁶

The Ts' Peten Defenders emphasized that since neither the Canadian nor the British Columbian government had negotiated Treaties with Shuswap traditional leaders, these "settler" governments had no legal legitimacy at Gustafsen Lake. Ts' Peten Defender, William Jones Ignace, better known by a translation of his Shuswap name, Wolverine, emphasized that promises made to his forefathers in the form of the Royal Proclamation of 1763 have been re-affirmed by both the 1867 Confederation Act and the 1982 Constitution Act. Ignace underscored that Section 35 of the 1982 Constitution Act reaffirms the rights of Aboriginal Peoples of Canada. Section 35 of this Act states, "The existing aboriginal and Treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."³⁷

In recent years, the Canadian and British Columbian governments have been challenged to deal with responsibilities stemming from alliance relationships with Aboriginal peoples. Several court decisions have validated legal principles that are similar to the legal arguments made by the Ts' Peten Defenders. An important legal precedent regarding Aboriginal title was set in 1984, in the Supreme Court of Canada, when Chief Justice Brian Dickson ruled that Aboriginal "interest in their lands is a pre-existing Aboriginal right"³⁸ in Canada both on and off reserves. Similarly, in the 1984 Meares Island case, the British Columbia Court of Appeal upheld a court injunction to halt logging on Meares Island to support the NuuChahNulth claim that logging would interfere with Aboriginal title and rights.³⁹ Subsequently, in the 1990 Sparrow case, the courts recognized and affirmed Aboriginal fishing rights within certain parameters in a modern context.⁴⁰ These court cases have established a pattern whereby Aboriginal rights

were acknowledged with a renewed vigour that has continued with the 1998 Delgamukw⁴¹ decision and the 1999 Marshall decision.⁴² As a result of pressure stemming from the success of Aboriginal peoples in the courts between 1973 and 1990, British Columbia recognized Aboriginal rights on 14 April 1992 and created the British Columbia Treaty Commission to deal with unextinguished Aboriginal title issues.

Although federal and provincial governments in Canada have been forced to acknowledge that there are outstanding Aboriginal title issues in British Columbia, the domestic institution created to settle the question has uncertain credibility. The British Columbia Treaty Commission Agreement that was signed by federal, provincial and First Nations representatives on 21 September 1992 has dubious legal legitimacy for two main reasons. First, those negotiating as representatives of Aboriginal communities are usually Tribal Council Chiefs whose legitimacy comes from domestic legislation (the Indian Act) that may be non-binding in untreated territories. Moreover, the spirit of these negotiations often runs counter to a constitutional pattern of safeguarding Aboriginal and Treaty rights in that the Commission seems designed to extinguish Aboriginal and Treaty rights in exchange for land and compensation. As a result, Native governments would become similar to municipal governments, not sovereign Nations, as some Native people demand.

The critique of contemporary Aboriginal leadership made by the Ts' Peten Defenders is not without precedent. In Windspeaker, Dan Ennis elaborated upon the historical genesis of a ruling elite in Native communities:

Once this new breed of leaders, elected through the imposed Indian Act legislation, got into positions of power they became exactly like the Indian agent: unaccountable to anyone, and prepared to stay in power for life at all costs. They practiced favouritism, making themselves, their friends and their families rich from the public coffers... Today, all

reserves in Canada have a class system. Most have a wealthy class, a middle class, a poor class and a desperate class...⁴³

Political scientist Christopher McKee explained that the resistance of many Native people is rooted in the possibility that settlements stemming from the British Columbia Treaty Commission Process may “create a replication of the socio-economic class stratification that occurred within many Native communities as a result of the Band Council provisions of the Indian Act.” “Indeed,” notes McKee, “There are signs that the legitimacy of some elected Aboriginal leaders is in serious doubt.”⁴⁴

In his Masters of Arts thesis, defended at the University of British Columbia in 1997, Michael Smith summarized the discrepancy between what most Canadians knew about Aboriginal constitutional rights and the fuller legal and historical issues that were articulated in the Gustafsen Lake camp:

...To a settler public congenitally ignorant of its own ignoble history and thoroughly invested, fiscally, politically and emotionally, in nationalist creation myths, the [Gustafsen Lake] Defender's repudiation of the territorial jurisdiction of the Canadian state and appeals to archaic imperial connections were not only anachronistic, but quite simply, incomprehensible. Though the Defenders were dismissed as lunatics, they were in fact invoking a long and honourable politico-legal tradition, running from the eastern First Nations who signed innumerable treaties with European powers prior to the nineteenth century; to the various delegations of B.C. Native leaders who travelled to Britain in the late nineteenth and early twentieth centuries seeking resolution of the land question; the Cayuga sachem Deskaheh, who petitioned the League of Nations in the 1920's to recognize the “independent statehood” of the Six Nations; to the Native leaders of the early 1980's who lobbied Westminster to require recognition of aboriginal rights as a condition as constitutional partition. Few if any attempts were made to thus contextualize the Defender's demands...⁴⁵

The Ts' Peten Defenders' invocation of this “long and honourable politico-legal tradition” was stalled when their legal arguments were clouded by the accusation that they were fanatical militants.

Before the violent conflict at Gustafsen Lake, several Ts' Peten Defenders had formed a “sovereignty association” to push the governments and courts of Canada to

honour promises made to Native people in the form of the Royal Proclamation of 1763. These activists consulted with Ottawa lawyer, Bruce Clark who was previously involved in a highly publicized court battle in the northern Ontario. During the Temagami case,⁴⁶ Clark made similar arguments regarding Aboriginal rights stemming from the Royal Proclamation of 1763.

Remarking on the close relationships he formed with several Aboriginal activists, including several Ts' Peten Defenders, Clark testified that the Native activists "have been my mentors" with whom he had formed a "symbiotic relationship" after they concluded that Native law and natural law were one and the same: "Our minds have come together in a cultural synthesis."⁴⁷ Clark asserted that the values of truth and justice underpinned the demands of the "sovereignty association" to international third party arbitration of Aboriginal title issue.

Because most Canadians, including the journalists who covered the Gustafsen Lake standoff, the RCMP officers who policed it, and the politicians and judges who denied the Ts' Peten Defenders' petition for third-party adjudication, have not been educated about the significant legal and constitutional rights possessed by Aboriginal people in Canada, the efforts of Bruce Clark to secure an audience with the Queen appeared eccentric and misguided. Moreover, it was easy for the RCMP and the BC Attorney General to deny Aboriginal rights that most assumed did not exist.

The conflict between the Ts' Peten Defenders and the RCMP captures, in microcosm, many aspects of the relationship between Native and non-Native people since first contact in North America. The RCMP were informed by cultural and political assumptions of supremacy while the Ts' Peten Defenders were motivated by an active

involvement with Native spiritualism as well as by an interpretation of Canada's legal and political history that conflicted with state and the police assumptions.

Although it has formed a central part of Aboriginal struggles to achieve self-determination for over two centuries,⁴⁸ the tradition of promises and alliances between Aboriginal peoples and the British Crown has not been emphasized in traditional accounts of Canadian history. The Ts' Peten Defenders argued that they were victims of a one-sided and misleading version of Canadian history that was crafted to satisfy those who succeeded in establishing the colonial project in British Columbia, often at the expense of the Indigenous population who were displaced.

The importance of creating a selective view of history written by the inheritors of the colonial project has been underscored by Edward Said, who explained that competing versions of history are reflected in the decolonization struggles around the world where "narrative plays a central role in determining success." The colonial narrative which glorified the Mounted Police and shaped "historical truth" is significant because, as Said explained, "The power to narrate, or to block other narratives from forming and emerging, is very important to culture and imperialism, and constitutes one of the main connections between them."⁴⁹ It is also important to note that, historically, popular opinion regarding the RCMP has been constructed in a positive way whereas the construction of popular opinion regarding Aboriginal People and "Aboriginal and Treaty Rights" has been largely negative.

One reason for the supremacy of the RCMP position in the popular mind is the centrality of the elaborate mythology of the Mounted Police. As Michael Dawson observed in his extensive study of the construction of the image of the RCMP, The

Mountie: From Dime Store Novel to Disney, “One story that arose from the Mountie myth was Canada’s careful and fair treatment of the Aboriginal Peoples.”⁵⁰ At Gustafsen Lake, the RCMP cultivated positive relationships with Native spokespeople that were most friendly to government and police positions and employed these Native leaders as part of a larger strategy of “disinformation.”⁵¹

The use of propaganda became a standard feature of the RCMP strategy at Gustafsen Lake and the RCMP invoked its trustworthy reputation that has been developed by virtue of important historical elaborations to influence public opinion through the media. As Michael Dawson stated, “The reputation of the RMCP, buttressed by cinematic elaboration, fictionalized romanticization, and historical reinvention is one of honesty and integrity which resonates deeply with many Canadians. The Mountie is a world-wide icon.”⁵²

The actions of the RCMP and the state at Gustafsen Lake should also be viewed in the historical context of the repression of the Plains Cree in the nineteenth century. As John Tobias wrote, “The record of the Canadian government in dealing with the Cree is thus not one of honourable fair-mindedness and justice as the traditional interpretation portrays.” There were “blatant violations of treaties” and a “political use of the police and the courts in a political manner to achieve the goal of subjugating the Cree...”⁵³ Only by ignoring these facts can one perpetuate what Tobias calls “the myth of Canada’s just and honourable Indian policy from 1870-1885.”⁵⁴ The role of the RCMP in the criminalization of Chiefs Big Bear and Poundmaker for taking part in the hypothetical Indian conspiracy to ally with Louis Riel⁵⁵ foreshadowed use of RCMP muscle to quell Native political action at Gustafsen Lake. Moreover, in 1924 the RCMP were sent in to

Six Nations territory near Brantford, Ontario to put an end to a challenge to the imposition of an Indian Act political system in the place of the traditional system near Oshwegon. Although Native traditionalists were invoking the heritage of alliances between the Crown and the Six Nations, an armed squad of Mounted Police forcefully ousted the protesters.⁵⁶

At Gustafsen Lake, Bruce Clark's argument that the Aboriginal title question must be settled by an international tribunal was similar to Oshwegon Long house traditionalists' lawyer, George Decker who believed that "Ottawa's intransigence posed an insurmountable obstacle to the settlement of the status question and that the Six Nations would only receive an impartial hearing before an international tribunal."⁵⁷ The international dimension of the claims of both the Six Nations in the 1920's and the Gustafsen Lake protesters in the 1990's was both baffling and irritating to the government and police. To RCMP officers and to the general public, seemingly arcane arguments about constitutional law seemed ill conceived. In both cases, "initial complacency" regarding the [substance of the] agitation was transformed into ruthless determination to crush it when the chiefs took the question to London and Geneva, [the international community]."⁵⁸

There is a body of evidence that demonstrates that the state used propaganda to suppress the Defenders' legal position at Gustafsen Lake in a way that fits in with other previous historical precedents. Ward Churchill placed the actions of the Shuswap Sundancers in the context of what he called, "The agendas of the American Indian Movement and the more organic warrior societies which have lately re-emerged in several Indigenous nations – as well as armed confrontations at places like Wounded

Knee, Oka and Gunnison [sic] Lake” whose “purpose is, quite specifically, to re-assert the genuinely sovereign and self-determining status to which our Nations are and have always been entitled.”⁵⁹ Churchill makes allegations regarding the “reign of terror” on Pine Ridge in the 1970’s which are similar to the accounts of Janice Switlo and Splitting the Sky regarding actions undertaken by police and military at Gustafsen Lake. Churchill states that, the “real mission” of FBI agents at Pine Ridge “was to provoke an armed confrontation which would justify the use of overwhelming force to crush the AIM encampment.”⁶⁰ As Churchill identifies, in Indians Are Us,⁶¹ the information control techniques employed by the American Justice Department during the 1973 stand at Wounded Knee resemble the use of propaganda at Gustafsen Lake.⁶²

British Columbia lawyer, Janice Switlo makes an observation about the similarity of the state response at Gustafsen Lake to past conflicts: “Throughout history whenever the Aboriginal Peoples have made the demand that the Crown live up to failed responsibilities and representations made that She ‘uphold Her Honour,’ the response has been to simply send in the RCMP...” Switlo referred specifically to “the situation, which occurred at Gustafsen Lake” and stated that it “is no different, not unusual as an example of our history. Just another example of ‘Indian justice.’”⁶³ Switlo examined other historical precedents regarding Aboriginal relationships with the police and the state in British Columbia and concludes that the erroneous media report of an Indian attack on the Hudson’s Bay Company’s Cadboro Bay Farm in Victoria in 1854 is an “event not unlike the result of inaccurate media reporting relying on statements of the RCMP during the Gustafsen Lake standoff.”⁶⁴

Historically, Aboriginal protesters who have pressed the Canadian government to

honour existing Aboriginal and Treaty rights have been met with the use of force by the Mounted Police in several instances. In 1980, the Blackfoot Confederacy sent a petition to the federal government asking the Crown to honour Treaty promises. The state refused to accept the petition and called in the RCMP. The Blood Land Dispute followed, near Cardston, Alberta where an RCMP riot squad was deployed and where the Mounted Police deployed a special weapons and tactical team to disperse Native protesters. Snipers perched on rooftops and elders sustained broken ribs in the conflict that pitted the forces of Native activism against the Mounted police.⁶⁵ An RCMP riot squad who were accused of abuse of force by the Kainai News⁶⁶ quelled a subsequent protest by Blood Tribe members.

The construction and commodification of the popular image of the Mounted Police is also important because it gives Canadians confidence that when an RCMP officer tells a reporter that Native protesters “are terrorists who are behind five shooting incidents”⁶⁷ and that “there is nothing to negotiate with them,”⁶⁸ he is usually believed, in part, because of a familiarity the media consumer has, consciously or unconsciously, with the Mountie and what he represents. In his study of the highly vaunted position afforded to the Mounted Police within popular culture, Visions of Order: The Canadian Mounties in Symbol and Myth, Keith Walden, writes, “Popular art does not elevate its audience to new levels of knowledge, experience or ways of seeing. Instead it tells the audience what it already knows. Its power lies in repetition.”⁶⁹ Stereotypes regarding the “savage Native” and the up-standing Mounted Policeman have been repeated so often that they may have been imprinted into the public mind.

For some analysis on the deeper symbolism at issue in the attempt to discredit

the alleged “Indian terrorists” at Gustafsen Lake, it is useful to examine the stereotypes and assumptions that are operating. In Aboriginal Voices, Miles Morriseau commented on the use of ethnic stereotyping by the media in coverage of both the Gustafsen Lake conflict and the concurrent standoff at Stoney Point, near Ipperwash, Ontario where an unarmed Aboriginal protester was killed by police. In his article titled “Seeing Savages Behind Every Bush: How the Media Missed the Full Story behind Gustafsen Lake and Stoney Point,” he wrote, “The recent events in Gustafsen Lake, BC and Stoney Point Ontario [Ipperwash] show how the media can’t seem to get enough of the savage/noble stereotype while ignoring the fundamental truths about the Native/Colonizer relationship.” Morriseau linked one-sided historical accounts of past conflicts with the events that transpired in 1995 by noting, “In modern-day society the stereotype becomes the gun-toting militant (savage) and the peace-loving negotiator (noble savage). . . .” Referring to the Gustafsen Lake Defenders, in particular, he noted, “The group was branded “Terrorists, militants, renegades, rebels and criminals,” by government officials, police, journalists and commentators. The words were modern-day versions of “savage” and this represented a point of view that the public was quick to swallow; after all they have been eating it for 500 years.”⁷⁰ This work will explore the use of stereotyping as a tool of manipulation.

In Public Opinion, Walter Lippmann sheds light on the process by which public opinion can be shaped by those in positions of authority. He coined the phrase “manufacture of consent” that was later employed by Noam Chomsky. The film Manufacturing consent: Noam Chomsky and the media, directed by Peter Wintonick and Mark Achbar, explores the process by which public support is mobilized. In the book of

the same name,⁷¹ Chomsky, Wintonck and Achbar examine the use of propaganda in the media and allege that powerful special interests in both government and the private sector can unfairly influence the media through a process of “manufacturing consent.”

In Public Opinion, Lippmann underscored the threat to democracy posed by the use of propaganda by governments. The use of propaganda by the BC Attorney General and RCMP spokespeople at Gustafsen Lake can be viewed in the context of Lippmann’s comment on the role of state officials in the process of advancing propaganda: “Provided they think publicity will not strengthen opposition too much... they seek a certain measure of consent. They take, if not the whole mass, then the subordinates of the hierarchy into their confidence to feel they have freely willed the result...”⁷²

In Propaganda: The Formation of Men’s Attitudes, Jacques Ellul identified important aspects of the nature of propaganda that provide useful context for analysis of the use of propaganda at Gustafsen Lake that will be explored in the conclusion of this work. Ellul writes, “Propaganda is a set of methods employed by an organized group that wants to bring about the active or passive participation in its actions of a mass of individuals, psychologically unified through psychological manipulations and incorporated in an organization.”⁷³ In this work, I will demonstrate the application of this theory of propaganda to the events that transpired in central British Columbia in 1995. With reference to the Gustafsen Lake conflict, the organized group that employed propaganda was the RCMP and/or the officials of British Columbia and Canada who “meant to bring about the active participation” of police and military soldiers to obey orders to initiate a ground assault on the Sundance camp. Likewise “passive participation” of the general public, the “mass of individuals” who consumed media

accounts of Native aggression, was manufactured to create consent for the siege on the Sundance camp.

¹ David Schneiderman, Director of the Centre for Constitutional Studies in the Faculty of Law at the University of Alberta, has suggested that, in international law, Aboriginal nations may have a stronger case than Quebec for self-determination. See interview on CBC radio, 740 AM Edmonton, 24 October 1995, cited in Joyce Green, "Towards A Détente With History," p.14
<http://kafka.uvic.ca/~vipirg/SISIS/Clark/detente.html>, 28 October 1999, 15:36

² See Ts' Peten Defenders press release, 19 June 1995

³ See Michael Asch, Home and Native Land: Aboriginal Rights and the Canadian Constitution, (Toronto: Methuen Publications, 1984) pp.46-47

⁴ Alexander Henry, Travels and Adventures in Canada and the Indian Territories between the Years 1760 and 1776, ed., (Edmonton: M.G. Hurtig Ltd., 1969), p. 44. See also Howard Peckham, Pontiac and the Indian Uprising (Chicago: University of Chicago Press, 1947)

⁵ See especially Richard White, The Middle Ground, Indians, Empires and Republics in the Great Lakes Region, 1650-1815 (Cambridge: Cambridge University Press, 1991), pp. 315-317. See also Robert S Allen, His Majesty's Indian allies: British Indian policy in the defence of Canada, 1774-1815, (Toronto: Dundurn Press, 1993)

⁶ Slattery, Brian, "The Hidden Constitution," in Boldt and Long, eds., The Quest for Justice, p. 122, cited in Tennant, Aboriginal Peoples, p.217

⁷ Majorie L. Benson, Isobel M. Findlay, James (Sakej) Youngblood Henderson, Aboriginal Tenure in the Constitution of Canada, (Toronto: Thomson Professional Publishing, 2000) p.151

⁸ Olive Dickason, Canada's First Nations: A History of Founding Peoples from Earliest Times, (Toronto: McClelland & Stewart, 1992) p.188

⁹ Dickason, Canada's First Nations, p.273

¹⁰ Tennant, Aboriginal Peoples, p.220

¹¹ *Ibid.*, p.15

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ According to the 1763 Royal Proclamation, Aboriginal title was safeguarded in that there could be no encroachment in unceded territories where no Treaty had been signed. However, underlying title remained with the British Sovereign. See the statement of Mr. Justice Strong in his Supreme Court opinion in *St. Catherine's Milling*. He states that it is "to the crown itself, in whom the ultimate title was... considered as vested." Cited in Cumming, Peter A. and Mickenberg, Neil H. Native Rights in Canada, (Toronto: Indian-Eskimo Association of Canada, 1972) p.39

¹⁵ Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989, (Vancouver: University of British Columbia Press, 1990) p.11

¹⁶ Tennant, Aboriginal Peoples, p.214

¹⁷ *Ibid.*, p.214

¹⁸ Royal Proclamation of 1763, cited in appendix to Menno Boldt, Surviving as Indians: The challenge of self-government, (Toronto: University of Toronto Press, 1993) p.165

¹⁹ See also ed Morse, Bradford, Aboriginal Peoples and the Law. Indian, Metis and Inuit Rights in Canada, (Ottawa: Carleton University Press, 1985) pp.52-56

²⁰ George Manuel, Michael Posluns, Fourth World: An Indian Reality, (Don Mills, Ontario: Collier-Macmillan Canada, 1974) p.31

²¹ See Article 13, British Columbia Terms of Union, cited in Paul Tennant, Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989, (Vancouver: University of British Columbia Press, 1990) p.43

²² Paul Tennant, Aboriginal Peoples, p.19-20, 218

²³ Hubert Howe Bancroft, "History of British Columbia, 1792-1887," Works of Hubert Howe Bancroft, History Company, (San Francisco, volume 32, 1887) pp. 322-323, cited in Switlo, Gustafsen Lake, p.23

- ²⁴ See Joseph Trutch, memorandum, enclosure in Musgrave to Granville, 29 January 1870, B.C., Papers Connected with Indian Land, appendix, p.11, cited Robin Fisher, Contact and Conflict: Indian-European relations in British Columbia 1774-1890, (Vancouver: UBC Press, 1992) p.171
- ²⁵ See Robin Fisher, "Joseph Trutch and Indian Land Policy," in Historical Essays on British Columbia, J. Friesen and H. K. Ralston. Eds., (Mc McClelland and Stewart, 1976) pp. 256-275
- ²⁶ Tennant, Aboriginal Peoples, p. 90
- ²⁷ Tennant, Aboriginal Peoples, p. 104
- ²⁸ Regarding the document Paul Tennant states, "As is apparent and contrary to what has often been assumed, the *Papers* [Connected With the Indian Land Question] were not published by the government at its own initiative," Tennant, Aboriginal Peoples, p.247
- ²⁹ Papers Connected with the Indian Land Question, British Columbia, cited in Tennant, Aboriginal Peoples, p.106, who cites them as follows: British Columbia, Papers Connected with the Indian Land Question, 1850-1875 (Victoria: Government Printer 1875) appendix, p.11
- ³⁰ Tennant, Aboriginal Peoples, p.110
- ³¹ Tennant, Aboriginal Peoples, p.112
- ³² Extract: Letter from Bruce Clark, Re Legal Issues 8 August 1995 to Staff Sergeant M.P. Sarrich NCO-in-Charge, Royal Canadian Mounted Police, Box 37, 100 Mile House, British Columbia V0K 2E0
- ³³ Canadian Indians and the Law: Selected Documents 1663-1972, ed. Derek G. Smith, (Toronto: McClelland and Stewart Limited, 1975) p.63
- ³⁴ *Ibid.*
- ³⁵ Section 25 of the Charter of Rights and Freedoms, within the 1982 Constitution Act states "The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement." Cited in Majorie L. Benson, Isobel M. Findlay, James (Sakej) Youngblood Henderson, Aboriginal Tenure in the Constitution of Canada, (Toronto: Thomson Professional Publishing, 2000) p.240
- ³⁶ Extract: Letter from Bruce Clark, Re Legal Issues 8 August 1995 to Staff Sergeant M.P. Sarrich NCO-in-Charge, Royal Canadian Mounted Police, Box 37, 100 Mile House, British Columbia V0K 2E0
- ³⁷ Section 35.1 of the 1982 Constitution Act also states, "The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the 'Constitution Act, 1867,' to section 25 of this Act... the Prime Minister of Canada will invite representatives of the Aboriginal peoples of Canada to participate in discussions on that item." See also Aboriginal Peoples and the Law, Indian, Metis and Inuit Rights in Canada, ed Morse, Bradford, (Ottawa: Carleton University Press, 1985) p.418
- ³⁸ Tennant, Aboriginal Peoples, p.222
- ³⁹ See Tennant, Aboriginal Peoples, p.233
- ⁴⁰ See Boldt, Surviving As Indians, p.34
- ⁴¹ See Oakes, Jill, ed. Sacred Lands, Aboriginal World Views, Claims and Conflicts, (Edmonton: Canadian Circumpolar Institute, University of Alberta, 1988) see also Delgamukww: The Supreme Court of Canada Decision on Aboriginal Title, (Vancouver: Greystone Books: David Suzuki Foundation, 1988) See also Isabel Heaman who writes in a summary of the Delgamukww decision for the Aboriginal Rights Coalition of BC (ARC), "The province does not have the jurisdiction to extinguish title. The BNA Act in Section 91 gave the federal parliament exclusive legislative jurisdiction for Indians and land reserved for Indians, which includes lands burdened by Aboriginal title" and also that "The [Delgamukww] decision that land reserved for Indians includes not just reserves but land where aboriginal title exists leaves open what provincial laws apply." <http://arcbc.tripod.com/Summary.htm>, 27 November 2000, 22:02
- ⁴² See Alison Auld, The Canadian Press, "Donald Marshall marches in fishing protest," 28 September 2000: "In a decision last fall, the Supreme Court of Canada ruled Natives have the right to make a moderate living by hunting, fishing and gathering. The decision came after Marshall was convicted in 1993 of fishing eels out of season and without a license." See also interview with Native lawyer, and director of operations for the Membertou Band negotiator for the union of Nova Scotia Indians, Bernd Christmas with Rex

Murphy," *The National Magazine*," CBC-TV, 14 August 2000, regarding the Marshall Decision: "Christmas: I think what we need to do is go back to, again, I want to repeat, go back to the Marshall decision and see what it says... Even in the clarification, the Supreme Court of Canada did not dismiss the fact that the Mi'kmaq people have the constitutional right to do commercial fish... I think we can also expand it even further to deal with all bands across the country, whether they're Indian bands under the Indian Act or, you know, Inuit. People are watching, meaning indigenous peoples of this country are watching what's happening with the Mi'kmaq and their Treaty rights. You know there are Treaties signed right across the country and what is taking place within that context. Everyone is, you know, facing right now is the Supreme Court telling the Mi'kmaq people that the treaty of 1752 is a live document and has constitutional protection. So you can imagine what other First Nations and other tribes across the country who ventured into agreements are thinking."

⁴³ See also, Stewart Bell, "Native militancy blamed on courts in RCMP report," *National Post*, 23 September 2000: An intelligence report, released to the *National Post* under federal Access to Information legislation alleges that Aboriginal "militants" exploit Aboriginal discontent, which it blamed partly on band corruption. An excerpt from the *National Post* article of 23 September 2000 follows here: "Despite billions of dollars going into Aboriginal programs, abject poverty remains a fact of life on many reserves, even those which have prospered from oil and gas holdings. Powerful factions control the finances and enrich their families and friends," the report says.

"Communities dependent on government funds also find themselves in this situation. This polarization has led to violence in the past and will likely be played out again in 1999 and beyond. Aboriginal extremists will most likely play major roles in provoking or sustaining militant action in these communities."

The findings suggest that extremists have been turning the confusion that has followed the recent series of court pronouncements on Native rights to their advantage, causing concerns for police who fear a repeat of the Oka-type bloodshed of the early and mid-1990s... Since soldiers stared down camouflaged natives at Oka in 1990, hardline militants have continued to surface across Canada at Aboriginal rights actions, such as the 1995 encampment at Gustafsen Lake, BC. See also See Boldt, *Surviving As Indians*, p.119, See also Walter Rudnicki, "The Politics of Aggression: Indian Termination in the 1980's," *Native Studies Review*, 3, no.1 (1987) p.81-93

⁴⁴ McKee, Christopher, *Treaty talks in British Columbia: negotiating a mutually beneficial future*. (Vancouver: UBC Press, 1996) p.95-96

⁴⁵ *Unsettling British Columbia: Interventions in a Neocolonial Politics*, Michael Smith, MA thesis, (Faculty of Graduate Studies, University of British Columbia, October 1997)

⁴⁶ *Temagami: A Debate on Wilderness*, Matt Bray and Ashley Thomson., eds, (Toronto: Dundurn Press, 1990), See also Bruce Clark, *Justice In Paradise*, (Montreal: McGill-Queen's University Press, 1999)

⁴⁷ Bruce Clark, testimony, 8 March 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁴⁸ See Robert S. Allen, *His Majesty's Indian allies: British Indian policy in the defence of Canada, 1774-1815*, (Toronto, Dundurn Press, 1993)

⁴⁹ Edward Said, *Culture and Imperialism*. (New York: Knopf, 1993) p.xii

⁵⁰ Michael Dawson, *The Mountie from dime novel to Disney*, (Toronto: Between The Lines, 1998) p.25

⁵¹ See footage of RCMP discussing their strategy to use a "disinformation and smear campaign" in the documentary film, *Above the Law 2*, produced by Mervyn Brown, 2000. Excerpts from this video recording were shown at the Gustafsen Lake trial on 20 January 1997, See also, "Mountie regrets 'smear' remark Gustafsen trial views damning tape," *Vancouver Province*, 21 January 1997

⁵² Michael Dawson, *The Mountie: From Dime Novel to Disney*, (Toronto: Behind the Lines, 1998)

⁵³ John Tobias, "Canada's Subjugation of the Plains Cree, 1879-1885" *Canadian Historical Review*, 64 No. 4 December 1983, p.519-548

⁵⁴ *Ibid.*

⁵⁵ Blair Stonechild, Bill Waiser, *Loyal 'Til Death: Indians and the North-West Rebellion*, (Calgary: Fifth House, 1997)

⁵⁶ Brian Titley, *A Narrow Vision Duncan Campbell Scott and the administration of Indian Affairs*, (Vancouver: University of British Columbia Press, 1986) p.119

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p.134

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- ⁵⁹ Ward Churchill, Struggle For the Land (Introduction to second edition), (Monroe, Maine: Common Courage Press, 1999) p.26
- ⁶⁰ Churchill, Indians are us?: Culture and Genocide in Native North America, (Toronto: Between the Lines, 1994) p.177
- ⁶¹ Ibid.
- ⁶² See Splitting the Sky, From Attica to Gustafsen Lake
- ⁶³ Switlo, Gustafsen Lake Under Siege, p.50
- ⁶⁴ Switlo, Gustafsen Lake Under Siege, p.22
- ⁶⁵ "The Blood Land Dispute," The Kainai News, Collectors Edition, 1981
- ⁶⁶ See Kainai News, Collectors Edition, Blood Tribe Reserve, 1981
- ⁶⁷ Justine Hunter, Sherryl Yeager, "Indian Rebels Plan to 'Leave in Body Bags,'" Vancouver Sun, 22 August 1995, A1
- ⁶⁸ RCMP Staff Sergeant Sarrich, in Brown, Above the Law 2
- ⁶⁹ Keith Walden, Visions of Order, (Toronto: Butterworths & Co 1982) p.3
- ⁷⁰ Miles Morrisseau, "Seeing Savages Behind Every Bush: How the Media Missed the Full Story behind Gustafsen Lake and Stoney Point," Aboriginal Voices, Autumn, 1995, p.6
- ⁷¹ See Mark Achbar and Peter Wintonick, Manufacturing consent: Noam Chomsky and the media (Montreal: Black Rose, 1994)
- ⁷² Walter Lippmann, Public Opinion, (New York: Free Press, 1975) p.161
- ⁷³ Ellul, Propaganda: The Formation of Men's Attitudes, (New York: Alfred A. Knopf, 1968) p.61

CHAPTER TWO

CATTLE RANCHERS AND SUNDANCERS CLASH:

“It didn’t matter what I said. They were going to make a show of force and set an example!”

The events which led up to the declaration of the RCMP that the Ts' Peten Defenders were terrorists are described in the notes of Native RCMP Constables who entered the Sundance camp on a regular basis in June, July and August 1995. The notes of these officers were disclosed to defense lawyers at the trial of the Ts' Peten Defenders, which followed the standoff. There are also minutes of RCMP meetings regarding the standoff and several copies of RCMP operational plans and internal communiqués that were disclosed at the trial that show directly what RCMP officers were thinking and doing at Gustafsen Lake. Finally, there are transcripts of the court testimony of RCMP officers regarding their role at Gustafsen Lake that shed light on the actions of both police and protesters. These documents create a very different impression of the genesis of the standoff than that constructed in the mainstream media. I have contrasted the public statements of the RCMP with the evidence collected at the trial to analyze RCMP behaviour and motivation.

Although the Gustafsen Lake conflict came to have important constitutional ramifications regarding attempts to settle Aboriginal title disputes at both domestic and international levels, the dispute started quietly. In the early late 1980's, Shuswap Faithkeeper Percy Rosette attracted people to Gustafsen Lake for Sundance ceremonies. For five years before the 1995 standoff, Rosette and members of a Sundance society gathered for this sophisticated religious ceremony² on land near 100 Mile House, British Columbia, where Lyle James operated a cattle ranch. Between 1989 and 1993, James gave his blessing to this ceremony. He and Percy Rosette signed agreements that stated that as long as no permanent structures were erected, and the Ts' Peten Defenders left at the end of the ceremony, the Sundance ceremonies could take place.³

Rosette had spiritual responsibilities associated with his role as the Faithkeeper of the Sundance as well as political and legal motivations connected with research he had done about ownership of the Sundance grounds. According to British Columbia lawyer Janice Switlo in Gustafsen Lake Under Siege: Exposing the Truth Behind the Gustafsen Lake stand-off, "While working as a researcher for an Indian band within the Secwepemc (Shuswap) Tribe, Rosette confirmed that a large area which includes the Sundance site, is Indian land."⁴

In addition to his legal and political interest in title to the Sundance grounds, Switlo explained that Rosette had a wide range of ceremonial responsibilities at the Sundance ceremonies: "As 'Faithkeeper,' not only does he have responsibilities during the Sundance preparations and event, he must also take physical and spiritual care of the sacred Sundance site and the sacred objects located there that are used in the Sundance religion."⁵

After the formal agreement between Rosette and James ended after the 1993 Sundance, Rosette consolidated his presence at the "Ts' Peten burial grounds."⁶ These grounds, he argued, were ancestral territories taken illegally from his ancestors. Although the RCMP would later claim that they considered the dispute unrelated to Aboriginal land claims issues, the notes of RCMP Sergeant Ken Porter on 14 June 1995 indicate that at least Porter knew about the Shuswap traditionalists' assertion that there are burial grounds in the area.⁷

In addition to his religious commitment to oversee the Sundance, Rosette was involved with a group of Native activists who advocated for a definitive Supreme Court ruling on the nature of Aboriginal title in their traditional lands. There was a sovereignty

association⁸ that included William Jones Ignace, often known by a translation of his Shuswap name, "Wolverine." Ignace is an organic farmer who had petitioned the international community on the issue of Aboriginal jurisdiction several times.

At Gustafsen Lake, Bruce Clark counselled the protesters that they were within their constitutional right to defend the Sundance grounds with guns⁹ and supported the idea that the promises made to Aboriginal peoples by the British Crown formed a solid constitutional foundation for the armed stand at Gustafsen Lake. The existence of a relationship of alliance between Aboriginal peoples and the British Crown is a key part of the argument put forth by Clark and Ignace. This relationship is also an essential element of Aboriginal traditions in both western and eastern Canada and it is therefore logical that Mohawk activist Splitting the Sky could identify with similar issues raised by Shuswap traditionalists at Gustafsen Lake.

Splitting the Sky, who was an influential figure within the Sundance camp, is an inheritor of the Six Nations, or "Haudoneshoney" tradition that has deep roots in diplomatic agreements and military alliances with the British Crown.¹⁰ An intense orator, he was chosen as the main spokesperson to articulate the arguments forwarded by Clark, Rosette, Ignace and Stevens whose efforts on the legal front were proceeding methodically and largely unnoticed until the dispute with James and his ranchers escalated.

In the first days of the conflict, the Ts' Peten Defenders did manage to convey some of their grievances through the press. On 28 June 1995, Stephen Frasher of The 100 Mile Press published accounts directly from the Ts' Peten Defenders:

Rosette and Archie and other Shuswap traditionalists say that the land is theirs and has never been ceded or the subject of a legal sale to Dog Creek rancher Lyle James. "Someone has issued illegal leases," says

Rosette. He claims James has never showed him a deed to the land, or who claimed legal authority to sell the land... Splitting the Sky asks, "What we want to know is where are the documents for this reserve?" There has always been some tension between the Ts' Peten Defenders and the rancher over the ownership claim but Splitting the Sky speaks about native land claims issues on a wider scale than has ever come up here before. Under the banner of "the Shuswap Nation at Gustafson Lake," the group has demanded an investigation by the Governor General into illegal land deals and intervention by the Queen to hear their claims under the Royal Proclamation of 1763 which states according to their release that "all unceded territories remain unmolested and undisturbed."¹¹

Although this press report stated the legal and spiritual issues plainly, this type of reportage quickly changed when accounts of violence ensued. Within a few weeks, Native people who gathered for the annual Sundance at Gustafsen Lake became the focus of national attention when reports of gunfire between members of the camp and the cattle ranchers made headlines.

How did violence begin? The alleged owner of the land where the Sundance took place, Lyle James, provided his account of the events at the trial of the protesters that followed the conflict. James testified that the Sundance took place without his consent in 1994 and said he was adamant that the ceremony should not take place in 1995. By February 1995, James retained a lawyer, who then contacted the commanding officer of nearby 100 Mile House RCMP Detachment, Sergeant Sarrich. Sarrich testified that the RCMP objective at this time was to have the Sundance cancelled or moved to a new location.¹² Sarrich then contacted Canoe Lake Band Chief Agnes Snow and Canim Lake Band Chief Antoine Archie to aid him in this effort. (Both Canim Lake and Canoe Creek Bands form part of a larger body called the Caribou Tribal Council.)

RCMP Sergeant Sarrich, who handled the dispute in its early months in 1995, testified that there were plans to have the Sundance moved or cancelled as early as January 1995.¹³ Sarrich stated that from the outset that he had the view the protesters'

arguments lacked substance. Sarrich also discussed the situation with James' lawyer and discussed the prospect of pressing charges against the Defenders. Sarrich's testimony demonstrated that he did not take any of the political or religious arguments raised by the Ts' Peten Defenders seriously. In fact, he stated in his testimony of 19 August 1996, that he viewed the people at the Sundance camp as being militants looking for a cause to create a violent confrontation.¹⁴

From February 1995 forward, there were clear lines of demarcation drawn. Most RCMP officers sided with Band Council officials in an attempt to discredit the protesters' message that neither the governments of British Columbia and Canada nor the Tribal Council governments had jurisdiction over the Sundance grounds. In accounts provided to the media, RCMP media liaison officers Sarrich, Ward and Montague consistently portrayed Rosette and the Ts' Peten Defenders as aggressive malcontents and ignored the substance of their demands for third party adjudication of their land dispute. The RCMP position was strengthened when the Ts' Peten Defenders received little or no support from mainstream Aboriginal organizations across Canada.

