Court File No.: C66995 and C66998

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CANADIAN BROADCASTING CORPORATION

Applicant
(Appellant in C66998)

- and -

LEE FERRIER, Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD, THE CHIEF OF POLICE OF THE THUNDER BAY POLICE SERVICES, THE INDEPENDENT POLICE REVIEW DIRECTOR, AND THE RESPONDENT OFFICERS

Respondents

- and -

THE FIRST NATION PUBLIC COMPLAINANTS

Respondents
(Appellant in C66995)

- and -

THE ATTORNEY GENERAL FOR ONTARIO

Intervenor

APPEAL FACTUM OF THE RESPONDENT LEE FERRIER, Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD

October 22, 2019

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Part I – Overview

1. The Respondent, retired Justice Lee Ferrier ("Ferrier") takes no position on the reasonableness or correctness of his decision of September 20, 2018 ("the Decision") that the application for an extension of time ("the Extension Application") in which to serve a notice of a disciplinary hearing on the Respondent Officers would be determined *in camera*.

2. Ferrier's participation in this appeal is limited to making submissions on the following matters:

   i. the record before Ferrier;

   ii. the appropriate remedy on judicial review;

   iii. the jurisdiction to order a publication ban should this matter be remitted back to Ferrier with the direction to apply the *Dagenais/Mentuck* test to determine whether the Extension Application should be heard *in camera*;

   iv. whether the appointment of Ferrier pursuant to the *Public Officers Act*[1] ("*POA*"), changes the applicable standard of review from what it would otherwise be had the Decision been rendered by the Thunder Bay Police Services Board ("the Board").

[1] *Public Officers Act*, R.S.O. 1990, c. P.45 [POA]

Part II – Statement of Facts

3. The Board brought a motion for the appointment of a disinterested person or Tribunal under s. 16 of the *POA* to exercise the powers and duties ordinarily imposed on the Board pursuant to s. 83(17) of the *Police Services Act*[2] ("*PSA*"). On July 25, 2018 the Superior Court granted the motion and appointed Ferrier as the statutory decision-maker.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit A

[Appeal Book and Compendium ("ABC"), Vol. 1, Tab 11(A) at p. 90]

4. On July 27, 2018, Ferrier noted to the parties that s. 35(3) of the *PSA* called for public hearings of the Board (with some exception). Ferrier therefore inquired of the parties whether public hearings would be appropriate in this case and noted that if there was no agreement, there was a need for submissions in advance of the Extension Application (which had now been scheduled for September 21, 2018).

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B

[ABC, Vol. 1, Tab 11(B) at pp. 97 and 98]

5. Separately, counsel for the Respondent Thunder Bay Police Service ("the Service"), the Respondent Ontario Independent Police Review Director ("the OIPRD"), and the Respondent Officers advised that they were in agreement that the hearings should be *in camera*. Counsel for the First Nations Public Complainants did not agree.

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[2] *Police Services* Act, R.S.O. 1990, c. P.15 [PSA]

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B [ABC, Vol. 1, Tab 11(B) at pp. 99-107]

6. In a conference call on August 1, 2018 between counsel for all of the parties noted above and Ferrier, a timeline for written submissions on this issue in advance of the September 21, 2018 Extension Application were established.

7. The First Nations Public Complainants filed their written submissions on August 21, 2018. The written submissions of the Service and the Respondent Officers were then each filed on September 10, 2018. (The OIPRD advised that they would not be filing any written submissions.) The Reply submissions of the First Nations Public Complainants were filed on September 14, 2018.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibits B, C, D, E, and F [ABC, Vol. 1, Tab 11(B) at p. 113; Tab 11(C) at p. 141; Tab 11(D) at p. 150; Tab 11(E) at p. 160; and Tab 11(F) at p. 179]

8. On September 16, 2018 at 12:11 p.m., Ferrier emailed counsel for the parties noted above to inquire as to whether s. 35(3) and (4) of the *PSA* were in force when *Forestall* was decided. The parties through their respective counsel all responded to this question.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B [ABC, Vol. 1, Tab 11(B) at pp. 118, 120, 122 and 126]

9. On September 16, 2018 at 2:29 p.m., counsel for the First Nations Public Complainants advised Ferrier that he had been instructed to provide notice to the Canadian Broadcasting Corporation ("CBC") and the Toronto Star of the issue on

whether the Extension Application scheduled for September 21, 2018 should be *in camera*.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B [ABC, Vol. 1, Tab 11(B) at pp. 121]

10. Later that day, CBC advised Ferrier of its interest in being heard on this matter. Ferrier advised CBC that counsel for the parties had delivered written submissions on the issue. Ferrier followed this up with an email on September 17, 2018 advising that he would receive written submissions up until 4:30 p.m. on September 19, 2018. CBC advised of their intention to submit material before the stated deadline. There was no request for an adjournment.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B [ABC, Vol. 1, Tab 11(B) at pp. 128-134]

11. On September 19, 2018 at 3:59 p.m. CBC filed their written submissions with the Respondent. This was done within the deadline provided.

