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November 12, 2008

## **Ontario's duty to ensure rights are upheld in police response to Indigenous protests**

Open letter to the Honourable Rick Bartolucci, Minister of Community Safety and Correctional Services

Dear Minister:

Amnesty International Canada is reiterating its call for the Province of Ontario to immediately:

- Publicly affirm its support for the Ontario Provincial Police (OPP) *Framework for Police Preparedness for Aboriginal Critical Incidents* and commit to ensuring that officers are held accountable for any breaches of this *Framework*.
- Work with Indigenous peoples' organizations to establish a timetable and process for an independent evaluation of the OPP *Framework* and appropriate codification of the *Framework* in provincial laws and policies.

In light of very serious concerns that have been raised over the OPP response to land rights protests at the Tyendinaga Mohawk Territory on June 28-29, 2007 and April 21-28, 2008, Amnesty International is also urging the Province of Ontario to establish an independent, impartial probe into OPP actions on those dates and to make the findings of such an investigation public.

During the Ipperwash Inquiry, the Ontario Provincial Police described its *Framework for Police Preparedness for Aboriginal Critical Incidents* ("Framework") as the "centrepiece" of its commitment to respect the underlying rights at issue in Indigenous land protests and to minimize the potential for escalation and violence. However, three months after the *Framework* was strongly endorsed in the report of the Ipperwash Inquiry, OPP Commissioner Julian Fantino said during cross-examination in a provincial court that the *Framework* is "not a firm and fixed mandated way of doing business."

Commissioner Fantino was being questioned about the large number of police deployed and the aggressive tactics used in response to a June 28-29, 2007 protest by activists from the Tyendinaga Mohawk Territory. The Commissioner's response raises serious questions about the amount of discretion being exercised by the OPP with respect to the *Framework* and whether

the OPP is being appropriately held to account for full and consistent implementation of the *Framework*.

Over the last 20 months, protestors from the Tyendinaga Mohawk Territory have engaged in a series of actions intended either to directly protect their interests in the Culbertson Land Tract or to attract public attention and put pressure on the federal government to resolve this long-standing land claim. Some of these actions have involved rail and road closures. This has resulted in public inconvenience and created a complex policing challenge. At the same time, there is no indication that these protests presented any threat to public safety. Although a spokesperson at one protest publicly alluded to the possibility that the protestors had access to weapons, Amnesty International is not aware of any evidence to suggest that this was in fact the case. As such, it appears to us that these protests give rise to precisely the kind of situation the *OPP Framework for Police Preparedness for Aboriginal Critical Incidents* was intended to address, and with which the Ipperwash Inquiry dealt exhaustively.

The Ontario *Police Services Act* states that: "Police services shall be provided throughout Ontario in accordance with...the importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*." Among the rights protected in law in Canada are rights to peaceful assembly and protest and the specific Treaty and Aboriginal Rights of Indigenous peoples. The *OPP Framework* is a critical tool for ensuring that officers respond to Indigenous land protests in a manner consistent with and supportive of these rights.

As we said in a letter to you in August 2008, Amnesty International believes that any policing policy intended to uphold and protect human rights must be treated with extreme seriousness and consistency. Where such a policy is breached, it is important to determine why it was breached and whether the breach was in fact warranted and acceptable.

In this light, we are deeply troubled that your government has not demonstrated real and serious concern over Commissioner Fantino's remarks about adherence to the *Framework*.

According to testimony in the case of *Regina v. Shawn Brant*, OPP actions during Tyendinaga Mohawk protests on June 28 and 29, 2007 included placing a sniper unit on stand-by and preparations to deploy overwhelming force against the protestors, even as a negotiated end to the protest was proceeding. Concerns were also raised in court over the fact that Commissioner Fantino interfered with the work of trained OPP negotiators by contacting protestor Shawn Brant directly and that during his conversations with Mr. Brant he made aggressive and inappropriate comments including a threat that "your whole world's going to come crashing down" and that Mr. Brant would suffer "grave consequences" if he did not order an end to the blockade.