The Ts' Peten Defenders represented grassroots Aboriginal activists who view their federally funded Tribal Council governments as collaborators with government efforts to stifle Aboriginal self-determination.¹⁵ To the general public, though, the assertion that the Ts' Peten Defenders were "outside agitators" seemed compelling when Aboriginal people who were portrayed as authentic community leaders offered little or no support to the camp. The "terrorist" threat was reinforced by denunciations from Tribal Chiefs in the 100-Mile house area such as Agnes Snow, who stated, "In speaking to the people from our community, if there should be any defending of our territory, it should

be coming from us, not these outsiders.”¹⁶

Although Sarrich and several high ranking RCMP officers characterized the Ts’ Peten Defenders as militants from the outset, there was another view that came from the Native Constables who entered the Sundance camp. RCMP Constables Charlie Andrew, Bob Wood, and George Findley were assigned to investigate the Gustafsen Lake dispute after Lyle James reportedly uttered threats while he and his ranch-hands served an eviction notice to the Ts’ Peten Defenders on 13 June 1995. The notes of officers, Andrew, Wood, and Findley indicate that these officers were more concerned about the threat of violence coming from ranchers than from the Ts’ Peten Defenders, especially after reports that the ranchers threatened members of the Sundance camp while the ceremony was on-going.

Although the protesters were portrayed as terrorists, court testimony and notes made by these Native Constables – who undertook negotiations with the Sundance camp as well as the ranchers – show that the Ts’ Peten Defenders had two main concerns. The first was religious. They wanted to make sure that the Sundance could run its course from 2 July to 16 July. The second was broader and both political and legal in nature and involved the articulation of a political-legal tradition with deep roots in Aboriginal communities throughout Canada’s First Nations. The Ts’ Peten Defenders alleged that they had the rule of law on their side because of promises made to them by the British Crown and the constitutional entrenchment of rights stemming from those promises dating back to the Royal Proclamation of 1763.

The legal and historical assertions made by Sundance camp spokesperson Splitting the Sky and their lawyer, Bruce Clark, were considered quixotic by most RCMP

negotiators, the Attorney General of BC, the Solicitor General of Canada, as well by the vast majority of the Canadian public who read the over-simplified news reports of the incident. Instead of exploring the substance of the Ts' Peten Defenders' legal assertions, RCMP media liaison officers dismissed the Ts' Peten Defenders outright. For example, Sergeant Sarrich told media that, "Our position is that they're terrorists, and there is nothing to negotiate with them."¹⁷

Although the public perception was that the camp was a hostile place, Shuswap RCMP Constable Charlie Andrew testified that during his many visits to the Sundance camp he was treated with dignity and no threats were made against ranchers, the police or the community. He stated that there was an open invitation to discuss the matter in a peaceful manner even during his final visits to the camp.¹⁸ There was, however, a controversy about a fence that the Ts' Peten Defenders reinforced "to prevent cows from desecrating the Sundance site and sacred burial grounds,"¹⁹ which had caused both frustration and danger to personal safety during the previous year's Sundance:

They [the Ts' Peten Defenders] explain that they have erected a fence along an old fence line around the perimeter of their sacred grounds to keep cattle from wandering through and defiling the sacred grounds. Within the enclosure is the Sacred Arbor, where the actual Sundance ceremonies are held, the council lodge campsite and an ancient burial ground. He maintains that a parcel about 28 sq. miles was originally intended to be put into a reserve for the Shuswap people, but that survey markers have been long ago tampered with and destroyed so that now there is no record of it.²⁰

The ranchers argued that this fence obstructed important operations of the cattle ranch and also alleged the Ts' Peten Defenders were bothering tourists who were camping in the area. However it was the opinion of Sergeant Porter on 22 June 1995 that the Ts' Peten Defenders "probably won't bother any outsiders as long as cowboys don't bother them."²¹ Regarding operation of the ranch, Porter noted the Ts' Peten Defenders

had “invited cowboys to come in and remove cows”²² to prevent loss to James.

The RCMP contradicted Porter’s observation that the Ts’ Peten Defenders’ presence was benign in a report written in late August when Superintendent Len Olfert organized a media campaign designed to convince the public that the Ts’ Peten Defenders had become a terrorist threat and alleged “There has been disruption to the operation of the ranch.”²³

The notes of Constable Bob Wood corroborate the testimony of Constable Andrew and disprove the allegation that the protesters were the aggressors. In fact, in June and July, officers seemed more concerned about aggressive action from the ranchers after James served the eviction notice. Wood’s notes of 1230 on 13 June state, “Lyle James advised by Cpl. Hicks not to harm anyone... recommended James follow lawyers direction and obtain a court injunction.”²⁴

Wood’s notes of 25 June 1995 indicate that the day-to-day activities in the camp involved preparations for the Sundance and characterize the camp as a peaceful and solemn place.²⁵

All quiet in camp – No problems with campers or ranchers. Informed John [Hill, also known as Splitting the Sky] and Ernie Archie [that] Lyle James is going to move his cattle from Gustafsen Lake. Both agreed there is no problem with this. John spoke with both Sgt.’s and explained the purpose of the Sundance and period of dates from July 2-16 when people would be meeting for ceremony. John and Ernie plus two others... were cutting wood for sweat lodge fires. Constable Wood invited by John to attend and view actual Sundance ceremony.²⁶

In early June, RCMP officers recorded evidence of aggression from James’ ranch-hands. On 16 June, the Ts’ Peten Defenders claimed that a drunken ranch-hand threatened them as he rode through the camp on horseback and warned that an invasion by the RCMP was imminent.²⁷ Although James denied that his ranch-hands made

threatening overtures when he was present, he did concede that one of his employees entered the Sundance camp one night after drinking. According to Lambertus:

The incident was well – documented during the trial. One of the ranch-hands, apparently after consuming alcohol, allegedly rode to the camp late one night on horseback, yelling and making a commotion that woke everybody up. He said that the ranch-hands and the police were going to raid the camp and burn it down. The scene was witnessed by non-Native people who were camping nearby, who later testified in court that the incident did occur.²⁸

Constable Wood investigated the Ts' Peten Defenders' allegation and in his notes on 24 June 1995 at 1430, he refers to a "statement obtained [from] campers yesterday" that said there were "no problems... During conversation, they [the non-Native vacationers] related a story of drunken cowboy ride[ing] through the camp last Friday. This substantiates the story told by the Ts' Peten Defenders at the talks last Saturday. Lyle James will be told to talk to his men."²⁹ Another note of concern regarding the potential for violence from the ranchers was noted by Constable Andrew on 17 June 1995 who wrote, "Member advised James that this was not the time or place to start moving people off this land with force."³⁰

Throughout June and July 1995 there were several conflicting reports regarding the exchange of gunfire and the utterance of threats near the Sundance grounds. In Constable Findley's notes of 15 June 1995 he refers to a "shooting at forestry workers" attributed to the Ts' Peten Defenders. He writes: "Lyle James, owner of the property is demanding these Natives get off his property or he will move them off with the help of his cowboys."³¹

No charges were ever laid in connection with the alleged shooting at forestry workers although press reports often indicated that the Ts' Peten Defenders were clearly responsible for them. According to the notes of Sergeant Sarrich on 5 July, Sundancer

Ernie Archie told a witness that "The shot at the forestry workers was an accident."³²

Although no one was injured, the incident was exploited by British Columbia Reform Party leader Jack Weisgerber in his attempt to raise support for police action against the Ts' Peten Defenders according to the populist dictum that became an oft-repeated mantra repeated by BC Attorney General Ujjal Dosanjh, the police and the general public during the standoff: "There is one law for all Canadians."³³

The call for an RCMP operation to remove the Ts' Peten Defenders may have its origin with members of the Reform party, including then-British Columbia MLA Jack Weisgerber. The demand of Reform party politicians that the RCMP should remove the Ts' Peten Defenders without hesitation was recorded by RCMP officers who were concerned that outside parties were pushing James to use force to remove the Ts' Peten Defenders before the Sundance ceremony finished. In his notes of 21 June 1995 at 1825, Constable Andrew wrote,

Findley advised that Peter Epp informed him he was a member of the Reform Party and good friends with [Reform Party leader] Jack Weisburger, also a Reform Party member or leader. It is possible that the two A/N people are pushing Lyle James' buttons in the background, we are assuming this at this time. It is very possible that Lyle James is getting pressure from different groups to start or cause a confrontation at Gustafsen Lake.³⁴

The calls for action to remove the Ts' Peten Defenders made by the Reform party echo many of the public sentiments of citizens who later staged public protests near 100-Mile House. These people supported the RCMP and urged the police to remove the campers, by force, if necessary bearing signs that proclaimed, "We support the police."³⁵ There was little interest in the Sundancers' legal position from state officials or the general public in the interior of British Columbia during the siege. Most viewed the Ts' Peten Defenders as initiators of violence, despite their claims to the contrary.

Although the ranchers played down their role as aggressors, the claim of the Ts' Peten Defenders that one of James' men brandished a bullwhip during the June eviction attempt was later confirmed. In his testimony on 22 July 1996, Lyle James' son, Dale admitted that a bullwhip was produced by another ranch-hand, Scott Bernard. The Ts' Peten Defenders alleged that the ranchers also called them "red niggers." Dale James testified that ranch-hands walked through the Sundance grounds, took the stove and the door of a structure within the encampment and walked through the Ts' Peten Defenders' tent.³⁶

In his testimony on 16 July 1996, Lyle James disagreed with the characterization of the RCMP that he was using a "confrontational approach" and claimed that when serving the eviction notice his cowhand was just playing with his bull-whip. In particular, James disagreed with Corporal Hicks' statement that James was determined to "burn, bulldoze the entire camp if necessary."³⁷ Nonetheless, James' testimony did indicate that the ranch-hands had aggressive intentions when he confirmed that someone said they were prepared to use force to break up the camp. He claimed this was said by some ranch-hands who were a bit "hotheaded" and "said things he wished they hadn't."³⁸

Few accounts of the threats made from James and his ranch-hands appeared in the mainstream media reports. In contrast, there were reports, largely based on statements made by Attorney General Dosanjh and RCMP spokesmen, that downplayed the legal issues raised by the Ts' Peten Defenders and emphasized the threat of violence from the Natives.³⁹ RCMP commanders dismissed the Aboriginal rights issues, treated the Ts' Peten Defenders as lawbreakers and tried to stifle the Sundance. According to the notes of Constable Andrew, there was a co-ordinated effort on the part of some RCMP officers,

in particular Sergeant Sarrich, and some Tribal Council Chiefs to have the Sundance moved or cancelled.⁴⁰

Throughout the conflict and even more vociferously at the ensuing trial, the Gustafsen Lake Defenders called upon the RCMP to fulfill their fiduciary duty to protect Native people from incursions into their unceded territories. They argued that the Queen and her Royal Police force were bound by a nation-to-nation relationship of alliance enshrined in agreements dating back to 1763 and re-affirmed in the Constitution.

When Percy Rosette made frantic calls to the RCMP for help in 1995, he was hoping that the RCMP would objectively arbitrate the dispute. Splitting the Sky and Jones Ignace, who were the camp spokespeople, often quoted lengthy passages from the Royal Proclamation of 1763, which referred to the duty of the British Sovereign to protect Native people. In the view of the Ts' Peten Defenders, they needed protection initially from the ranchers but more broadly from a legal and political system that denied them title rights stemming from the 1763 Royal Proclamation.

Although RCMP officers alleged the Ts' Peten Defenders had no coherent issues, there were direct discussions between Ts' Peten Defenders and RCMP officers regarding the specifics of the Ts' Peten Defenders' legal and constitutional position and their historical struggle for cultural, spiritual and political autonomy. For example, Constable Findley made extensive notes about the history of the land at Gustafsen Lake during a discussion he had in the camp with David Archie and Splitting the Sky. The following synopsis of his notes of 12 July 1995, shows that the RCMP were given direct exposure to the real historical and constitutional issues at the heart of the Sundancer's stand:

[Sundancer] David Archie: described [Aboriginal] history – before colonial times Shuswap people subsisted through hunting, fishing, berry-picking. The area was a trade route to Canim Lake and the North

Thompson Area. In 1832 there was the Blackdome Inter Tribal Agreement according to which 2000 sq. mi. of territory near Black dome mountain to east side of Green Lake was reserved. In 1864 the Douglas Reserve was negotiated between Governor Douglas and the Canoe Creek and Dog Creek Indian bands which laid out 300 000 acres as far east as Neilson Lake. Many Natives lived year round, and remain in the area today. In 1865 Joseph Trutch "declared Natives non-citizens" and "passed ordinance that natives could not buy, sell or pre-empt land" and "down-sized reserves... from 300 000 acres to 14 000 or 5% of the Douglas Treaty." In 1870 Natives were excluded from partnership in Confederation. In 1862 small pox hit. Trutch thought Natives would go extinct. In 1858 whites had come into ranch after failing in gold rush and married some natives. Under Trutch, Natives were given 10 acres per family although whites got 160 acres. In 1858 was the first owner of James Cattle ranch. Between 1920 and 1940, "Natives were not allowed to sell or buy agricultural goods off reserve" Natives were urged to sell reserve land if they were in dire straights by the government of the day.⁴¹

Part of the exchange where Findley discussed these issues with the Sundance camp was captured on film and appears in the documentary film Above the Law (Part One).⁴² The video-taped exchange ends with Findley's comment: "Throw in alcohol and residential school and it aint hard to understand the loss of land and family breakdown of the Native people."⁴³ Importantly, this report, that Findley handed to his superiors, explained the context to the Ts' Peten Defenders' claim that they were victims of "genocide." Moreover, Findley advised against RCMP action to remove the Ts' Peten Defenders and stated specifically: "Recommendation: Do not take police action to remove [them because] public support from local Native bands would or could shift in a hurry."⁴⁴ The concern of Findley that if the larger historical side of the Ts' Peten Defenders' message was received Native bands might support their armed struggle is very significant. Instead of encouraging, or at least allowing, a debate regarding the historical and legal issues at hand, the RCMP chose to proceed with a propaganda campaign designed to discredit the Ts' Peten Defenders and to prevent the issues raised in Findley's report from becoming the issues of public debate. In the end, very few Native people heard a clear articulation of the legal and historical issues that were at the

heart of the Ts' Peten Defenders' stance. Although many came out in support of them after their trial, the Ts' Peten Defenders received little domestic support in the summer of 1995, at least in part because of the intense campaign of media manipulation that discredited the protest.

Following Findley's report there were more reports of gunfire. Tensions were running high on both sides and according to the notes of Sergeant Porter on 20 July 1995, "James [was] getting pushy."⁴⁵ In response, the Ts' Peten Defenders began drafting press releases under the name of the "Defenders of the Shuswap Nation." They called upon the Governor General to investigate the status of the land and demanded "The land policy of the Department of Indian Affairs in the Shuswap Nation is to be exposed; an audience is to be arranged with the Queen and then Privy Council of the UK at which the Treaty obligations of the Royal Proclamation of 1763 and the policy of protecting unceded territories are renewed."⁴⁶

As tensions escalated the protesters argued they would view any incursion into the camp as an act of war. They drafted a press release and stated plainly, "Any further attempts to forcibly invade the Defenders' camp will be met with resistant force."⁴⁷ As of 19 June, the Defenders were preparing for an assault by the RCMP they felt was imminent. Throughout the standoff, the Ts' Peten Defenders argued that they were in an armed but self-defensive posture and that they would stand down as soon as the Solicitor General of Canada sent their petition for third-party adjudication to Crown officials in London, England.

At the subsequent trial, one of the Gustafsen Lake Defenders' defense counsel, George Wool, who was an RCMP officer before becoming a lawyer, summarized the

events of June and July that set the tone for the police response. He outlined “findings of fact” related to the background of the standoff: “In the early 90’s it was known that Native people were meeting for a Sundance, not a standoff, not a sudden terrorist act.”

“Fact,” stated Wool,

This is a “red neck area” where Native people live separate and apart. Barry Holden testified there was never a problem... Native people helped out fishermen in the area. [Then] in June 1995, Mr. James decided to go into this area he believed his ranch. He had been advised to get a court order, and follow civil process but he didn't which was what probably started this whole thing. Thirteen ranchers went into what was then a peaceful camp. There was no standoff at that time... [Wool noted the rancher's admission that it was a] bad decision to crack the bullwhip.⁴⁸

Wool told the court that James’ attempt to evict the Ts’ Peten Defenders was the aggressive action that escalated the conflict: “In my view [the eviction attempt] starts the whole process... Next Ron Tonelli [a ranch-hand] rides into the encampment claiming horses have been shot and fires a shot. [Then] a drunken cowboy, Lindsay Turnbull rides into the camp making threats and yelling, ‘You better get out of here.’ The media doesn't cover this... and anyone would have viewed this as a threat.” Wool referred to these as “the facts that set the stage.”⁴⁹

While the Native Constables maintained good relationships with the Ts’ Peten Defenders, other Constables continued to be concerned about the possibility that James might start moving on the Sundance camp. On 20 July, RCMP Superintendent Len Olfert wrote in his notebook that a “lawyer from James Cattle [is] saying ‘take them out.’”⁵⁰ Olfert also notes James still had “No eviction order.” Nevertheless, “James is pushing for action.”⁵¹

In the two weeks following Olfert’s observations about James wanting to “take out” the Ts’ Peten Defenders there were two more unconfirmed reports of shots being

fired. On 26 July 1995, there was a report that two fisheries officers were encountered by six men who said they were from the Sundance camp. According to an article later published in the Vancouver Sun, as these officers were leaving shots were fired into the area.⁵² According to the notes of Sgt. Porter there was a report of witnesses "hearing shots" but these people were "not shot at."⁵³ Nevertheless, support from the federal Reform Party for an RCMP operation was redoubled by these reports which blamed the Ts' Peten Defenders for initiating shooting incidents, and on 27 July Sarrich "had discussions with Phil Mayfield (Reform MP) and Lyle James."⁵⁴

The conflict between the ranchers and the Ts' Peten Defenders could have remained a local issue. There was no clear evidence that the Ts' Peten Defenders initiated shooting incidents in June and July. RCMP negotiators counseled against the use of RCMP force.

Although the press remained more interested in accounts of violence, some Ts' Peten Defenders maintained faith that the Canadian courts might hear their constitutional challenge and vindicate their claim to underlying title of the Sundance grounds. Their lawyer, Bruce Clark, told them that a breakthrough was possible on 12 September 1995. Clark hoped that the Supreme Court would reverse earlier precedents on the question of title with reference to the Delgamukww case⁵⁵ and open the question of Native jurisdiction in unceded Aboriginal territories to fuller discussion and legal examination. With this hope in mind and still fearful of encroachment from ranchers and the RCMP, the Ts' Peten Defenders decided to reinforce their camp with provisions and called for help from both Native and non-Native sympathizers.⁵⁶ As the conflict wore on, the Ts' Peten Defenders called on their supporters to protect them physically by coming to the

camp. They also implored supporters to counter the backlash against them that stemmed from the political pressure and media reports that they argued were based on propaganda designed to inflame public opinion and manufacture consent for an attack on their camp.

After alleging that the Ts' Peten Defenders were terrorists, the police, the military and the provincial government pushed forward with their effort to remove the protesters although they lacked direct evidence linking the Ts' Peten Defenders to the shooting incidents.⁵⁷ Although Dosanjh maintained that Gustafsen Lake "is not a political issue"⁵⁸ and was unrelated to Aboriginal title issues, the fundamentally discordant legal interpretations between the Ts' Peten Defenders and state officials were evident to Native Constables who attempted to maintain peaceful negotiations with both ranchers and Ts' Peten Defenders in June and July. For example, Andrew's notes on 18 July 1995 state that "John Dock [Splitting the Sky] said that some MLA made a statement on the radio that he would seek a court order in the Supreme Court and have the people removed from the site by the police. John Dock then said if the police enforce the court order that will mean war against them and he himself is prepared to die for the cause."⁵⁹ According to Andrew's notes of 18 July 1995, Splitting the Sky, who handled many of the inquiries from police and media in June, July and August also said, "They [the Ts' Peten Defenders] want the dispute to be resolved in a peaceful manner. They do not want any type of confrontation with anyone. John Dock said they want the Prv/Fed government to sit down and resolve the issues at hand."⁶⁰ Splitting the Sky was one of the main players at the Gustafsen Lake episode and his articulation of the Ts' Peten Defenders constitutional position set the tone for the negotiations which ensued.

The Ts' Peten Defenders' response to reports of Native aggression was largely

unknown to the Canadian public as the standoff edged towards violence and bloodshed. Reports of violence from within the Sundance camp, which originated with the RCMP, dominated media coverage. For example, the RCMP claimed that weapons seized from people associated with the camp, approximately forty kilometres away, confirmed suspicions that the Ts' Peten Defenders were dangerous criminals.⁶¹ Although there was no confirmation of these reports, RCMP officers discussed whether they should invade the camp immediately or whether they should go to the media first.⁶²

On 20 August, Canadian Press reported on the seizure of weapons purported to be associated with the Sundance camp: "In one of the latest incidents, two fisheries officers [from the Department of Fisheries and Oceans] found two heavily armed natives beside the Fraser River on 11 August." The article emphasized the RCMP account of the dispute and dismissed the protesters as illegal squatters by stating, "A small group of natives *squatting illegally* [italics mine] on a private ranch about 90 km southwest of this Cariboo community has shot at a Mountie and threatened Department of Fisheries enforcement officers, a senior RCMP officer told a news conference."⁶³

Although the reportage of this arrest set the stage for the RCMP claim that the Ts' Peten Defenders were terrorists, Sergeant Sarrich later admitted in court that he had no direct evidence that the weapons seized and presented to the media as belonging to the Ts' Peten Defenders, had ever been inside the camp. Sarrich also testified that he associated the guns with the Ts' Peten Defenders despite reports from Constables Wood, Andrew and Findley that no guns had yet been seen in the camp.⁶⁴

Following the weapons seizure by Fisheries officers, RCMP Constable Ray Wilby testified that he met with Porter and Olfert and was ordered to do a "discrete

reconnaissance” of the camp.⁶⁵ This “discrete reconnaissance” team of camouflage “Emergency Response Team” (ERT) members surrounded the camp in the early morning darkness with high calibre weapons including 9mm Saucer handguns, 9mm submachine guns M-16 rifles and .308sniper rifles. The heavily armed RCMP Emergency Response Ream (ERT) entered the Sundance grounds around 0400 on the morning of 18 August.⁶⁶

According to the Canadian Press report of the incident, an “RCMP patrol went into the area and came across a young native in battle dress, police said. Within seconds of the encounter, the native fired a shot at a member with the bullet narrowly missing his head. The native fled into a heavily wooded area.”⁶⁷ The RCMP told the press that the firing of this shot at the heavily armed Emergency Response team – that surrounded the camp in the middle of the night – constituted an act of terrorism by the Ts’ Peten Defenders.⁶⁸ However, the Ts’ Peten Defenders argued that they had good reasons to fire what they argued was simply a warning shot because they had a legitimate fear that their camp was being attacked. As stated above, ranchers had warned that such an invasion was imminent. Rosette asked reporters, “If someone came sneaking into your house with a SWAT team, what would you do? You’d have to defend yourself. This lake, and all this land, belongs to the Indian people.”⁶⁹

James Pitawanakwat told the press that the accounts of forestry officials and RCMP being shot at were incorrect. He also claimed the shot fired at the Emergency Response Team was a warning shot into the air and stated, “They are going to say anything to the press to make us look bad in the public eye.”⁷⁰

Even lower ranking RCMP officers later questioned the logic of inserting the heavily armed “reconnaissance” team who wore camouflage face paint and carried high

calibre weapons.⁷¹ At the Gustafsen Lake trial, George Wool asked Constable Andrew about the concern that the “reconnaissance dressed in dark clothing might cause a confrontation,”

Wool: In your mind, you were concerned of what might happen if people in dark clothing were sneaking up on the encampment right?

Andrew: Yes, I was.

Wool: You were concerned because somebody in the camp might mistake these people in military or dark clothing as aggressors, right?

Andrew: I believed they were – if they were detected there might be a confrontation.”⁷²

Even Sergeant Sarrich who had little sympathy with the Ts’ Peten Defenders’ position agreed, in his court testimony, that inserting the ERT in the middle of the night may have been a recipe for disaster, and that if he was a camper, it might occur to him to shoot back.⁷³

Sergeant Porter also questioned the actions of his superiors in August 1995 and said he “didn’t agree with a lot of things” the RMCP did at Gustafsen Lake. Wool pressed him for specifics and hypothesized, “What bothered you, Ken Porter, was that you were uncomfortable about using things like ERT team, heavy-duty weaponry, going in there and putting on a big show, isn’t that true?”

Porter answered, “I guess there was a certain amount of apprehension on my part.”

Wool also explored the nature of the seemingly heavy-handed media campaign at the Sundance grounds. In particular, Wool asked Porter if he felt it was unethical for the RCMP to fly in journalists to attend the press conference on 11 August 1995 where the Ts’ Peten Defenders were portrayed as terrorists. Specifically, Wool asked Porter if he was “uncomfortable with the idea of having Sgt. Montague and this jet full of journalists fly into Williams Lake and put on a great big media show before any roadblocks or

investigation. That's it isn't it?"

Porter answered: "I don't know that I was uncomfortable with it. It was not my idea... I was caught up in it." He summarized, "The long and short of the whole thing is, it wasn't my show. "

"That's right," said Wool, "It was Superintendent Olfert's show, true?"

"True," Porter replied.⁷⁴

It was RCMP Superintendent Olfert who, despite the lack of concrete evidence to link the weapons seized by fisheries officers to the camp, organized the elaborate 11 August press conference that marked the beginning of the most concerted attempts of the RCMP to discredit the Ts' Peten Defenders. The RCMP displayed weapons to reporters and alleged that a serious terrorist threat was developing. An RCMP operation plan drafted on 22 August, stated, "As a direct result of the DFO [Department of Fisheries and Oceans] seizure, a decision was made to initiate planning for a search of the Gustafson [sic] Lake site."⁷⁵

After spotting the heavily armed ERT team in the bushes in the early morning hours of 18 August, Percy Rosette made frantic calls to the RCMP asking for help. Constable Wood, who maintained good relations with the Ts' Peten Defenders, made a record of this phone call. According to his notes, he received a call from Rosette who made a complaint that "There are 4-6 whites in camouflage in the bushes with guns. Coming at them." Wood advised Rosette, "Police will attend ASAP as we are busy with another complaint at present."⁷⁶ The RCMP did not follow up on Percy's complaint.

Rosette received no support from Native Constables, who were promptly pulled back. The RCMP denied that it was they who were in the bushes, which escalated fear in

the camp that ranchers were following up on threats of vigilante action. The Native officer who received Rosette's plea for help and set out to investigate his allegation that there were camouflaged men lurking in the woods was pulled off the case. More importantly, in his testimony Olfert admitted that RCMP tapes of the phone conversation with Percy Rosette were destroyed.⁷⁷ As such, it is possible that there existed other evidence that supports the allegation that the RCMP engaged in a campaign of "disinformation and smear."

Native officers later stated they felt betrayed by their commanders. They argued that the higher-ranking officers were determined to use force to settle the dispute and ignored the advice of the three Native RCMP negotiators who recommended that no police action was necessary. According to Wood, there were only five people left in the camp by 18 August and it was his opinion that they would leave peacefully.⁷⁸ At the trial, George Wool stated, "Historically the RCMP is not very well-trusted, that is why the Native Constables were brought in... [Because of]... residential schools, Native people have been cheated, lied to, and double-crossed." Wool explained, "A Native person feels no one cares" and alleged this is a central part of the "sad history of BC."⁷⁹

Until the insertion of this ERT team, RCMP negotiators Wood, Findley and Andrew played the role that made the Mounted Police famous in history books and dime novels.⁸⁰ They were arbiters who were trying to facilitate a peace agreement between all parties in a dispute that was winding down. The Sundance had come to a close and Wood had determined that "It was down to five individuals" who remained. Then, according to Constable Wood, "Something changed. The RCMP made up their minds. They were going to use force."⁸¹

At this point, the tone of the RCMP operation changed from investigation to provocation and the officers went from being observers to enforcers of laws that the Ts' Peten Defenders argued did not apply to the Sundance grounds. Wood, Andrew and Findley were pulled from the case, allegedly to protect their own safety. Constable Bob Wood, one of the Native Constables who was pulled off the case denied Sergeant Montague's assertion that safety concerns were behind the decision to remove the Native Constables. In contrast, Wood suggested that the RCMP strategy was to abandon negotiations and to use force to remove the protesters. "My God," Wood said, "We were there for two months, daily, so I don't know what his reasoning was."⁸²

Wood also asserted that the RCMP rejected clear recommendations from he and other officers and that the use of force was not required to end the conflict. In the words of Constable Wood, "It didn't matter what I said. [After 18 August] they no longer wanted the Native police officers involved. They were going to make a show of force and set an example. Somebody above the level of Constable made a decision that the Emergency Response Team was going to go in. And nothing was going to change their mind."⁸³ Wood has since quit the force and has come out publicly to criticize the decision⁸⁴ to use Canada's federal police force to "set an example" to those Aboriginal people who would challenge the prevailing legal, political, and constitutional status quo.

Despite the questionable and provocative nature of the late night insertion of RCMP officers who surrounded the camp, after a shot was returned from the camp, the RCMP used the incident to step up their attempts to discredit the Ts' Peten Defenders. Under the command of Superintendent Olfert, the RCMP staged a press conference where they denied that Ignace, Rosette, Clark, Splitting the Sky and the rest of the Ts'

Peten Defenders had valid or even comprehensible political grievances.⁸⁵

At this point, the standoff quickly escalated into a military siege after the Emergency Response Team drew fire from the camp.⁸⁶ The RCMP stepped up their efforts to discredit the Ts' Peten Defenders. They employed a propaganda technique George Wool referred to as "policing by publicity," in an interview with Aboriginal Peoples Television Network (APTN) aired in May 2000.⁸⁷ As the standoff escalated, the Mounties employed propaganda-like publicity techniques to manufacture consent⁸⁸ for their plan to remove the Ts' Peten Defenders. Wool told APTN that "policing by publicity" has become a customary strategy employed by RCMP officers in the last ten years to ruin the credibility of suspects whom the RCMP have identified as criminals.⁸⁹ It would appear that the Gustafsen Lake Defenders were singled out by the RCMP for such treatment. For example, on 19 August, Superintendent Olfert held a press conference in nearby 100 Mile house in which he called the people in the camp, at this time only a handful of people, "terrorists."⁹⁰

After the removal of the Native negotiators from the conflict, the RCMP designed a media strategy to prepare the public for their assault on the camp. RCMP officers' notes and operational plans detail the nature of this plan. A document prepared by Porter and Wilby under the direction of Olfert described the intent of the press conference: "On 19 August we orchestrated a joint media conference featuring speakers from DFO, RCMP, Cariboo Tribal Council and Lyle James himself. The objective of this conference was twofold. Firstly to warn the public of the presence of this radical group and their weapons and secondly *to set the stage for a direct police response.*"⁹¹[italics mine]

According to the notes of Assistant RCMP Commissioner Dennis Brown, within

twenty-four hours of the 19 August press conference, RCMP officers in Kamloops were “putting together a plan to go in and get them [the Ts’ Peten Defenders] out.”⁹² Based on the reports of aggression from the camp that were yet unsubstantiated, RCMP commanders began planning for a military assault on the camp that they acknowledged could be lethal. According to the same entry in Brown’s notes, on 20 August at 1245 “The use of firearms is definitely a possibility and we may need our protective type of devices from the military to ensure that our personnel are not hurt. The C.O. [Commanding Officer] commented and I agreed that we need to clean them out entirely and not have any hanging issues similar to what happened at Oka.”⁹³ (See Appendix 2)

The dispute initially pitted the ranchers against the Ts’ Peten Defenders and seemed in many ways a dark variation on the classic theme of conflict in the North American west of “cowboys versus indians.” The RCMP stepped in for the cowboys and the Ts’ Peten Defenders took the familiar role of antagonist. After the insertion of the ERT squad on 18 August and the heavy-handed press conference of 19 August, the RCMP role changed from negotiator to enforcer. In the week that followed the insertion of the ERT squad and the dismissal of the Native Constables from the case, the RCMP began drafting operational plans that called for a “ground assault” on the Sundance camp.⁹⁴ (See Appendix 3) Tensions mounted and trust melted as the RCMP sealed off the camp and cut off their communications by jamming their radiophone.

Based on evidence collected from trial disclosure, I conclude that when the RCMP addressed the media they downplayed the threat of violence from Lyle James and his ranchers. Although it was clear that the Ts’ Peten Defenders were making a principled legal stand, police and state officials exaggerated the aggressiveness of the Ts’ Peten

Defenders.

18 August 1995 was a key turning point. Trust between the protesters and the police deteriorated after the RCMP deployed a heavily armed Emergency Response Team in the early morning hours without the knowledge of RCMP negotiators. These Native Constables were then removed from the case after advising that no police action was necessary.⁹⁵ After 18 August 1995, the RCMP employed propaganda techniques to discredit the Defenders by calling them "terrorists." Public support for the RCMP increased as condemnation for the Ts' Peten Defenders resulted from media reports that echoed misleading RCMP press release accounts.

Moreover, there is evidence that at least some evidence was destroyed. If tapes of a conversation between Percy Rosette and the RCMP were destroyed it is possible that other key evidence that the RCMP felt might be damaging was destroyed.

¹ See Brown, Above the Law 2

² For a description of the ceremony from the 1995 Sundance Chief, see interview with Splitting the Sky in independent documentary film, Above the Law 1, directed by Mervyn Brown, 1997

³ There were two agreements. The first acknowledged that an annual Sundance could take place beginning in 1989. The second agreement was entered into the Gustafsen Lake trial as See Exhibit 132. See also transcript of Lyle James' testimony, 16 July 1996. This second agreement reads: "This permission is granted on a one-time only basis for the period of 15 July to 31 July 1993 and does not constitute permission to occupy property at some other time this year or in any other year." *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁴ Switlo, Gustafsen Lake Under Siege, p.93

⁵ Ibid.

⁶ See Report submitted to Gustafsen Lake Defence Team by Valerie Van Clieaf, 26 July 1996. See also letter from Janice Switlo LLB to Manuel Azevedo, 10 August 1996, Xerox copy.

⁷ Sergeant Porter's notes, 14 June 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁸ See Ben Mahony, interview with Lil' Wat Elders in "The Case Against the Courts," Terminal City, #203, August 1997

- ⁹ Reasons for Judgement of the Honourable Mr. Justice Josephson, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, 30 July 1997, p.16
- ¹⁰ Allen, Robert S, His Majesty's Indian Allies: British Indian policy in the defence of Canada, 1774-1815, (Toronto: Dundurn Press, 1993)
- ¹¹ Steven Frasher, "Is Gustafsen Lake a sacred site? or more?" 100 Mile House Free Press, 28 June 1995
- ¹² RCMP Sergeant Sarrich's testimony, 14 August 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry.
- ¹³ RCMP Sergeant Sarrich's testimony, 15 August 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁴ See Sergeant Sarrich's testimony, 19 August 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁵ See Ben Mahony, Terminal City, no. 183, 21-27 March 1997, "Whose Land Is it?: Jailhouse Interview With Wolverine." See also Splitting the Sky, From Attica to Gustafsen Lake
- ¹⁶ Sherryl Yeager and Justine Hunter, "Indian rebels plan to 'leave in body bags,'" Vancouver Sun, 22 August 1995, Page A1
- ¹⁷ Cited in, Brown, Above the Law 2
- ¹⁸ Constable Charlie Andrew, Transcript summary of testimony 24 July 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry.
- ¹⁹ Switlo, Gustafsen Lake Under Siege, p.94
- ²⁰ Steven Frasher, "Is Gustafsen Lake a Sacred Site? or more?" 100 Mile House Free Press, 28 June 1995
- ²¹ Notes of Sergeant Ken Porter, 22 June 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²² Ibid.
- ²³ See report prepared by Sgt. Porter and Constable R. Wilby under the Direction of Superintendent Len Olfert, O/C Kamloops Sub/Division, 22 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁴ Constable Wood's notes, 13 June 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry.
- ²⁵ See speech by Flo Samson, at Simon Fraser University, Harbourfront campus, 18 November 1997, See also Shelaugh Franklin, "Sundancers Need Your Support Now," Terminal City, May 1997 and Ben Mahony, Telephone interview with Suniva Bronson, 26 February 2001
- ²⁶ Constable Wood's notes, 24, 25 June 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁷ See Tsilhqot'in National Government, Ts' Peten: The Standoff At Gustafsen Lake in 1995: As Depicted in RCMP Records and Press Reports of the Time, Spring 1997, submitted to Defense lawyer, Manuel Azevedo, 29 May 1997, Office of the Deputy National Chief, Tsilhqot'in National Government, 102-383 Oliver Street, Williams Lake, BC, V26 1M4, Phone 250-392-3918, see also Defenders press release, 17 June 1995
- ²⁸ Lambertus, Terms of Engagement, p.100
- ²⁹ Constable Wood's notes, 24 June 1995 at 1430, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁰ Constable Andrew's notes, 20 June 1995 as recorded in "RCMP continuation Report Occurrence No. 95-528," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³¹ Constable Findley's notes, 15 July 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³² Sergeant Sarrich, "Notes of Gustafsen Lake Involvement," disclosed to the Gustafsen Lake Defence Team, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³³ Quote attributed to Ujjal Dosanjh in Paul Chapman, "RCMP on warpath Shot fired at Mountie by Natives 'an act of terrorism,'" Vancouver Province, 20 August 1995
- ³⁴ Notes of Constable Andrew, 21 June 1995 at 1825, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁵ Bruce Clark, Justice In Paradise, p. 166. See also, Vancouver Sun, 29 August 1995, Final Edition, A1

- ³⁶ See transcript of Dale James' testimony, 22 July 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁷ Testimony of Lyle James, 16 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁸ Testimony of Lyle James, 18 July 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁹ Paul Chapman, "RCMP on warpath, Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August, 1995
- ⁴⁰ RCMP continuation Report, Occurrence Number 95-528, 20 June 1995 (Andrew is describing the events of 17 June at 1845), *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴¹ Edited version of RCMP Constable George Findley's notes, 12 July 1995, This conversation is cited in full also in Switlo, Gustafsen Lake Under Siege, p.103
- ⁴² Brown, Above the Law 1
- ⁴³ Ibid.
- ⁴⁴ Edited version of RCMP Constable George Findley's notes, 12 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry. This conversation is also cited in full also in Switlo, Gustafsen Lake, p.103
- ⁴⁵ See Porter's notes, 20 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁶ Ts' Peten Defenders press release, 18 June 1995
- ⁴⁷ Ts' Peten Defenders press release 19 July 1995, "Defenders of Sacred Shuswap Sundance Grounds Preparing for RCMP Assault"
- ⁴⁸ George Wool, summation, 10 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁹ George Wool, summation, 10 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁵⁰ Notes of RCMP Superintendent Len Olfert, 20 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁵¹ Notes of RCMP Superintendent Len Olfert, 20 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁵² See Vancouver Sun, 12 August 1995
- ⁵³ See RCMP Sergeant Ken Porter's notes, cited in Tsilhqot'in National Government, Ts' Peten
- ⁵⁴ "Record of Sergeant Sarrich's Involvement at Gustafsen Lake," disclosed to Defence team at Gustafsen Lake Trial, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁵⁵ See Bruce Clark, Justice in Paradise, p. 240, paragraph numbered 3, (extract) from affidavit sworn 8 September 1998 by Bruce Clark and filed in the legal proceedings *Law Society of Upper Canada v. Bruce Clark*; b) *ibid.*, pp.364-367, (extracts in greater detail) from court transcript of proceedings before the Supreme Court, 12 September 1995. Bruce Clark adds: "Please note that the affidavits were not challenged as to their truth either by way of cross-examination upon an affidavit or any affidavit in reply denying that truth. E-Mail correspondence between Ben Mahony and Bruce Clark, 15 Nov 2000, 23:21:06
- ⁵⁶ The Protesters' press release of 19 July 1995 included the following request: "That every individual reading this urgent press release is asked to call the RCMP at (604) 395 2456 and express their concern over the potential for violence against the occupants of the Sundance grounds in Shuswap territory. We invite all Ts' Peten Defenders to come to Gustafson Lake and ensure that this Sundance will be held as planned to sustain our inheritance and religious freedom. Donations of food, camouflage clothing, radio and communications equipment, camping gear, etc. are welcome and appreciated. RELIGIOUS RIGHTS, LAND RIGHTS, WATER RIGHTS, FISHING RIGHTS, HUNTING RIGHTS – This is what we stand for. The Defenders of the Shuswap Nation"
- ⁵⁷ See Notes of Superintendent Hall, 12 August 1995, See also Holly Horwood, "Cops kept mum as rebels called – natives feared skulking men racists: lawyer," Vancouver Province, 28 January 1997, where Horwood writes that the court also heard that: "– Porter's notes of 18 August, state: 'Execute the warrant ASAP,' an apparent reference to police beliefs that a BC Supreme Court order existed authorizing a search of the camp. No such order exists. – A preliminary plan written largely by Porter, to assault the camp 25

August, refers to 'links' between encampment members and 'several shooting incidents.' No direct connection has been established between the accused and previous shooting incidents. Justice Bruce Josephson cautioned jurors that opinions on earlier violence 'may be misguided or just plain wrong.'