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit B [ABC, Vol. 1, Tab 11(B) at p. 139]

Affidavit of Katarina Germani sworn September 20, 2018 [ABC, Vol. 1, Tab 12, para. 4]

12. After receiving all of the written submissions from the parties and CBC, Ferrier rendered the Decision on September 20, 2018 at 9:07 a.m. Ferrier decided that the Extension Application would be heard *in camera*.

Affidavit of Sajeela Veldhuis sworn November 8, 2018 at para 2 [ABC, Vol. 1, Tab 11, para. 2 at p. 87, Exhibit I at Tab 11(I), p. 227]

Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibits I and B [ABC, Vol. 1, Tab 11(I) at p. 227, and Tab 11(B) at p. 138]

13. The Extension Application was scheduled for September 21, 2018. It did not proceed however as counsel for CBC on September 20, 2018 at 6:36 p.m. sent an email to the Respondent requesting that the matter be adjourned pending CBC's application for a stay. The Respondent agreed to this request on September 20, 2018 at 8:04 p.m.

Affidavit of Susan Dulong sworn September 25, 2018, paras 16 and 17 and Exhibits 8 and 9 [ABC, Vol. 2, Tab 14(8) at p. 303-304 and Tab 14(9) at p. 590]

Part III – Issues Raised by the Appellant

(i) The Appropriate Remedy on Judicial Review

14. The First Nations Public Complainants in para 94 of their factum seek to have this Court quash the Decision and order that the Extension Hearing be open to the public.

15. Such an order is not in line with jurisprudence. Where an administrative body has made an error or breached procedural fairness the presumptive remedy is to remit the matter back for a re-hearing in order to allow the tribunal to apply the

statutory requirements or exercise its discretion in line with the interpretation of the law provided by the court.

> Donald J.M. Brown, The Honourable John M. Evans, *Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Thompson Reuters, 2016) [Brown and Evans] at para.5:2210
>
> *Oakwood Development Ltd. v. St-Francois Xavier*, [1985] 2 SCR 164, 1985 CanLII 50 (SCC) [Oakwood], at para. 19-20

16. In Brown & Evans the authors note at paragraphs 5:22:10:

> Where the error is jurisdictional and is of such a nature that is cannot be corrected, an order remitting the matter to the tribunal would obviously not be appropriate. Where the error is made within jurisdiction, however, or where it involves a breach of procedural fairness, and notwithstanding that once a decision is quashed it is open to the decision-maker to proceed anew, the appropriate remedy will usually be to order that the matter be remitted for redetermination in whole or in part…

17. In *Oakwood,* the Supreme Court of Canada was clear that where the legislature had given discretionary power to an administrative body, a reviewing court should not usurp that role, but should remit the matter to the administrative body with proper instructions. The Court held at paragraphs 19-20:

> It is, of course, not for this Court to address the merits of the appellant's application for subdivision or to substitute its own decision for that of the municipal council. As Cartwright J. pointed out in *Smith & Rhuland Ltd. v. The Queen ex rel. Brice Andrews*, 1953 CanLII 234 (SCC), [1953] 2 S.C.R. 95, at p. 107, the courts recognize that the Legislature has conferred the discretionary power of decision on the administrative body under review and not on the courts. In its review capacity, it is the Court's function merely to ensure that the decision is properly made within the statutory framework and on the basis of considerations relevant to the decision-making function with which the administrative body is charged.

> The appropriate remedy in such a case, therefore, is for the matter to be sent back to the respondent for the Council to hear and determine the appellant's application on proper principles. …

18. Should this Court determine that the Decision of Ferrier (and that of the Divisional Court) ought to be quashed and that the *Dagenais/Mentuck* line of cases does apply, then the appropriate remedy would be to remit the matter back to Ferrier to be determined in accordance with the reasons of this Court.