Although the June 28-29<sup>th</sup> protest ended peacefully, it was followed by other incidents from April 21-28, 2008 during which there was again a massive deployment of OPP officers and equipment, including the Public Order Unit and the Tactics and Rescue Unit. In interviews with members of the Tyendinaga Mohawk community, including protestors and bystanders, Amnesty International has heard consistent and credible reports of police actions during the April 21-28 incidents that clearly require investigation, including reports that OPP officers pointed firearms at unarmed protestors and members of their families.

Given the seriousness of these concerns, Amnesty International considers that your government's only public response to date – a statement by Premier McGuinty that he has “full confidence” in Commissioner Fantino and that the Commissioner's response to the Tyendinaga Mohawk protests showed "tremendous discipline" – is utterly inappropriate and inadequate.

In August 2008, Amnesty International wrote to you urging the Government of Ontario to:

- Publicly confirm that it supports the *Ontario Provincial Police Framework for Police Preparedness for Aboriginal Critical Incidents* and will ensure that officers are held to account for its breach.
- Work with Indigenous peoples' organizations to establish a timetable and process for independent evaluation of the OPP *Framework* and appropriate codification of the *Framework* in provincial laws and policies.

We were disappointed by your reply. In your September 12 letter, you inaccurately refer to our concerns as being about remarks “allegedly” made by Commissioner Fantino. In fact, there is no doubt about what the Commissioner stated as his remarks are a matter of public court record. Your letter makes no further comment on the Commissioner's remarks, offers no clarification of the province's position on police accountability for upholding the *Framework*, and does not address the specific recommendations we presented to you.

Your letter states only that: “The Ministry of Community Safety and Correctional Services is undertaking a comprehensive analysis of the recommendations from the Ipperwash report, one of which is an evaluation of the OPP Framework for Police Preparedness for Aboriginal Critical Incidents.”

In the 2007 final report of the Ipperwash Inquiry, Commissioner Justice Linden called for the province to adopt, “**as soon as it is practical to do so,**” a provincial peacekeeping policy based largely on the OPP *Framework*, in order to “codify the lessons learned at Ipperwash and reassure both Aboriginal and non-Aboriginal Ontarians that peacekeeping is the goal of both police and government in this province, that treaty and Aboriginal rights will be respected, that negotiations will be attempted at every reasonable opportunity, and that the use of force must be the last resort.” Such a policy, the report stated,

will compel provincial or police officials who wished to pursue a more aggressive policing response in the future to explain publicly why peacekeeping is inappropriate. It will also be considerably more difficult for a provincial official to demand that protesters leave a site within a limited time period or to downplay the importance of negotiations. Police leaders, incident commanders, and individual officers will also have additional assurance that peacekeeping is the appropriate and justified strategy, irrespective of any real or perceived governmental pressure otherwise.

Commissioner Justice Linden also called for an independent evaluation of the implementation of the *Framework* with “significant and meaningful participation by Aboriginal representatives in the design, oversight and analysis of the evaluation.”

Minister Bartolucci, we are concerned by the fact that 1 ½ years later your Ministry is still at the stage of merely *reviewing* the Inquiry's recommendations and has not yet moved with appropriate urgency to implement measures deemed vital to upholding rights and saving lives. Accordingly, we are reiterating our call for your government to immediately:

- Issue a public confirmation that your government supports the OPP *Framework* and will ensure that officers are held accountable for any breaches of the *Framework*.
- Work with Indigenous peoples' organizations to establish a timetable and process for an independent evaluation of the OPP *Framework* and appropriate codification of the *Framework* in provincial laws and policies.

Concerns over OPP actions in June of 2007 and April of 2008 are extremely serious. Therefore, Amnesty International is also urging you to establish an independent, impartial probe into OPP actions on June 28 and 29, 2007 and April 21-28, 2008 with respect to Mohawk protests and occupations near Tyendinaga and to make the findings of such an investigation public.

Yours sincerely,



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