⁵⁸ Vancouver Province, 30 August 1995, Final Edition, A6

⁵⁹ Constable Charlie Andrew's notes, 18 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁰ *Ibid.*

⁶¹ Carolyn Lewis, "RCMP ready to move on armed native squatters," Edmonton Journal, 20 August 1995, Final Edition, A3

⁶² See Superintendent Rick Hall's entry in RCMP Continuation Report, 12 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry: On 12 August, RCMP Superintendent Hall noted, "OC [Operations Command] want to go to the media [but] Sgt Sarrich disagrees: 'I oppose this as I see it as setting the stage for grand-standing on the part of the camp. My strong belief is that we send in a team to make arrests without word to anyone before hand... We agree to disagree with the OC winning but the following day he changes his position and we work towards an expanded OPS [operational plan].'"

⁶³ Carolyn Lewis, "RCMP ready to move on armed native squatters," Edmonton Journal, 20 August 1995, Final Edition, A3

⁶⁴ See testimony of RCMP Sergeant Sarrich, 19 August 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, and New Westminster Registry.

⁶⁵ See testimony of Constable Raymond P. Wilby, 27 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁶ *Ibid.*

⁶⁷ Carolyn Lewis, "RCMP ready to move on armed native squatters," Edmonton Journal, 20 August 1995, Final Edition, A3

⁶⁸ Paul Chapman, "RCMP on Warpath Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August 1995

⁶⁹ Paul Chapman, "RCMP on Warpath Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August 1995

⁷⁰ Sherryl Yeager and Justine Hunter, "Indian rebels plan to 'leave in body bags,'" Vancouver Sun, 22 August 1995, A1

⁷¹ In his testimony on 29 August 1996, Wilby, Constable Raymond P. described the weaponry used by the Emergency Response Team, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷² Testimony of Constable Andrew, 24 July 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷³ Summary of testimony of Sergeant Sarrich, 14 August 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷⁴ Testimony of Sergeant Ken Porter, 27 January 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷⁵ See Kamloops Sub'Division Operational Plan, Gustafson Lake, File: 95KL-334 - Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, p.5, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷⁶ Notes of Constable Wood at 0730, August 1995, (Date not recorded but seems to be 18 August), *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry.

⁷⁷ "Police Wanted 4000 Troops at Gustafsen," Vancouver Province, 8 January 1997

⁷⁸ Interview with Bob Wood, in Brown, Above the Law 2

⁷⁹ George Wool, transcript of his address to the court, 10 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁸⁰ See Michael Dawson, The Mountie: From Dime Novel to Disney, (Toronto: Behind the Lines, 1998) p.25

⁸¹ Interview with Bob Wood, in Brown, Above the Law 2

⁸² Brown, Above the Law 2

⁸³ See Brown, Above the Law 2

⁸⁴ See interview with Aboriginal Peoples Television Network, "Contact," May 2000, See Also, Brown, Above the Law 2

⁸⁵ See Paul Chapman, "RCMP on warpath, Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August 1995

⁸⁶ Paul Chapman, "Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August 1995. The first line of the article reads: "The RCMP declared war yesterday on a heavily armed band of natives they say are terrorists."

⁸⁷ See Aboriginal Peoples Television Network, "Contact," May 2000

⁸⁸ Peter Wintonick and Mark Achbar, Manufacturing Consent: Noam Chomsky and the media, (Montreal: Black Rose, 1994)

⁸⁹ See also Lambertus, Terms of Engagement, p. 89

⁹⁰ See testimony of Sergeant Sarrich, 16 August 1995, Ray Wilby, 27 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹¹ See Kamloops Sub-Division Operational Plan, Gustafson Lake, File: 95KL-334 - Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹² Notes Of A/Commissioner Brown, Notes to File, File #: 95KL-334/95E-6812, Sunday 20 August 1995, 1245, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹³ Ibid.

⁹⁴ See Kamloops Sub-Division Operational Plan, Gustafson Lake, File: 95KL-334 - Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹⁵ RCMP Constable George Findley's notes, 12 July 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry. This conversation is also cited in full also in Switlo, Gustafsen Lake: Under Siege, p.103

CHAPTER THREE

AN AMBUSH REPORT AND MILITARY INTERVENTION:

“The war's already on, get it over with.”¹”

"If the RCMP don't do it, they should bring the military in to clear them out," said Daryl Laverdiere of 100 Mile House. "The war's already on, get it over with."²

– Comment made during citizen protest during the Gustafsen Lake standoff.

The RCMP recorded their strategies to quell dissent at Gustafsen Lake in operational plans that were disclosed at the Gustafsen Lake trial. This operational plan and the revisions that followed as the standoff escalated detail the plan to remove the Ts' Peten Defenders in a "ground assault."³ (See appendix 3) The notes of several officers also clarify that the RCMP were planning a military assault on the protest camp when the RCMP alleged they were ambushed. In this chapter, I present evidence regarding this incident in the form of court transcripts and disclosure, video footage, media reports and independent forensics analysis. I contrast this evidence with RCMP public statements and conclude that RCMP statements made regarding the alleged ambush are insupportable.

After the RCMP stated publicly, at their 19 August press conference, that the Ts' Peten Defenders were "terrorists," the tone of the conflict changed markedly from a trespassing dispute to an armed conflict. Native RCMP constables were removed from the case and the RCMP drafted an operational plan that outlined their strategy to move on the camp with the aid of the military. The rationale for the "ground assault," described in their operational plan of 22 August 1995, was that the Ts' Peten Defenders had initiated terrorist activity.⁴

On 22 August 1995, RCMP officers drafted an operational plan that alleged that the RCMP "have established links between the perpetrators" of "several shooting incidents" and "the camp at Gustafson Lake."⁵ Specifically, the 11 August 1995 Department of Fisheries and Oceans weapons seizure and the shot fired at the ERT team

on 18 August were referred to as “events [which] confirm the presence of weapons and indicate there is at least a small group of terrorists on the site that are prepared to use these weapons.”⁶ Although they still had conducted no comprehensive investigation that linked the Ts’ Peten Defenders with these alleged aggressive actions, the RCMP stepped up their campaign to discredit the Ts’ Peten Defenders. Sergeant Peter Montague told the press plainly that “This [native protest] is terrorist activity.”⁷

The efforts of Sergeant Montague and other RCMP officers to control information at Gustafsen Lake were captured on RCMP videotapes that the police recorded for the purposes of training.⁸ (See Appendix 4) Excerpts from these controversial videotaped recordings were shown to the court where the Ts’ Peten Defenders were prosecuted and have more recently been shown on national television. The systematic nature of the RCMP smear campaign was exposed in the documentary film, Above the Law 2. This independently released film was shown on Aboriginal Peoples Television Network (APTN) in several broadcasts in May 2000. The film featured several revelatory excerpts from the RCMP recordings of the RCMP’s own back-room discussions. In one excerpt, an officer refers to the command level plan to “profile these hoods [Ts’ Peten Defenders]... They want to bring discredit out there on these fucking guys; show them what they are to the press. And the O.C. is in line with that; they want to do it in a very co-ordinated way.”⁹ In another excerpt from the same meeting, an officer asks, “Is there anyone who can help us with a disinformation and smear campaign?” Montague later remarks, “Smear Campaigns Are Our Specialty.”¹⁰

While police spokespersons worked to discredit the Ts’ Peten Defenders, RCMP commanders continued to work diligently to secure approval for the use of military

hardware from reluctant officials in the upper echelons of the Department of National Defence. In the week between the staging of the RCMP press conference on 19 August and the alleged ambush of RCMP officers on 27 August, RCMP officers made initially futile attempts to secure endorsement for the use of 13-tonne Armoured Personnel Carriers from the military for use in their operational plan to move on the camp. The operational plan prepared by officers Wilby and Porter on 22 August, under the direction of Olfert, outlines the use of military vehicles, although the RCMP had not yet received clearance to use them: "At present, the RCMP does not have the resources to safely enter the area and enforce the law. To facilitate execution of this warrant the site will be secured by Emergency response teams utilizing military Armoured Personnel Carriers."¹¹

As of 23 August 1995, approval for the use of the Department of Defence weaponry had not yet been secured. Intense negotiations ensued as the RCMP and the Attorney General tried to convince the military to endorse the use of Department of National Defence (DND) forces and equipment. The reluctance of DND officials to participate is evident in a communiqué disclosed at the Gustafsen Lake trial. This document carries the stamp of the Chief of Staff and Director General of Military plans and operations and demonstrates the reluctance of DND officials to get involved in the conflict. The author outlines the need to "Emphasize to Major General Addy that the CF [Canadian Forces] does not want to play in BC (that includes loaning vehicles, training RCMP drivers unless absolutely necessary.)" In the same document there is a reference to a meeting in Regina on 23 August 1995 that notes the participants of this meeting "are very aware (Fournier [Deputy Solicitor General]) that CF do not want to participate in any way."¹²

In the record of a meeting of 23 August 1995, the potential legal problems regarding the RCMP request for military approval are outlined in a document from the Deputy Chief of the Defence Staff. One participant asks if "Military personnel have 'all the powers of constables?'" Answer. No! There is no framework for this particular request approval. We need an order-in council designed to place [sic] that framework. ... CF armed assistance – No."¹³

Although it was decided on 23 August that an Order-in Council would be required to send the military into Gustafsen Lake, that determination changed within two days.

The situation shifted on 25 August at 2355 when Brown,

received a call from Deputy Commissioner Beaulac. He is meeting with Justice Department, Solicitor General, PCO [Privy Council Office], etc., and it was decided an Order in Council is not needed only an MOU [Memorandum of Understanding] between us and the military. He requested the Attorney General deal with the Solicitor General as he is currently going to the Minister of Defence and this is causing difficulties.¹⁴

Regarding the use of a low level administrative instrument, a Memorandum of Understanding (MOU), to turn the military on the Ts' Peten Defenders, Dr. Anthony Hall wrote:

In my estimation the commitment of the country's machinery of foreign defense into a conflict within Canada's borders constitutes the very high end of the kind of decision that requires very definite and clear lines of political accountability. I find it absolutely unconscionable, not to mention arguably illegal, for the federal government to hand over its instruments of war to Mr. Dosanjh in this way [through a Memorandum of Understanding]. This issue alone, I believe, is more than enough to justify the need for an independent judicial inquiry.¹⁵

While RCMP officers stepped up their campaign to discredit the Ts' Peten Defenders and to secure military weaponry to remove them, military officials in Edmonton and Ottawa expressed serious doubt about the legalities of the operation, and initially, denied the request. More importantly, military commanders speculated that the

militancy of the Ts' Peten Defenders was being exaggerated and that the effect of the RCMP media strategy was to escalate the dispute. The RCMP operational plan of 22 August refers to the video of the Ts' Peten Defenders that was shown on CBC television on 19 August that "shows armed natives dressed in camouflage clothing some of which are carrying assault weapons. The video depicts Splitting the Sky instructing unidentified Ts' Peten Defenders in guerrilla warfare."¹⁶

Although the RCMP used the violent images in the video to buttress their claim that the Ts' Peten Defenders were preparing for guerrilla warfare, military officials downplayed the seriousness of the militant images portrayed. In DND documents disclosed at the Ts' Peten Defenders trial, an official concluded, "This was staged for media attention."¹⁷

RCMP Assistant Commissioner Brown recorded the reluctance of the military to get involved at Gustafsen Lake on 23 August at 1028, when he noted that his Commanding Officer [CO] "advised that the military has turned down our request and referred to Privy Council Office (PCO)."¹⁸ Although the military had not given consent for the use of their Armoured Personnel Carriers, the RCMP pushed forward with their plan to use them, according to Brown, who recorded in the same note, "The CO wants to have us immediately identify eight people to train to drive the [military] bisons. He also wants us to keep track of all newspaper clippings that are being published on this affair."¹⁹ Less than two hours later, Brown wrote, "Inspector Guy advised that there will be training [of] nine of our people at Chilliwack starting tomorrow. The training would go on for two to three days. It would be a very intense bare bones training to allow them to operate the bison transporters. He further advised Media Relations would collect all the

newspaper clippings.”²⁰ (See appendix 2) This quote is significant for two important reasons. First, it shows that the RCMP were preparing for the “ground assault” by conducting training with Canadian Forces armaments although they had no legal sanction to employ them. Secondly, it shows that the RCMP were closely monitoring media coverage to maintain control of the imagery and information coming out of the Gustafsen Lake confrontation.

The concerted effort of the RCMP to control the flow of information coming out regarding the conflict is underscored in the statement of one officer (captured on the RCMP training tape), “I can assure you that we’re going to manage information and I don’t give a shit what the cost is. It’s going to be done and if we have to hire people to do it...”²¹ The possibility that the RCMP hired, or planned to hire journalists to implement a “disinformation and smear campaign” is indicated in another chilling remark that foreshadowed the willingness of the RCMP to initiate a lethal assault on the camp: Commander Olfert remarks, “What we’re doing here is damage control for when people have to be killed.”²² A note made by Brown indicates that the RCMP media strategy regarding “damage control” was architected largely by RCMP media liaison officer Sergeant Peter Montague and was later massaged by a media consultant flown in from Ottawa.²³ It is unclear who paid this consultant and whether it is standard practise for the RCMP to hire media experts as part of their policy of “policing by publicity” or the employment of “disinformation and smear” techniques.

The aim of the RCMP seemed to be to simplify the episode into easily quantifiable categories where the police were identified as defenders of peace, order and private private property while the Ts’ Peten Defenders were maligned as criminals. The

efforts of various officers to curtail the media from broadcasting the true demands of the Ts' Peten Defenders are recorded in the notes of Inspector Bass. He documented RCMP attempts to prevent the media from reporting on phone conversations between Native negotiators and Wolverine and discussions between Wolverine and RCMP negotiator Dennis Ryan. According to Bass, "Dick Smith called and advised that the media had intercepted 2 calls -- Mercredi/Wolverine, Ryan/Wolverine and were going to report the context. Smith requested I contact Crown [state officials] and see if we could stop it."²⁴

As of 23 August, police efforts to discredit the Ts' Peten Defenders and contain their efforts to gain the support of Aboriginal communities and the human rights community worldwide were proving successful. The Vancouver Sun ran an editorial titled, "The Thugs of Gustafsen Lake and our moment of Truth," in which the Ts' Peten Defenders were maligned as "thugs" who "are heavily armed, confrontational and illegally occupying private property."²⁵

While the "smear campaign" continued and police action was being planned, the Ts' Peten Defenders remained clear in their position that they would leave the camp if an audience was arranged with the Queen's representatives in Canada or abroad. On 23 August, Brown noted that the Ts' Peten Defenders "now wish to speak with the Governor General of Canada and no one else."²⁶

A day later, on 24 August, Percy Rosette reiterated the demand for third party adjudication in a hand-written letter entered into the Gustafsen lake trial as Exhibit A024:

The Sch [Shuswap\Secwepemc] people who remain true to the Creator and the land of our ancestors seek a peaceful resolution to a [situation] which has been going on for 139 years. Domestic laws which we have had no hand in signing do not apply here. The legal precedents protecting our rights have been heard. We agree to lay down our arms (as indigenous peoples) after receiving a gur[antee] of diplomatic immunity from prosecution for all members of this camp, and

audiences with our rep. Bruce Clark and the Queen's Privy Council and Governor General."²⁷

Although the Ts' Peten Defenders made their demands clear, the media focussed on the wilder conspiracy theories that some members of the camp flirted with. On 24 August, in a Vancouver Sun article titled, "Rebel Indians fanatics: militants seized by cult mentality: New World order influence on Natives at Gustafsen Lake"²⁸ the Ts' Peten Defenders were portrayed as a group of paranoid millenarianists. In this article, the hostility of British Columbia state officials to the Ts' Peten Defenders was redoubled by the allegation of British Columbia Premier Mike Harcourt that the Ts' Peten Defenders were "fanatics" who were "seized with a cult mentality."²⁹ The report tied the protesters directly to "Ottawa conspiracy theorist, Glen Kealey." Harcourt also associated the Ts' Peten Defenders' goals of American New World Order extremists and "a belief Armageddon will be in the year 2000."³⁰

On 24 August, a different Vancouver Sun article reported that the "rebels" were not interested in negotiating, according to Sergeant Sarrich.³¹ He characterized the Ts' Peten Defenders legal and historical position as an unrealistic stumbling block to the negotiation process: "If they were going to be all one-sided and dwell on the Magna Carta and the Proclamation of 1763, there was no point in advancing a meeting..."³² News reports, some of which alleged that "the rebels had children in the compound and were using them as human shields"³³ contributed to intense hostility against the Ts' Peten Defenders. The Vancouver Sun article also noted that RCMP had to create a "response to the public calls for action [on the protest camp]"³⁴ which indicates that there was increasing support for a police assault on the Ts' Peten Defenders. Reports that the Ts' Peten Defenders were criminals who used children as human shields further toxified the

relationship between the camp and both the media and the police.

Although Ovide Mercredi did not share the Ts' Peten Defenders' constitutional position, several Tribal Council Chiefs in British Columbia requested that he arbitrate the dispute.³⁵ He entered the camp several times in the ensuing week.³⁶ As Grand Chief of the Assembly of First Nations, Mercredi represented those chiefs who the Ts' Peten Defenders argued had no jurisdiction in untreated territories. There was a clear divide in terms of strategy in achieving the goals of Indigenous self-determination between Mercredi and Wolverine.³⁷ While Mercredi focused on domestic solutions to Aboriginal rights issues Wolverine sought international channels of arbitration. Wolverine told reporters at the camp: "We are talking about accessing the Privy Council and the courts. We're not talking about a local issue."³⁸ As such it is not a surprise that Mercredi rejected the request of those in the camp that he endorse their application for resolution of the standoff through international mechanisms. The Ts' Peten Defenders' appeal for international third-party adjudication went over the head of the National Chief and invoked truly international methods of arbitration.

Although the Ts' Peten Defenders made specific legal demands for third-party adjudication of the Gustafsen Lake dispute, the press wildly oversimplified their position. On 26 August, the Vancouver Sun reported that the protesters demanded that Mercredi sign a document "authorizing the lawyer [Bruce Clark] representing armed native rebels to argue on behalf of all Canada's aboriginal people." Mercredi emphasized, "The use of force and violence has never been condoned by our First Nation Chiefs in our collective form" and added that the "Cariboo Tribal Council has condemned the armed group's actions."³⁹ Mercredi was portrayed as a representative of the calm and reasonable Natives

who were contrasted to the reckless “militants” within the camp. Although his attempts to bring the Ts’ Peten Defenders out of the camp were not successful, the RCMP kept him involved in their efforts to settle the standoff through negotiation. (It is important to note that this negotiation strategy was accompanied by an operational plan to invade the camp when or if that negotiation process failed.)

While Mercredi attempted to arbitrate, the RCMP proceeded with their attempt to bring the military into the Sundance grounds. On 25 August, according to Brown’s notes, Dosanjh agreed to write to the Solicitor General and request the use of military equipment from the National Defence Minister.⁴⁰ As events unfolded, Dosanjh came out in full support of the RCMP operation⁴¹ and became a key political and legal liaison between the RCMP and military and state officials.

Press reports describing the events of 25 August indicate there was an escalation of tensions. The Vancouver Sun reported that “RCMP officers began blocking roads to the Gustafsen Lake site, which the 30 or so native Indians and their supporters staging the occupation have vowed to defend with their lives... RCMP have said they will clear the site.”⁴² In public, the RCMP portrayed the Ts’ Peten Defenders as obstinate and violent. However, their own intelligence sources indicated the Ts’ Peten Defenders were actually in a defensive posture. For example, in his notes of 25 August at 2045, Olfert reported that Mercredi “feels they [the Ts’ Peten Defenders] are afraid of the police and really do not want to do battle.”⁴³

Despite evidence that the Ts’ Peten Defenders were not inclined towards battle, the RCMP proceeded to cut off communications to the camp and isolated them from their supporters and their lawyer.⁴⁴ On the same day, Olfert also noted there were still legal

and political hurdles to cross before the RCMP could proceed with their plan to remove the Ts' Peten Defenders with the aid of the military. Olfert noted that although the BC Attorney General and the federal Solicitor General were "on side," [for a plan to remove the protesters] on 25 August, "lawyers have cold feet."⁴⁵

As events edged towards the report of a violent outburst on 27 August 1995, RCMP officers received conflicting messages about their permission to use military hardware. On 25 August, Brown noted, "The military have agreed they will drive the vehicles that we are requesting."⁴⁶ In contrast, on the next day, Brown noted that military use of the APC's had been put on hold by DND⁴⁷ although an "approval in principle had been reached on our request."⁴⁸ Brown stated further that "[Solicitor General] Herb Gray is going to the P. M. [Prime Minister] and apparently he will sign on behalf of the Defence Minister... Military will start to move their equipment very soon."⁴⁹ According to Brown's notes of 26 August 1995, "There is misunderstanding and they have not located the Minister of Defense, if we need to move in quickly, Herb Gray would get authorization to do ahead."⁵⁰

By 2000, the same night (26 August), the military vehicles were under RCMP command, although no clear evidence of violence from the Sundance camp had been established. Brown wrote, "The military vehicles are under the command of the C.O. as of 20 00 [26 August]."⁵¹ Further attempts of the RCMP to control the media were recorded in the second part of the same entry in Brown's notes: "Peter Montague has to tighten up on what he says to the media."⁵²

Unlike most journalists during the standoff, William Johnson of the Montreal Gazette looked seriously at the substance of the legal position advanced by the Ts' Peten

Defenders and questioned the logic of the plan to remove the Ts' Peten Defenders by force that had been circulating widely.⁵³ On 26 August, he wrote: "Why risk force? Their [the Ts' Peten Defenders'] argument is based on law. The Supreme Court of Canada refused to hear their case. Could not a solution of restraint be found to settle their claim? It is far too soon to reach for the guns."⁵⁴ Because of the negative reporting regarding the Ts' Peten Defenders and their lawyer, Johnson wrote that when he went about contacting Clark for an interview he "expected to encounter a nut, a fanatic, someone out of touch" but actually found him a "man of intelligence who has researched his subject, thoroughly, [and] has come to the startling conclusion that Canada's legal and judicial system with respect to Indians is unconstitutional."⁵⁵ Johnson took the long view towards the standoff and the problems which underlined it in another column titled "Lasting solution to Indian conflicts will take many years," in which he stated "The settlement which we must reach for a just peace in this land will not be written with gun smoke."⁵⁶

The tone of Johnson's plaintive plea for "cool heads" and caution on the part of the police contrasted with the tone of a vast majority of the mainstream press reports. The Vancouver Sun, report of the same day, for instance, mocked the position of the Ts' Peten Defenders, ignored their legal position altogether, referred to Wolverine as "incoherent," and dismissed the group as a "few fanatics."⁵⁷ Similarly, Vancouver Sun reporter Elizabeth Aird blamed the Ts' Peten Defenders for their own bad public relations and acknowledged that the protesters were being dismissed by the media: "The unfortunate consequence of the rebels' garbled message is media coverage just this side of snide and public reaction just short of a smirk."⁵⁸

When friends and supporters of the protesters saw media coverage of the conflict

they feared for the worst as they saw the discrepancy between their own view of the issue and the “spin” that was broadcast across the nation. On 26 August 1995, a Ts’ Peten Defenders support group called Settlers in Support of Indigenous Sovereignty (S.I.S.I.S.) posted their side to the story to the Internet. They warned:

A Canadian Wounded Knee is imminent. The media reports you are getting are most likely very distorted. Even CBC, As it Happens, usually an exemplary news show, only interviewed the American owner of the 18 000 acre ranch, Lyle James, and the BC Attorney General. There was NO other view expressed. The attorney for the Sundance Defenders, Bruce Clark, was not asked for comment. According to the Toronto Globe and Mail, only two firearms have been seen at the camp, and “knives and machetes.” How many firearms would there be at a picnic held anywhere in the interior of British Columbia? Knives and machetes? Give me a break. There has been NO reference made in the media that I know of, about the sons of Lyle James shooting at the encampment several days ago.⁵⁹

The Ts’ Peten Defenders’ fears that an attack was imminent were legitimate in light of evidence that emerged at the Gustafsen Lake trial, which demonstrated that the RCMP were preparing to invade, even before the allegation of aggression on 27 August. According to Brown’s notes, on 25 August, at 2355, “Stephen Owen called along with Maureen Maloney [and were on] a conference call to the C.O. and myself. The C.O. gave them 2 alternatives – #1 – do nothing, #2 – go in and clean it out.”⁶⁰ The RCMP were waiting to see the results of Mercredi’s attempt to bring the standoff to a peaceful end before they pushed forward with the ground assault on the Ts’ Peten Defenders. According to Brown’s notes on 27 August at 1124, “The peace consultation process would be exhausted when Mercredi says he cannot do anymore... The main issue is can Mercredi talk them out, if not, he should leave and we will get on with our operational plan.”⁶¹

Although he entered the camp several times, Mercredi received an apparently cool reception from the Ts’ Peten Defenders when he decided not to sign their petition for

third-party (international) arbitration of the dispute.⁶² Although Mercredi felt he was making some progress, he complained that RCMP actions had hampered his efforts to convince the Ts' Peten Defenders to surrender. In his notes of a meeting with Dosanjh and Superintendent Johnson, Deputy Commissioner J.D. Farrell made a note of the "allegation by Ovide Mercredi that the RCMP had interfered with his work by cutting of [the] communications of [the] natives in compound as well as by over-flying with a helicopter."⁶³ Despite Mercredi's grievances, the RCMP moved forward with their planning to assault the camp: Farrell writes that the "gist of [this] meeting is that [all] agree that we will exhaust all possible negotiating options... Once however, that agreement was reached, the ops [operational] plan would be a police issue."⁶⁴

Judging by the tone of RCMP meetings on 27 August, the RCMP were preparing to take the afore-mentioned option "#2 to – go in and clean it out."⁶⁵ They had finally received endorsement to use DND hardware as outlined in their operational plan and seemed poised to meet the demands of the Reform Party and the citizens groups who called on the RCMP to move on the camp. At noon on 27 August, Brown emphasized, "The military vehicles are under the command of the CO as of 2000 the night before. This was given by Major General Addy."⁶⁶ On 27 August, at 1220, Brown noted that "The C.O. put on a conference call with Superintendent Olfert. We reviewed the meeting with Attorney General this AM. Everyone is on-side..."⁶⁷

Within three hours of the discussion to move on the camp in what surely would have been a controversial move, there was a report that alleged that the Ts' Peten Defenders took offensive action against RCMP officers. According to the police, the confrontation took place when RCMP officers escorted forestry workers to move trees

the natives were falling that were over the road some distance from the camp.⁶⁸ At 1515, Brown received word that the Ts' Peten Defenders had initiated an attack on these RCMP officers: "Attorney General called and advised me [Brown] that BCTV has just reported that the officers had been shot at Gustafsen Lake. He wants to get confirmation. At 1520, Brown, "Called Insp. Guy he advised that Emergency Health Services have reported that two members were shot and that they were wearing bullet proof vests."⁶⁹

The Canadian Press account of the incident reported, without qualification that "Indian rebels fired a hail of bullets that hit two RCMP officers working near an armed camp on private ranchland yesterday." The report did not carry the customary qualification "RCMP allege" or "RCMP state" and added to the public perception that the Ts' Peten Defenders were escalating the standoff. The report stated "The officers were not injured but the shooting escalated a tense and unstable standoff in B.C.'s remote interior, dampening hopes for a peaceful resolution."⁷⁰

The Vancouver Province reported, "The flak jackets they [RCMP officers] were wearing protected them from serious injury, or death, when they were each hit by one bullet. An RCMP Suburban station wagon was destroyed by what police spokesman Sgt. Peter Montague called "'a multitude' of hits from semi-automatic weapons." The Vancouver Province quoted RCMP spokesperson Peter Montague who stated, "We were ambushed... Our vehicle was severely disabled. All the tires were shot out, all the windows."⁷¹

According to the RCMP, trees that had been felled across the road leading into the Sundance site were being cut by forestry workers under RCMP supervision when persons from the Defenders' camp opened fire on the police vehicle. To those who accepted the

account at face value, the report of an Indian ambush of RCMP officers reinforced the public perception that the standoff was a law and order issue and that the Ts' Peten Defenders were terrorists as the RCMP alleged.

A Globe and Mail report on 28 August constructed the Ts' Peten Defenders as the perpetrators of violence in their headline, "Mounties Hit in Indian Standoff: Bulletproof vests save fleeing officers; BC Minister Calls For Surrender Without Amnesty."⁷² The lead was an unqualified recycling of the RCMP version of the incident: "Two police officers were hit by bullets but not injured as a standoff between armed Indians and the RCMP erupted into violence yesterday and politicians demanded unconditional surrender."⁷³ The mythical image of the fair-minded Mountie – the voice of restraint and even generosity – was perpetuated in another excerpt in this article that stated, "The shots came just as the Mounties announced they would allow national Native leader Ovide Mercredi to return to the rebel camp for a third consecutive day."⁷⁴

Although the media stressed the good will of the RCMP who "allowed" Mercredi to enter, Mercredi later argued that the RCMP hampered his negotiating efforts by double-crossing him and precipitating the shooting incident. Mercredi stated that the RCMP sabotaged his negotiating efforts by implementing their tactical plan while he was still in the camp.⁷⁵ According to the notes of Olfert, Mercredi also "expressed the concern of the occupants that if they surrendered their weapons they would all be killed."⁷⁶

The significance of the alleged ambush was summarized by Superintendent Olfert who stated, "This is the biggest RCMP operation ever. Sunday [27 August] changed everything."⁷⁷ Accordingly, public support for a lethal raid on the camp was bolstered after

the reporting of the ambush. Dosanjh told the press, "The shooting crystallizes in everyone's mind this issue is a law-enforcement matter and has nothing to do with aboriginal land claims."⁷⁸

By repeating derogatory terminology associated with the protest and denying its legal credibility, Dosanjh and the RCMP spokespeople cultivated public support for the RCMP plan to use military force at Gustafsen Lake. Dosanjh told the Vancouver Province, the "RCMP [now] have the mandate to "dislodge these individuals, to end the illegal occupation and eliminate any danger to public safety"⁷⁹ He stated plainly, "RCMP have a tactical plan to flush out the rebels."⁸⁰

Responding to inquiries from the Vancouver Sun, Dosanjh "refused to comment when asked if the army had been called in. [However] Montague denied the army is involved."⁸¹ This quote is significant for two reasons. First, it demonstrates the willingness of state officials to support the RCMP plan to assault the camp. Secondly, based on the overwhelming evidence disclosed at the trial it appears that Sergeant Montague lied to the press when he said that the RCMP had not asked for military support. For example, the operational plan⁸² drafted on 22 August, (See Appendix 2) clearly outlined the intent to use the military. A formal request was made for the use of military hardware on 25 August by Dosanjh (See Appendix 5) three days before the Vancouver Sun carried Montague's denial. Moreover, the military was in nearby Kamloops waiting final orders, where they could not be detected for several days before Montague's claim that the military were not involved."⁸³ As Jeff Lee wrote after he secured information "contained in secret documents declassified and released to the newspaper, [Vancouver Sun] by the department of national defence under Access to

Information laws, 'By August 21, [almost a week before Montague's denial of military involvement] the military had created *Operation Wallaby*, was gathering intelligence daily for briefings to Ottawa and had begun a plan to use search-and-rescue-marked Buffalo aircraft to secretly airlift Bison crews in from Alberta.'"⁸⁴

Regarding the reportage of the alleged ambush, important facts were missing from most media reports of what was portrayed as an unprecipitated outburst from the Sundance camp. Important contextual facts missing from most media reports are as follows: there was no warning when the RCMP officers approached the camp; the RCMP had cut off the phone line to the camp; the Defenders, according to RCMP notes, were living in fear of an RCMP invasion on the camp and had stated plainly that they would use force to resist such an attack. On the basis of these facts, established by RCMP's officers notes, it can be argued that the RCMP actually initiated the incident by approaching the protesters while they were felling trees near the camp. Although the RCMP allege that the instigators of the violence of 27 August were the Ts' Peten Defenders, it is clear that the RCMP were preparing for a ground assault on the camp. It is also important to bear in mind the aforementioned comment recorded by Olfert that "They [the Ts' Peten Defenders] are afraid of the police and really do not want to do battle."⁸⁵

More importantly, at the trial of the Ts' Peten Defenders, the RCMP could not substantiate their story of an ambush. There are several inconsistencies between the RCMP accounts of the incident and the evidence that emerged. First, although RCMP forensics analysis determined that some of the damage done to the RCMP suburban was done by a 9mm bullet, no 9mm handgun was ever found in the camp.⁸⁶ Moreover,

although the RCMP had twenty-four hour surveillance capabilities and shot “wescam” video footage on a daily basis, there is no video record of the ambush.

When questioned about the blank section of the “wescam” footage that could have recorded verifiable proof of the RCMP account of the “ambush,” Montague lamented that the equipment had malfunctioned and called the allegation that the ambush story was fabricated, “preposterous.” Montague emphasized the honesty and up-standing family values of Officer Molendyk, the target of the alleged Indian ambush,⁸⁷ who some of the Ts’ Peten Defenders had accused of fabricating the incident.

Many of the Defenders assert that based on the evidence available, the RCMP shot the vests themselves.⁸⁸ Defense lawyer Manuel Azevedo stated that after the trial ended it was still not clear what happened on 27 August.⁸⁹ Although RCMP officers alleged they were under fire from several different locations during the ambush, in his “Will Say” statement submitted to at the Gustafsen Lake trial, Constable Lorne Clelland said, “He did not see any person[s] firing at them.”⁹⁰ Speculation that the ambush story was “concocted” increased when trial observers closely examined the fantastic story told by Officers Clelland and Molendyk of the alleged ambush: One officer claimed he threw the indicting evidence – the bullet that allegedly hit him – out the window in the heat of the moment. Constable Clelland testified that shots were coming at him so fast he could not turn his vehicle around. The RCMP account of the incident is fantastic and somewhat unlikely. The behaviour of the alleged RCMP victims is illogical. The driver of an RCMP suburban is alleged to have driven backwards for several hundred metres⁹¹ down a narrow road while shooting out both the driver’s side window as well as the passenger window such that he was firing across the body of his colleague. Meanwhile, he alleged

they took rounds of ammunition from both sides.

According to a forensics analysis report done by one of the Ts' Peten Defenders supporters during the Gustafsen Lake trial, "Not only would it require super-heroic dexterity to achieve but, M-16's eject spent casings to the right. That would mean plenty of hot casings flying around the cab of the vehicle in close proximity to Molendyk's head or face."

The report went on further to state:

No real investigation was done, nor conclusions reached. There was no critical analysis nor any pathology reports to analyse. No attempt was made to identify the spent rounds recovered from the vehicle, or to identify the weapons, which fired them. There were a number of rifles recovered from the camp, but they were neither tested nor fingerprinted... The examination was severely compromised by an unusual press conference. Only six hours after recovering the vehicle, [several days later] Media Liaison Officer, Cpl. John Ward hosted members of the media at the garage where the examination had just begun. Dust and debris were wiped off the vehicle for the press conference, presumably to make the bullet strikes more discernable for the cameras. This is not proper forensic procedure. It is not even proper police procedure -- releasing unconfirmed information about a violent crime before an investigation has even begun.⁹²

The report concludes with the statement, "There is no evidence supporting the RCMP's claim that the Sovereignist's ambushed the officers in the Suburban, but there is much material and circumstantial evidence pointing to a shoddy RCMP frame-up."⁹³

The Defenders claim that the RCMP account of an "Indian ambush" was wildly exaggerated although they did admit to returning fire.⁹⁴ What is clear is that there are discrepancies between what the RCMP told the press and what the evidence supports. The likelihood that the RCMP could have instigated aggression on 27 August, as the Ts' Peten Defenders alleged, is supported by the indication in RCMP Inspector Moulton's notes on the day of the ambush that one or more of the Ts' Peten Defenders are "to be shot on sight."⁹⁵ Moreover, there is clear evidence that the RCMP were engaged in a

smear campaign against the Ts' Peten Defenders in video-taped discussions that were recorded during their backroom planning discussions. The comment, "How you want to massage that is totally up to you"⁹⁶ is consistent with the tone of other RCMP discussions captured on video which show RCMP manipulating information.

It is clear from viewing video-tape of RCMP discussions at Gustafsen Lake that the RCMP took great liberties in explaining the particulars of the alleged ambush to the public. An excerpt from the RCMP training tape casts doubt on the RCMP account of the incident. A conversation between Media Liaison Officer Sgt. Peter Montague and an unidentified man on the evening of the alleged ambush depicts Montague appearing concerned that the forestry workers who were near the ambush site might talk to the press about aspects of the incident that conflict with the RCMP version. Montague is portrayed as fearful that the forestry workers who witnessed the incident are:

... gonna put out like a news to their employees to discuss which employees were in there and what had happened and it would hit the media you know.

Unknown: Oh yeah, their families...

Montague: Yeah, but I think that if any type of that information gets out there people... in other words, if they become available to the media they may say things there that we wouldn't want out.