(ii) Standard of Review under the *Public Officers Act*

19. If this court determines that the reasonableness standard of review is to be applied to the decision of a police services board dealing with an Extension Application, then Ferrier agrees with the submissions of the Respondent Officers at paragraphs 66 a-f and 70 of its factum.

20. In *Roy v. Poitras*[3] the Superintendent of Bankruptcy (the "Superintendent") appointed a retired judge to hear a disciplinary matter. When considering the appropriate standard of review of the disciplinary decisions, the Federal Court noted that the Superintendent had the necessary qualifications to be recognized as an expert with respect to bankruptcy matters and therefore the standard of review should be reasonableness. The Court rejected the position of the applicant on judicial review that the degree of deference owed to the Superintendent should not be provided to the retired judge. The Court determined that the standard of review

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[3] *Roy v. Poitras*, 2000 FC 1386 (CanLII) [Roy]

appropriate for the Superintendent was also appropriate for the retired judge, holding at paragraph 24.

> Before concluding on this first issue, counsel for the trustee argued that delegate Poitras should not receive the same degree of deference as the Superintendent, since he does not have the same expertise as Superintendent Marc Mayrand. The objective of such an argument is to ensure that the standard applied is that of correctness. No affidavit offering any evidence on this point was submitted. It is public knowledge that the chosen delegate was a judge and Chief Justice of the Quebec Superior Court, and in this capacity he has heard numerous and varied proceedings, including Bankruptcy Division cases. In his capacity as delegate, he was called upon to apply the Act, regulations and the directives to the facts submitted in evidence, render a decision, and ultimately decide on a sanction. He has done this for a large part of his life. I do not see how I could apply a standard of review other than those already mentioned above. Considering the circumstances in this case, such an argument must fail.

21. In the present circumstances, the level of deference applicable to the Decision of Ferrier should be the same as the deference owed to the relevant police services board.

PART IV – ADDITIONAL ISSUES RAISED BY THE RESPONDENT

(iii) The Record before Ferrier

22. Paragraph 29 of the factum of the CBC notes that the Decision by Ferrier makes no mention of the fact that CBC had made submissions opposing the *in camera* proceeding. CBC further states at para 36 of its factum that it was speculative and

unreasonable for the Divisional Court to have concluded therefore that Ferrier had considered CBC's submissions.

23. While it is accurate that Ferrier did not specifically refer to having received submissions from CBC, it is uncontradicted that prior to rendering his decision he had received the written submissions from all parties and from the CBC.

24. In any event, CBC does not argue that there was a denial of natural justice or procedural fairness. Accordingly, the facts relating to the amount of notice CBC received prior to providing their submission and the fact that Ferrier did not *specifically* refer to having received CBC's submissions are of no relevance.

25. The written submissions that CBC sent to Ferrier address the following as the single issue being raised:

> " (a) Should the Applicants' request to have the hearing held in camera be granted?
>
> CBC submits that no in camera proceeding should be ordered in this matter unless there is sufficient reason that satisfies the test in *Dagenais/Mentuck*. As no such reason has been provided, the request ought not to be granted."
>
> **Affidavit of Sajeela Veldhuis sworn November 8, 2018, Exhibit G**
>
> **[ABC, Vol. 1, Tab 11(G) at p. 189]**

26. The Decision by Ferrier was that the *Dagenais/Mentuck* line of cases did not have application to the Extension Application. Ferrier characterized the Extension Application as a "Board meeting where specific statutory provisions apply, where

the Board is not a Court, there is not a judicial or quasi-judicial proceeding and the Board is performing an administrative act".

27. It is clear therefore that the Decision did address the very issue raised by CBC.

28. Moreover, an administrative decision-maker is not required to refer to every argument or submission made by the parties. This principle was recognized by the Supreme Court of Canada at para 3 in *Construction Labour Relations v. Driver Iron Inc.*[4]

> "The Board did not have to explicitly address all possible shades of meaning of these provisions. This Court has strongly emphasized that administrative tribunals do not have to consider and comment upon every issue raised by the parties in their reasons. For reviewing courts, the issue remains whether the decision, viewed as a whole in the context of the record, is reasonable …"

(iv) <u>Jurisdiction of Ferrier as the substitute decision maker to order a publication ban</u>

29. CBC asserts in paragraphs 7 and 8 of its factum that if Ferrier was to apply the *Dagenais/Mentuck* test, lesser measures such as a partial publication ban could be ordered so as to protect against the alleged harms identified in the Decision.