Other: Yeah, cause they're just gonna set their people... they'll be barraged, you know, with calls and eh... and yeah, you know they're gonna start commenting on our people, our equipment, what they're seeing, what they heard... cause... Jesus!⁹⁷

At a meeting held at Kamloops, Sub/Division Headquarters, and the day after the ambush was reported to the press, RCMP officers discussed co-ordinating an inter-provincial effort to control information regarding their activities at Gustafsen Lake:

The shooting on Sunday was an incredible lesson to be learned by everyone of what importance it is to increase our communication. We must develop a strategy, which encompasses all western Canada uniformed members. This must be done on an intelligence-sharing basis. We can't tell anyone when "D" Day is... We need a media strategy developed. We need to have the public's understanding based on feedback.⁹⁸

The two main issues of concern implicit in this discussion were controlling the media to placate the public, “based on feedback,” and secret planning for an attack on the camp on “‘D’ day.”

What is most significant about the alleged ambush is that evidence collected by the police was so weak that they laid no charges stemming from the incident. The RCMP had ample opportunity to establish such a link between the ammunition that struck the bullet-ridden vehicle they showed to the press gallery and the camp. The fact that the RCMP alleged that damage to the Suburban was done in part by 9mm ammunition⁹⁹ corroborates the hypothesis that the RCMP fabricated evidence by shooting at the Suburban as the officers involved in the shooting carried 9 mm weapons. Moreover, no forensics evidence linked members of the camp to the shooting and Constable Clelland “did not see any person firing at them.”¹⁰⁰

As *Splitting the Sky* wrote,

During the trial the Crown produced a forensics expert who states that the holes in the suburban had to be produced by a 9mm calibre shell. Evidence produced in court of the alleged guns used by occupants totalled 17 hunting rifles and one A-K47 converted to single shot. Molendyk and Clelland had fully automatic weapons. An M16, which used a .233 calibre bullet [like the one that damaged the RCMP vehicle] and an MP5 sub-machine gun which uses a 9mm calibre [like the ones that the RCMP alleged were shot at them] found in a clip that holds 30 shells.¹⁰¹

Although most reporters recycled the RCMP account of the ambush as fact, William Johnson, of the Montreal Gazette questioned the story from the start. In his column, “Report of ‘ambush’ in ‘Hail of Bullets’ Just Doesn’t Stand up,” Johnson observed that the accounts of the so-called ambush in the Ottawa Citizen and the Globe and Mail were “vivid” but that he had his doubts about the one-sided reportage:

Something, perhaps my grey hair, tells me that the story of an “ambush” in a “hail of bullets” fired by semi-automatic weapons doesn’t stand up. When an ambush involves crossfire from two sides on unsuspecting targets the story told by the Mounties – one would expect that someone would get hurt. If there is no wounded Mountie to photograph and show the pictures of, if there is no bullet-torn clothing to hold up at a press conference, I begin to sense that there is more or less to the “ambush” story than what reporters so confidently reported.¹⁰²

“Professionalism would have required that the reporters add, ‘According to an RCMP official,’” said Johnson. “Here you have a confrontation, a war of nerves, a propaganda campaign in a remote area of British Columbia. Reporters should not take sides and decide who is right.”¹⁰³

The co-operation of the some media with the police is evident in an episode described in a transcript of the RCMP video log of 27 August at 700: “[A journalist] George Garret is playing a taped interview with Bruce Clark for police briefing. Garret states he will hold back release of the news until the police give their OK – unless he is scooped by other media.”¹⁰⁴ Garret later concluded that the RCMP were using him in an attempt to discredit Clark. Garret stated: “I later found out... that it was Mike’s [Dr. Webster’s] psychology to involve Clark – to have him go in – and they anticipated that he would come out with guns blazing, so to speak – that he would be an antagonist. What they wanted to do was let Clark self-destruct...”¹⁰⁵

After the reports of the ambush hit the mainstream media, public support for the RCMP to remove the “thugs” at Gustafsen Lake increased. The Attorney General who endorsed the use of military weaponry styled both Mercredi and himself as calm and moderate and praised Mercredi for his condemnation of the “ambush.” According to the Vancouver Sun, Mercredi stated, “The fact that two police officers were shot at is a criminal act. It is an act of attempted murder.”¹⁰⁶ Dosanjh contrasted Mercredi’s approach

with the recklessness of the Ts' Peten Defenders and stated that although "he appreciated Mr. Mercredi's efforts, he doubted the holdouts would listen to him any more than they would to a non-native."¹⁰⁷

Although a few close observers were aware of the already-existing enmity between traditional elements like the Ts' Peten Defenders and the Indian Act Chiefs who Mercredi represented, the lack of widespread knowledge of this fact alienated the Ts' Peten Defenders from popular support. The image of Mercredi – a Native leader who was viewed by some federal politicians as too radical to work with – condemning the "rebels" was a powerful image that likely stirred up popular opinion against the Ts' Peten Defenders.

In direct contrast to the increasing tide of public support for the RCMP, the Union of BC Indian Chiefs issued a statement on 28 August 1995, that alleged the Ts' Peten Defenders were victims of state-sanctioned violence and propaganda:

... The RCMP, the Attorney General and the media have gone to great lengths to discredit the Shuswap Ts' Peten Defenders and their supporters at Gustafsen Lake as dangerous fanatics in order to justify the use of armed force to remove them from the Sundance grounds... In trying to discredit and isolate the Ts' Peten Defenders, the RCMP and Attorney General are laying the groundwork for bloodshed-needless bloodshed. The positions expressed by the Ts' Peten Defenders on their nation's sovereignty and aboriginal title are not 'extremist.' They are shared by many Indian peoples across this province. British Columbia is unceded Indian land... Our peoples demand justice and recognition but whenever they stand up for their rights they are subjected to the rule of law and police state tactics.¹⁰⁸

A letter of support was also written by former US Attorney General and well-known human rights advocate, Ramsey Clark who wrote to Dosanjh:

to urge you [him] to pursue non-violent means of addressing the issues raised by the present confrontation... There is no justification for the use of force, or for conduct by law enforcement that might provoke violence. The emotionalized state of mind of all involved is clear. With the RCMP calling the Indians "thugs" and "terrorists" and promising force, the risk they will employ excessive, deadly force, causing bloodshed and loss of lives is overwhelming unless restraint is

ordered... I urge you to act immediately to defuse a dangerous situation, to begin dialogue and to seek arbitration of all issues perhaps by an independent and impartial panel comprised of no Canadians and no Indians.¹⁰⁹

Ramsey Clark recommended that a third-party dispute mechanism, like the one Clark argued was legally required, be created to settle the underlying title dispute at Gustafsen Lake. Ramsey Clark also appealed to Dosanjh and the RCMP to use restraint. In contrast, Dosanjh chose to manufacture consent for a lethal raid on the camp by discrediting the protest.

The efforts of the RCMP and the state were so successful in cultivating hostility to the protesters that citizens gathered to demonstrate their condemnation of the Sundancers and to issue their support for a raid on the Sundance camp. Popular opinion can be gauged by the reaction of citizens who protested near the road into the Sundance grounds. Some of these protesters endorsed an RCMP operation to remove the Ts' Peten Defenders by force, even if it resulted in loss of life. One protester told the Vancouver Sun, the "chance that someone might get killed shouldn't stop the RCMP from storming it. The war's already on, get it over with"¹¹⁰ The report emphasized that there was strident support for an RCMP invasion on the Sundance camp: "Trucks and cars responded to the placard that read 'Honk If You Support the RCMP.'" One of the protesters demanded to know why the RCMP had not moved in on the camp yet and arrested the protesters.¹¹¹

Three days after the reporting of the "ambush," the Ts' Peten Defenders formally stated their allegation that the ambush was fabricated. On 31 August, the Vancouver Sun reported, "Police allowed Clark into the camp hoping he'd broker a peace plan. Instead he came out after several hours of talks armed with an explosive affidavit from Tronde

Halle, a freelance camera operator who's been staying in the camp... Halle's affidavit charges 'persons unknown' with firing warning shots into the air and says there was 'fire from the police directly at persons from said Indian encampment.' He said "return fire was directed at the police."¹¹²

Clark held up a .223 shell casing at the press conference where he read out Halle's affidavit which stated that, "There is no weapon at the Gustafsen Lake Indian encampment that is capable of firing a .223 shell."¹¹³ Clark also said he thought he had helped negotiations "by making available to the public the other side of the story."¹¹⁴

In court, Clark elaborated on his discussion with the Ts' Peten Defenders inside the encampment regarding the "ambush." He described the Ts' Peten Defenders' disbelief when he told them it had been reported that they ambushed RCMP officers. Clark testified that later at court he was shocked at the laughter he heard as the Ts' Peten Defenders joked about the absurdity of the RCMP account.

... I expressed a concern about this ambush business because it was so prevalent in the national media... it seemed so dramatically inconsistent with John Stevens' instruction... their reaction was to laugh. They found this very funny, and I was taken back by that reaction... And they basically started chipping in and telling me, "It didn't happen. You've been conned, man" and they started just explaining to me... that it was a set-up, that as far as they were concerned, they heard about it. The first knowledge they had was when they heard it in the media... they had this newspaper article - which, as you will have seen, this is Exhibit C to that affidavit, and which the newspaper report says (reading) RCMP on the warpath and the Indians are terrorists. And they explained to me that they get this article, and all the stuff they're listening from, the media basically is communicating to them a situation where the RCMP is going to kill them. They feel they are going to be murdered and that this - their - their death, which they seem prepared to face, - I mean, not "seem prepared," are definitely prepared to face. And so they - to support their position in explaining to me, they say, "We have a tape of - of what happened that day..." and Mr. Halle has his camera, and apparently he has videotaped some of the events. And basically what - what they - what they - what they indicate, that this tape will demonstrate to me is that they're nowhere near the road where this so-called ambush took place, that these events are right in the periphery or their encampment, and they're not going anywhere, that there's a huge amount of gunfire coming at them, and

the idea that they're running through the bush and ambushing, it's just completely absurd to them. They say, "If you look at this tape, what you'll basically see is we fire warning shots, as we always do, we get met with a complete barrage, a hail of bullets, and we fire warning shots back just to let them know that we're still here."¹¹⁵

The Ts' Peten Defenders alleged that they were forced into a self-defensive but armed position because they had information that the RCMP were planning a raid on the camp. One of the reports where the RCMP allege that the Natives are "terrorists" was reportedly monitored on radio by the Ts' Peten Defenders and it convinced them that they were the target of an imminent police invasion. According to Clark, "The RCMP 'declaration of war' was heard at the camp a few days before the exchanges of gunfire he had described."¹¹⁶ In this context it is not surprising that gunfire erupted when the RCMP came close to the Sundance camp to remove the trees that the Defenders had felled on the morning of 27 August.

Chief Mercredi, although he rebuked the Ts' Peten Defenders for taking up arms, argued that the RCMP should have heeded his advice and kept their distance from the Ts' Peten Defenders. Mercredi stated, "Our assessment that violence would occur if police advanced on the camp was correct. Violence has occurred."¹¹⁷ Mercredi also stated that the police felt pressured to move forward with an invasion. It would appear that the RCMP were so successful in manufacturing consent¹¹⁸ for a police assault on the camp that there was public demand for a move on the camp. Mercredi identified that hostility to the Ts' Peten Defenders in the non-Native community motivated the RCMP plan to invade the Sundance grounds: "They told me [Mercredi] that they have to go ahead for two reasons – one, they don't want to set a precedent. And two, they are saying white public opinion demands it."¹¹⁹

Attorney General Dosanjh denied that there were any extenuating circumstances to the report of shots fired from the Sundance camp and continued to discredit the Ts' Peten Defenders, over-simplify the evidence, and recycle RCMP accounts of Native aggression. In response to those who stated, after the standoff, that the media had provided a one-sided account of the standoff that relied on police sources, he responded, "There is no other side to this story. There is only one side to this story."¹²⁰ Dosanjh spoke as if conclusive evidence had been established regarding the aggressions from the Sundance camp. He referred to the self-declared Defenders as "those who occupy illegally private land and then shoot at police officers at sight and hunt them and actually aggressively pursue them to kill."¹²¹ Dosanjh endeared himself to growing anti-Native sentiment that ran rampant during the standoff by stating, "Its not part of the Aboriginal rights to pick up AK 47s and start shooting at police officers."¹²² Dosanjh positioned himself to the public as the protector of "innocent people who might inadvertently enter the area and be shot at."¹²³ He also misrepresented the situation by stating, "We [Dosanjh and the RCMP negotiators] have bent over backwards to solve this peacefully."¹²⁴

It is likely that Dosanjh, as Attorney General and the Chief Law Officer of British Columbia contravened the principles of due process by categorically stating that the Ts' Peten Defenders had illegally occupied private land and had attempted murder at Gustafsen Lake. He essentially pronounced the protesters guilty before they had the opportunity to state their case in court. Moreover, the substance of his accusations (that were phrased as pronouncements of guilt) have been flatly contradicted by evidence that it was the RCMP who used excessive force at Gustafsen Lake.

The heavy-handed attempts of the RCMP to control information that emanated from Gustafsen Lake continued as the standoff escalated and were accompanied by similar measures from military officers. On 31 August 1995, at 0840, Brown noted, "The C.O. advised that he spoke to Major General Addie [sic] who told him the Chilliwack Times is going to run an article about the APC's we have staged at Kamloops. Major General Addie has instructed the Acting Base Commander at Chilliwack to approach the editor of The Times and have him kill the story as it would put lives in jeopardy."¹²⁵

The criticisms made by the Caribou Tribal Council early in the standoff created a virtual closed loop of public condemnation outside of which the Ts' Peten Defenders tried, unsuccessfully, to articulate their constitutional position and their fear of an invasion. Even politicians who were not viewed as traditional allies of Native people were able to point to the rejection of the protest by the Caribou Tribal Council as evidence that the protest was an unprincipled terrorist action. Fraser Valley East Reform MP Chuck Strahl stated, after the 27 August alleged ambush, "Let's call a spade a spade. These people have no support from the Caribou Tribal Council and certainly no support from those involved in any treaty negotiation. They are cowardly thugs, pure and simple, and should be reacted accordingly."¹²⁶

The paranoia in the camp should be seen in the context of the very real hatred that was articulated in public debate and also in the context of the wide discrepancy between what the RCMP were reporting and what evidence currently available shows was happening on the ground.

Because the media reported, often without qualification that, RCMP officers were ambushed and shot in the back and that Mercredi condemned the shooting, support for

the Ts' Peten Defenders did not materialize. The uncritical reports of a Native ambush were too much for even the most liberal leaning citizens, especially when accompanied by Mercredi's denunciation. Dosanjh inflamed public sentiment with the statement that "Political negotiations are no longer an option."¹²⁷

The ambush report gave the reactionary elements in British Columbia communities ammunition with which to attack the so-called "rebels" and forced Mercredi to choose sides in a standoff that became characterized as a serious armed confrontation, not an issue of Aboriginal rights. Public opposition to the Ts' Peten Defenders, especially in central British Columbia, was evident in the comment of community representatives such as John Morrison of the BC Cattleman's Association who dismissed the Ts' Peten Defenders as "an aggressive, taunting, armed group of militants."¹²⁸ As Ovide Mercredi stated, the RCMP emphasized that hostility to the Ts' Peten Defenders in the non-Native community led to pressure to invade the Sundance camp.¹²⁹

Shortly after the alleged ambush incident, RCMP officers appear on their training tape, deeply disgusted with Bruce Clark for undermining the account given by the RCMP to the media. Clark had been expected to lead the campers out but emerged with evidence that the RCMP had instigated the shooting on 27 August. Bruce Clark was disliked so intensely that RCMP Sergeant Dennis Ryan stated that Superintendent Len Olfert wanted to "Kill this Clark and smear the prick and everyone with him."¹³⁰ (After the statement became public in 1997, during the Gustafsen Lake trial, Olfert claimed there were extenuating circumstances but did not deny making the statement.)

As the Battle of Gustafsen Lake escalated towards the report of more violence on 4 September, the RCMP took the media spotlight by showing evidence of alleged

Native aggression while the Sundance camp remained sealed off behind police lines with no access to the outside world and with little opportunity to tell their side to the story.

¹ Sherryl Yeager, Mike Crawley, Vancouver Sun, "Indians offered gifts for freedom after talks fail: Indians: Controversial lawyer turned back by RCMP," 29 August 1995, A1

² Ibid.

³ See Kamloops Sub'Division Operational Plan, Gustafson Lake, File: 95KL-334 – Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Globe and Mail, 23 August 1995

⁸ See RCMP disclosure titled: "Appendix: Subject: Gustafsen Lake Operation – Videotaping By Division Training Section re: An explanation of the videotaping of the Gustafsen Lake criminal operation," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹ Brown, Above the Law 2

¹⁰ Brown, Above the Law 2

¹¹ See Kamloops Sub'Division Operational Plan, Gustafson Lake, File: 95KL-334 – Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, p.6, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹² Communique Chief of Staff (J3), Director General, Military Plans and Operations, "To Solicitor Gen Gray, D Sol Gen Fournier, RCMP Commissioner Murray, undated, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹³ Deputy Chief of the Defense Staff, record of meeting, 23 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁴ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 2355, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁵ Anthony Hall, The Making of an Indian Fighter and a Canadian Premier, <http://home.uleth.ca/map/map/film/>, 23 February 2000, 2210

¹⁶ Kamloops Sub'Division Operational Plan, Gustafson Lake, File: 95KL-334 – Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, p.5, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁷ See Department of National Defense, p 2, Document file: MLN-4491 DAN=404-076365, OCDSN=MOD 46 TOR=212348Z AUG 95," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁸ Assistant Commissioner Dennis Brown's notes, 23 August 1995, 1028, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁹ Ibid.

²⁰ Assistant Commissioner Dennis Brown's notes, 23 August 1995, 1215, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

²¹ Brown, Above the Law 2

²² See testimony of Len Olfert, 14 January 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Splitting the Sky, From Attica to Gustafsen Lake, chapter 4, p. 935

²³ See Assistant Commissioner Dennis Brown's notes, 12 September 1995, 1141, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

- ²⁴ RCMP Inspector Bass' notes, 28 August 1995, 2100, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁵ Vancouver Sun, "The Thugs of Gustafsen and our moment of Truth," 23 August 1995
- ²⁶ Assistant Commissioner Dennis Brown's notes, 23 August 1995, 1155, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁷ Exhibit A024, Gustafsen Lake Trial, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁸ Peter O'Neil, Mile Crawley, "Rebel Indians 'Fanatics': Militants seized by 'Cult Mentality,'" 24 August 1995, Vancouver Sun, A1, A2
- ²⁹ Ibid.
- ³⁰ Ibid.
- ³¹ Sherryl Yeager, "Armed Ranch Stand-off: RCMP Conducts Wide Probe into Militant Indian Group," Vancouver Sun, 24 August 1995
- ³² Sherryl Yeager, "Armed Ranch Stand-off: RCMP Conducts Wide Probe into Militant Indian Group," Vancouver Sun, 24 August 1995
- ³³ Ibid.
- ³⁴ Ibid.
- ³⁵ See Michael Bernard, "Militants spurn Mercredi's offer to start negotiations," Halifax Daily News, 24 August 1995
- ³⁶ See Montreal Gazette, "Mercredi Officers to Negotiate End to B.C. Indians' Dispute," 24 August 1995, A12
- ³⁷ Hall, Anthony, "The Philosophical Conflict That Animates Gustafsen Lake," Globe And Mail, 5 September 1995
- ³⁸ Michael Bernard, "Militants spurn Mercredi's offer to start negotiations," Halifax Daily News, 24 August 1995
- ³⁹ Canadian Press, "Mercredi Offers to Negotiate End to BC Indians' Dispute," Montreal Gazette, 24 August 1995, A12
- ⁴⁰ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 1424, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴¹ Paul Chapman, "RCMP on Warpath, Shot fired at Mountie by natives 'an act of terrorism,'" Vancouver Province, 20 August 1995
- ⁴² Sherryl Yeager, with Canadian Press, Mercredi, rebels clash over ways to seek justice," Vancouver Sun, 26 August 1995, A1
- ⁴³ RCMP superintendent Len RCMP Superintendent Len Olfert's notes, 25 August, 2045, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁴ In the RCMP disclosure titled "Sarrich Gustafsen Lake Involvement" Sarrich notes, "I gave the go-ahead to have the radio phone cut at 1800 hours....," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁵ RCMP Superintendent Len Olfert's notes, 25 August 1995, no time given, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁶ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 1400, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁷ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 1720, cited in Tsilhqot'in National Government, Ts' Peten
- ⁴⁸ Assistant Commissioner Dennis Brown's notes, 26 August 1995, 1210, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁴⁹ Ibid.
- ⁵⁰ Ibid.
- ⁵¹ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1200, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁵² Ibid.
- ⁵³ William Johnson, "Too soon for gunfire in B.C. land claims dispute," Montreal Gazette, 26 August 1995, Johnson also stated in the same article, "For God's sake, no violence. For all our sake as Canadians, present and future, bloodshed must not stain the James ranch on Gustafsen Lake. A group of traditionalist Indians has occupied a cabin and some land on this British Columbia ranch. They say they are willing to die to

defend their Indian title to the land. The RCMP, on the other hand, describes them as "thugs" and "terrorists." The Mounties have said they will move in today and remove the occupiers by force. That would be worse than the blunder Quebec police committed in 1990 by attacking the Mohawks barricade at Oka.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ William Johnson, "Lasting solution to Indian conflicts will take many years," Montreal Gazette, 30 August 1995

⁵⁷ Elizabeth Aird, "Last Stand of the Hopeless: Indians Might Prefer to Die on Ranch than on a city Street," Vancouver Sun, reprinted in Montreal Gazette, 30 August 1995

⁵⁸ Ibid.

⁵⁹ Settlers In Support of Indigenous Sovereignty (SISIS), Bulletin posted to Internet 26 August 1995, <http://kafka.uvic.ca/~vipirg/SISIS/GustLake/aug2695a.html>, 5 July 2000

⁶⁰ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 2355, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶¹ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1124, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶² See *Splitting the Sky, From Attica To Gustafsen Lake*, chapter 2, p.464

⁶³ Notes to File: Deputy Commissioner, J.D. Farrell, Record of meeting, 27 August 1100, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁴ Ibid.

⁶⁵ Assistant Commissioner Dennis Brown's notes, 25 August 1995, 2355, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁶ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1200, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁷ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1220, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁸ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1100, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶⁹ Assistant Commissioner Dennis Brown's notes, 27 August 1995, 1515, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷⁰ Canadian Press, "2 officers hit as Indians open fire Tension at B.C. standoff escalates," Toronto Star, 28 August 1995, Final Edition, A1

⁷¹ Barbara McLintock, "Flak vests save police from bullet in the back," Vancouver Province, 28 August 1995, Final Edition, A4

⁷² Ross Howard, "Mounties Hit in Indian Standoff; Bulletproof Vests save fleeing officers; BC minister calls for Surrender without amnesty," Globe and Mail, 28 August 1995

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ See Vancouver Province, 28 August 1995, Final Edition, A4

⁷⁶ RCMP Superintendent Len Olfert's notes, 27 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷⁷ Training Tape A5, cited in *Splitting the Sky, From Attica to Gustafsen Lake*, chapter 2, p. 590-591

⁷⁸ Mike Crawley, Sherryl Yeager, "Bulletproof vests save lives of officers caught in 'ambush:' RCMP vehicle blasted by automatic gunfire: Tensions rise at Gustafsen Lake standoff: SHOOTING," Vancouver Sun, 28 August 1995, A1

⁷⁹ Salim Jiwa, "Attack shocks A-G," Vancouver Province, 28 August 1995, Final Edition, A5

⁸⁰ Ibid.

⁸¹ Mike Crawley; Sherryl Yeager, "Bulletproof vests save lives of officers caught in 'ambush:' RCMP vehicle blasted by automatic gunfire: Tensions rise at Gustafsen Lake standoff: SHOOTING," Vancouver Sun, 28 August 1995, A1

⁸² See RCMP plan to use military vehicles in their operational plan: See Kamloops Sub'Division Operational Plan, Gustafsen Lake, File: 95KL-334 - Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert, See also request for military support in writing in letter to Attorney General Dosanjh, dated 25 August 1995 requesting Armoured

Personnel Carriers from the military, both cited in *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁸³ Jeff Lee writes in "RCMP Considered Asking Military To Take Over at Gustafsen," *Vancouver Sun*, 12 April 1996, "The crews and their equipment were confined to an armoury in Kamloops to prevent detection and orders were given for no military aircraft to land at any airport nearby."

⁸⁴ *Ibid.*

⁸⁵ RCMP Superintendent Len Olfert's notes, 25 August 1995, 2045, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁸⁶ See Brown, *Above the Law 2*. See also Testimony of forensics inspector, Brian McConaghy who testified on 14 November 1996 and 22 November 1996 at *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry.

⁸⁷ Ben Mahony, telephone interview with Peter Montague, February 1999.

⁸⁸ Joshua Lemmens, Critical analysis of the material evidence presented by the Crown during the trial of the Gustafsen Lake Sovereignists, Xerox Copy, Highlights of Independent Forensics report:

1) The forensic examiners have indicated the path of bullet A on the driver's side, as terminating in the dashboard of the vehicle. [photos 737-743] This means that the bullet would have had to have passed right through Cst. Clelland's vest... Since this obviously did not occur, we must conclude that Clelland wasn't in the driver's seat when this bullet was fired.

2) The photo record is incomplete. There are no forensic photos of the dashboard or of the damaged flak-jackets that were provided as evidence for the trial.

3) The forensics examination went no further than that, examination... What looked like a 9 mm bullet [the type used in a handgun] was removed from one of the tires by the forensics team [photos 780-781]. This bullet is not mentioned in the forensic report and it is unknown if a ballistics test was done on it. This is a suspicious omission since no handguns were recovered from the camp...

5) A simple method in analytical ballistics for identifying spent rounds requires the firing of control bullets from all the weapons connected with a shooting incident. Every bullet expended from a weapon has characteristic grooving caused by the gun barrel's rifling. These marks are as unique as fingerprints. The control bullets are then compared with bullets recovered at the scene. Bullets with the same rifling marks must have been fired by the same weapon.

Forensic ballistics is an exact science. Laboratory techniques like these, were available to the RCMP. Identification of the bullets could have been traced back to the weapons used. If police officers were, in fact, ambushed and shot in the back, I can't think why the forensic team wouldn't have diligently pursued a proper investigation which may have pinned down an attempted murder conviction. Resolution, it seems, was not an objective for the RCMP in this case.

⁸⁹ Ben Mahony, interview with Manuel Azevedo, 8 January 2000

⁹⁰ Cst Lorne Clelland, "Reg.#33976, Emergency Response Team, Prince George RCMP, 'Will Say' statement," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹¹ According to his 'Will Say,' Clelland says he drove backwards for only several hundred metres, then turned around and drove 4-5 km: Cst. Lorne Clelland, "Reg.#33976, Emergency Response Team, Prince George RCMP, 'Will Say' statement," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁹² Lemmens, Critical analysis

⁹³ *Ibid.* Also, other supporters of the Defenders emphasize that the RCMP discussed the possibility that someone not from the Sundance camp might have fired at the RCMP on 27 August. See transcript of testimony of Superintendent Olfert, 15 January 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, where training tape footage is played for the court that refers to a handgun "which doesn't seem to fit what actually happened there."

⁹⁴ Ben Mahony, Telephone interview with Gustafsen Lake defender Suniva Bronson, 26 February 2001

⁹⁵ Inspector Earl Moulton's notes 27 August 1995, 1520, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, "P.O. [likely Prime Objective] to be shot on sight." As there is reference in the same note to Splitting the Sky specifically, he may be the Prime Objective which is possible considering that RCMP had his phone tapped and had surveillance outside his home throughout the standoff.

⁹⁶ Splitting the Sky, From Attica to Gustafsen Lake, chapter 2, p.521

- ⁹⁷ Transcript released by Ts' Peten Defenders as press release on 12 May 1997
- ⁹⁸ Minutes of Meeting held at Kamloops Sub/Division Headquarters Coffee Room at 29 August 1995 at 0830, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ⁹⁹ Cst. Lorne Clelland, "Reg. #33976, Emergency response Team, Prince George RCMP, 'Will Say,' disclosed at Gustafsen Lake Trial," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁰⁰ Ibid.
- ¹⁰¹ Splitting the Sky, *From Attica To Gustafsen Lake*, chapter 2 p.522, See also, Cst. Lorne Clelland, "Reg. #33976, Emergency Response Team, Prince George RCMP, 'Will Say' statement," *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁰² William Johnson, *Montreal Gazette*, "RCMP should avoid Waco-style shootout in B.C." reprinted with in *Edmonton Journal*, titled as "Report of ambush in 'Hail of Bullets' Just Doesn't Stand up," both dated 29 August 1995
- ¹⁰³ Ibid.
- ¹⁰⁴ Log of 46 Hours of RCMP Video: Videographer Norm Trop, "The RCMP's Sleaziest Home Videos," Log prepared by Glen Kealey
- ¹⁰⁵ Cited in Lambertus, *Terms of Engagement*, p.174. She collected revelatory data through interviews with various journalists involved in the standoff. Unlike Garret, most agreed to be interviewed under an agreement of anonymity
- ¹⁰⁶ Mike Crawley, Sherryl Yeager, "Bulletproof vests save lives of officers caught in 'ambush:' RCMP vehicle blasted by automatic gunfire: Tensions rise at Gustafsen Lake standoff," *Vancouver Sun*, 28 August 1995, Final Edition, A1
- ¹⁰⁷ Vaughn Palmer, "New A-G's conviction rooted in his own past," *Vancouver Sun*, 29 August 1995, Final Edition, A10
- ¹⁰⁸ Union of B.C. Indian Chiefs, press release, 28 August 1995, cited in Michael Smith, *Unsettling British Columbia: Interventions in a Neocolonial Politics*, MA thesis, (Faculty of Graduate Studies, University of British Columbia, October 1997)
- ¹⁰⁹ Letter dated 29 August 1995, from Ramsey Clark to Honourable Ujjal Dosanjh, Xerox copy, also reprinted in Switlo, *Gustafsen Lake*, p. 293
- ¹¹⁰ *Vancouver Sun*, 29 August 1995, Final Edition, A1
- ¹¹¹ Ibid.
- ¹¹² Mark Hume and Kim Pemberton, "Lawyer Says Police Shot at Indians First," *Vancouver Sun*, 1 September 1995, See also video excerpt of Clark reading out the affidavit in Brown, *Above the Law 2*.
- ¹¹³ Brown, *Above the Law 2*,
- ¹¹⁴ Mark Hume and Kim Pemberton, "Lawyer Says Police Shot at Indians First," *Vancouver Sun*, 1 September 1995
- ¹¹⁵ Bruce Clark, Testimony at Gustafsen Lake trial, cited in Splitting the Sky, *From Attica To Gustafsen Lake*, chapter 4, p.1077
- ¹¹⁶ Mark Hume and Kim Pemberton, "Lawyer Says Police Shot at Indians First," *Vancouver Sun*, 1 September 1995
- ¹¹⁷ Sherryl Yeager, "RCMP actions anger Mercredi: Assembly of First Nations chief blames rebel lawyer for advancing own cause," *Vancouver Sun*, 28 August 1995, Final Edition, A3. See also *Vancouver Province*, 28 August 1995, Final Edition, A4 which reported the gunfire came less than 24 hours after First Nations Grand Chief Ovide Mercredi warned of almost-certain violence from the renegades if the RCMP tried to dismantle the camp
- ¹¹⁸ Peter Wintonick and Mark Achbar, *Manufacturing consent: Noam Chomsky and the media* (Montreal: Black Rose, 1994)
- ¹¹⁹ Sherryl Yeager, "RCMP actions anger Mercredi: Assembly of First Nations chief blames rebel lawyer for advancing own cause" *Vancouver Sun*, 28 August 1995, Final Edition, A3
- ¹²⁰ Barbara McLintock; Jason Proctor, "No other inquiry: A-G," *Vancouver Province*, 24 September 1995, Final Edition, A6
- ¹²¹ See Brown, *Above the Law 2*. See also, Lindsay Kines, "Standoff site has foxhole, bunker" *Vancouver Sun*, 25 September 1995, Final Edition, B1

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- ¹²² See Brown, Above the Law 2, See also Barbara McLintock; Jason Proctor, "No other inquiry: A-G," Vancouver Province, 24 September 1995, Final Edition, A6
- ¹²³ Salim Jiwa, "Ambush in the Cariboo: Ambush Shocks A-G," Vancouver Province, 28 August 1995
- ¹²⁴ Ibid.
- ¹²⁵ Assistant Commissioner Dennis Brown's notes, 31 August 1995, 0840, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹²⁶ "What they're saying," Vancouver Province, 29 August 1995, A5
- ¹²⁷ Justine Hunter, "Attorney-general spurns calls for 'political' action," Vancouver Sun, 29 August 1995, Final Edition, A3
- ¹²⁸ "What they're saying," Vancouver Province, 29 August 1995, A5
- ¹²⁹ Sherryl Yeager, "RCMP actions anger Mercredi: Assembly of First Nations chief blames rebel lawyer for advancing own cause," Vancouver Sun, 28 August 1995, Final Edition, A3
- ¹³⁰ Holly Horwood, Vancouver Province, "Sgt. Cites Boss: 'Kill This Clark,'" 4 February 1997, A4

CHAPTER FOUR

THE RCMP ALLEGE A SECOND ATTACK:

*“There is a small group, 6 warriors, that will not give up –
it will require the killing of the hard-liners.”¹*

On 5 September 1995, the RCMP alleged publicly that they were pursued and shot at by the Ts' Defenders on the previous night. Pertinent evidence regarding this incident was disclosed at the Gustafsen Lake trial in the form of the minutes from RCMP officers meetings, RCMP operational plans, officer's notebooks, communications between RCMP commanders, state officials and military officials and a revelatory RCMP forensics report. The record of continued requests for the intervention of the Department of National Defence is of particular importance because this request was premised upon an allegation that the Defenders shot at RCMP officers that is contradicted by subsequent forensics analysis. These documents demonstrate that between 27 August and 6 September the RCMP continued to use "disinformation and smear" techniques.

In this chapter, I shall explore trial evidence that demonstrates that the RCMP account of the shooting on 4 September 1995 was false and that the RCMP forwarded an erroneous account of this incident to both the military and the press.

A week after the report of the 27 August ambush, the RCMP displayed a bullet-ridden vehicle to the press that they alleged had been damaged by gunfire from the Sundance camp during the "ambush" a week earlier. The press conference functioned to counteract criticism that had come from Montreal Gazette columnist William Johnson, who questioned the Mounties' account of the ambush, in part because the police had not collected physical evidence to show that they were victims of hostile fire.² (Johnson's critical comments on the RCMP's actions were carried in several newspapers across Canada.)

After the alleged ambush on 27 August, the demonization of the Ts' Peten Defenders in the press continued while the RCMP pushed for endorsement from the

military for the use of its armoured personnel carriers, for more aggressive purposes. Eventually, the RCMP requested the use of military APC's not only for escorting officers but also for patrolling around the camp.³ As outlined earlier, there is overwhelming evidence that the ambush of 27 August 1995 was concocted by the RCMP. This evidence was not available to most Canadians, even those who questioned the RCMP account. When the RCMP showed the bullet-ridden vehicle to the media, they hoped to lend credence to their request for further military assistance. At this press conference, the RCMP made an impressive display to the media of the "shot-up, unmarked RCMP vehicle" two police officers were allegedly forced to abandon after being fired upon nine days previously at Gustafsen Lake."⁴ The article that described this evidence of the "Indian ambush," in the Vancouver Sun reported that "another major development," "was the end of relations between RCMP and the native Indians' lawyer Bruce Clark."⁵

In the three days that followed the alleged ambush, (before he entered the camp and emerged with a controversial affidavit) the RCMP included Clark in their negotiating efforts. Clark hoped that if the Ts' Peten Defenders constitutional demands were sent directly to the Queen's representative, the Governor General, the core jurisdictional issue could be addressed. The RCMP operational plan for 31 August, however, did not identify the jurisdiction issue as a factor and simply outlined the design to effect the surrender and arrest of the Ts' Peten Defenders with the help of Clark: "This surrender option hinges upon the intercession of Mr. Bruce Clark who is presently acting as an intermediary for the subjects, to firstly [sic] convince them to surrender and secondly, to assist in their safe and orderly removal and arrest."⁶

Clark claimed the RCMP betrayed him because they submitted his letter regarding

the camp's demands for third-party adjudication to the provincial Attorney General, who rejected it, instead of submitting it to the Governor General as per his agreement with the RCMP.⁷ In refusing the Ts' Peten Defenders' request for third party adjudication as per the 1704 Mohegan decision, Dosanjh failed to honour the Crown's fiduciary responsibility to Aboriginal peoples. Although his rejection of the Ts' Peten Defenders' demands helped Dosanjh gain popularity, legally speaking, his actions contravened the constitutional principles the protesters' outlined.

After their disagreement over the submission of the protesters' demand the police publicly denounced Clark. Sergeant Montague said the RCMP "will no longer have anything to do with him" and described Clark's contribution to negotiations as "zero."⁸ Montague's vociferous denunciation of Clark is not surprising as this harsh condemnation came four days after Clark failed to convince the Ts' Peten Defenders to exit the camp with him. Instead, Clark accused the RCMP of broadcasting misinformation regarding the shooting incident of 27 August, when he came out of the Sundance camp with an affidavit that alleged the RCMP had shot first.

Montague told the press "We expected him [Clark] to go in there and accomplish a peaceful negotiation. Instead he came out with what he came out with [the allegation that the police had started the shooting on 27 August]."⁹ Clark was soon singled out for police retribution and was denounced as a "prick" by the RCMP in training footage captured in Above the Law 2. In a back room meeting, RCMP officers decided that it would be a "good strategy" to "kill this Clark"¹⁰ A fellow officer concurs by calling this "a good tactic."¹¹ The media complied by maligning Clark while praising the patience and temperance of the RCMP, who were presented as if they ignored opportunities to

shoot at aggressive militants. Few reporters or pundits questioned the notion that Clark and his Native clients were extremists.

The attempts to discredit Clark in the media and the personal threats made by the RCMP are a powerful example of the negative coverage that is afforded to those who oppose the RCMP and challenge the larger bedrock ideological assumptions that give the governments and the police political and legal power and legitimacy. Clark was maligned after he provided legal analysis which undermined provincial and national jurisdiction in most of British Columbia and also after he contradicted RCMP accounts of an “Indian ambush.”