30. As previously noted, Ferrier takes no position on this appeal as to the reasonableness or correctness of the Decision. However, in the event that this Court does remit the matter back to Ferrier, it must be noted that an administrative body or tribunal (and by extension Ferrier as the substitute decision maker) likely does not have the power to order a publication ban.

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[4] *Construction Labour Relations v. Driver Iron Inc.,* 2012 SCC 65 (CanLII) [Construction Labour]

31. While s. 35(4) of the *PSA* allows a police services board to exclude the public from a meeting or hearing, there is no statutory authority for the board to order a publication ban. It follows therefore that the substitute decision maker would also not have the authority.

32. Statutory bodies are limited to the powers specifically provided to the body by legislation, or implied. A statutory body may not assume jurisdiction not assigned to it by statute and errs in law by attempting to exercise powers not conferred upon it.

> Donald J.M. Brown, The Honourable John M. Evans, *Judicial Review of Administrative Action in Canada*, (Toronto: ThompsonReuters, online version) [Brown & Evans] para. 13:1100
>
> *Nicholson v. Haldimand-Norfolk Regional Police Commissioners,* [1979] 1 SCR 311, 1978 CanLII 24 (SCC) [Nicholson]

33. In Brown & Evans, the authors note as follows:

> **13:1100 — The Need For a Grant of Authority**
> It is a fundamental principle of public law that all governmental action must be supported by a grant of legal authority. With two minor qualifications, the actions and decisions of public officials and institutions that affect the rights of individuals have no legal force or effect unless authorized by a grant of statutory authority, either express or necessarily implied. Neither individuals nor institutions have inherent powers by virtue of the fact that they perform governmental functions. And although it is not a requirement that the legal source of authority be specified on the face of an administrative order, if challenged, it must be possible to identify the supporting legal authorization. [Footnotes omitted.]

34. In *Nicholson*, the Supreme Court of Canada was considering a decision by a Board of Commissioners of Police to dismiss a probationary officer. The Court

noted that the Board had only the powers granted to it by statute, and had no inherent powers. On this point, the Court noted at page 320:

> .... First, the respondent Board is not the Crown and, being simply a body created by statute, it has only such powers as are given by statute or regulations thereunder. ...

35. In *Richmond Hill (Town) v. Elginbay Corporation*[5], this Court made the following observation regarding the powers of another statutory body:

> I begin with the trite observation that the OMB is a creature of statute: it can do only what the legislature has empowered it to do through various statutory provisions. And the converse of that of course is that it cannot do what it has not been empowered to do or do that which has been given by legislative authority to another.

36. In *Canadian Newspapers Company Ltd. v. Law Society of Upper Canada*[6], the Court dealt with a disciplinary hearing by the Law Society of Upper Canada. The Discipline Committee made an order banning publication, as well as an order banning publication of the fact that it had made such an order, based on its concern for the reputation of the lawyer and outstanding criminal charges. The Divisional Court indicated that although it shared the Discipline Committee's concern with protection of the lawyer's reputation, the Discipline Committee did not have authority to make the non-publication order. The Court observed at paragraph 5:

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[5] *Richmond Hill (Town) v. Elginbay Corporation*, 2018 ONCA 72 (CanLII) at para 55; leave to appeal to SCC refused at 2018 CarswellOnt 19226 [Richmond Hill]
[6] *Canadian Newspapers Company Ltd. v. Law Society of Upper Canada*, 1986 CarswellOnt 1099 (Div. Ct) [Canadian Newspapers]

(i) the Discipline Committee, as an administrative tribunal established pursuant to regulation, does not have inherent jurisdiction to make such orders;

(ii) such orders, which are designed to have effect and operation beyond the conduct of the hearing itself, are not within the ambit of the "plenary jurisdiction" (to use Mr. Laskin's phrase) of the Discipline Committee which is adverted to in recent decisions of this court;

...

PART V – ORDER SOUGHT

37. Ferrier takes no position on the order sought, other than that if the decision of the Divisional Court is quashed, then the matter should be remitted back to him and that costs should not be ordered against Ferrier.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October, 2019.

David Migicovsky
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THE ATTORNEY GENERAL FOR ONTARIO

Intervenor

CERTIFICATE

I estimate that 15 minutes will be needed for my oral argument of the appeal, not including reply. An order under Rule 61.09(2) (original record and exhibits) is not required.

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TAB A

SCHEDULE "A" – LIST OF AUTHORITIES

Case Law

1. *Canadian Newspapers Company Ltd. v. Law Society of Upper Canada*, 1986 CarswellOnt 1099 (Div. Ct)

2. *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65 (CanLII)

3. *Nicholson v. Haldimand-Norfolk Regional Police Commissioners,* [1979] 1 SCR 311, 1978 CanLII 24 (SCC)

4. *Oakwood Development Ltd. v. St-Francois Xavier*, [1985] 2 SCR 164, 1985 CanLII 50 (SCC)

5. *Richmond Hill (Town) v. Elginbay Corporation*, 2018 ONCA 72 (CanLII); leave to appeal to SCC refused at 2018 CarswellOnt 19226

6. *Roy v. Poitras*, 2000 FC 1386 (CanLII)

Secondary Sources

7. Donald J.M. Brown, The Honourable John M. Evans, *Judicial Review of Administrative Action in Canada*, looseleaf (Toronto: Thompson Reuters, 2016) at para. 5:2210; and para. 13:1100

TAB B

SCHEDULE "B" – LIST OF STATUTES

1. *Public Officers Act*, R.S.O. 1990, c. P-45

Consolidation Period: From June 22, 2006 to the e-Laws currency date.

Last amendment: 2006, c. 19, Sched. C, s. 1 (1).

Public officer to be Canadian Citizen or permanent resident

1 No person shall be employed in any public office in Ontario who is not a Canadian Citizen or permanent resident of Canada, but nothing in this section prevents the employment of any person for a temporary purpose by the Government of Ontario or by any commission acting for or on behalf of the Crown, when in the opinion of the Government or of such commission such employment is in the public interest. R.S.O. 1990, c. P.45, s. 1.

Commissions continued on demise of the Sovereign

2 (1) It is not necessary, upon the demise of the Sovereign, to renew any commission, by virtue whereof any public officer or functionary in Ontario held his or her office or profession, during the previous reign, but a proclamation shall be issued by the Lieutenant Governor, authorizing all persons in office who held commissions under the late Sovereign and all functionaries who exercised any profession by virtue of any such commissions, to continue in the due exercise of their respective duties, functions and professions, and such proclamation shall suffice, and the incumbents shall, as soon thereafter as may be, take the usual and customary oath of allegiance before the proper officer or officers thereunto appointed. R.S.O. 1990, c. P.45, s. 2 (1).

Continuance in duty and validity of acts

(2) The proclamation having been issued and oath taken, every public officer and functionary shall continue in the lawful exercise of the duties and functions of his or her office or profession as fully as if newly appointed by commission derived from the Sovereign for the time being, and all acts and things done and performed in good faith by such incumbents in their respective offices and in the due and faithful performance of their duties and functions between the time of the demise and the proclamation so to be issued, the oath of allegiance being always duly taken, shall be deemed to be legally done and valid accordingly. R.S.O. 1990, c. P.45, s. 2 (2).

Savings as to rights of the Crown

3 Nothing in section 2 prejudices or in any way affects the rights or prerogatives of the Crown with respect to any office or appointment derived or held by authority from the Crown, nor prejudices or affects the rights or prerogatives thereof in any other respect whatsoever. R.S.O. 1990, c. P.45, s. 3.

Oaths of allegiance and office

4 It is not necessary for any person appointed to any office in Ontario or for any person called as a barrister or admitted as a solicitor to make any declaration or subscription or to take or subscribe any other oath than the following:

I, ..., do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (*or the reigning Sovereign for the time being*), her heirs and successors according to law. So help me God. (omit this phrase in an affirmation).

and also such oath for the faithful performance of the duties of his or her office or for the due exercise of his or her profession or calling as may be required by any law in that behalf. R.S.O. 1990, c. P.45, s. 4.

Form of oath of allegiance to be used

5 Except where otherwise specially provided, the form hereinbefore set forth, and no other, is the oath of allegiance to be administered to and taken by every person in Ontario, who, either of his or her own accord or in compliance with any lawful requirement made on him or her or in obedience to the directions of any Act, desires to take an oath of allegiance. R.S.O. 1990, c. P.45, s. 5.

Who may administer oath of allegiance

6 All provincial judges and all other officers lawfully authorized, either by virtue of their office or by special commission from the Crown for that purpose, may administer the oath of allegiance in any part of Ontario. R.S.O. 1990, c. P.45, s. 6.