After Clark left the Sundance camp, tensions between the Ts’ Peten Defenders and the RCMP ran high. Wolverine maintained that the Ts’ Peten Defenders had constitutional law on their side while the RCMP discussed whether to abandon negotiations and proceed with an assault on the camp. Two males who walked out of the camp on 30 August told RCMP officers who interviewed them, “Camp occupants are worried about an attack, they are almost paranoid about the [RCMP] helicopter.”¹² They also contradicted the claim that surfaced several times throughout the standoff that the Ts’ Peten Defenders were holding hostages and stated, “Camp occupants are altogether. No dissension. Anyone who wants to leave is free to go.”¹³ Although the RCMP had information that the Ts’ Peten Defenders were in a paranoid and defensive posture, commanders appeared to be preparing for a lethal assault on the camp, according to the notes of RCMP Chief Superintendent Murray Johnston. He noted, “Len [Olfert] strongly feels that there is a small group, 6 warriors, that will not give up – it will require the killing of the hard-liners.”¹⁴

As the RCMP prepared for the possible “killing of the hard-liners,” they tightened the perimeter around the camp, and proceeded with their plan of containment. On 1 September 1995, officers installed trip-wire and stationed several heavily armed Emergency Response Teams close to the camp. The “ERT Operational Plan” of 1 September described the plan to “insert ERT and support personnel by helicopter” and “to ensure this road [near the Sundance camp] is impassable by subjects inside the camp.” The aim was to contain the Ts’ Peten Defenders by cutting down several large trees just outside the Sundance camp. After felling trees, the RCMP used an advanced technological device described as a “perimeter security alarm” on “the encampment side of the barricade.” The RCMP operational plan also outlined the use of “sensor/early-warning devices” and mentioned that “aerial observation support will be provided by Wescam during the entire operation.”¹⁵ (See appendix 7) According to the notes of Sergeant Gates, on 2 September, the “Strategy of containment [was] under way” that included the use of trip wire and “1000 rounds M16 tracer ammo.”¹⁶

The security perimeter that the RCMP laid around the Sundance camp was prepared with the help of military officers, including Sergeant Mike Schlueter. After the standoff, Schlueter pressed a three million dollar law suit against the federal government because one of the explosives he handled near this security perimeter blew off part of his hand. Schlueter asserted that he wasn’t told the grenades’ charges were halved from the normal 3.5 seconds. Therefore, when he tried to set up a trip-wire, the grenade blew off part of his right hand. He required a graft using skin from his left arm.

In a telephone interview in January 2000, Schlueter emphasized that carelessness and anxiety in the military force that surrounded the Sundance camp could easily have

resulted in death. Schlueter described one incident he referred to as a “mad minute,” a reference to episodes where American soldiers in Vietnam became unhinged and engaged in reckless and aggressive behaviour. While patrolling around the camp, soldiers panicked and fired indiscriminately in 360-degree circles while he screamed at them to hold fire. Schlueter cited lack of training as the cause for the reckless and dangerous behaviour of these soldiers, many of whom were inserted into what they were told was a dangerous terrorist situation with little psychological preparation or proper military training.¹⁷ He said that many soldiers were given less than a half hour of training before they were sent into a “guerrilla operation.”¹⁸ In a statement given in November 1995, Schlueter also said that the possibility that the reckless behaviour of poorly trained officers caused “friendly fire,” (the firing of shots by military soldiers that hit their own personnel) was high.¹⁹

As the RCMP narrowed this perimeter around the camp by placing explosives around the Sundance camp, the Ts’ Peten Defenders warned that they would retaliate if RCMP officers continued to close in. It is likely that the reckless discharge of many rounds of ammunition just outside the camp, as outlined by Schuelter, heightened tensions and reinforced the perception within the camp that an RCMP attack was imminent.

Mistrust of the RCMP is evident in the record of the exchange between Wolverine and Sergeant Ryan on 3 September where Wolverine explains that some of the Ts’ Peten Defenders will be leaving the camp to get water supplies while also emphasizing the Ts’ Peten Defenders’ legal framework:

Wolverine: There ain’t going to be a crime scene because the only criminals are you people. You people are the trespassers on our

land. We're only protecting it. So when we get to the International Court of Justice we'll find out who the real squatter is here...

Ryan: I think it's good that you're keeping your people in a responsible position and we're doing the same out here. I think that's good. It's a real good [sic] thing to happen.

Wolverine: Well, we have to get water a little bit away from our camp here because our well is not in yet, and we have to get some water from another source, and I'd hate like hell for somebody on the ERT team to try to ambush some of our boys because, as it is, this is really going to bring it on.²⁰

The next major report of shooting occurred the day after Wolverine's warning that ERT members should keep their distance from the camp. Late in the night on 4 September (on the early morning of 5 September) the RCMP alleged that the Ts' Peten Defenders stalked them during the night and fired several rounds at police officers.

RCMP Corporal John Ward told the media that "Four RCMP officers came under fire from armed natives from the Gustafsen Lake camp." He went on to say that "Shots were fired at them and a number are thought to have struck the vehicle" and that the officers were "actively pursued by persons from the armed camp and only great restraint on the part of the officers prevented what could have been a very serious incident."²¹ Four military Armoured Personal Carriers (APC's) were sent in, supposedly to extract the officers to safety. Corporal Ward assured the press that the APC's were being used "strictly in the defensive posture."²² RCMP Radio reports received at the RCMP's command post and published in the Vancouver Sun alleged, "Shots were fired at them [the RCMP officers] and a number are thought to have struck the vehicle."²³

There are two important aspects to the RCMP account of the "stalking" incident. The first is the issue of shots fired; the second is the statement that APC's were sent in to extract officers from the alleged attack from the Ts' Peten Defenders.

Regarding the shots that were allegedly fired by the Ts' Peten Defenders, there is strong forensics evidence that contradicts the story told by the RCMP. Although a 6

September 1995 RCMP operational plan states that a bullet was lodged in the headliner of the Victoria ERT (Emergency Response Team) Suburban there is strong evidence to contradict the claim. The police vehicle was said to be fired upon by the Ts' Peten Defenders on September 4. This revised RCMP plan, which was sent to the military in an attempt to convince the DND of the need for an expanded use of the APC's alleges that a "bullet [fired on 4 September] narrowly missed the head of the Victoria Team Leader."²⁴ (See Appendix 8)

The forensics expert contracted by the RCMP to examine this evidence summarized his findings in a report titled, "Examination of Victoria ERT Suburban."²⁵ (See Appendix 9) In his report he flatly contradicted the account provided to the press, and the specifics of the alleged shooting that were sent to the military. He explained that he was requested:

...to examine a vehicle attached to the Victoria E[mergency] R[esponse] Team, which supposedly had come under fire from Natives attached to the encampment at Gustafsen Lake... Victoria ERT members pointed out damage to the exterior rear view mirror on the passenger side front door...[because] the Victoria ERT members felt that the mirror had been struck by a bullet which had then deflected up and into the vehicle, piercing the headliner of the cab.²⁶

After a thorough discussion of possible bullet trajectories and a description of the damage the vehicle had sustained, he stated, "No sign of any foreign object was found in the hole of the headliner." More importantly, he concluded,

Opinion: It is my opinion that neither the damage to the mirror, and the hole in the headliner is consistent with being struck by a bullet or any similar object... For an object to strike this mirror support and deflect to the position of the hole in the headliner, it would have had to pass through the neck/head region of a person sitting in the passenger seat... I would suggest that the damage to the mirror back is more consistent with being hit by a vertical object such as a tree branch. The damage to the support arm and window frame would be consistent with a metal object such as a rifle barrel resting between the arm and the window frame. As for the hole in the headliner, it gave me the appearance of being torn by a sharp object such as the front sight of a rifle.²⁷

The forensics investigator's conclusions contradicted the account provided in the operational plan revision submitted by Moulton, approved by Hall and Olfert, that included a cover letter written by RCMP Deputy Commissioner, J.D. Farrell (Commanding Officer of "E" Division) and faxed to Major General C. Addy on 7 September.²⁸ (See appendix 8)

Evidence and testimony from the RCMP forensics experts at the trial conflicted with press reports of the events so completely that at sentencing hearings George Wool stated plainly, "On 4 September, the RCMP said there was a shooting, we now know there wasn't." Everything [all the trial evidence] fits in with a smear campaign."²⁹ During sentencing hearings on 10 July 1997, Wool pressed the RCMP for an official media retraction of the assertion that the protesters' stalked RCMP that had been based on RCMP accounts of the 4 September incident.

The second important point in the police account of the 4 September incident is the claim that the APC's were sent in to extract officers from the alleged attack from the Ts' Peten Defenders. In light of the evidence that the RCMP were not hit by gunfire as they alleged, it seems clear that the RCMP exaggerated the need for the APC's and misinformed the public by stating that the RCMP were in a strictly "defensive posture."

Strong evidence that the RCMP fabricated aspects of their press release regarding this incident is presented in training film contained in Above the Law 2. In a revealing scene three officers discuss the wording of the press release that will go out regarding the 4 September incident. Three officers discuss how to establish "a good reason to deploy these things [APC's]." One officer suggests asserting that the RCMP came "under surveillance" from the Ts' Peten Defenders. Another officer is concerned that an account

of RCMP officers coming “under surveillance” will not be severe enough to convince public opinion that the APC’s were required:

Officer 1: You want to say under surveillance? As opposed to uh... cause you’ve got to have another reason for deploying these things and if it’s just under surveillance...

Officer 3: It’s pretty aggressive. I think it’s pretty inflammatory...

Officer 2: Actively pursuing? Pursuing?

Officer 1: Yea, actively pursuing, yep, that’s good. Yeah, actively pursuing our police officers. OK. That’s good.³⁰

The RCMP rationalized the use of their APC’s with reference to the alleged aggression from the Sundance camp on the night of 4 September and the press responded sympathetically: “Monday’s attack on police... has led the RCMP to deploy four Armoured Personnel Carriers into the area.”³¹ This last sentence is most important as it makes plain that the report of this “stalking” incident, the alleged “active pursuance” by the Sundancers, was the pivotal episode “which led the RCMP to deploy [DND] Armoured Personnel Carriers into the area.”³²

The press employed the framework presented by the RCMP that indicated the police were on the defensive and private property was at risk. The general public was told that the 4 September shooting incident “led to police cancelling a plan to allow Shuswap elders into the Gustafsen camp Tuesday.”³³ The Ts’ Peten Defenders were depicted as standing in the way of substantive negotiations. “They showed great restraint,” said Corporal John Ward of the decision by the members of the emergency response team not to fire on “armed native Indians” who were said to have pursued police until officers took up “defensive positions” away from the camp.³⁴ In this report, the decency and calm of the Mounties was contrasted to the savage aggression attributed to the Ts’ Peten Defenders.

Like the alleged ambush on 27 August, there were those who questioned the

RCMP account of 4 September shooting. RCMP negotiator Sergeant Wylie recorded in his notes that one of the Ts' Peten Defenders' supporters, "heatedly accused the RCMP of 'orchestrating the shooting incident.'"³⁵ Wylie noted that many supporters "accused the RCMP of hypocrisy ('talking out of both sides of our mouths'). They complain that on the one hand the RCMP says they want a peaceful resolution to the problem, yet on the other hand the RCMP is showing their shot-up vehicle to the media, the Attorney General's office has made a reference to the number of hostages in there and APC's were used while attempting to deal with the camp occupants."³⁶

One of the Ts' Peten Defenders' own press releases, which went largely ignored accused the media of employing "slanderous, racist, inflammatory pictures and narrative with emphasis on warriors in camouflage clothing being called terrorists." The release also stated, "The legal and traditional Native position must be discussed in its proper context and the scare and intimidation tactics used by the government and the media must be shown for what they really are – that [they are] being [used] to manipulate the public into thinking they are under attack."³⁷

Four days before the report of the shots fired, Olfert apparently concluded that there were several Defenders who will require killing.³⁸ According to the notes RCMP Chief Superintendent Murray Johnson on 1 September, Olfert stated, "There is a small group, 6 warriors, that will not give up – it will require the killing of the hard-liners."³⁹ Olfert's statement demonstrates that the RCMP was prepared to declare war on members of the Ts' Peten Defenders camp. Although the media focussed on exaggerated and possibly fabricated reports of aggression from within the protesters' camp the RCMP was prepared to kill Native activists whose main demand was for third-party settlement of

their title dispute.

Despite reports of Native aggression on 27 August and 4 September, there was still conflict between the police and the military about what role DND armaments and forces would play in the standoff. Although military officials had endorsed the use of their armaments for transporting officers, it was not clear that the military endorsed the use of the APC's for offensive manoeuvres. On 6 September, one RCMP officer noted that the "Military doesn't see the use of the Bisons as we do – Plan A – Patrolling and other use not authd. [sic] as Op Plan had to be approved by DND..."⁴⁰

Notes of RCMP officers of 7 September indicate that the RCMP were still devising an assault on the camp while negotiations continued. In the notes of a meeting with Olfert, Hall, Moulton and Edwards and Kembel, on 7 September, Brown noted, "The elders are set to go in as a group at 0900 on 8 Sept. 95. If they don't meet with success, then a plan will have to be made to take the renegades by force if necessary."⁴¹

Despite reluctance from the military to deploy the APC's for patrols around the camp, the resolve of the RCMP to use force appeared to increase according to Brown who noted on 9 September that Superintendent Johnston advised that Superintendent Olfert wants to get more proactive and "take down the red truck and occupants if they can."⁴² With the RCMP intent on aggressive action and the Ts' Peten Defenders remaining staunch in their defence of the Sundance grounds, the standoff moved towards the report of the exchange of thousands of rounds of fire between the camp and the RCMP on 11 September.

The documents disclosed at the Gustafsen Lake trial, (See Appendices 5 and 6) demonstrate that the RCMP was in constant contact with the British Columbia Attorney

General who requested military intervention on the behalf of the RCMP. To buttress their claim that military support was required, the RCMP and Attorney-General Dosanjh alleged that aggressions were committed by the Ts' Peten Defenders on 27 August and 4 September. It appears clear that the police accounts of these incidents were incorrect and that military intervention was endorsed based on false information.

The 4 September shooting is critical because an account of this shooting was sent from the RCMP to the military as part of the police effort to convince the military to approve the request for an expanded use of the APC's. On 7 September, RCMP Deputy Commissioner Farrell faxed a request for more expanded military assistance based on the seriousness of the alleged Native aggression on 27 August and 4 September that were erroneous. He wrote, "It is impossible to overemphasize the necessity for such support. On 2 occasions [27 August and 4 September], the ERT Suburbans have been compromised by hostile gunfire. On both occasions, the absence of loss of life has been solely serendipitous."⁴³ (See Appendix 8, page 3)

¹ See Testimony of Len Olfert, 14 January 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Notes of Chief Superintendent Murray Johnston, 1 September 1995, 1600, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry. See also Darcy Henton, "B.C.'s trial in a giant 'fish tank,' High-profile Indian standoff now draws little attention as court case drags on," *Toronto Star*, 2 March 1997, Final Edition, A2

² William Johnson, *Montreal Gazette*, "RCMP should avoid Waco-style shootout in B.C." reprinted in *Edmonton Journal*, titled as "Report of ambush in 'Hail of Bullets' Just Doesn't Stand up," both dated 29 August 1995

³ See Assistant Commissioner Dennis Brown's notes, 6 September 1995, 1350: Major General Addy "is not prepared to let the APC's to routine patrol work, cited in Tsilhqot'in National Government, *Ts' Peten*

⁴ Kim Pemberton, "RCMP find bullet-ridden vehicle," *Vancouver Sun*, 5 September 1995, A3

⁵ *Ibid.*

⁶ "Surrender Option - E.R.T. Gustafsen Lake, B.C.," Prepared by Cst. R.P. Wilby, Sgt. K.C. Gates, recommended by Insp. P.L. Edwards, Supt. L. Olfert, 31 August 1995, 1010, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁷ See interview with Clark in Brown. *Above the Law 1*

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- ⁸ Kim Pemberton, "RCMP find bullet-ridden vehicle," Vancouver Sun, 5 September 1995, A3
- ⁹ Ibid.
- ¹⁰ Brown, Above the Law 2.
- ¹¹ Ibid.
- ¹² Minutes of Meeting held at 100 Mile house Command Centre, 31 August 1995, 0905, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹³ Ibid.
- ¹⁴ See testimony of Len Olfert, 14 January 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Notes of Chief Superintendent Murray Johnston, 1 September 1995, 1600, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Darcy Henton, "B.C.'s trial in a giant 'fish tank:' High-profile Indian standoff now draws little attention as court case drags on," Toronto Star, 2 March 1997, Final Edition, A2
- ¹⁵ ERT Operational Plan - 1000 Road South of Encampment, prepared by K.J. Mann, recommended by Sgt. K.C. Gates, approved by Inspector P.L. Edwards, handwritten date, 1 September 1995, 1000, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁶ RCMP Sergeant Gates' notes, 2 September, 1995, cited in Tsilhqot'in National Government, Ts' Peten
- ¹⁷ Ben Mahony, telephone interview with Mike Schlueter, January 2000
- ¹⁸ Ibid.
- ¹⁹ In statement of Mike Percy Schlueter taken 14 November 1995 via telephone at 1312 by Cpl. Mike Smith: "I notice some pot marks on crew commanders weapons station which I felt might possible [sic] be [sic] from friendly fire from our bison... set up some trip wires... which were connected to stun grenade..."
- ²⁰ See testimony of Dennis Ryan, cross-examination by Shelaugh Franklin, 22 November 1996, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²¹ Gerry Bellett "RCMP ignored chances to return fire, officer says: Armored vehicles deployed near native camp after attack," Vancouver Sun, 6 September 1995, Final Edition, A1
- ²² Ibid.
- ²³ Ibid.
- ²⁴ Facsimile, marked urgent, reference no. 95E-6812, To: Major General C. Addy, From: O/C Contract Policing Branch, signed by J.D. Farrell, Deputy Commissioner, Commanding Officer, "E" Division, 7 September 1995 p. 5, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁵ Examination of Victoria ERT Suburban, Photo Section 5," RCMP Ident Continuation Report, Appendix B, Occurrence No. 95E/6812, Investigator, Cst. Tassell, Ident. Specialist, Cpl. K.R. Carrothers, Ident. Occ. No. 95/21314, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Appendix "B" To Operational Plan, Reference no. 95E-6812, "Urgent," 7 September 1995, From O/C Contract Policing Branch "E" Division to LFWA, Major General Addy, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁹ Ben Mahony Court notes, Gustafsen Lake Trial, 10 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁰ Brown, Above the Law 2
- ³¹ Gerry Bellett, "RCMP ignored chances to return fire, officer says: Armored vehicles deployed near native camp after attack," Vancouver Sun, 6 September 1995, Final Edition, A1
- ³² Ibid.
- ³³ Ibid.
- ³⁴ Ibid.
- ³⁵ RCMP Sergeant Wylie's notes, 5 September 1995, See also notes of Corporal Cameron, 5 September 1995, both cited in *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ³⁶ Ibid.
- ³⁷ Ts' Peten Defenders press release, 21 August 1995
- ³⁸ See testimony of RCMP Superintendent Len Olfert, 14 January 1997, See also Notes of Chief Superintendent Murray Johnston, 1 September 1995, 1600, both cited in *Regina v. Mary Pena*, Docket

X043738, Supreme Court of British Columbia, New Westminster Registry, See also Darcy Henton, "B.C.'s trial in a giant 'fish tank.' High-profile Indian standoff now draws little attention as court case drags on," Toronto Star, 2 March 1997, Final Edition, A2

³⁹ See Testimony of Len Olfert, 14 January 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Notes of Chief Superintendent Murray Johnston, 1 September 1995, 1600, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, See also Darcy Henton, "B.C.'s trial in a giant 'fish tank.' High-profile Indian standoff now draws little attention as court case drags on," Toronto Star, 2 March 1997, Final Edition, A2

⁴⁰ Notes of RCMP Management meeting, 6 September 1995, 0958, cited in Tsilhqot'in National Government, Ts' Peten (comment attributed to Hall)

⁴¹ Assistant Commissioner Dennis Brown's notes, 7 September 1995, 1330, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁴² Assistant Commissioner Dennis Brown's notes, 9 September 1995, 1140, cited in Tsilhqot'in National Government, Ts' Peten

⁴³ Facsimile, marked urgent, reference no. 95E-6812, To: Major General C. Addy, From: O/C Contract Policing Branch, signed by J.D. Farrell, Deputy Commissioner, Commanding Officer, "E" Division, 7 September 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

CHAPTER FIVE

THE RCMP PRESSURE THE CBC:

“CBC Radio’s journalistic independence had been breached... the CBC had been manipulated in order to help the police.”¹

In the days that followed the report of the 4 September "stalking" incident, RCMP negotiators maintained radio-phone negotiations with the Defenders. The protesters remained firm in their position that the conflict would end as soon as the Canadian Governor General or the British Crown addressed important legal arguments. Wolverine maintained that he was prepared to defend his life for the sake of the legal principles at the heart of the Battle of Gustafsen Lake.²

Eight days after the reports of gunfire late in the night of 4 September, the detonation of RCMP explosives and an ensuing gun-battle raised tensions. On 12 September, Ts' Peten Defenders OJ Pitawanakwat and Suniva Bronson drove over an RCMP explosive device that was planted in the road leading from the Sundance camp. The RCMP detonated this device as they lay in bushes near the road. Bronson and Pitawanakwat escaped the explosion while the RCMP shot through clouds of smoke from the explosion, missing the protesters but killing the camp dog in the process. In the exchange of gunfire that ensued, Bronson, a twenty-eight year old non-Native, was struck in the arm by a police bullet. There were no police injuries.³

Graphic footage of this incident was later shown on CBC TV on 21 April 1997 during the Gustafsen Lake trial. As a result, there has been pressure on the RCMP and the military to describe exactly what explosive was used to detonate the truck. The use of a device that appeared to be a land-mine on Canadian citizens at the Battle of Gustafsen Lake is particularly controversial in light of Canada's leading role in advancing an international ban on the use of land-mines.⁴

Twenty-four hours after the use of the device that the RCMP referred to as an "explosive charge,"⁵ and the reports of a dangerous fire fight,⁶ the RCMP pressured the

CBC to co-operate in an RCMP media strategy. Montague phoned the head of radio news in British Columbia and alleged that the Ts' Peten Defenders had hostages whose release depended on the RCMP gaining access to the airwaves to broadcast a message from Chief Antoine Archie of the Canim Lake Tribal council.⁷ Montague demanded access to CBC airwaves to air this message in Shuswap that was said to be a demand made by the Ts' Peten Defenders in negotiations in exchange for "surrender."

In 1999, serious questions regarding the propriety of the RCMP using seemingly heavy-handed tactics to gain access to the public airwaves were asked by Dr. Anthony Hall and CFUV (University of Victoria) radio-host John Shafer to the CBC Ombudsman. The dynamics of the "surrender" broadcast event are described in a report from CBC Ombudsman David Bazay that follows here. Bazay conducted an investigation into the incident by interviewing CBC reporters who covered the standoff as well as Jeffery Dvorkin, who was the Managing Editor of CBC Radio News during the standoff.

On 24 November 1999, Bazay sent an eleven-page report on this investigation to Dr. Hall. It follows here in edited form:

Dear Prof. Hall:

Here, at last, is my response to the questions you and John Shafer of Victoria have raised about the CBC's coverage of the events at Gustafsen Lake.

...Mr. Shafer raised questions about CBC Radio's decision to comply with the RCMP's request to have a local Indian chief broadcast a special message into the camp on 13 Sept. 1995. He asked, "Is this consistent with standard practice." I put the question to Jeffrey Dvorkin, Vice-President of News at National Public Radio in the United States, who as the then Managing Editor of CBC Radio News authorized the broadcast. Mr. Dvorkin told me that this broadcast was a mistake, and that CBC Radio's journalistic independence had been breached. Here's his version of what happened: He says he received a telephone call from the then Director of Radio in Vancouver, informing him that the RCMP's Sgt. Montague had made an urgent request to broadcast a special message into the camp. His understanding was that a hostage-taking was under way: 'The DOR [Director of Radio] in Vancouver was told by Sgt. Montague that lives were at stake and that only by broadcasting this special message would lives be saved. Sgt

Montague put a great deal of pressure on the DOR to comply. I had five minutes to make a decision about a situation I could not verify. I made the decision that CBC Vancouver could broadcast the special message believing the RCMP that 'lives were at stake.' Mr. Dvorkin said this proved to be untrue, and he wrote a letter to the RCMP commissioner 'to protest against the manner in which the CBC had been manipulated in order to help the police.' I should make clear here that neither CBC Radio nor CBC TV ever broadcast any report that the Gustafsen Lake standoff had become a hostage-taking incident.

Here's how 'The National' reported on the radio broadcast, which occurred on a day when a spiritual leader from South Dakota visited the camp:

Reporter: Shortly after the spiritual leader was flown into the camp at Gustafsen Lake came news of another development. Another person voluntarily left the camp and was taken into police custody. He came out as a show of good faith because the people in the camp now had a demand.

Sgt. Montague: And that demand was that if the occupants heard from a respected chief of the Shuswap nation, whether it was a person who supported them or not, with a particular message, that they were prepared to lay down their arms and come out and come out immediately.

Reporter: Shortly after, that message was broadcast on CBC Radio, the only station picked up in the camp.

Radio Announcer: This message comes from Chief Antoine Archie of the Canim Lake Band.

Chief Archie: People who have come out of Gustafsen Lake have not been mistreated. They have been treated with respect. If the rest of the camp come out, they will be treated with dignity and respect.'

...CBC Radio examined the propriety of this broadcast in its media program, 'Now the Details,' on 17 Sept. 1995. Among those interviewed were Sgt. Montague, who claimed that the surrender message was suggested by someone from the camp, and Mr. Dvorkin, who accused the RCMP of manipulating the CBC.

...The other controversy... was the RCMP's release of the names and criminal records of people supposedly inside the camp. Sgt. Montague was later quoted as saying this was done deliberately to smear the reputations and to destroy the credibility of the protestors as part of what he described as 'psychological warfare.' ...The RCMP's handling of this incident figures prominently in one scholar's continuing study of the media coverage of the 1995 Gustafsen Lake standoff. Sandra Lambertus is conducting a comprehensive study as a doctoral thesis at the University of Alberta... In an interview, Ms. Lambertus says the RCMP developed a sophisticated strategy designed to bring the media under its control. She says, 'The effects of the media strategy were magnified with the RCMP operational initiatives at Gustafsen Lake, many of which followed standard operating procedures.' For example, by setting up barricades and sealing off the camp, she says, the RCMP became the gatekeepers and thus many news stories were published and broadcast 'without journalistic witnessing.' In her view the barricades provided police with the opportunity to dominate interpretation of the standoff. 'There was no way to confirm if the RCMP were giving the full story - or the degree to which it was sanitized or exaggerated - or if they were giving any part of the story at all.' The RCMP could give out information, or withhold it, at will. The media became vulnerable to the police and

their discretionary power to control and limit new information. The police defined what was 'news.'⁸

The haste and heavy-handedness with which the RCMP carried out their strategy to gain access to the CBC airwaves is indicated by the treatment of CBC radio reporter Conway Fraser. Fraser told the Vancouver Province that the RCMP approached him out of the blue and asked him to go with them. At first, Fraser said, the RCMP were so secretive that, "They wouldn't even tell me where we were going or what we were doing... I wondered if I was being arrested."⁹ But once it was explained, Fraser and CBC management agreed to interrupt national programming four times between 1500 and 1600 to broadcast a message from Chief Antoine Archie of the nearby Canim Lake band.¹⁰

Although Montague asserted that the broadcast was crucial because there was a "hostage-taking situation" court evidence contradicts this. The notion that there were hostages is directly refuted by the minutes of a meeting at the RCMP 100 Mile House Command Centre on 4 September at 1630, attended by between Ken Gates, Len Olfert, Verl Shockey, Earl Moulton and Dennis Ryan. Moulton states, "There is no indication that anyone is being held against their will in the camp."¹¹ According to the minutes of this meeting, the RCMP did not suspect that there were people in the Sundance camp being held against their will. Moulton stated further, "If the camp takes hostages, it is felt that it would destroy their credibility and would eliminate flash points [of] concern across Canada."¹² These comments echo the observation of Brown, who wrote, "There is no indication there are any hostages in the camp at this time."¹³ (See appendix 2)

The RCMP claimed that the "surrender" message was part of a request from the Sundance camp. This has been proven false. One of the Ts' Peten Defenders' supporters

told the Vancouver Sun on 14 September 1995 that one of “the latest stumbling blocks that prevented[ed] a peaceful end to the standoff” was “the objectionable use of the word ‘surrender’ in Archie’s broadcast.”¹⁴

Similarly, in a transcript of the negotiations between Marlow Sam (one of the Native negotiators) and the camp, Wolverine states,

...One of the things in the broadcast is what we hear on the radio is that we are about surrendering, we never said those words. All I said is that uh we give you guys three days to get this in, in the international community, to the Privy Council of Great Britain... because we’ll be using national, international and constitutional laws...”
[The police response]: “Okay, we never had anything to do with saying anything about surrender...”¹⁵

Another taped conversation between the RCMP and camp members corroborates the protesters’ claim that they did not request the message. The following exchange is between Officer Wylie and a protester referred to as “Male 2” in the logs of negotiations:

“Wylie: Art it’s Sean here. Can uh, just so that you people are aware it’s going to be broadcast on the radio every fifteen minutes...
Male 2: Yea, who’s going to be on the radio every fifteen minutes?
Wylie: Antoine Archie.
Male 2: Oh, Okay... that sounds good. Uh, do you have any idea what (undecipherable) going to be saying?
Wylie: I have, I have no idea. It’s just uh that they’re uh supporting what’s happening”¹⁶

After brief and problematic deliberations, and under extreme pressure from the RMCP, CBC executives decided to allow the Mounted Police to broadcast the message by Antoine Archie, whom the RCMP alleged the Ts’ Pcten Defenders would respect. The RCMP claimed (and the press reported) that Archie was an esteemed chief of the Shuswap Nation.¹⁷ In contrast, RCMP internal reports, a record of conversations between the RCMP negotiators, and camp members as well as court testimony have made it clear that the Ts’ Pcten Defenders did not respect Antoine Archie. For example, acrimony between the campers and Archie was recorded in an RCMP continuation report of 21

August, 1995¹⁸ where officers noted that the campers rebuffed Chief Antoine Archie when he tried to enter Sundance grounds with Sergeant Sarrich.¹⁹

In his account of the standoff, *Splitting the Sky* directly refutes the claim that Archie was a respected chief in the eyes of the camp. He states, “There wasn’t one ounce of respect from any of us for Mr. Archie.”²⁰ He also explained that one reason for the ill will was that “Antoine Archie, one of the local Band Chiefs, along with Agnes Snow and others, had publicly denounced us as outsiders.”²¹

A journalist interviewed (under the understanding that he or she would remain anonymous) by Lambertus confirmed that Archie had little respect from the Ts’ Peten Defenders and their small support group that gathered near police lines. This reporter observed the reaction of the Ts’ Peten Defenders’ supporters when they realized that it was Antoine Archie – who they knew well as an antagonist of the camp – who was to make the Shuswap broadcast they had hoped was legitimate:

They thought he [Archie] was a patsy for the cops... And it [the message] sort of didn’t work. It got everybody riled up. Got the other side just saying he wasn’t the spokesman for the – for that side. He was basically a – sort of a – sort of like a – status quo kind of Native. Status quo with the treaty process... the talk after at the gas station [where the Ts’ Peten Defenders held their poorly attended press conferences] was they were upset that “this can totally backfire and make the dispute getting [sic] worse... This is not the guy.”²²

The allegation that people were being held against their will was especially powerful. There is evidence that officials in Dosanjh’s office may have set the tone for the accusation that there were hostages in the Sundance camp: RCMP Sergeant Wylie’s notes of 5 September 1995 explain, “The AG’s office has made a reference to the number of hostages in there.”²³

Although most of the press reports echoed the RCMP account of the incident, the

Vancouver Sun²⁴ included the critical remarks of some of the protesters' supporters in a report, published four days after the broadcast (after the standoff had come to a close):

The fragile negotiations nearly collapsed Wednesday when the RCMP knowingly used a Shuswap chief the rebels did not respect to broadcast a message on local radio saying they would not be hurt if they surrendered, said Hill [Splitting The Sky]. The use of Canim Lake Band Chief Antoine Archie appeared to be an attempt by the RCMP to inflame the squatters because Archie has been opposed to the group's position from the start, Hill said. In a telephone interview Monday, [Arvol] Looking Horse backed Hill's claim that the group did not know Archie would make the broadcast, which they [the RCMP] said was the group's last demand in return for a surrender. He said he was in the middle of a ceremony in which the Ts' Peten Defenders said they would come out after three days when the radio broadcast was made. "They never gave me enough time," Looking Horse said of the police. I was shocked when I heard (the broadcast). They did not tell me what they were going to do...²⁵

The notion that the RCMP knowingly used a spokesperson that they knew would antagonize the Ts' Peten Defenders is consistent with the allegation of members of the Tsilhqot'in Nation who submitted a comprehensive seventy-four page report titled Ts' Peten: The Standoff At Gustafsen Lake in 1995: As Depicted in RCMP Records and Press Reports of the Time²⁶ to defense lawyers on 29 May 1997, near the end of the Gustafsen Lake trial. Representatives of the Tsilhqot'in Nation argued that the RCMP were looking to frustrate the negotiation process while giving the appearance of acting in good faith so as to manufacture consent for the use of force on the camp as their perimeter closed in upon with each failed diplomatic stroke: "Whenever negotiations showed any sign of succeeding, they [the RCMP] did something to subvert the process." Moreover, "Every mediator and every negotiating group who went to the camp were extremely critical of the RCMP's behaviour, every one except the first, self-appointed group and the delegations led by Chief Agnes Snow."²⁷

Agnes Snow was an opponent of the legal strategy pursued by the Ts' Peten Defenders in that she was a supporter of the British Columbia Treaty Commission that

the protesters vehemently rejected. As Chief of the neighbouring Canoe Creek Tribal council, Snow entered into negotiations with the Treaty Commission on 15 December 1993. Antione Archie is also a signatory to this document. Therefore, in the eyes of the Ts' Peten Defenders, both Archie and Snow were associated with the "collaborator class" of Indian Act leadership.

Many news reports reinforced the notion that the Ts' Peten Defenders were untrustworthy and had gone back on a promise to surrender. In contrast, the perception that the RCMP were patient was reinforced when the media reported the RCMP claim that they were co-operating in every way with the Ts' Peten Defenders in an attempt to bring the standoff to a peaceful conclusion. For example, The Canadian Press echoed the RCMP account:

The lengthy armed native standoff at Gustafsen Lake appeared close to a bloodless conclusion yesterday when aboriginal renegades agreed to surrender if their safety was assured. About two dozen squatters who had vowed to fight to the death said they would drop their guns and walk out to police surrounding their remote camp if they heard a "respected chief" assure them on radio they would not be harmed.²⁸

The national press corps reported that the message was a demand from the "squatters" in the camp. The press simply reported that a 40-second message by Canim Lake Chief Antoine Archie that urged the protesters to come out unarmed and assuring them they would not be mistreated was broadcast twice on CBC Radio. But as the Globe and Mail reported, there were no signs of surrender in response to the message.²⁹ The report implied that the Native people were still uncooperative and by implication unreasonable in not honouring their side of an alleged agreement to surrender in exchange for the message from Chief Archie. The press questioned why the "renegade aboriginals" did not follow up on the promise to surrender. The Canadian Press report constructed Archie as an ally and protector of the Ts' Peten Defenders and quoted his

statement on the CBC radio broadcast, “[If] the rest of the camp come out they will be treated with dignity and respect... The RCMP have pledged their support for this. I will personally be at the RCMP station or wherever to greet you on your arrival.”³⁰

Reports of the incident gave the impression that a negotiating impasse was about to be overcome by the dramatic breakthrough regarding conditions for surrender. The Vancouver Sun headline read “High hopes for end to stand-off dashed as deal struck with rebels falls through.”³¹

As part of his investigation into the incident, Bazay spoke with Dr. Sandra Lambertus whose doctoral research regarding Gustafsen Lake was in the process of being completed. Her general comments about the RCMP media strategy at Gustafsen Lake are consistent with the particular conclusions I draw here regarding evidence that the RCMP manipulated the media in their handling of the 13 September CBC radio broadcast. In her Ph.D. thesis, Terms of Engagement: An Anthropological Case Study of the Media Coverage of the 1995 Gustafson Lake Stand Off, Lambertus described the virtual media blackout that existed at Gustafsen Lake as the RCMP constructed barricades to keep journalists and the public from the Sundance camp:

The establishment of the barricades provided the RCMP with a near-hegemonic control over the definition of the situation in the camp to the media, and prevented the people in the camp from having a media voice or a witness... the barricades contributed to conditions of reporting that increased the potential for distorted media coverage of the event and the people involved.³²

One journalist suggested that even prior to the erection of the RCMP barricades there was “a real concern that this would lead to bloodshed. And so tension grew through the thing. You had the sense (certainly through Montague) that it seemed a point of pride – that they [RCMP] couldn’t be seen to be backing down from this challenge to their

authority... It became a bit of a concern that you could have some sort of state-sanctioned slaughter..."³³

Although RCMP press conferences received prominent attention from the media, Lambertus noted that there was another source of information which contrasted with the official air that emanated from the RCMP press conference room. Supporters of the Ts' Peten Defenders offered an alternative interpretation of the standoff. She writes, "In contrast to the RCMP definition that the conflict was a law enforcement issue... the frame offered at this venue [a nearby gas station] was that the dispute at Gustafsen Lake was connected to the resolution of Aboriginal land issues in BC. Nonetheless this content had only limited appeal for the mainstream gathering news. Also the service station venue implied a loss of status for the information disseminated."³⁴ Whereas the police and selected Native leaders who represented and defended the dominant cultural economic and political system were often quoted in an unqualified fashion, supporters of the Ts' Peten Defenders were dismissed in large part because they had no institutional authority and seemed to possess little social and cultural currency.³⁵

Regarding the evidence that the RCMP abused their power and reputation for fairness, it is important to review the highlights of Bazay's investigation undertaken in response to "questions about CBC Radio's decision to comply with the RCMP's request to have a local Indian chief broadcast a special message into the camp on 13 September 1995." Bazay summarized the most damaging aspects of the RCMP behaviour regarding the broadcast of the message on 13 September by reporting that Jeffrey Dvorkin "told me that this broadcast was a mistake, and that CBC Radio's journalistic independence had been breached." Regarding Montague's assertion that lives were at stake with reference

to the broadcasting of the message from Chief Archie, "Mr. Dvorkin said this proved to be untrue, and he wrote a letter to the RCMP commissioner "to protest against the manner in which the CBC had been manipulated in order to help the police."³⁶

Dvorkin himself was interviewed four days after the broadcast on CBC radio along with Conway Fraser, Montague as well as Robert Hunter, the executive who made the final decision to broadcast the message.³⁷ In response to the host who asked, "Did the people's broadcasting corporation become the RCMP Broadcasting Corporation last week in British Columbia?" Dvorkin stated that he felt the CBC had become "agents of the RCMP." He said that because of Montague's claim that there were "lives at stake," "We didn't have any choice in the matter."³⁸ Dvorkin added, "I hope there will be strong protests made... toward the RCMP."³⁹ To date there have been few such protests and little evidence that the CBC has confronted the seriousness of the breach of journalistic integrity that occurred on 13 September 1995.

Montague has flatly rejected the notion that the RCMP had taken over the airwaves or that there was any favouritism or manipulation. When asked if he thought the CBC would comply with his request he stated, "We didn't even give it a second thought."⁴⁰

Lambertus conducted a series of anonymous interviews with journalists who covered the Battle of Gustafsen Lake. Many of these reporters voiced serious concerns about the possibilities for RCMP manipulation that the situation held after the RCMP barricades went up. In particular these journalists "considered the [13 September] broadcast "absolutely overt manipulation of the media."⁴¹ Excerpts gathered by Lambertus that convey this concern are as follows: "[Montague] just does not understand

the role of the media in a democratic society. Media acts as a check on the police – pestering the police is a good thing. Montague doesn't understand this – doesn't think it's a problem to take over access to resources. He just doesn't get it, and that scares me...⁴² Another stated, "The RCMP referred to the incident as an example of how media and the RCMP co-operated. I'm not so sure. We knew we were getting a controlled version of reality – but no other reality was legally possible."⁴³

Given the seriousness of the breach of CBC 's journalistic independence that occurred when Montague pressured the CBC to take part in their disinformation and smear tactics, further reflection and change within the CBC is required to prevent a similar breach in the future. To whom are the police accountable for the type of breach of journalistic independence that occurred at Gustafsen Lake? Similarly to whom, if anyone, are journalists answerable? The CBC ombudsman's report makes it clear that the RCMP engaged in severe and unethical manipulation. However, no concrete steps have been taken to prevent a future episode. The airing of one discussion program⁴⁴ (where the RCMP continued to make untenable characterizations of the episode) does not constitute full reckoning with the seriousness of the threat to journalistic integrity posed by the incident. When the nation's public broadcaster becomes complicit in a "disinformation and smear campaign," serious preventative measures and much more institutional reflection are required.

Bazay's comments regarding the release of criminal records as well as his discussion of the pressure applied by Sergeant Montague to Jeffery Dvorkin substantiate the assertion that the RCMP employed a range of propaganda techniques to discredit the Ts' Peten Defenders. Bazay emphasized that the extent of the RCMP manipulation

techniques included “the release of the names and criminal records of people supposedly inside the camp. Sgt. Montague was later quoted as saying this was done to smear the reputations and the destroy the credibility of the protesters as part of what he described as ‘psychological warfare.’”⁴⁵ Strong preventative measures are required to shield both journalists and protesters from the coercive psychological tactics employed by people in authority in future conflicts.

Regarding the events that transpired at Gustafsen Lake on 13 September, there is no evidence in the disclosures that shows that the Ts’ Peten Defenders had agreed to surrender in exchange for the playing of the radio message as the RCMP told the press. All available evidence is to the contrary. The assertion that the RCMP manipulated the press and communicated false information to the public is consistent with conclusions reached in the previous two chapters regarding the events of 27 August and 4 September. In all three cases, there is strong evidence that the RCMP used propaganda techniques to discredit the constitutional arguments put forward by the Ts’ Peten Defenders regarding Aboriginal title.

¹ See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999

² See Michael Bernard, “Rebel natives ambush Mounties; RCMP silent on next move in standoff,” Ottawa Citizen, 28 August 1995, Valley Edition, A1: “Wolverine states that the protesters are willing to leave the camp in ‘body bags’”

³ Graphic footage of the detonation of RCMP explosives is shown in Brown, Above the Law 2

⁴ See Mike Trickey, “Axworthy is awarded European peace prize,” Montreal Gazette, 17 October 1998, A17

⁵ See Murray J. Johnston, Assistant Commissioner, RCMP, “The facts about Gustafsen: The RCMP rebuts an article critical of the armed forces’ and Mounties’ role in the standoff with natives,” Vancouver Sun, 1 March 2000, A13

⁶ For a discussion of the discrepancies in the RCMP account and footage of the explosion, see CBC TV One, 21 April 1997 (Vancouver)

⁷ Ben Mahony, E-Mail correspondence with Jeffrey A. Dvorkin, 29 May 2001, 10:29:27

⁸ See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999

⁹ Barbara McLintock, Vancouver Province, 14 September 1995, Final Edition, A4

¹⁰ Ibid.

- ¹¹ Minutes of RCMP Meeting held at 100 Mile House Command Centre, 4 September 1995, 1630, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹² *Ibid.*
- ¹³ Assistant Commissioner Dennis Brown's notes, 1 September 1995, 0949, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁴ Jeff Lee, "Armed rebels refuse to budge in spite of every plea," *Vancouver Sun*, 15 September 1995, Final Edition, A1
- ¹⁵ *Splitting the Sky, From Attica to Gustafsen Lake*, Chapter 6, p. 357 See also Jeff Lee, "Armed rebels refuse to budge in spite of every plea," 15 September 1995, *Vancouver Sun*, Final Edition, A1: "Jones Ignace, also known as Wolverine, told police in a telephone call Thursday that they never agreed to surrender, Montague said. However, police understood the surrender would take place if a single condition of a radio broadcast on CBC Radio was met, he said."
- ¹⁶ *Splitting the Sky, From Attica to Gustafsen Lake*, chapter 6, p.321
- ¹⁷ Canadian Press, *Hamilton Spectator*, 14 September 1995, Final Edition, A2
- ¹⁸ RCMP continuation report of 21 August 1995, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ¹⁹ *Ibid.*
- ²⁰ *Splitting the Sky, From Attica to Gustafsen Lake*, chapter 6, p. 337
- ²¹ *Ibid.*, chapter 6, p.76
- ²² Lambertus, *Terms of Engagement*, p.250
- ²³ RCMP Sergeant Wylie's notes 5 September 1995, 1630, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry
- ²⁴ Lambertus writes "...not all the newspapers in the sample confirmed to the same telling of the news narrative [at Gustafsen Lake]. The most distinctive was *Vancouver Sun's*... "stories [that] began to openly challenge the police perspective, and raise doubts about the RCMP 'multi-faceted plan.'" in Lambertus, *Terms of Engagement*, p.5, see also p.192.
- ²⁵ Jeff Lee, "RCMP Told To Send in Medicine Men 3 Weeks Ago, Indian Says," *Vancouver Sun*, 19 September 1995
- ²⁶ Tsilhqot'in National Government, *Ts' Peten*
- ²⁷ See Tsilhqot'in National Government, *Ts' Peten*
- ²⁸ Canadian Press, 14 September 1995, *Hamilton Spectator*, Final Edition, A2
- ²⁹ Canadian News (CP), "Chief Broadcasts Message In CBC to Bid End The Standoff," *Globe and Mail*, 14 September 1995
- ³⁰ Steve Mertil, "B.C. Indians offer to surrender after safety guaranteed," *Montreal Gazette*, 14 September 1995, Early Edition, A8
- ³¹ Pete McMartin, Jeff Lee, "High hopes for end to standoff dashed as deal struck with rebels falls through: Indians: Hopes dashed," *Vancouver Sun*, 14 September 1995, A1
- ³² Lambertus, *Terms of Engagement*, p.156-157
- ³³ *Ibid.*, p.310
- ³⁴ *Ibid.*, p.194
- ³⁵ As Bazay noted, in correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999: "Ms. Lambertus notes...The RCMP's labeling of the illegal activities associated with the camp as acts of terrorism radicalized the group for the public record. She notes that reporters tried to develop other sources on their side of the barricades, notably among camp supporters and among native leaders who had visited the camp, but in her view 'these alternative sources could not effectively challenge the dominant frame of the situation offered by the RCMP.'"
- ³⁶ See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999.
- ³⁷ Lambertus, *Terms of Engagement*, p.250
- ³⁸ *Ibid.*
- ³⁹ *Ibid.*
- ⁴⁰ Lambertus, *Terms of Engagement*, p.251
- ⁴¹ *Ibid.*, p.249
- ⁴² *Ibid.*, p.319

⁴³ *Ibid.*

⁴⁴ See CBC radio, "Now the Details," 17 September 1995

⁴⁵ See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999

CHAPTER SIX

CONCLUSION: THE NEED FOR A PUBLIC INQUIRY

How did this conflict between two men, Shuswap Faith Keeper, Percy Rosette and American rancher, Lyle James escalate into the largest police action in the history of the province which raised questions of law that resonate at deep constitutional and international levels? The trial that followed the standoff shed important light on this question. As mentioned in chapter two, the Ts' Peten Defenders' legal position conflicted directly with state assumptions about the jurisdiction of the land at Gustafsen Lake. This conflict in legal positions, which underpinned the physical confrontation, became a prominent aspect of the trial.

The Ts' Peten Defenders' pre-trial hearing began in May 1996 and the drama ended on 31 July 1997 when those convicted were sentenced. The charges ranged in seriousness from trespass to attempted murder. Ts' Peten Defenders who were charged with lesser offences were Robert Lauchlin Flemming, Percy Adrian Rosette, Flora Elsie Sampson, Ronald Raymond Craig Dionne, Glenn Darwin Denault, Tronde Fred Halle, Shelaugh Anne Franklin, Grant Michael Archie, and Sheila Leanne Ignace. Those "accused convicted of possession of a weapon for a purpose dangerous to the public peace and mischief causing actual danger to life," were as follows: Suniva Bronson, James Allen Scott Pitawanakwat, Edward Clarence Dick, Joseph Adam Ignace, Jones William Ignace, and Francis Edward Dick.¹

The trial received very little national media coverage. I attended many of the trial sessions and published a column in the Vancouver weekly Terminal City that explored the evidence that emerged. Throughout the trial several of the defendants stridently set forth the same legal arguments that formed the basis of the demands made within the camp during the standoff. In particular, Wolverine, Flo Sampson, Shelaugh Franklin and

James Pitawanakwat consistently issued direct challenges to the jurisdiction of the court by arguing that the judge must first address the question of Aboriginal jurisdiction as per the constitutional requirements for settlement in untreated territories before the court could be sure that the proceedings were fully consistent with the rule of law. Throughout the trial there were passionate pleas from the accused for the court to address both the legal aspects of the jurisdiction questions as well as the deeper questions related to the subjugation of Aboriginal peoples in Canada.

Both Ignace and Pitawanakwat emerged as powerful figures at the trial and addressed the court in an impassioned way. Pitawanakwat told the court:

Our people have suffered more than anyone should suffer. Our ways were brutally attacked. Our laws said we were doing right. Under extreme aggression and oppression we can and must protect our people. When the "guardians of the rule of law" are oppressive we are guaranteed the right to defend our elders, our children and our way of life. The reconstruction of our warrior societies threatens those in authority but is necessary.²

Pitawanakwat and Wolverine often addressed the court from behind a small glass cubicle that was then separated from the gallery by a floor to ceiling plane of bulletproof glass. This spectacle had the effect of alienating the accused from the general public. Supposedly designed for security purposes, the glass reinforced the notion that the Ts' Peten Defenders were dangerous terrorists. In many ways, the bullet-proof glass had the same effect as the propaganda techniques employed by the RCMP during the standoff; the defendants were portrayed as dangerous militants who posed a threat to public safety.

A reporter for the Toronto Star emphasized the surreal nature of the courtroom infrastructure, the intensity of the exchanges between Ts' Peten Defenders and RCMP officers, and the lack of widespread coverage of the case:

In a bullet-proof glass cage resembling a giant fish tank, Jones William

Ignace is in the midst of a harsh cross-examination of assistant commissioner Murray Johnston, one of the senior RCMP officers who coordinated the police response to the 1995 land claims dispute. "Who is the terrorist here?" Ignace thunders. "I say the RCMP were." The scene at this trial in a bubble is almost surreal. Six armed deputy sheriffs are stationed strategically around the courtroom to keep an eye on Ignace and 17 other defendants. In stark contrast to the highly publicized event that prompted it, there has been little media coverage of this eight-month-long trial. The hearing has gone on so long that four defendants have had babies.³

During her address to the court, non-Native defendant Shelaugh Franklin tried to debunk the notion that the Ts' Peten Defenders were outsiders with little or no national or international support. On 11 July 1997, she attempted to read more than twenty letters which focused on the issue of unceded native land and mistreatment of the Ts' Peten Defenders. For example, the Belgian Human Rights Group, KOLA 's⁴ letter to Prime Minister Jean Chretien stated "The current actions of the BC government and the RCMP toward Ts' Peten [Gustafsen Lake] Defenders, as well as the negligence of the Canadian national government to intervene and put a halt to these actions unambiguously qualify as genocide."⁵

At the trial the Ts' Peten Defenders argued that the court had no jurisdiction over them with reference to the same body of law raised at the standoff. Throughout the trial, Franklin, Pitawanakwat, and Ignace, asserted that the effect of their interpretation of the meaning of the Royal Proclamation of 1763 was to exonerate them. They flatly rejected the legal theories offered by the state that counter their view. As discussed in chapter two, the state has often argued that the Proclamation does not apply to colonies such as British Columbia that came into being after 1763 and that the Proclamation was not designed to extend to the pacific coast. Nevertheless, several defenders argued that the Proclamation did and does apply. Despite interruptions from trial Judge, Bruce Josephson, Franklin emphasized the issue of Aboriginal jurisdiction, consistently throughout the court

proceedings:

We are asking you [Judge Josephson] to look at the constitutional law. You refused to do that. I'm still of the belief that the Shuswap are the inherent owners of their land. The assumption of jurisdiction over their land is fraud, constitutionally treasonous and genocidal. I have yet to see arguments, which disprove my contention that judges too are subject to law. Wolverine and OJ are in prison because of what they believe in, not because of what they have done. [Wolverine and Pitawanakwat received longer sentences than the other Defendants] They speak the truth.⁶

Franklin challenged Lyle James directly on jurisdiction issue when the rancher took the stand at the trial. She asked James if he had ever seen the Royal Proclamation of 1763 or Section 35 of the 1982 Constitution Act. She read an excerpt from the 1982 Constitution Act, which includes the important qualification that the Charter of Rights and Freedoms, "Shall not be construed as to abrogate or derogate from any Aboriginal Treaty or other rights or freedoms that pertain to the Aboriginal peoples of Canada, including any rights or freedoms that have been recognized by the Royal Proclamation of 1763."⁷

Franklin then asked James if he was aware of this constitutional stipulation to which he flatly replied, "No." Although the judge swept aside the jurisdiction issue by stating, "That's a question of law. I'm sorry, not for the witness," Franklin rejoined, "This is the precise question of law that we've had a problem getting a hearing at in Canada."⁸

Although the trial was initially meant to determine the guilt or innocence of the eighteen members of the Sundance camp whom the Crown alleged constituted a conspiracy on private property, at many times throughout the proceedings the trial seemed to be more an investigation into RCMP tactics. Evidence that the RCMP used

excessive force and ran a “disinformation and smear campaign” against the Ts’ Peten Defenders raised the call for a public inquiry by many court observers.

Defense lawyer Manuel Azevedo argued that political concern over the Gustafsen Lake episode echoed at the highest echelons in Ottawa. He directly refuted the notion that the Ts’ Peten Defenders’ protest constituted a conspiracy on private property, as asserted by Crown prosecutor Lance Bernard and stated, “If there was a conspiracy, it was not on the part of the accused. It was on the part of the RCMP and their political masters to once and for all crush this revival of Indian culture at Gustafsen Lake. They were going to go right to the Prime Minister... This case went to the highest authorities and that’s where the conspiracy lay.”⁹

The need for further inquiry into evidence of media manipulation at Gustafsen Lake is underscored by the insights provided by CBC ombudsman, David Bazay as outlined in chapter six. His description of RCMP efforts to pressure the CBC to participate in their media strategy on 13 September is highly revealing. He substantiates the allegation that the RCMP lied to the CBC to get access to the airwaves in a move which reinforced the public perception that the RCMP were bending over backwards to accommodate the Ts’ Peten Defenders’ demands while at the same time reinforcing the notion that the Ts’ Peten Defenders were unreasonable malcontents.

The RCMP portrayal of the protesters as violent criminals fits in with historical precedents. As Daniel Francis observed in *The Imaginary Indian*, “In the vast literature of the Mountie produced between 1885 and World War Two, the Indian is the bad guy, savage and ungovernable, a symbol of the dark forces of anarchy, which had to be subdued before civilization could flourish in the West.”¹⁰ The RCMP recycled this

dismissive tone in their press briefings. The terms “criminals,”¹¹ and “squatters,”¹² who “pursue to kill”¹³ were used by the RCMP and the British Columbia Attorney General to describe protesters who were attempting to bring about respect for the rule of law and the internationalization of the British Columbia title question.

During the trial, some reporters began to explore evidence of RCMP wrongdoing but these articles were infrequent. Most Canadians have likely been left with wildly simplified and erroneous impressions of what happened at Gustafsen Lake. Further journalistic reckoning with the extent to which the media was manipulated is required. Vancouver Sun columnist Joey Thompson’s column is a beginning. Although her analysis did not receive national attention from editorialists and panellists throughout most of Canada, she wrote plainly about the extent to which she felt manipulated by the use of propaganda at Gustafsen Lake. In her column, on page A12 of the Vancouver Sun on 26 September 1997, she wrote: “The fact is [Gustafsen Lake] camp members weren’t the terrorists the RCMP made them out to be. Nor did they invite the shootouts the police press releases claimed. Officers were ordered to back off the “terrorist” label three days into the mud-slinging and name-calling. But the damage was done.” Thompson emphasized that the media became “sold on the RCMP’s script of good vs. evil: Our men in red blazers against trigger-crazed Indian thugs. And that’s what stung the most...”¹⁴ She reviewed some of the main discrepancies between what the RCMP told the press during the standoff and what was revealed at the trial. She summarized: “Court transcripts tell the story; we got had.”¹⁵

Similarly, one Globe and Mail article, written by Ross Howard on 8 October 1996, reported on evidence of RCMP wrongdoing at Gustafsen Lake. The article noted

that some RCMP officers used hollow-point bullets although they are prohibited as military ammunition under international conventions because of their devastating impact on victims. (See also Appendix 10)¹⁶ Howard's article, "RCMP Tactics War-Like, trial told," also stated: "The RCMP had an informer or agent among those who were involved in the standoff according to Sergeant Martin Sarrich. And the police violated their own no-shooting rule, Corporal Malcolm Callander said, and gave incomplete information to the media."¹⁷

Although Thompson and Howard began to unravel the web of "disinformation and smear" with these two articles (which contrasted to the vast majority that carried false information) there must be much greater attention given to strong evidence of the use of propaganda by the RCMP at Gustafsen Lake if these articles are to serve any function other than to promote a necessary illusion that there is balance in the mainstream media. Without a fuller reckoning with the extent to which the media might have been involved in the RCMP media strategy, there is a dangerous threat that "thought control" and media manipulation will damage Canadian democracy.

The manipulation of the media by the RCMP at Gustafsen Lake is evident in the statements of several officers that were disclosed at the trial. RCMP Sgt Ryan stated: "We want to make sure that the press releases most advantageous to us go out" in the same exchange where he asks his colleagues: "Did you find someone who can help us with the disinformation and smear campaign."¹⁸ It is unclear whether the RCMP did hire "somebody" to "help" with a "disinformation or smear campaign" at Gustafsen Lake. It is clear, however, that the RCMP were intent on controlling information. In Above the Law 2, an RCMP officer states, "I can assure you that we're going to manage information

and I don't give a shit what the cost is. It's going to be done and if we have to hire people to do it..."¹⁹ There is also evidence that the RCMP flew in a media consultant from Ottawa,²⁰ indicating that the RCMP may have sought to "hire a staff" for the purpose of "disinformation and smear."

The efforts of the RCMP to manipulate the media appear to have been highly successful. From the time of the alleged ambush on 27 August until the end of the conflict, there was a virtual media blackout which obscured central aspects of the event from public view. After the standoff, Mark Hume of the Vancouver Sun wrote, "For several weeks, the media were blocked from seeing just about anything of the police operation at Gustafsen Lake and largely became dependent on daily RCMP briefings for reports on events." He concluded, "The military involvement in the operation was denied, even weeks after it had begun. The use of night-vision goggles, spy planes, forward looking infra-red and booby traps was never commented on."²¹ Hume also explained that the RCMP allowed selected reporters to view their centre of operations at Gustafsen Lake called Camp Zulu. Several reporters were flown by the RCMP over the camp under an oath of secrecy that they would not report on the nature of camp Zulu until after the standoff. Hume wrote that, "The Vancouver Sun did not take the trip, or the RCMP's oath of secrecy – and instead flew over the base after learning it was located outside an air-exclusion zone." He reported on what could be seen from above the RCMP's camp Zulu and stated that the RCMP "had established a military-style operations base, to launch patrols into the thick bush around Gustafsen Lake."²²

Why would the RCMP and state officials feel the need to misrepresent the legal and constitutional issues at stake at the Gustafsen Lake conflict and to engage in what

Bazay refers to as manipulation and what RCMP officers refer to in their own video-taped discussions as a “disinformation and smear campaign?”²³ The “disinformation and smear” campaign had the effect of isolating the Ts’ Peten Defenders from domestic and international support and contained their threat to the political and economic status quo. The use of both state force and propaganda demonstrates that when there is a threat to the sanctity of the state, and its access to billions of dollars of natural resources, the state will marshal its instruments of force to quell the physical threat, while controlling information to discredit those who pose an ideological threat. The Ts’ Peten Defenders posed a fundamental challenge to the prevailing property regime and the system of social, economic and political relationships that stem from it. The protesters called for a fundamental reconsideration of the unequal distribution of wealth and the social and political inequities that stem from the colonial era. The use of the police to enforce the rule of law is the central point of the controversy.

The gravity of the challenge presented by the protesters at the Ts’ Peten sacred grounds was not lost on politicians or the RCMP. In a 24 August 1995 interview on CHNL Radio Kamloops, RCMP Sergeant Peter Montague stated, “Basically, the very foundations that Canadian society are built on are threatened here, and the RCMP is well aware of that.”²⁴ At Gustafsen Lake, the RCMP defended a suspect legal regime. If the legal truth is that jurisdiction remains with Native people, trillions of dollars of corporate revenue as well as the very jurisdiction of the state may be jeopardized. To prevent the loss of corporate investment, the use of force, in the name of the law was employed to stifle, suppress, and “set the example”²⁵ that a challenge to the sanctity of the state will not be tolerated.

In Roll Jordan Roll, Eugene Genovese wrote, “The legal system of the western world had succumbed to a bourgeois idea of private property.”²⁶ At Gustafsen Lake, the state and the police acted to defend the sanctity of the doctrine of marketplace equality. State officials rejected an interpretation of the constitutional laws that preceded the transformation of British Columbia into a province that places highest value on its regime of private property holdings. The state also resisted the demand for a fundamental re-working of the balance of political and economic power. The provincial Attorney General claimed to support the equality of all persons before the law but refused to deal with the extent to which “marketplace democracy” was instituted as part of a process of illegal dispossession and subjugation of Aboriginal peoples.

Genovese also wrote, “One of the primary functions of the law concerns the means by which command of the gun becomes ethically sanctioned.”²⁷ At Gustafsen Lake, the state and the police claimed that the use of force against the Ts’ Peten Defenders was morally defensible by invoking the sanctity of private property rights and contradicting their constitutional arguments. Genovese also refers to the “hegemonic function of the law”²⁸ and reminds us that the idea of hegemony “implies class antagonisms, but it also implies, for a given historical epoch, the ability of a particular class to contain those antagonisms on a terrain in which its legitimacy is not dangerously questioned.”²⁹ At Gustafsen Lake, the class interests of those in positions of economic and political power in both Native and non-Native communities in British Columbia were protected when the serious threat to state legitimacy that the Ts’ Peten Defenders posed was quashed. By convincing the public that the RCMP were acting to defend the rule of law and that the Defenders were reckless law-breakers, the compelling legal arguments

assembled by the Ts' Peten Defenders were muted. Although state legitimacy could have been widely questioned if the Ts' Peten Defenders were able to gain public support, an RCMP "disinformation and smear campaign" discredited them while a show of state force contained them.

In many ways, the legitimacy of the RCMP response was created through the use of propaganda. The legitimacy of the Ts' Peten Defenders' constitutional arguments was thoroughly discredited by the police who played an essentially political role by arguing that the protesters had no substantive issues.

The use of the RCMP to quell political dissent at Gustafsen Lake is highly problematic. As mentioned in chapter two, the historical record shows that the RCMP have often played a political role in the policing of those who demonstrate opposition to the Canadian state. Historically, the RCMP has infiltrated unions³⁰ and activists associated with the Quebec separatist movement.³¹ An analysis of the historical record shows that the RCMP consistently sided with corporate interests and government, against political dissenters, both Native and non-Native.

Many Canadians may find the evidence of RCMP wrongdoing at Gustafsen Lake difficult to believe because it deviates so far from established national myths. In his exhaustive study on The Canadian Mounties in Symbolism and Myth, Keith Walden examined the construction of the image of the RCMP as a ubiquitous national symbol sometimes assumed to be beyond reproach. In contrast, as Edward Mann and John Lee explain in RCMP vs. the people: Inside Canada's Security Service, instruction in methods of evasion and plausible deniability are core elements of some officers' training, especially higher-ranking officers. Mann and Lee state, "The capacity to stonewall, like a

musketeer's ability in fencing, will normally increase with the rank of the [RCMP] officer."³²

The use of disinformation and smear techniques by the RCMP at Gustafsen Lake is consistent with a tradition of less than savoury aspects of the RCMP's activities, especially in regards to tactics in political policing that are part of the public record. Mann And Lee describe tactics similar to those displayed at Gustafsen Lake and advise their readers to look beyond the myths that have been "widely celebrated in the press, movies, novels, and in the bulk of Canadian history books" because "behind this image, almost invisible, the other mission of the NWMP and its successor the RCMP has been the surveillance and sometimes forceful control of all minorities that do not fit into the Canadian establishment's model of public order."³³

The use of propaganda by the RCMP and state officials to discredit Aboriginal protesters is also part of a larger trend that has precedents dating back to 1924. The language used by state officials to describe Aboriginal protesters at Oshwegan in 1924 resembles the language used to denounce the Ts' Peten Defenders in 1995. Both were accused of being agitators who lacked mainstream support. For example, in 1924, Department of Indian Affairs deputy superintendent Duncan Campbell Scott referred to the activism of Six Nations traditionalists as "agitation carefully fomented by a few reactionaries."³⁴ Similarly in 1995, police referred to the Ts' Peten Defenders as militants who "have no support whatsoever."³⁵ The RCMP labelled them trespassers³⁶ and "declared war... on a heavily armed band of natives they say are terrorists."³⁷

In particular, the exploits of the RCMP in infiltrating the Quebec sovereignty movement in the name of national security need to be reviewed to contextualize the

evidence of RCMP wrongdoing at Gustafsen Lake. Regarding the actions of the RCMP in the 1970's, Richard Cleroux wrote, in Official Secrets: the story behind the Canadian Security Intelligence: "They [the RCMP] had lied, cheated, stolen, committed arson, opened peoples' mail, held people without warrant, conspired, destroyed evidence, created mischief and deliberately misled other police forces. And when it appeared they might be found out, they had conspired to cover it up to hide their crimes."³⁸ This context is important when considering evidence of RCMP wrongdoing at Gustafsen Lake, which resembles tactics, employed to investigate other elements of Canadian society who were deemed to be security threats.

In RCMP: The Real Subversives, Richard Fidler revealed a pattern of RCMP espionage tactics regarding the infiltration of Native political movements. In particular, Fidler detailed the role of an RCMP spy who "tried to get British Columbia Natives to use violent tactics... to provoke actions that the police could easily suppress, arresting or killing radical leaders and discrediting the movement."³⁹ This RCMP agent tried to provoke Native protesters in Mount Currie into using dynamite and AK-47 rifles. Fidler concluded that these efforts ultimately proved unsuccessful.

More recently, the RCMP has been accused of employing excessive force to police the meeting of world leaders at the APEC conference at UBC. The use of force at the APEC hearings has come under close scrutiny⁴⁰ and has been compared by some to the use of police force at Gustafsen Lake. The need for further inquiry into the dynamics of police actions at Gustafsen Lake has been emphasized by Margot E. Young of the Law Faculty at the University of Victoria who linked the Gustafsen and Ipperwash conflicts with a more pervasive pattern of police abuses related to the use of pepper spray on

students at UBC in 1997. She emphasized, "Canadians and their governments are not always quick to investigate potential police abuses of power. A range of examples illustrates this point. In 1995 the Ontario Provincial Police shot at and killed a member of a group of Native protesters occupying Ipperwash Provincial Park." She also noted that "no provincial inquiry into this shooting death has been called, despite condemnation of this refusal by the United Nations Human Rights Committee" and that "Similar potential police misconduct may have characterized the Gustafsen Lake dispute in British Columbia in 1995" where "the events have remained largely uninvestigated and media coverage dipped sharply as time passed."⁴¹

The use of the RCMP to quell political dissent in Native communities raises important questions. What is the role of the police when an expression of constitutionally protected Aboriginal rights comes into conflict in potentially lethal confrontations? What interpretation of the rule of law mandates the duties of the RCMP? Is it appropriate for the police to play a political role? In particular, to what extent did the RCMP co-operate in the political designs of the federal and provincial governments to suppress the constitutional arguments of the Ts' Peten Defenders? Evidence of the use of excessive force and propaganda by the RCMP reviewed in this study raises the serious concern that the RCMP has become a police force that defends the interests of state or corporate interests at the expense of the civil rights of protesters and the rule of law in general.

The notion that the use of propaganda and police force might be motivated by the economic and political interests of the ruling class has been explored by Noam Chomsky in Necessary Illusions: Thought Control in Democratic Societies.⁴² Chomsky writes, "It is a natural expectation, on uncontroversial assumptions, that the major media and other

ideological institutions will generally reflect the perspectives and interests of established power."⁴³ At standoffs with Aboriginal protesters, the RCMP effectively became enforcers of the economic and political interests of established power by discrediting a legal argument that challenged Canadian jurisdiction over the trillions of dollars of resources in British Columbia.

According to the "propaganda model" of critical analysis explored by Noam Chomsky, the media serve the interests of state and corporate power by framing their reporting and analysis in a manner supportive of established privilege and which limits discussion and debate. Although particular reporters might deviate from identification with dominant class interests, Chomsky writes, "Journalists are unlikely to make their way unless they conform to these ideological pressures, generally by internalizing the values: it is not easy to say one thing and believe another, and those who fail to conform will tend to be weeded out by familiar mechanisms."⁴⁴

The power of television to shape public opinion has been explored by Pierre Bourdieu who also examined the extent to which television news coverage often feeds back already-held assumptions to media consumers. In his book, On Television, he referred to "the circular circulation of information" which "produces a formidable effect of mental closure" to ideologies that threaten widely held views."⁴⁵ Bourdieu identified an economic motivation at the heart of the attempt to display only certain images and ideas on television, which can be subtle, perhaps unconscious, but pervasive. The media coverage of the Battle of Gustafsen Lake fits into this model because the arguments of the Native protesters pose a threat to the economic interest of the dominant economic class that are usually connected with ownership of major media conglomerations.

Noam Chomsky argues that, “The system protects itself with indignation against a challenge to the right of deceit in the service of power, and the very idea of subjecting the ideological system to rational inquiry elicits incomprehension or outrage, though it is often masked in other terms.”⁴⁶ At Gustafsen Lake, corporate and state interests were reflected and defended in media reports, which masked the substance of the protesters’ legal and historical arguments interests by invoking the assumption that the jurisdiction of the lands at Gustafsen Lake remained with the Canadian state.

As mentioned in chapter two of this work, Jacques Ellul has noted that propaganda can be employed to bring about either the active or passive participation of individuals. At Gustafsen Lake, the state secured the active participation of RCMP officers and military soldiers and the passive participation, or approval, of the general public. The attempt of the police and the state to convince the general public that a siege on the Sundance camp was morally defensible may have exceeded its initial objective of creating passive acceptance and support for police actions. Some citizens went beyond a passive role and took to the streets – not only to acknowledge their support for the RCMP, but also to demand more aggressive actions of the RCMP to use force to suppress the alleged enemy within the Sundance camp. While most citizens did not get a clear account of the depth and weight of the legal and historical substance that underpinned the Ts’ Peten Defenders protest, they were provided with hundreds of media accounts that indicated that the RCMP acted honourably, while the Ts’ Peten Defenders acted criminally.

The extent to which the public supported Dosanjh and his “get tough” policy on the Ts’ Peten Defenders was summarized by David Hogben in his column, “Election

Train Ready after [Gustafsen Lake] Surrender: ‘With the heavily armed native Indian militants in police custody, the provincial government may try to translate its success in the high-profile stand-off into a victory at the polls.’” Hogben quoted University of Victoria Political science Professor, Norman Ruff as saying that Attorney General Ujjal Dosanjh has become “one of the best things to have happened to the NDP” in “transforming the anxieties over aboriginal issues from a political liability into an asset.”⁴⁷

In Media coverage and political terrorists: a quantitative analysis, Richard Schaffert explained two techniques of propaganda which, in my view, apply to the use of propaganda by the state and police at Gustafsen Lake. The two processes are: “name-calling,” defined as, “affixing a derogatory label to a concept, thereby encouraging its rejection” and “card stacking:” selectively accumulating fact or fiction to support or discredit a concept.”⁴⁸ The repeated use of the terms “terrorists” and “criminals” to describe the Ts’ Peten Defenders signifies “name-calling,” while the use of false evidence of aggression from the camp to discredit the protest signifies “card stacking.”

When contrasting evidence disclosed at the trial of the eighteen Ts’ Peten Defenders with the RCMP accounts of Aboriginal “terrorism” supplied to the media it becomes evident that the RCMP worked to discredit the legal position taken by the protesters by releasing misleading information. Instead of examining the historical precedents and points of law raised by the Ts’ Peten Defenders, then British Columbia Attorney General, Ujjal Dosanjh told the press that, “Gustafsen Lake has nothing to do with Aboriginal land claims issues. It’s purely to do with the weapons found there and the shots that have been fired.”⁴⁹ By controlling the flow of information that was

communicated through the media and by invoking negative ethnic stereotypes the constitutional arguments of the Ts' Peten Defenders were silenced. By showing physical evidence to the media of police vehicles that were allegedly riddled with bullets from the camp,⁵⁰ any assertion that the campers were principled activists engaged in the defence of traditional burial grounds became untenable.

Although there was extensive testimony in court about the inconsistencies in RCMP allegations as well as the constitutional and spiritual aspects of the Ts' Peten Defenders stand, the Defenders were not exonerated. Several were convicted and went to jail. However, as Joey Thompson stated, two years after publishing columns that flatly criticized the Ts' Peten Defenders: "Police led the media to believe they had 'consistently been fired upon' by camp occupants, including shots fired at an RCMP chopper. But most were never confirmed."⁵¹

A public inquiry is desperately needed to document, clarify and publicize the evidence of RCMP wrongdoing at Gustafsen Lake. Such an inquiry should also examine the complicity of the media in the broadcast of RCMP disinformation. Only when journalists realized the extent to which they were manipulated at Gustafsen Lake, can such threats to journalistic integrity and democracy itself be prevented.

The trial revealed that there are many aspects of the standoff that bear further analysis and examination. A public inquiry is required to determine the participation of the Prime Minister's Office in endorsing the use of military armaments, especially in light of evidence that this endorsement was based on falsified evidence (as explored in chapters three, four and five). The participation of the Prime Minister's Office is indicated in the notes of Hall on 9 September 1995: "PMO [Prime Minister's Office] –

not happy – PMO office – apparently military told PMO troops [are] out, we said they were not out. Insp. Smith D/Comm Palmer called DEOC [RCMP Divisional Emergency Operations Centre] and said APC's are ours to use as we see fit... concern from DND/DEOC over wording of media release.”⁵²

The most compelling reasons that a public inquiry is required are outlined at length in the three previous chapters of this thesis. There are vast discrepancies between what the RCMP said was happening in the confrontation and evidence that shows the RCMP were initiators of shooting incidents. Moreover, the approval of the use of the military was premised on erroneous accounts of shooting from within the camp.

Even with the help of undercover informants planted in the cell of Ts' Peten Defenders who awaited trial, the RCMP could not gather evidence to support their allegation that they were shot at on 27 August and 4 September. Constable Richard C. Demesester testified that he acted in an undercover capacity as a plant in the cell of James (OJ) Pitawanakwat, shortly after his arrest.⁵³ Excerpts from RCMP notebooks as well as from their own training video indicate that the RCMP were prepared to use excessive force at Gustafsen Lake. The claims made in public by the RCMP like those of Superintendent Len Olfert that “A peaceful solution is what we always wanted”⁵⁴ are belied by the recorded statements that showed the RCMP intended to use force including the following:

- “The CO (Commanding Officer) commented and I agreed that we need to clean them out entirely and not have any hanging issues similar to what occurred at Oka.”⁵⁵
- “Len [Olfert] feels strongly that there are a small group – 6 warriors, that will not give up – it will require the killing of the hardliners”⁵⁶ (This statement was made

between the alleged aggressions of 27 August and 4 September and indicates that the RCMP were prepared, at the command level, to kill those in the camp.)

- “Superintendent Johnston advised that Superintendent Olfert wants to get more proactive and take down the red truck and occupants if they can.”⁵⁷

These quotes paint a very disturbing picture of the state of mind and the actions of the RCMP officers who were at Gustafsen Lake. Although they styled themselves the guardians of private property and public safety, the evidence shows that police were undertaking and advocating provocative military manoeuvres.

A public inquiry could also determine reasons why the RCMP deleted sections from their internal communications regarding the alleged ambush of the ERT team on 4 September 1995.⁵⁸ (Appendix 11) What did the RCMP have to hide by deleting sections of the account of this incident? It is unclear to what extent officials in the Department of National Defence, as well as the provincial and federal governments knew that the police account of the 4 September shooting was false. The deleted sections of the RCMP account may provide insight.

Three incidents have been examined most closely in this work but several other instances of RCMP use of excessive force merit serious critical analysis. For example, on 11 September, the RCMP claimed that their officers were fired upon during an intense firefight. Like the three incidents examined most closely in this thesis, the RCMP account of the incident (and repeated in most press accounts) was discredited at the trial. Initially, Montague told the press that “RCMP officers riding in Armoured Personnel Carriers came under such heavy fire that one of the APCs was disabled” and that two Natives ran into the trees, carrying weapons with them, and began firing at officers.⁵⁹ However, he

was later forced to admit that the occupants of the truck were not carrying weapons.⁶⁰ On the same day, the RCMP used land explosives on a camp truck, killed a camp dog and shot one of the campers in the arm. This incident, as well as the examination of the evidence around the sniper shot taken at one of the campers on 12 September, deserve further attention and research.

At the Ts' Peten Defenders' trial, Judge Josephson acknowledged the seriousness of the unprecipitated shooting at one of the Ts' Peten Defenders on 12 September. In his reasons for judgement, Josephson noted, "On 12 September, police had withdrawn to the perimeters. Police snipers fired three shots 1,000 yards across the lake at a native person dressed in camouflage clothing... While well out of normal range for their rifles, the shots were designed to kill."⁶¹ Regarding the sniper shot, it is important to note that Corporal Callander testified, "They had him [the camper] in sights with the intent to kill him."⁶² The Vancouver Sun reported on 12 October 1996, in an article titled, "Snipers at Gustafsen Lake, able to 'shoot to kill,'" that "RCMP snipers using a laser-equipped rifle were given the green light to shoot to kill Native Indians at Gustafsen Lake last year according to court testimony."⁶³

Another aspect of the conflict that bears further inquiry is the discussion about employing Canada's secret commando unit, Joint Task Force Two at Gustafsen Lake. Joint Task Force Two (JTF2) is the Canadian Armed Forces elite counter-terrorist/special operations unit. (JTF2's exact terms of reference are not known.) On 13 September at 15 22, Brown noted: "...CO's office for a meeting with Murray and I. Supt. Olfert feels current situation is beyond a police role and JTF2 [Joint Task Force Two] should be called in."⁶⁴ (See Appendix 2) More research is required to determine whether this force

was mobilized at Gustafsen Lake.

Although RCMP officers were involved initially only as negotiators, the operation at Gustafsen Lake swelled into the “the most costly RCMP operation in Canadian history.”⁶⁵ Over 400 officers were dispatched, first to investigate and later to initiate a “ground assault”⁶⁶ on the Sundance camp. Throughout the standoff, there was little attention paid to pertinent legal and historical issues while reports of Aboriginal violence that rationalized the RCMP siege made headlines. The RCMP were engaged in a campaign of disinformation designed to convince the general public as well as high-ranking Department of National Defence officials that the Gustafsen Lake protesters were hardened criminals, guilty of instigating shoot-outs with the police.

By focusing on the alleged threat that lurked within the camp, the police and government diverted public attention from the Aboriginal title issue while the RCMP and military surrounded the camp with Armoured Personnel Carriers, night vision, stun grenades, parachute flare guns, thunderflash and flash bang percussion bombs, 400 M-16 fully automatic assault rifles, helicopters and 24-hour surveillance cameras.⁶⁷ A public inquiry is necessary to examine evidence that the RCMP response at Gustafsen Lake was marked by the use of excessive force and state-sponsored propaganda that obscured unresolved legal issues related to Aboriginal title.

¹ This information is taken from Reasons For Judgement of the Honourable Mr. Justice Josephson, Regina v. Mary Pena, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

² Testimony of James Pitawanakwat, 12 July 1997, Regina v. Mary Pena, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

³ Darcy Henton, “B.C.’s trial in a giant ‘fish tank,’ High-profile Indian standoff now draws little attention as court case drags on,” Toronto Star, 2 March 1997

⁴ KOLA describes its genesis and parameters as follows: “KOLA is a grassroots human rights organization which was founded in September 1987 near Red Scaffold, on the Cheyenne River Sioux Reservation, South Dakota. In 1990, we opened the international campaign office in Brussels, Belgium. Our main objectives are to spread correct information on every issue concerning American & Canadian First Nation people(s): culture, politics, environment, education, philosophy and religion, judicial matters, history... KOLA is not

an acronym; it is the Lakota word for friend and this word defines exactly who we are and who we would like to work with. KOLA is a completely independent, non-lucrative organization without political, religious or any other "color." See <http://users.skynet.be/kola/index.htm> 17 May 2001, 19:44

⁵ Ben Mahony, Court notes, Gustafsen Lake trial, 12 July 1997, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁶ See testimony of Shelaugh Franklin, 12 July 1997, This exact quote is taken from a web site posted by supporters of the Defenders who assembled a comprehensive catalogue of trial documents and disclosure at: <http://kafka.uvic.ca/~viping/SISIS/gustmain.html>, 6 March 2001, 13:00

⁷ Testimony of Lyle James, 18 July 1996, cross-examination by Shelaugh Franklin, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

⁸ Ibid.

⁹ Holly Horwood, "Natives Fault cops, 'Conspiracy,'" *Vancouver Province*, 29 April 1997, A4

¹⁰ Francis, Daniel, *The Imaginary Indian the image of the Indian in Canadian Culture* (Vancouver, B.C.: Arsenal Pulp Press, 1992) p.62

¹¹ Brown, *Above the Law 2*.

¹² "Police Set to Move in on Armed Natives," 20 August 1995, *Victoria Times Colonist*, A1

¹³ BC Attorney General Ujjal Dosanjh, cited in Brown, *Above the Law 2*

¹⁴ Joey Thompson, "Media Should Apologize for Gullibility on Gustafsen Lake," *Vancouver Province*, 26 September 1997

¹⁵ Ibid.

¹⁶ Report Prepared by Community, Contract and Aboriginal Policing Services Directorate, Approved by D.W. McCallum, Supt., Acting Director, cited in *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

¹⁷ Ross Howard, "RCMP Tactics War-Like, trial told," *Globe and Mail*, 8 October 1996

¹⁸ Brown, *Above the Law 2*

¹⁹ Brown, *Above the Law 2*

²⁰ See Assistant Commissioner Dennis Brown's notes, 12 September 1995, 1141, *Regina v. Mary Pena*, Docket X043738, Supreme Court of British Columbia, New Westminster Registry

²¹ Mark Hume, "Selected media get look at Zulu: RCMP allow trips into forward base of operations," *Vancouver Sun*, 18 September 1995, Final Edition, A3

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²³ See correspondence between CBC Ombudsman David Bazay and University of Lethbridge, Native American Studies Professor, Dr. Tony Hall, 24 November 1999, Brown, *Above the Law 2*, See also, Holly Horwood, "Mountie Regrets 'Smear' Remark: Gustafsen Trial Views Damning Tape," *Vancouver Province*, 21 January 1997

²⁴ Montague, Peter, CHNL Radio, cited in Chris Morabito, "Canada's Secret War Turns Four," *The Dissident*, September 1999

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²⁶ Eugene D. Genovese, *Roll, Jordan, Roll: The World The Slaves Made*, (New York: Pantheon Books, 1972) p. 4

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²⁸ Ibid., p.26

²⁹ Ibid., pp.26-27

³⁰ John Allan Lee and Edward Mann, *RCMP Vs. The People: Inside Canada's Security Service*, (Don Mills: General Publishing Co., 1979) p.110

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³³ Mann and Lee, *RCMP Vs. The People*, p.107

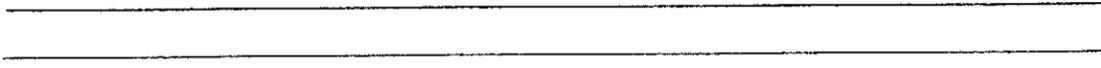
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³⁵ Sherryl Yeager and Justine Hunter, "Indian Rebels plan to 'leave in body bags,'" *Vancouver Sun*, 22 August 1995, A1

³⁶ Ibid.

³⁷ Ibid.

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- ³⁹ Richard Fidler, RCMP: The Real Subversives, (Toronto: Vanguard Publications, 1978) p.76
- ⁴⁰ Wesley Pue, ed., Pepper In Our Eyes: The APEC Affair, (Vancouver: UBC Press, 2000) pp. 52-53
- ⁴¹ Margot E. Young, "Relax a Bit in the Nation: Constitutional Law 101 and the APEC Affair," in Wesley Pue, ed., Pepper In Our Eyes: The APEC Affair, (Vancouver: UBC Press, 2000) pp. 52-53
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- ⁴³ Ibid., p.10
- ⁴⁴ Chomsky, Necessary Illusions, p.8
- ⁴⁵ Pierre Bourdieu, On Television, (New York: The New Press 1998) p.23
- ⁴⁶ Chomsky, Necessary Illusions, p.9
- ⁴⁷ In David Hogben, "Election Train Ready After Surrender," Vancouver Sun, 18 September, 1995, A3
- ⁴⁸ Richard Schaffert, Media Coverage, p.66
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- ⁵⁰ Gerry Bellett, "RCMP ignored chances to return fire, officer says: Armored vehicles deployed near native camp after attack: Natives," Vancouver Sun, 6 September 1995
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- ⁶¹ Reasons for Judgement of the Honourable Mr. Justice Josephson, Regina v. Mary Pena, Docket X043738, Supreme Court of British Columbia, New Westminster Registry, 30 July 1997
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- 3) See Kamloops Sub'Division Operational Plan, Gustafson Lake, File: 95KL-334 - Kamloops Sub/Division, 22 August 1995, Prepared by S/Sgt. K. Porter, Cst. R. Wilby, Under the Direction of Supt. Len Olfert
- 4) Memorandum to: Commissioner, Ottawa Att: Director, Community, Contract and Aboriginal Policing Branch From: O/C Operations "E" Division Re: "Gustafsen Lake Operation: Videotaping By Division Training Section 'Our File' 95E-6812"
- 5) Correspondence between J.D. Farrell, Deputy Commissioner, Commanding "E" Division and The Honourable Ujjal Dosanjh, Attorney General, Province of British Columbia, Parliament Buildings, Victoria, British Columbia, V8V 1X4 and The Honourable Herb Gray, P.C, Q., M.P., Solicitor General of Canada, 340 Laurier Avenue West, Ottawa, Ontario, K1A 0P8, 25 August 1995 - 27 August 1995
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- 7) ERT Operational Plan - 1000 Road South of Encampment, prepared by K.J. Mann, recommended by Sgt. K.C. Gates, approved by Inspector P.L. Edwards, handwritten date, 1 September 1000hrs
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- 10) Report Prepared by Community, Contract and Aboriginal Policing Services Directorate, Approved by D.W. McCallum, Supt., Acting Director, CCAPS
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Our Home And Native Land

Whose Land Is It?

From the brand-spanking new Surrey pre-trail centre, BEN MAHONY talks to William Jones Ignace, better known by his Shuswap name, Wolverine.

Daniel J. Collins/Propaganda photo



We were searched then taken through two sets of locked doors. The first set slammed loudly as we walked into a vacant space of white walls and tinted windows. Earlier in the day, I had asked my photographer-companion Daniel: "Is this hungover-ramshackle-by-the-seat-of-your-pants style what they call 'gonzo journalism'?" I wanted this discussion to be a sharing of perspective, not an interrogation. So I came as myself and improvised my questions on the one-and-a-half-hour transit ride. Generous Daniel took the assignment when we called him the previous night at midnight. Like most of the general public, he had little information about the land, legislation and people who were in the Gustafsen Lake camp when the largest mobilization of the R.C.M.P. in history surrounded them.

Wolverine has been in jail since September 1995, charged with eighteen other members of the Gustafsen Lake camp. The prosecution has made its case. Disclosures by the R.C.M.P. that they engineered a smear campaign and evidence that the R.C.M.P. instigated the violence has led to rumours that a mistrial may be declared. The defence has called controversial lawyer Bruce Clark to the stand to speak to the jurisdiction of the land and to the constitutional law which framed the demands of Wolverine and the camp. Since this is unceded territory for which the Shuswap Nation has signed no treaty, their claim to the land is per the Royal Proclamation of 1763, which makes them allies to the Queen, not tenants. Because this argument appears convincing and well supported in existing constitutional law, it has been suggested that Federal Justice Minister Allan Rock and B.C. Attorney-General Ujjal Dosanjh may attend the proceedings which the Ts'Peten Defenders encourage you to attend at the Surrey Court House.

Ben: What can you tell me about the Gustafsen Lake area and its history?

Wolverine: Well, the Gustafsen Lake area is part of the Shuswap Nation. I believe it came out in testimony about the inter-tribal agreement between the five bands

that shared that area. But that's still in the part that's the Shuswap Nation. The Shuswap Nation is a very large Nation. It's surrounded by the Chilcotin, the Lil' Wat, the Okanagan, the Kootenay, and the Cree. So you see that it takes in right in to the Kootenay, about ten hours drive to the east.

B: Were you born in that area?

W: I'm from the Southern Shuswap at Adams Lake. But Percy asked me for help for that area in the Sundance and from people that were trying to kick them off land which is still unceded territory because I've been going to court with Bruce [Clark] since 1990.

B: When did you first meet Bruce?

W: 1990.

B: Did he approach you?

W: No, I came down because there was an action going over with the Mount Currie people. I met Bruce there. That was 1990. We went to different courts on the Lower Mainland here trying to get the jurisdiction issue addressed. We've been stonewalled by the judicial system. I think it came out in court that Bruce has tried to have the jurisdiction argument addressed 41 different times.

B: So he spoke to that question in regard to different claims, is that right? The Lil' Wat and with other people out east as well?

W: Yeah, we had one action which we were involved with in '89 in our area. I was more or less an advisor in that court case. Then Bruce took a case and we finally it got to the Supreme Court of Canada.

B: Where was that, the Lil' Wat?

W: No, it was a hunting issue, but dealing with the land issue that hadn't been settled in British Columbia. So anywhere you go you're still on unceded territory.

B: Most of B.C. is unceded territory?

W: Only a few small treaties were made. Treaty Eight is a pretty good size of Northern B.C., but that one is questionable. The treaty was made with only one nation, [he paused and smiled, raising one finger and I could sense my diminutive elder warming to the discussion. It must have been bizarre for him to have been inserted into a white

ten-by-twenty-foot discussion cubicle to meet with young white strangers]. You cannot get on the map and draw out that, "this is our territory" when there are people from other Nations living on that. These people were drawn into Treaty Eight without even knowing it. So that treaty is questionable.

B: When you left Gustafsen Lake at the end of the incident did you know where you were going, that they were going to take you here or take you to jail?

W: I didn't know where we were going to go but it didn't matter as long as we got the issue dealt with.

B: Bruce said that one of the main reasons for the incident was to raise the issue of jurisdiction and the 1704 precedent. Is that true?

W: Well, one of our main demands was third-party adjudication. Because in an appeal hearing in Canada or British Columbia, we'll never get a fair hearing from people that are competing for the same land and resources. We've never had any justice in this country and I don't think we ever will.

B: Have you sought action in the international sphere?

W: We took on the issue in 1991 because B.C. didn't want to deal with jurisdiction. This is at a lower level. Judges did not want to listen. So we talked it over with Bruce and asked how to advance our legal argument. How could we get this heard in the Supreme Court of Canada if the people at a lower level don't want to listen? I went to the United Nations. I took three volumes: "International Remedies", "Domestic Remedies", and

different court cases that we were involved in at that time which the judges didn't want to listen to, to law. We felt that there might be at least one country in the world that could bring out our concerns. We took this to a panel of listeners of indigenous peoples in Albuquerque, New Mexico in 1993.

There I testified to the United Nations. What I said was that the whole judicial system in Canada was so corrupt that the corruption begins in the very Law Society itself, right to all the courts in British Columbia, right to the attorney general of British Columbia and right to the premier's office. I said that's where the corruption is and that goes right to the Supreme Court of Canada because they do not want to listen to law.

B: What reaction did you get?

W: Well, it sort of shocked some of the people. What I stated was that if the U.N. fails us in what we're trying to do here, to bring out the message, if it fails us, where in the world can we go for justice? We may have only one more avenue we could go and that was to the Queen herself because we felt that the Queen had jurisdiction. When the traditional people speak about the Crown we mean "The Imperial Crown of Great Britain", the original place where jurisdiction stems from. So we have to go back there to get our case before the Queen and the Privy Council.

B: Do you think that's possible?

W: Well, if it's still in the law books, like in 1704 in Queen Anne's Court. It's only been used [the third-party adjudication mechanism] once.

B: It has been used? In 1704?

W: Yeah, the Mohegan vs. Connecticut. They still have the Privy Council and here in Canada. But the Privy Council here in Canada will not rule in our favour because they're eating out of the same trough as the politicians and everybody else. And so is the enforcement arm. So that for any kind of action that we do here in Canada, we are criminalized. Like at Gustafsen Lake when yet clearly all the laws are on our side.

B: When Bruce Clark went overseas to speak to people their reaction was disbelief. "There's no way that can be going on in Canada," they said because of our reputation as a peaceful and just nation. Bruce testified that his mind and you're mind are one and the same on issues of jurisdiction. Is that true?

W: Yeah. I've been putting the pieces of the puzzle together since 1974 as to how the system operates here.

B: When did you first learn of the 1704 remedy?

W: I first learned about this from Bruce, but I had the same document of 1875,

which I picked up a few years ago then gave to Bruce.

B: Bruce has supporters and also people that criticize him a lot. Some think he's being smeared and that the justice system is out to get him.

W: It's not only the justice system, the enforcement arm of the government is after him, too, because with these legal arguments he's the best there is in Canada.

B: Some that might support you otherwise feel that his behaviour is erratic.

W: Because he's been at it and has seen genocide happen to Indian people themselves... some of his friends. So I guess it touches him. People that don't know him think he's a little bit off, but he's not. He's the best there is. He's the only man here in Canada who's willing to take on the case. I had a lawyer who undermined the very argument that we're putting forth here today.

B: Was Rankin just arguing about the nature of the evidence?

W: That's it. What evidence was that when it's all hearsay by the R.C.M.P. themselves, all a pack of lies. I will tell you this. I've been here for eight months and only two officers have told the truth, only two. That's the kind of law enforcement that have here in Canada now. They're corrupt. They're heads are in the trough like a bunch of pigs.

There was only two.

B: Did media come into the camp?

W: We had a few come in but they twisted the story so bad. They made stories up. That was part of the smear campaign done by the R.C.M.P. to discredit us so that way we'd never gain support from the people across Canada or anywhere because we were bringing out the law. The law is what we stood on. We asked for third-party adjudication through the Privy Council. We tried to open the door through the Governor General and to get him to open the door to the Privy Council in Great Britain. That was the only real demand we had.

B: People didn't hear that. It's been acknowledged that there was a smear campaign. What would you say to people who want to know about the shots that were fired?

W: Who's land was it? Who had a right to be there? The R.C.M.P. came in. They're the ones who invaded into

Turn to next page



Notes of A/Commr Brown

NOTE to FILE

File #: 95KL-334

95E-6812

re: GUSTAFSEN LAKE

Sunday, August 20th, 1995 1245 hrs: I met with the Commanding Officer in Regina at the Airport, he reviewed the Gustafsen Lake native incident verbally with me indicating that the natives are still refusing to leave property, the ERT Members were checking it out the other night and a shot was fired just missing the head of the ERT Team leader.

Kamloops are putting together a plan to go in and get them out. The use of firearms is definitely a possibility and we may need our protective type of devices from the military to ensure that our personnel are not hurt. The CO. commented and I agreed that we need to clean them out entirely and not have any hanging issues similar to what occurred at Oka.

August 20th, 1995 1645 hrs: I received a phone call from Willard Townsend who had been instructed by the CO, prior to his departure, to brief me on the Gustafsen Lake situation. We again reviewed the same material that I had discussed with the Commanding Officer and he informed me that Insp. GUY is coordinating the effort from Division Headquarters.

Brown's note

August 22nd, 1995 2200 hrs: I received a call from the Commanding Officer who is on conference in Regina. We had a general discussion about the Kamloops operational plan. The CO has also discussed this issue with the Commissioner, who feels we should be exploring other alternatives rather than going in to get them. The CO suggests getting the lawyers in Ottawa and the Attorney General Department lawyers and have them research how we are going to get the bison and personnel carriers through the province or are we going to go to the base to get them on our own.

August 23rd, 1995 1028 hrs: Insp. Guy met with me and gave me a short briefing in respect to the Gustafsen Lake incident. He advised that 0800 hrs. the CO called and wants to have us immediately identify eight people to train to drive the bison. He also wants us to keep track of all newspaper clippings that are being published on this affair. He advised that the military has turned down our request and referred to the Privy Council Office (PCO). OC Kamloops has been called by Insp. Guy and advised him. Apparently the OC Kamloops has an open line of communications to the natives and will be talking to them today, Supt. Olfert maybe going out to that

Brown's notes

to the Cariboo Tribal Council today at 5:00pm and he would make a decision after that. I advise the D/Commr. Beaulac that Supt. Len Olfert at Kamloops would be the best individual to liaise with Mercredi as he has all the ground information and would be making a decision as to whether it would be safe to proceed with this plan of action.

August 23rd, 1995 1155 hrs: I spoke with Supt. Len Olfert. He stated that the Detachment Commander at 100 Mile House had talked to the Natives at Gustafsen Lake on the phone and did not get a good response. ~~They now wish to speak with the Governor General of Canada and no one else.~~ I advise him to call D/Commr. Beaulac and discuss with him the involvement or possible involvement of Ovide Mercredi.

August 23rd, 1995 1215 hrs: Insp. Guy advised that there will be training nine of our people at Chilliwack starting tomorrow. The training would go on for two to three days. It would be a very intense bare bones training to allow them to operate the bison transporters. He further advised me Media Relations will collect all the newspaper clippings.

August 27th, 1995 1124 hrs: The CO continued to discuss the APC and the numbers of people involved. We believe that most of the people will comply when we move in. The peace consultation process would be exhausted when Mercredi says he cannot do any more. The Attorney General requests an overview time line of the events at the site since last June. Insp. Guy will prepare this for him. The main issue is can Mercredi talk them out, if not, he should leave and we will get on with our operational plan.

August 27th, 1995 1200 hrs: The CO briefed D/Commr. Beaulac on the current status at Gustafsen Lake. The military vehicles are under the command of the CO as of 2000 hrs (8:00pm) the night before. This was given by Major General Addy. Peter Montague has to tighten up on what he says to the media, the only mandate that Mercredi has is to talk the natives out and surrender to us unconditionally.

August 27th, 1995 1220 hrs: The CO put on a conference call with Supt. Olfert. We reviewed the meeting with the Attorney General this AM. Everyone is on side. The Attorney General and we would come to an agreement, when we have exhausted all avenues then we would go in.

Olferts states it is very hard to seal the militants in as the vehicle got through today.

August 27th, 1995 1246 hrs: The CO asked me to call Supt. Rick Preston and set him up to help Supt. Olfert.

August 27th, 1995 1250 hrs: Call placed to Insp. Earl Moulton by the CO he wanted to know if there is a problem with the military, the issue is, the military cannot seem to take overt action. CO advised that the troupes and vehicles are under his control and if there is further difficulties to advise him and he would go back to Major General Addy.

August 27th, 1995 1307 hrs: I called A/Commr. Odillon Emond and gave him a brief update on the meetings and the events so far.

August 27th, 1995 1515 hrs: Attorney General called and advised me that BCTV has just reported that three officers had been shot at Gustafsen Lake. He wants confirmation. I advised him that I did not have my TV on, and that I would get confirmation from my office.

August 27th, 1995 1520 hrs: Called Insp. Guy he advised that Emergency Health Services in Kamloops have reported that two members were shot and that they were wearing bullet proof vests.

August 27th, 1995 1525 hrs: I called the Attorney General advised him of what Insp. Guy had informed me and at this time it was unknown what the condition of the members was.

August 27th, 1995 1530 hrs: The CO advised of the info received from Insp. Guy. The CO will advise headquarters Ottawa of the sketchy information.

August 27th, 1995 1535 hrs: S/Sgt. Ken Porter had called in to Insp. Guy and advised that two ERT teams were standing by while the Ministry of Forestry were clearing trees off the road. They were shot hitting the vest on their way out to 100 Mile House. The PC was left at the scene. Forestry people have also vacated the

scene. There were rapid fire shots at the police vehicle and they were hit in the back of the bullet proof vest. All road blocks have been pulled out except the main one, on the road to 100 Mile House. There is one check point 15 kilometres from the site, all the rest have been abandoned. Mercredi is telling the press that this will be a day of rest. Wescam has picked up the members at this end. The shooting occurred while the members were on their way towards the logs were on the road on the stand-by location. It was an ambush, the members are alive and OK. They are being checked out at 100 Mile House Hospital.

August 27th, 1995 1554 hrs: The CO advised of the above.

August 27th, 1995 1640 hrs: Arrived at the Office on re-call to deal with this crisis situation.

August 27th, 1995 1650 hrs: In the CO's Office with Chief/Supt. M. Johnston, Insp. D. Guy and myself. The CO wants to set up on a 24 hour basis our DEOCC, asked that it be activated. We will use it as our central communications point. Have Kamloops set up a similar facility to ensure we got smooth communication. All NOC inquiries would be directed to DEOCC.

August 27th, 1995 1703 hrs: Insp. Earl Moulton called on conference call with us. He advised that two ERT vehicles and one PSD vehicle were in with the Forestry crew who were clearing the logs off the road that were cut earlier by the natives. Members were acting as cover. They saw a white dog in the bush which they recognized as being seen in the native camp and ran back to their vehicles. This location was about 6 kilometres from the encampment. We received fire, possibly semi-automatic, from the campsite of the road. The rear vehicle of the ERT group returned the fire, there were more semi-automatic fire and bullets when through the back of the suburban and lodged in the dash. It was recovered and it appears to be

7.62 millimetre full metal jacket. Which is a concern with the APBs as it, according to Earl Moulton's information, it would go right through them. Moulton feels it is no longer a police process, and we must do something to stop this type of ammo. He is not of the opinion we can use stealth to get into the encampment, that it is now too dangerous. They have night vision scopes and in his estimates there is still 25 to 30 people in the camp. Right now there are 12 ERT people out on the roads. Vancouver team will relieve them in a short while. The CO feels we should look at mobilizing all our ERT members. We have tentative identification of approximately 15 persons in the camp, some are from Chase, several are Mohawks, estimate of 7 or 8 of them, some are local people who are hanging on at the camp for whatever purpose. Earl Moulton has been talking to the Force psychologist, Mike Webster, about these people. Webster has worked with the FBI on their major cases such as the shootings at Waco Texas.

CO feels we should move the APCs into position. The CO wants traditional roadblocks set-up to control the access. The CO advised Earl to get his people to a safe position and Earl is assessing a safe retrieval of the abandoned PC. We need the second Wescam from Ottawa to assist with observation. A mobile command centre will be established near 100 Mile House. Camp participants are concentrated in the camp and there are a few scattered throughout the bushes which is hard to pin them down. Earl Moulton will attempt to seal off as much of the camp as possible. His contact number

August 27th, 1995 1728 hrs: Commissioner Murray called the CO: He is checking on the members who have been shot at. They have been checked at 100 Mile House Hospital and they are OK. The CO gave an overview of the current situation. Members came under full automatic fire as evidence of them full metal jacket ammo. The Commissioner will get the second Wescam on its way out here.

August 30th, 1995 1920 hrs: Called S/Sgt. Wayne Jeffreys. He advised that Stuart and Frances Dick are in 100 Mile House detachment. He does not have any further information and will check with Kamloops.

August 30th, 1995 1923 hrs: Called C/Supt. Johnston. He has briefed Stephen Owen on the two people who walked out.

August 30th, 1995 1930 hrs: Call received from GSGT. Gary Bass. Tasked him for any information on the vehicle that was abandoned going into the camp. The vehicle was searched for weapons. All new animal carcasses. One was arrested on a roadblock. [REDACTED] at the scene.

August 31st, 1995 0730hrs: C/Supt. Johnston advised that Bruce Clark is losing patience with us and has walked out to the roadblock and demanded access to the camp. Members at 100 Mile House feel he is suffering from sleep deprivation and they will try and talk him into taking it easy and get some rest and then discuss his visit to the camp.

August 31st, 1995 0830hrs: C/Supt. Johnston advises Bruce Clark has stated he is going back to Ottawa. Supt. Len Olfert will be talking to the elders today.

August 31st, 1995 0840hrs: The CO advised that he spoke to Major General Addie who told him the Chilliwack Times is going to run an article about the APC's we have staged at Kamloops. Major General Addie has instructed the Acting Base Commander at Chilliwack to approach the editor of the Times and have him kill the story as it would put lives in jeopardy. The CO wants this logged in DEOC. The Supt. contacted as well as Supt. Olfert was advised.

September 1st, 1995 0900hrs: Meeting in the CO's office where we discussed resourcing of ERT at Gustafsen Lake. Prince George is using municipal members on ERT which depletes the municipal complement. CO requests that a discussion be had with C/Supt. Don Belke about the bill-out provincial costs on this for transfer to the municipality. CO feels that it would be appropriate for Murray Johnston and I to visit the members next week to see how they are doing. The CO also feels that Bruce Clark double crossed us and we should have nothing further to do with him.

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September 1st, 1995 0949hrs: Supt. Len Olfert called while our meeting was in progress. Clark has done damage in Olfert's view. He has asked negotiators to come up with a plan. He is working on a profile of Wolverine (Ignace). The family had contact with Rosette and he had a definite emotional impact on him. Olfert will not let Clark back into the camp again. The biggest he is having is command structure and he hopes to resolve it soon, between HQ, Kamloops and 100 Mile House. He wants to move in a bigger mobile command post. He will look at Burnaby mobile command post for that purpose. Olfert is looking at their planning and the media strategy. Have to give us a better profile on this, Clark took a tobacco gift into the camp yesterday when he went in to visit the occupants. He is considering getting the Adams Lake band as that is where Wolverine is from. There may be about six occupants in the camp who handle the guns. There is no indication there are any hostages in the camp at this time. It appears that Ovide Mercredi is gone from 100 Mile House. Olfert has heard that there are military people in 100 Mile House who are looking at taking over this incident. We may eventually use the APC's for patrols but this would aggravate the situation and be very controversial across the country. We cannot rush in, we have to continue to negotiate and go slowly. We have to pressure the Shuswap elders to work at resolving this.

September 1st, 1995 1135hrs: D/Commr. Bolac called. He had talked to the CO and was updated by him. He advised he had received a call from D/Commr. Jerry Boose

(by Judge's Order)
Brown's Notes-

Jan 15/97

September 13, 1995 1510hrs: Called Stephen Owen and advised him of one more native walking out and the elder doing the CBC broadcast.

September 13, 1995 1522hrs: CO's office for a meeting with Murray and I. Supt. Olfert feels current situation is beyond a police role and JTF2 should be called in. Members are getting very tired and discouraged. ERT is not trained for this type of operation. They can hold this position but can't last for too long. The CO states that if we can get a Chief of our choice and guarantee them safety, the natives in the camp will come out. There is a lot of stress and fatigue working on our people. The CO directed that we pull some of our ERT back from some of the points to give our people relief. Put them into a holding pattern for a while. We have to review our strategy. If we need more teams to replace the tired members, we may have to borrow. Supt. Bill Sweeney from "G" and Supt. Cal Legasik, "F" Division. Make sure Montague does not make any mention of a pull back in his press releases. Contact "D" Division and alert them. The CO feels we should call all the Divisions, through Frank Palmer and have him alert the other Division ERT teams. Ask for Legasik to replace one of our officers. Also, get Sweeney from "G". Talk to military about getting a representative from JTF2.

September 13, 1995 1640hrs: CO called Supt. Olfert and asked for an update. The Chief has gone on CBC Radio and broadcast a message that the camp people could come out safely. The natives then held a press conference at 1530hrs that was very positive. The sundancer who is assisting has gone in with 3 vans to talk to the renegades in the camp. Discussed the resourcing issue at 100 Mile House. The CO directed Olfert to withdraw the teams to a safe position. Olfert states they are out to a position that ERT can control. Olfert doesn't want to pull out too far as it will open their supply lines. "F" Division ERT team is in 100 Mile House and is being briefed. Supt. Hall advised the surveillance plane indicates all the camp occupants are gathered in the area of the vans. Some are running around and may be disposing

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Jan 20/97

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KAMLOOPS SUB/DIVISION OPERATIONAL PLAN

GUSTAFSON LAKE

FILE: 95KL-334 - KAMLOOPS SUB/DIVISION

FILE: 95-528 100 MILE HOUSE DETACHMENT

SECURE FAX/KAM

95/81

PAGE 1 OF 20

Prepared By:
S/Sgt. K. PORTER
WEST SECTION NCO
KAMLOOPS SUB/DIVISION

CST. R. WILBY
KAMLOOPS SUB/DIVISION
ERT LEADER

Under the Direction of:
Supt. Len OLFERT
O/C KAMLOOPS
SUB/DIVISION

Len Olfert
95 of 202

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OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

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DELEGATION OF AUTHORITY:

Kamloops Sub/Division having geographical responsibility for policing the GUSTAFSON LAKE/100 MILE HOUSE area becomes the organizational entity to provide police services to deal with this situation.

All police operations will come under the direction of the Officer Commanding Kamloops Sub/Division Supt. L. OLFERT who will participate in the execution of this plan. His delegation of responsibilities is as follows:

Ops. Commander	S/Sgt. Ken PORTER
Site Commander	S/Sgt. Brian TURNER
ERT Operations	Sgt. Vern BRAVENER

The NCO i/c 100 Mile House Detachment remains responsible for the delivery of police services within the Detachment area and as such is responsible for the investigation of criminal offences pursuant to this situation.

SITUATION:

There is a small group of natives occupying approximately one quarter square mile of private land situated roughly 45 minutes by gravel road southwest of One Hundred Mile House B.C. The property District Lot 114 Lillooet Land District is clearly private land deeded to the James Cattle Company owned and operated by Lyle JAMES and his family. There has been disruption to the operation of the ranch in that the natives have erected fences around the site, prohibited access by ranch staff and have disrupted the free movement of some of the ranch cattle in the

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OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

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area. The site is not on or near any main roads to or from anywhere. Fishermen and campers who use the area for recreational purposes with JAMES' tacit concurrence have not been denied access to the Lake. According to the group occupying the site, and the small group of vocal supporters across the country, the area does not belong to JAMES and forms part of "Sacred Aboriginal Ground".

At present the group is believed to consist of ~~six to twenty~~ men, women and children who remained behind after the actual Sundance Ceremony which was held from early to mid July, plus an additional group of 10-20 supporters including some non-natives who arrived within the last few days for an estimated total of 30-40. There is some question as to the exact number present as some of them disappear into the woods when members attend the site and others are coming and going continuously. The group remaining are adamant they will "Hold the Sacred Land". The main players include Percy ROSETTE of Alkali Lake, the organizer and long term "squatter" John DOXTATOR (alias: Splitting the Sky) who has acted as spokesperson and security officer, and an unidentified militant native known only as "Raven". DOXTATOR is believed to be John HILL FBI #259784H a ~~MOHAWK from Akwesasne New York~~ travelling across Canada recruiting and encouraging the reactivation and expansion of the American Indian Movement (AIM). He recently completed a ~~25 year jail term for murder in the U.S.~~ All others observed on the site with the exception of a few local natives, remain unidentified as they wear masks and camouflage clothing. Efforts are ongoing to identify more of the group. The group is receiving advice from Bruce CLARK, an Ontario lawyer who represented members of the LIL'WAT PEOPLES MOVEMENT arrested in connection with the ~~MOUNT CURRIE~~ and URE CREEK BLOCKADES a number of years ago. The group has little or no support from natives in the area. The Cariboo Tribal Council which represent the bands upon who's traditional territories the site lies, has publicly denounced the group and their occupation of this site. Likewise, the Traditional Sundance Society claim this group are not bona fide sundancers. Efforts by local detachment members, JAMES and his staff, and local native leaders, to have

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OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

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this group move peaceably, have been unsuccessful. There have been several shooting incidents in the One Hundred Mile House/Williams Lake area over the past few weeks. ~~we have~~ established links between the perpetrators and the camp at Gustafson Lake. Two subjects from the site were arrested August 11th 1995 by Federal Fisheries Officers fishing illegally in the Fraser River near Williams Lake. They had in their possession an AK-47 assault rifle and a loaded 9MM semi-automatic pistol. The assault rifle was accompanied by three loaded 30 round clips. In addition a number of martial arts weapons and a piano wire garrot were seized. A total of eleven weapons related charges have been laid. Rumours of the presence of these weapons have persisted throughout other actions in this Sub/Division such as the Blockades at Merritt and Adams Lake. ~~As a direct result of the DFO seizure, a decision was made to initiate~~ ~~planning for a search of the Gustafson Lake Site.~~ Preliminary planning included reconnaissance patrols by E.R. Team members in an attempt to determine a threat level. During one of these patrols in the early morning hours of August 18th, ~~our team encountered a young native in battle~~ ~~fatigue.~~ Within seconds of this encounter the native fired at one of our members with the bullet narrowly missing him. The native fled the scene. ~~These events confirm the presence of~~ ~~weapons and indicate there is at least a small group of terrorists on the site that are prepared to~~ ~~use these weapons.~~ On August 19th, CBC Television aired a video of the site in which a spoke person known as "Splitting the Sky" believed to be HILLS, states any attempt by the RCMP to arrest anyone on the site or remove anyone from the site will be interpreted as an act of war. In addition, the video shows armed natives dressed in camouflage clothing some of which are carrying assault weapons. As well, the video features "Splitting the Sky" instructing unidentified natives in commando warfare.

On August 19th we orchestrated a joint media conference featuring speakers from DFO, RCMP, Cariboo Tribal Council and Lyle JAMES himself. The objective of this conference was two fold. Firstly, to warn the public of the presence of this radical group and their weapons and secondly, to set the stage for a direct police response.

PROTECTED "B"

OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

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STRATEGY

Clearly, there are serious Criminal Code weapons offenses ongoing at the site. As well, those on the property are constructively breaching Section 430(1)(c) of the Criminal Code. ~~Criminal Code Search Warrants alleging weapon offenses by the occupants of the site will be executed to search for restricted, prohibited and dangerous weapons.~~ At present, the RCMP does not have the resources to safely enter the area and enforce the law. To facilitate execution of this warrant the site will be secured by Emergency Response Teams utilizing Military armoured personnel carriers. This will be followed by the arrest of all persons on the site including those attempting to leave. The next phase involves implementation of EDU to deal with explosives and booby-traps believed to be on the site. This will be followed by a full search of the site pursuant to the warrant. Once the area has been fully searched and video taped, evidence seized, and prisoners secured, we will maintain site security pending dismantling of the structures and other impediments to lawful use of the land. In response to a request from the Cariboo Tribal Council, Native Chiefs will be invited to first remove any items considered by them to be of significance, prior to turning the property back to Lyle JAMES for total destruction of everything illegally constructed. Follow-up investigation with respect to offenses in connection with this operation will be the responsibility of 100 Mile House Detachment. The exception being the shooting incident involving our Emergency Response Team, August 18th, which will be investigated by Kamloops Sub/Division G.I.S. as an Attempt Murder and any shooting incidents coincidental to the execution of this Plan which will also be investigated by Sub/Division G.I.S.

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OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

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- Video down load from West Cam
- secure phone
- EHS radio *- What is this?*
- Vehicle repeaters deployed as directed by Radio Techs.
- Special "I", Aircraft, EDU and Ident to communicate directly with Command Centre.
- All other police vehicles operate on assigned channel.

EQUIPMENT

- ERT members equipped as per ERT Commander's instruction.
- All other members in full working uniform minus head gear, including vest and gloves. Equipped with disposable handcuffs.
- Photography
 - Ident members equipped to video and still photograph
 - Operation to be taped via West Cam surveillance aircraft
- Exhibit person equipped as required.
- Special "I" and EDU equipped as required.

MEDIA

- ~~Media liaison for this operation will be handled exclusively by Sgt. Peter MONTAGUE as per attached Appendix "B" (forthcoming)~~

PROTECTED "B"

OPERATIONAL PLAN - GUSTAFSON LAKE FILE 95KL-334

14

MILITARY ASSISTANCE

- Four (4) BISON APCs C/W driver and driver supervisor.
- appropriate transportation for BISON to and from field muster point.
- EDU Team
- BISON familiarization training for ERT and PSD members.
- temporary overnight accommodation RMR barracks for approximately thirty (30) ERT/PSD personnel.
- Field mobile kitchen to provide one mid day meal for approximately fifty (50) RCMP personnel at field muster point.

EXPENSES

- All expenses for this project are chargeable to 100 Mile House Rural Detachment Collator E2196. Form 1393 and 1112 must contain the notation "Gustafson Lake" with a copy provided to NCO i/c 100 Mile House Detachment.

BRIEFING

- All personnel involved in this operation are to report to Kamloops Sub/Division at 1200 hours August 24th 1995 for briefing. It is requested that where ever possible members travel by unmarked police vehicle to the briefing.

TELEPHONE DIRECTORY

Appendix "C" attached (forthcoming)

The execution of the ~~ground assault by ERT personnel will be precipitated by reconnaissance flights by West Cam equipped Force aircraft to evaluate escalation of the Site as well as~~ to monitor all ground activity during the ground assault. The Command Post for over-all command will be situated at 100 Mile House Detachment and manned by SUPT. OLFERT and personnel. Ops. Commander ERT will be on site in Air 4 to command all ground forces. If date of ground assault is 0700 hr. 95.08.25 (Friday) all ERT personnel and support personnel will be sequestered in the RMR Armoury no later than noon Thursday 95.08.24. This will facilitate briefing and training as well as enhance the security of the Operation.

95 August 24 - 1200 hrs.

- All personnel in RMR Armoury full briefing and training period.

95 August 24 - 2300 hrs.

- Final briefing and updating gear up. Equipment check.

95 August 25 - 0200 hrs.

- Depart RMR Armoury for 100 Mile House staging area via Team Suburbans.
- Staging area is large gravel pit approximately 15 kilometres from site.

95 August 25 - 0600 hrs.

- Arrive 100 Mile House staging area.

95 August 25 - 0630 hrs.

- Board (APC) BISON
- Depart for ground assault jump off point.

95 August 25 - 0700 hrs.

- ~~Initiate ground assault.~~
- West Cam already on scene video taping.
- Air 4 and Ops commander already in the air with FLIR operating.

GROUND ASSAULT PLAN

ERT will be utilizing four (4) Military "BISON" armoured personnel carriers. They will be operated by a military driver who will be assisted by a Military Crew Commander. These Military personnel will be confined to the BISON's for the duration of the operation. ~~The Military personnel will be unarmed and non-combatants.~~

Due to a large area, containment will be difficult and not guaranteed. The dynamic use of APC's will reduce risk and enhance member's safety.

Each of the four (4) BISONs will carry eight (8) ERT personnel, one PSD and handler totalling nine (9) persons. Each BISON will have a POLICE sign on each side and the front. As well each BISON will have a corresponding number on the top of the BISON to assist the Air borne ERT Ops Commander in identification of land units.

The four (4) BISONs and ERT personnel will depart from the staging area and proceed aboard the BISONs down the #1000 Road to the right hand turn into the encampment. From this point the four BISONs will proceed at maximum speed into the encampment. BISON #1 will proceed past the gate (which is on the east side of the encampment) and proceed directly to the already identified sniper position on the rock out cropping approximately 600 yards N/E from the encampment. The BISON will drive directly to the sniper position and five (5) ERT personnel and one (1) PSD and handler will exit the BISON and secure this position which has a commanding view of the open terrain to the S/W which is the encampment. At the same time BISON #2 and #3 will proceed to the encampment. One from the east side and one from the west side. Upon entry to property following statement will be issued from the APC's. "This is the Police, Royal Canadian Mounted Police. We are here to execute a Search Warrant authorized under the Criminal Code of Canada". Separate instructions will be issued regarding the

lowering of weapons and arrest procedures. All personnel will remain in the BISONs until BISON #1 has secured the sniper position. BISON #1 will traverse the high ground south from the sniper position to prevent any offensive fire from the tree line to the east of the encampment. Once the sniper position is secure BISON #2 and #3 will secure the encampment and deal with passive and violent resistance. All prisoners will be secured. All structures will be entered and searched. Once the immediate area is secure then BISON #2 will transport the prisoners to the 1000 Rd and turn them over to the arrest teams. All evidence will be secured for the investigation team. BISON #4 will be left available to respond to any request for assistance from the other BISONs or the ground team.

Once the warrant has been executed and all prisoners and evidence secured then the ERT compliment will standby while the remaining structures are bulldozed by Ranch Owner Lyle JAMES. Upon completion the BISONs and ERT will return to the staging area.

It has been requested that Special "I" eliminate the auto-tel and hand held radio capabilities, to facilitate as much surprise as possible.

With the event of armed natives being observed, they will each be dealt with as expediently as possible. Each encounter will be done by the BISON. If an armed native was to run into the bush thusly posing a physical threat BISON #4 will be tasked with pursuing and arresting same. The confrontation will be done by the PSD carried within each BISON. It is anticipated that with some degree of surprise most of the inhabitants will be encountered and surrounded at the encampment.

Stealth approach is not being considered at this time due to previous encounter and risk of a compromise prior to Warrant execution.

MEMORANDUM

NOTE DE SERVICE

Commissioner, Ottawa
Att: Director Community Contract and
Aboriginal Policing Branch

FROM
DE

OIC Operations
"E" Division

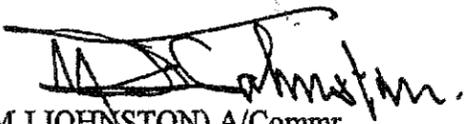
SECURITY - CLASSIFICATION - DE SÉCURITÉ
Protected "A"
OUR FILE - N/RÉFÉRENCE
95E-6812
YOUR FILE - V/RÉFÉRENCE
DATE
1997.02.02

SUBJECT / OBJET: **Gustafsen Lake Operation**
Videotaping By Division Training Section

Reference your E-mail message of 97-01-23 asking for an explanation of the videotaping of the Gustafsen Lake criminal operation.

Please find attached correspondence from Insp. EDWARDS dated 97-01-28 explaining the rationale for the taping of the Gustafsen Lake operation. At the time of the taping no one thought about the ramifications relating to disclosure that the video tapes would have, but concentrated on the value to future Operations Commander training. It must be pointed out that in 50 hours of video taping of the highly charged and very stressful Gustafsen Lake investigation, Defense Counsel has only identified three incidents that have become embarrassing to the Force. These incidents are truly unfortunate, but when members work extensive hours under very stressful conditions comments like those made become a fact of life. No one, much less the members involved, likes what has happened as a result of the statements becoming public. However, this incident has become a learning experience and we will have to move forward and ensure that it does not happen again.

If you require any further information, please feel free to contact me.


(M.J. JOHNSTON) A/Commr.
OIC Operations
"E" Division

REVIEWER 12

JUN 23 1997

Royal Canadian Mounted Police / Commanding Officer
Gendarmerie royale du Canada / Commandant divisionnaire

Jan 20/97

✓

EDIV.H.Q. # 3900
via SECUREFAX
1 of 2 pages

6 August 25, 1995

The Honourable Ujjal Dosanjh,
Attorney General,
Province of British Columbia,
Parliament Buildings,
Victoria, British Columbia.
V8V 1X4.

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SECURE FAX VIB

Dear Minister,

This will acknowledge your correspondence dated August 25, 1995.

95/263 PO 1 of 2

I am confirming in writing, the following:

Given the present circumstances, the RCMP cannot fulfill its policing responsibilities in a safe manner and protect the security of the public regarding the activities of the group of individuals at Gustafsen Lake without the requested armoured personnel carriers;

The RCMP are confident this group of individuals is in possession of various weapons and equipment including AK-47s, based upon various sources including video taped evidence of persons inside the compound possessing these weapons;

Upon a direct hit, the AK-47 weapon has the necessary firepower to penetrate a normal personnel carrier at ten meters potentially killing the occupants;

The armoured personnel carriers are not equipped with weapons, will be clearly marked as police vehicles, and will be used to provide safe and protective transport for RCMP investigators;

The RCMP are not requesting military personnel to possess weapons as their functions will be restricted to operation of the four Bisons as transport vehicles, and as members of The Explosive Ordnance Disposal Team who may be required to deal with any unusual military explosives or devices encountered;

The request for food rations for one hundred for one day reflects the length of time RCMP and military personnel may be required given the isolated location and complexity of this operation;

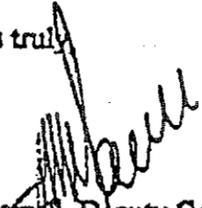
The RCMP will continue to maintain all reasonable efforts to resolve this matter without the use of force and, in conducting this operation, will use the minimum force required to conclude the criminal investigation and apprehension of any suspects.

Canada

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I trust this will assist you in finalizing your decision in this matter.

Yours truly



J.D. Farrell, Deputy Commissioner,
Commanding "E" Division.

95/263

PG 2 OF 2

E DIV. H.Q. # 3900

Via SECUREFAX

8

2 of 2 pages

'E' Division Headquarters,
657 West 37th Avenue,
Vancouver, British Columbia.
V5Z 1K6.

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August 25, 1995

Deputy Commissioner J. D. Farrell
Commanding Officer
"E" Division Headquarters
Royal Canadian Mounted Police
657 West 37th Avenue
Vancouver, British Columbia
V5Z 1K6

Dear Deputy Commissioner Farrell:

I am writing in response to your letter of August 24, 1995, wherein you ask me to request the aid of the Canadian Forces to provide the RCMP with specialized equipment and services with which to carry out your policing duty related to the activities of the individuals at Gustafsen Lake. In considering your request, I wish to confirm the following additional information provided to the Ministry of Attorney General by you and your officials yesterday and today:

Given the present circumstances, the RCMP cannot fulfill its policing responsibilities in a safe manner and protect the security of the public regarding the activities of the group of individuals at Gustafsen Lake without the requested armoured personnel carriers;

The RCMP are confident this group of individuals is in possession of various weapons and equipment including AK-47s, based upon various sources including video taped evidence of persons inside the compound possessing these weapons;

Upon a direct hit, the AK-47 weapon has the necessary firepower to penetrate a normal personnel carrier at ten meters potentially killing the occupants;

The armoured personnel carriers are not equipped with weapons, will be clearly marked as police vehicles, and will be used solely to provide safe and protective transport for RCMP investigators;

The RCMP are not requesting military personnel to possess weapons as their functions will be restricted to operation of the four Bisons as transport vehicles, and as members of The Explosive Ordnance Disposal Team who

may be required to deal with any unusual military explosives or devices encountered;

The request for food rations for one hundred for one day reflects the length of time RCMP and military personnel may be required given the isolated location and complexity of this operation;

The RCMP will continue to maintain all reasonable efforts to resolve this matter without the use of force and, in conducting this operation, will use the minimum force required to conclude the criminal investigation and apprehension of any suspects.

Prior to finalizing my decision in this matter, I am requesting the courtesy of your confirmation in writing that the above noted circumstances are accurate and form part of the basis for the RCMP request as set out in your letter of August 24, 1995.

Thank you for your consideration in this regard.

Yours sincerely,

Stephen Owen

for Ujjal Dosanjh
Attorney General



Province of
British Columbia

OFFICE OF THE
ATTORNEY GENERAL

Ministry of
Attorney General

Attorney General
Victoria
British Columbia
V8V 1X4
Telephone: (604) 387-1866

August 25, 1995

The Honourable Herb Gray, P.C., Q.C., M.P.
Solicitor General of Canada
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P8

Dear Sir:

I am writing to request your assistance in obtaining the support of the Department of National Defence to provide the Royal Canadian Mounted Police in British Columbia with the following equipment and services as technical support to a criminal investigation into the activities of individuals at Gustafsen Lake:

1. Four (4) Bison Wheeled Armoured Personnel Carriers, complete with military driver and crew commanders;
2. One (1) Explosive Ordnance Disposal Team;
3. 100 allotments of 1 day food rations.

For the reasons set out in the attached correspondence, the RCMP are of the view that the equipment and services are required in order to safely conduct this criminal investigation which will remain under the direction of the RCMP.

- 2 -

Thank you for your consideration of this request on an expedited basis.

Yours sincerely,

Ujjal Dosanjh
Attorney General

Attachments:

1. Letter of August 24, 1995 from Deputy Commissioner Farrell to Attorney General Dosanjh
2. Letter of August 25, 1995 from Attorney General Dosanjh to Deputy Commissioner Farrell
3. Letter of August 25, 1995 from Deputy Commissioner Farrell to Attorney General Dosanjh.

Solicitor General
of CanadaSoliciteur général
du Canada

Ottawa, Canada K1A 0P3

AUG 27 1995

The Honourable Ujjal Dosanjh
Attorney General
Province of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Dosanjh:

Thank you for your letter of August 25, 1995, requesting my assistance in obtaining the support of the Department of National Defence (DND) to provide the Royal Canadian Mounted Police (RCMP) in British Columbia with the equipment and services, described in your correspondence, as technical support to a criminal investigation into the activities of persons at Gustafsen Lake.

I have discussed the matter with the Minister of National Defence, the Hon. David Collenette, who has advised that DND will provide the resources that you have requested.

Yours sincerely,

The Hon. Herb Gray, M.P.

1



Royal Canadian Mounted Police
Commanding Officer
Gendarmerie royale du Canada
Commandant divisionnaire

Jan 20/97

Protected "B"

95E-6812

September 12, 1995

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The Honourable Ujjal Dosanjh
Attorney General
Province of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

PROTECTED B

Dear Mr. Dosanjh:

GUSTAFSEN LAKE

This correspondence is supplementary to that provided you on August 24, 1995.

The situation at Gustafsen Lake is critical and has deteriorated to the point where further military resources are required for the purposes of providing safety and protection for our police personnel, who are carrying out their duties in accordance with our original Operational Plan.

On our behalf, it is necessary that you requisition the following additional equipment and services from the Canadian Forces:

Five (5) Bison Wheeled Armored Personnel Carriers, complete with Military driver and crew commanders.

It must be reiterated that these resources are in addition to the items that the Canadian Forces are currently supplying. We ask that they continue to supply items they are making available to us now.

Canada

95-277 | 4 5
* PG OF

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06/25/96 13:42 804 387 0090

AG CRIM JUSTICE

010

09/14/95 THU 16:06 FAX 804 387 411
SEP 12 '95 01:30PM "E" DIV OCC

AG'S OFFICE

DEPUTY AG

007

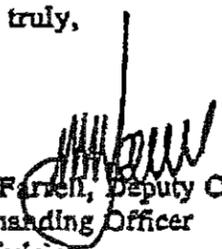
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- 2 -

Protected "B"

Your urgent attention and consideration is required. Once approved, would you kindly provide me with written confirmation at your earliest convenience.

Yours truly,


J. D. Farrell, Deputy Commissioner
Commanding Officer
"E" Division

657 West 37th Avenue
Vancouver, B.C. V5Z 1K6

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PROTECTED B

SECURE / FAX VIC

PROTECTED

September 12, 1995

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SECURE/FAIR

The Honourable Herbert Gray, P.C., Q.C., M.P.
Solicitor General of Canada
340 Laurier Avenue
Ottawa, Ontario
K1A 0P6

95/270
#1/270

Dear Minister:

Following consultation with the Commanding Officer of "E" Division regarding requirements for ending the unlawful activities at Gustafson Lake, I hereby request the following additional resources from the Canadian Armed Forces, to be assigned immediately to the Provincial Police Service:

- Five Canadian Forces armoured personnel carriers with military drivers and commander.

It is my understanding that the Commanding Officer of "E" Division has consulted with the Commissioner of the RCMP in Ottawa regarding the need for and availability of these resources. I request your cooperation in expediting the federal approval process and deployment of the resources.

Yours sincerely,



Ujjal Dosanjh
Attorney General

cc: Commissioner P. Murray
Deputy Commissioner J.D. Farrell

Province of
British Columbia

Attorney General

Parliament Buildings
Victoria, British Columbia
V8V 1X4

①

②

Solicitor General
of Canada



Solliciteur général
du Canada

RECEIVED
GRAY
SEP 23 1995
10-2-90/1743-2-R-CL
MINISTRY OF ATTORNEY GENERAL
DEPUTY MINISTER

SEP 15 1995

RECEIVED
ATTORNEY GENERAL
SOLICIT
SEP 20 1995
Ujjal

The Honourable Ujjal Dosanjh
Attorney General
Province of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Dosanjh:

I am writing with reference to your letter of September 12, 1995 requesting my assistance in obtaining the support of the Department of National Defence to provide the Royal Canadian Mounted Police in British Columbia with five Canadian Forces armoured personnel carriers with military drivers and commander as technical support to a criminal investigation at Gustafsen Lake.

The Minister of National Defence, the Honourable David Collenette, has advised me that he will provide the technical support that you have requested.

Yours sincerely,

Herb Gray
THE HON. HERB GRAY, M.P.

W1

*Main
helicopter
insertion*

40

**E.R.T. OPERATIONAL PLAN
1000 ROAD SOUTH OF ENCAMPMENT**

RESOURCES REQUIRED:

- HQ ERT ENTIRE TEAM (11 MEMBERS)
- TWO PDS MEMBERS
- ONE SPECIAL "I" MEMBER
- AIR SERVICES HELICOPTERS (AIR 1 AND AIR 4)

OBJECTIVE: Insert ERT and support personnel by helicopter to block 1000 Road, located south of the encampment, to ensure this road is impassable by subjects inside the camp.

DETAILS OF PLAN:

On 95-09-01 HQ Emergency Response Team will establish a base at the area of the 1020 checkpoint. From this base Air1 and Air4 will insert all ERT and support personnel to the area of 1039 south of the Gustafson Lake encampment. Once inserted and established ERT will identify the appropriate location to drop several large trees across the 1000 Road. Trees will be dropped with chainsaw.

When the barricade has been established Special "I" member will then set up a perimeter security alarm on the encampment side of the barricade. These alarms can be monitored from the mobile command post and possibly the permanent command post in 100 Mile House. **T/L must record/map placement of any sensor/early-warning devices for information of other teams and assurance of subsequent retrieval. **

Communications and aerial observation support will be provided by WESCAM during the entire operation.

If time allows, ERT will conduct a recce of this area and attempt to establish a basecamp in the area of this barricade for future use.

It is proposed that ERT will hike south from this barricade and be extracted, again by helicopter, from an area that cannot be observed by members of the encampment.

All members will dressed in the appropriate camo clothing. ~~The ERT has full compromise authority while completing this operation.~~

Prepared by:

Recommended:

Approved:

(K.J. MANN) CST.
T/L HQ ERT

K.C. Gates
Sgt. K.C. GATES
"E" Div. ERT Superv.

P.L. Edwards
Insp. P.L. EDWARDS
OIC/ERT 100 Mile Hse
as per [unclear]

Royal Canadian Mounted Police / Gendarmerie royale du Canada
FACSIMILE TRANSMITTAL
ENVOI D'UN FAC-SIMILÉ

Jan 20/97

Classification / désignation de confidentialité
Protected "B"
 Priority - Priorité: **Urgent** Date: **1995-09-07**
 File No. - No de dossier: **95E-6812**
 Reference No. - No de référence:

NAME / NOM: LFWA	TELEPHONE NO. / NO DE TÉLÉPHONE:
ADDRESS / ADRESSE: Major General C. ADDY	
	FAX NO. / NO DE FAX-SIMILÉ:

OM

NAME / NOM: OIC Contract Policing Branch	TELEPHONE NO. / NO DE TÉLÉPHONE:
ADDRESS / ADRESSE: "E" Division	
	FAX NO. / NO DE FAX-SIMILÉ: €

Total number of pages to follow including this one / Nombre total de pages à suivre y compris celle-ci: **5**

COMMENTS / COMMENTAIRES

~~CUSPATSBN LAKE APPENDIX B TO OPERATIONAL PLAN~~

[Amended 95-09-06]

Please ensure that Major General C. Addy is informed immediately on the arrival of this document. It is for his personal attention. The attached appendix to our original operational plan is predicated on the basis that negotiations are ongoing in an effort to peacefully resolve this situation. It is absolutely critical that we gather additional investigative intelligence and that we have the flexibility to use the currently assigned military vehicles for which the Royal Canadian Mounted Police accepts full responsibility. In order to successfully fulfill our mandate, the safe transportation of police resources is of paramount importance. This amendment will allow for a protected and immediate response to situations necessitating an emergent insertion or extraction of police resources should status deteriorate during or after negotiations.

J. D. Farrell
 J. D. Farrell, Deputy Commissioner
 Commanding Officer
 "E" Division

E DIV. H.Q. # **4308**

via SECUREFAX
1 of **5** pages

Operator - Opérateur	Telephone No. - No de téléphone
----------------------	---------------------------------

875 (89-C4) 7530-21-906-1062

Canada

APPENDIX "B" TO OPERATIONAL PLAN

This appendix is submitted as the proposed Long-Term Operational Plan for E.R.T. It is a calculated approach designed to gradually escalate pressure on the armed and barricaded persons presently dug in at Gustafsen Lake. This plan is designed to make the continuing occupation of Gustafsen Lake more difficult by severing supply lines and ensuring supporters do not infiltrate. This plan is a complement to the ongoing negotiating process which is designed to produce a viable surrender option. Both tactical and negotiating strategies must proceed in concert.

The shooting incidents of 95-08-27 and ~~95-09-04~~ of ERT members and the ~~apparent shooting at the Webcam-armed wing aircraft~~, this cannot be confirmed due to the height of the aircraft, dictate that member safety be a paramount planning concern. The extrication of the Victoria and Prince George ERT teams on ~~95-09-05~~ of utilizing the Bison is an example of the type of use this plan contemplates for those resources.

Command Structure

Due to the increase in threat levels and complexity, the command structure now in place differs from that contained in Appendix "A" which was on 95-08-25.

Overall Incident Commander - Supt. Len OLFERT
ERT Operations Commander - Supt. Ric HALL
Assistant Operations Commanders - Insp. Roger KEMBEL'
- Insp. Earl MOULTON
- Insp. Perry EDWARDS

ERT Personnel

Sgt. Ken GATES - Operational planning and support
Sgt. Vern BRAVENER - " " " "

Kamloops S/Div. ERT
Kelowna S/Div ERT
Vancouver HQ ERT
Chilliwack S/Div ERT
Prince George S/Div ERT
Victoria S/Div ERT
Courtenay S/Div ERT
Surrey Det. ERT
Nelson S/Div ERT
North Vancouver ERT
Prince Rupert S/Div ERT

E DIV. H.Q. # 4308
via SECUREFAX
2 of 5 pages

Efforts are continuing to secure the services of Coquitlam Det. and Burnaby Det. ERTs.

Each of the foregoing actions are non-intrusive and are designed to avoid face-to-face confrontation as [REDACTED]. Each of those actions have also been discussed with [REDACTED] Mike WEBSTER, the consulting psychologist being used by the negotiation team, who advises that each of the foregoing will be beneficial to the negotiations as means of reinforcing the existence of an effective perimeter.

Following the above actions, a number of further, pro-active measures are available as tactical operations. The decision to take any or all of these actions will be contingent upon the RCMP management group assessing the viability of negotiation strategies and the impact on existing, and probable, related activities across Canada. Such actions are expected to include:

- Stealth insertion of ERT personnel with the object of neutralizing the encampment's ability to [REDACTED] supply by horseback.

- Neutralizing the encampment's [REDACTED] canine early warning capabilities.

- Establishing [REDACTED] forward trip wire and distraction devices to increase the security of checkpoint personnel.

- Stealth insertion of ERT personnel to the ROSETTE leasehold property south of Gustafsen Lake to take out the encampment's ability to utilize that property as a source of building material. This initiative may include the use of minimal force to secure the arrest and detention of two to three of the primary radical elements of the encampment.

*Red
Truck*

Each of these latter options will require the deployment of the APC's and/or the Huey's strictly as tools for the delivery of ERT personnel to extricate ERT personnel who might become compromised by the actions of the encampment.

The execution of all the foregoing initiatives is absolutely constrained by the availability of APC's for insertion and extraction. Should there arise a concern for the safety of any military personnel that might be involved in such deployment, please be advised that we have on-site RCMP personnel who are trained and capable of being fully operational in the APC's. We also have available helicopter RCMP pilots to fly the Huey's. We are therefore requesting that authority be given for RCMP personnel to operate these resources. This request is NOT to be considered a lack of support for the personnel currently deployed with the APC's. Their actions during the operation of 95-09-05 were exemplary.

It is impossible to overemphasize the necessity for such support. On two occasions, the ERT suburbanians have been compromised by hostile gunfire. On both occasions, the absence of loss of life has been solely serendipitous.

EDIV.H.Q.# 4308
via SECUREFAX

3 of 5 pages

PSD Personnel

S/Sgt. Tom HOWARTH - Co-ordinator

19 P.S.D.'s have been identified to be deployed to this incident.

Additional Support Functions

Special "I" - Kamloops and Kelowna S/Div. and "E" Division

E.D.U. - Two "E" Division personnel

Wescam - Two dedicated fixed wing aircraft with onboard high-resolution video taping and live feed capability.

Helicopters - Air 2 (Courtenay) and Air 4 (Kamloops) currently deployed with Forward Looking Infra Red (FLIR). Air 1, also with FLIR, will also be deployed once its maintenance is complete. Research is being conducted to secure a Bell 212 for personnel transport, insertion and extraction. If successful the helicopter will be flown by RCMP pilots trained in the Bell 212.

LONG TERM OPERATION PLAN

95-09-06 - Maintenance of status quo being holding checkpoints at points 1120 and 1029.

95-09-07 - Maintenance of 1120 and 1029. Reconnaissance of 1137 and 1140 checkpoints in preparation for re-establishing those checkpoints. Reconnaissance to be by two APC's with two teams of 8 ERT and one PSD.

95-09-08 - Maintenance of 1120 and 1029. Re-establish 1137 and 1140 by inserting ERT members by means of APC's. Ongoing staffing of these points must be by means of APC's for member safety. Transport via ERT Suburban has proved dangerous and only good fortune has thus far avoided lethal consequences.

95-09-09 - Maintenance of 1120 and 1029. Maintenance of 1137 and 1140 by APC support. Insertion of ERT team to point on south side of Gustafsen Lake by stealth approach to install technical devices. Two APC's required to standby for the execution of an immediate action plan should the insertion team be compromised. Operational Plan exercised 95-09-05 for the extrication of Victoria and Prince George ERTs will be in place for that operation.

95-09-10 - Maintenance and staffing of 1120, 1029, 1137 and 1140. Reconnaissance of point known as "Hanging Tree" at approx. 1041 with follow-up insertion of personnel to man a checkpoint to secure the southern access to Gustafsen Lake.

EDIV.H.Q.# 4308

via SECUREFAX

4 of 5 pages

RCMP GRCIDENT CONTINUATION REPORT
MUST BE PRECEDED BY INITIAL REPORTSUITE DU RAPPORT DE L'IDENTITÉ
DOIT ÊTRE PRÉCÉDÉ D'UN RAPPORT INITIAL

Page no./n°

TO À	Det./Unit Dét./Service 100 MILE HOUSE DETACHMENT	Investigator Enquêteur CST. TASSELL	Occ. No. N° d'inc. 95E/6812
FROM DE	Ident. Sect. Sect. de l'identité KAMLOOPS FORENSIC IDENTIFICATION SECTION	Ident. Specialist Spécialiste en Identification CPL. K.R. CARROTHERS	Ident. Occ. No. N° d'inc. de l'Id. 95/ 21314
Nature of Event Genre d'Incident			

GUSTAFSEN LAKE BLOCKADE - NR. 100 MILE HOUSE, B.C.

SPECIFICS OF SCENE, ADDRESS, POE, etc.		DÉTAILS RELATIFS AUX LIEUX, ADRESSE, LIEU D'ENTRÉE, etc.	
Y-A	M D-J	Time Heures	ACTION TAKEN MESURES PRISES
95.09.08		10:52	<p>GUSTAFSON LAKE PROJECT APPENDIX "B" EXAMINATION OF VICTORIA ERT SUBURBAN PHOTO SECTION 5</p> <p>WHILE AT THIS CHECKPOINT AWAITING POSSIBLE SURRENDER OF PRISONERS, CPL. McLARNON AND MYSELF WERE REQUESTED TO EXAMINE A VEHICLE ATTACHED TO THE VICTORIA E.R. TEAM, WHICH SUPPOSEDLY HAD COME UNDER FIRE FROM NATIVES ATTACHED TO THE ENCAMPMENT AT GUSTAFSEN LAKE. THE SUBJECT VEHICLE WAS A GREY CHEV SUBURBAN WITH B.C. LICENCE XGX 814. THE VEHICLE WAS PARKED IN A FIELD NEAR THE MOBILE COMMAND POST, AND THE VICTORIA ERT MEMBERS POINTED OUT DAMAGE TO THE EXTERIOR REAR VIEW MIRROR ON THE PASSENGER SIDE FRONT DOOR.</p> <p>THE MIRROR WAS BASICALLY SQUARE IN SHAPE, AND SUPPORTED ON A SINGLE CURVED METAL ROD, WHICH HELD IT APPROXIMATELY 6 INCHES FROM THE WINDOW. THE VICTORIA ERT MEMBERS FELT THAT THE MIRROR HAD BEEN STRUCK BY A BULLET WHICH HAD THEN DEFLECTED UP AND INTO THE VEHICLE, PIERCING THE HEADLINER OF THE CAB.</p> <p>THE MIRROR, FACING FORWARD, HAD A CREASE IN THE METAL, AND THIS CREASE RAN BASICALLY HORIZONTAL. AT RIGHT ANGLES TO THIS CREASE, PRETTY WELL VERTICALLY, WAS AN INDENTATION IN THE METAL, BUT THERE WAS NO SIGN OF ANY SCRATCHES, ABRASIONS, OR DAMAGE TO THE PAINT. I COULD SEE NO SIGNS OF ANY TRANSFER OF METAL, OR ANY INDICATION OF CONTACT WITH A METALLIC SURFACE.</p> <p>ON THE CURVED ARM OF THE MIRROR SUPPORT, BETWEEN THE 90 DEGREE BEND AND THE POINT WHERE THE MIRROR MOUNT ATTACHED TO THE DOOR, THERE WERE HEAVY SCRATCHES WHICH WENT THROUGH THE PAINT TO BARE METAL. THESE SCRATCHES APPEARED TO BE PARALLEL TO THE ARM OF THE MIRROR. ON THE METAL EDGE OF THE VERTICAL WINDOW SUPPORT, THERE WERE ALSO HEAVY SCRATCHES ON THE TRAILING EDGE OF THE SUPPORT. THESE GAVE THE APPEARANCE OF BEING CAUSED BY CONTACT WITH A METALLIC OBJECT, AS DID THE SCRAPES ON THE MIRROR SUPPORT ARM.</p> <p>THE HOLE IN THE HEADLINER OF THE VEHICLE WAS ELLIPTICAL IN SHAPE, LONGER THAN IT WAS WIDE, AND RAN FROM FRONT TO BACK. THE HOLE WAS APPROX. 1 CM IN LENGTH, AND WAS DARK, AS THOUGH SOMETHING HAD DISCOLORED THE FABRIC. THE HOLE WAS LOCATED .80 M. BACK FROM THE FRONT EDGE OF THE HEADLINER, AND .41 M. FROM THE PASSENGER SIDE EDGE OF THE HEADLINER. THIS PLACED IT ABOVE AND JUST BEHIND THE PASSENGER SIDE FRONT SEAT. NO SIGN OF ANY FOREIGN OBJECT WAS FOUND IN THE HOLE OF THE HEADLINER.</p> <p>OPINION: IT IS MY OPINION THAT NEITHER THE DAMAGE TO THE MIRROR, AND THE HOLE IN THE HEADLINER IS CONSISTENT WITH BEING STRUCK BY A BULLET OR ANY SIMILAR OBJECT. THE CREASE ON THE MIRROR WAS BASICALLY IN THE PHYSICAL CENTRE OF THE MIRROR BACK, AND WAS VERTICAL, AT LEAST 6 INCHES FROM THE DAMAGE ON THE SUPPORT ARM AND WINDOW FRAME EDGE. THE SCRATCHES WERE MULTIPLE IN NUMBER, AND WERE PERPENDICULAR TO THE PATH OF AN OBJECT APPROACHING THE VEHICLE FROM AN ANGLE OF LESS THAN 90 DEGREES TO THE PATH OF THE VEHICLE. ALSO, FOR AN OBJECT TO STRIKE THIS MIRROR SUPPORT AND DEFLECT TO THE POSITION OF THE HOLE IN THE HEADLINER, IT WOULD HAVE HAD TO PASS THROUGH THE NECK/HEAD REGION OF A PERSON SITTING IN THE PASSENGER SEAT.</p> <p>I WOULD SUGGEST THAT THE DAMAGE TO THE MIRROR BACK IS MORE CONSISTENT WITH BEING HIT BY A VERTICAL OBJECT SUCH AS A TREE BRANCH. THE DAMAGE TO THE SUPPORT ARM AND WINDOW FRAME WOULD BE CONSISTENT WITH A METAL OBJECT SUCH AS A RIFLE BARREL RESTING BETWEEN THE ARM AND THE WINDOW FRAME. AS FOR THE HOLE IN THE HEADLINER, IT GAVE ME THE APPEARANCE OF BEING TORN OR RIPPED BY A SHARP OBJECT SUCH AS THE FRONT SIGHT OF A RIFLE.</p> <p>ARRANGEMENTS WERE MADE TO HAVE THE HEADLINER OF THE VEHICLE REMOVED BY SPECIAL "I" SECTION MEMBERS AT THE COMMAND CENTRE ON 95.09.10 AT 08:00.</p> <p>95.09.10 - VEHICLE WAS NOT AVAILABLE FOR HEADLINER EXAM. DUE TO OPERATIONAL REQUIREMENTS IN THE FIELD. TO BE EXAMINED LATER.</p>

Signature (Unit Commander Chef de service) Date	Signature (Investigator Enquêteur) Date	Copies to - Copies à
2666-1 (93-04) (PRO)	Copies To: Master File Copies À: Dossier principal	Investigator Enquêteur Ident. File Dossier de l'Ident.

RCMP GRCIDENT CONTINUATION REPORT
MUST BE PRECEDED BY INITIAL REPORTSUITE DU RAPPORT DE L'IDENTITÉ
DOIT ÊTRE PRÉCÉDÉ D'UN RAPPORT INITIAL

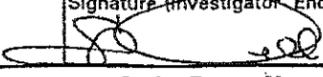
Page no./n°

TO A		Det./Unit Dét./Service 100 MILE HOUSE	Investigator Enquêteur CST. TASSELL	Occ. No. N° d'inc. 95E/6812
FROM DE	Ident. Sect. Sect. de l'identité KAMLOOPS FORENSIC IDENTIFICATION SECTION	Ident. Specialist Spécialiste en identification CPL. S.A. GEHL	Ident. Occ. No. N° d'inc. de l'Id. 95/21314	
Nature of Event Genre d'incident				

GUSTAFSON LAKE BLOCKADE - NR 100 MILE HOUSE, B.C.

SPECIFICS OF SCENE, ADDRESS, POE, etc. DÉTAILS RELATIFS AUX LIEUX, ADRESSE, LIEU D'ENTRÉE, etc.

Y-A	M	D-J	Time Heurs	ACTION TAKEN MESURES PRISES
				APPENDIX 'B' EXAMINATION OF VICTORIA ERT SUBURBAN PHOTO SECTION: 11 VIDEO NO. NIL
95-09-16			1130	CPL. MURRAY SMITH AND CPL. JOSH CROSETIERE OF VANVOUVER SPECIAL 'I' ARRIVE AT CHECKPOINT BRAVO BY HELICOPTER. CPL. SMITH UNLOCKS THE VEHICLE TO BE EXAMINED: VEHICLE: 1993 CHEVROLET SUBURBAN, GREY, B.C.L. XGX814. REGISTERED TO COLWOOD R.C.M.P., VICTORIA ERT TEAM. SMITH POINTED OUT A HOLE IN THE HEADLINER OF THE VEHICLE. THE HOLE WAS MEASURED AND IS 1.5CM X .5CM. IT WAS LOCATED ABOVE THE FRONT PASSENGERS SEAT APPROXIMATELY ABOVE THE LEFT BACK CORNER OF THE SEAT. THE HOLE HAD A 20MM SCALE BESIDE THE HOLE. THIS VEHICLE HAD BEEN EXAMINED PARTIALLY BE CPLS MCLARNON AND CARROTHERS. CPL. SMITH ADVISED HE HAD ALREADY REMOVED AND SEIZED THE RIGHT SIDE OUTSIDE MIRROR. CPL. CLARKE PHOTOGRAPHED THE VEHICLE AND TOOK CLOSE-UP PHOTOGRAPHS OF THE HOLE IN THE HEAD LINER. I THEN TOOK TWO PIECES OF .25" WOODEN DOWELING WHICH HAD BEEN PAINTED ORANGE AND TAPED ONE END OF THE DOWELING TO THE HOLE IN THE HEAD LINER AND PLACE THE OTHER END IN THE AREA WHERE CPL SMITH APPROXIMATED THE DAMAGED MIRROR HAD BEEN. CPL. CLARKE PHOTOGRAPHED THE DOWELING IN THIS LOCATION. CROSETIERE THEN REMOVED A HEAT AND AIR CONDITIONER VENT FROM THE HEADLINER AND THIS ALLOWED A VIEW OF THE HIDDEN SIDE OF THE HEADLINER IN THE AREA THAT THE HOLE WAS LOCATED. IT APPEARED THAT THE HOLE IN THE LINER WAS AT LEASE PARTIALLY THROUGH THE HEAD LINER FAINT TRACES OF FIBRE WERE VISIBLE ON THE TOP SIDE OF THE LINER. THE AREA ABOVE THE HOLE IN THE LINER IS A CHAMBER WHERE THE A/C AND HEATED AIR IS DUCTED. THIS DUCTED AREA WAS EXAMINED AND NO TRACE OF ANY BULLET WAS LOCATED. THERE WAS NO DAMAGE TO THE TOP SIDE OF THIS DUCTED CHAMBER TO INDICATE A BULLET MAY HAVE HIT IT. CROSETIERE THEN REMOVED THE HEAD LINER FROM THE ROOF OF THE VEHICLE AND PULLED IT DOWN SLIGHTLY ON THE PASSENGERS SIDE. I USED A SCALPEL TO CUT THE A/C DUCTING BACK TO A POINT WHERE IT IS DUCTED UP ALONG THE POST BEHIND THE RIGHT REAR DOOR POST. THERE WAS NO BULLET OR FRAGMENTS LOCATED ANYWHERE ALONG THIS DUCT. CPL. SMITH EXAMINED THE SAME AREA. THE HOLE IN THE LINER WAS THEN PROBED BY CPL. CLARKE TO PROVE THAT THE HOLE IN FACT WAS COMPLETELY THROUGH THE LINER.
			1240	THE EXAMINATION WAS CONCLUDED AND NOTES WERE COMPLETED.

Signature (Unit Commander Chef de service) Date	Signature (Investigator Enquêteur) Date	Copies to - Copies à
		

2686-1 (93-04) (PRO)

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SECRET

D.E.O.C. LOG

Date 95 | 9 | 4 Time 21 | 15

D.E.O.C. USE ONLY		
Log No. 1679	Action Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Responsibility Desk: <input checked="" type="checkbox"/> Operations <input checked="" type="checkbox"/> Planning/Intelligence <input type="checkbox"/> Logistics <input type="checkbox"/> Finance <input type="checkbox"/> Other:
to No. 95E6812		Priority: <input checked="" type="checkbox"/> Urgent <input type="checkbox"/> Routine <input type="checkbox"/> Low
Ref. 474		Status: Still Under Investigation <input checked="" type="checkbox"/> Concluded Here <input type="checkbox"/>

SOURCE INFORMATION

Agency/Detachment: 100 Mile Command

Contact Person: Jason Edwards Phone: 604 | 395 | 1125

EVENT INFORMATION

Location of Event: 2-4 KM NW of Gustafsen Lake

Nature of Event: Ambush of ERT Team

Why deleted?

140 advised (map Guy of circumstances he will advise A1 Comm. Brown + Capt. Johnston.

55 10C notified by Fax

ENTERED

Date of Action: 95 | 9 | 4 Time of Action: 2100-2200 Signature: [Signature]