Security to be given by certain public officers

7 (1) Security by or on behalf of every person appointed to any office or employment, or commission in the public services of Ontario, or to any office or employment of public trust, or wherein he or she is concerned in the collection, receipt, disbursement or expenditure of any public money under the Government of Ontario, and who by reason thereof is required to give security, shall be furnished within one month after notice of his or her appointment, if he or she is then in Ontario, or within three months, if he or she is then absent from Ontario (unless he or she sooner arrives in Ontario, and then within one month after such arrival), in such sum and in such manner as is approved of by the Lieutenant Governor in Council or by the principal officer or person in the office or ministry to which he or she is appointed, for the due performance of the trust reposed in him or her and for his or her duly accounting for all public money entrusted to him or her or placed under his or her control. R.S.O. 1990, c. P.45, s. 7 (1).

Liability of sureties of public officer for acts of deputy

(2) Where a deputy is appointed by a person holding an office, any security required by law and given on behalf of the person, extends to and includes the acts and omissions of the deputy, whether appointed before or after the giving of the security. R.S.O. 1990, c. P.45, s. 7 (2).

Security to cover acts and omissions of deputy

(3) The liability of the sureties, and of the officer appointing the deputy, is the same as regards the performance of the duties of the office by the deputy, as in regard to the performance thereof by the person holding the office, and such liability extends to and covers all acts and omissions of the deputy while he or she continues to perform the duties of the office, and whether before or after the death or resignation of the person appointing him or her, subject to the same rights of withdrawal by the sureties from liability, as exist in regard to the security given by public officers. R.S.O. 1990, c. P.45, s. 7 (3).

Deputy may be required to furnish security

(4) The Lieutenant Governor in Council may, despite this section, require new security to be furnished by any deputy on the death or resignation of the person holding the office wherein he or she is deputy, and such security shall be for the like amount, and subject to the same conditions as that required by law for the due performance of the duties of the officer whom the deputy represents. R.S.O. 1990, c. P.45, s. 7 (4).

Form of security

8 The Lieutenant Governor in Council may prescribe the form of the security required to be furnished under any statute by a public officer or by any class of public officers, and may authorize the Treasurer of Ontario to enter into agreements in Her Majesty's name with any corporation authorized to carry on the business of fidelity insurance in Ontario for the furnishing of security for any public officer, or for public officers generally, or for any class or classes of public officers. R.S.O. 1990, c. P.45, s. 8.

Savings as to municipal or school treasurers

9 Nothing in the preceding sections applies to any treasurer or other officer of a municipal or school corporation having the custody of money of such corporation. R.S.O. 1990, c. P.45, s. 9.

Laying statement of securities before Assembly

10 The Treasurer of Ontario shall cause to be prepared and laid before the Assembly, within fifteen days after the opening of every session thereof, a detailed statement of all securities furnished on behalf of public officers, and of any changes that have been made in reference to such securities since the last statement laid before the Assembly. R.S.O. 1990, c. P.45, s. 10.

Effect of securities by public officers

11 The security furnished on behalf of any public officer in pursuance of this or any other Act requiring security enures as well for the benefit of Her Majesty as for that of the persons for whose benefit it is provided by the Act requiring the security or otherwise that it shall enure. R.S.O. 1990, c. P.45, s. 11.

12 REPEALED: 2002, c. 24, Sched. B, s. 25.

Section Amendments with date in force (d/m/y)

Local registrars and clerks

13 Every local registrar of the Superior Court of Justice and every clerk of the Small Claims Court for a division embracing a local municipality that was a city on December 31, 2002 or part of such local municipality, shall keep a separate book in which he or she shall enter from day to day all fees, charges and emoluments received by him or her by virtue of his or her office, showing the sums received by him or her for fees, charges and emoluments of all kinds whatsoever, and shall on or before the 15th day of January in each year make up a statement under oath of such fees, charges and emoluments to and including the 31st day of December of the previous year and deliver or mail it to the Attorney General. R.S.O. 1990, c. P.45, s. 13; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

Particulars in returns by public officers

14 Every public officer who is by this or any other Act required to make a return of the fees and emoluments of his or her office to any ministry of the Government, or to any officer, shall include in his or her return,

(a) the aggregate amount of all fees and emoluments earned by him or her during the preceding year by virtue of his or her office;

(b) the aggregate amount of all fees and emoluments actually received by him or her during the preceding year by virtue of his or her office;

(c) the actual amount of the disbursements during the same period in connection with his or her office, and such other particulars as the Lieutenant Governor in Council may prescribe. R.S.O. 1990, c. P.45, s. 14.

Procedure against person who has ceased to be a public officer for retaining money, books, etc.

15 Where a person who has been, but has ceased to be, a public officer, retains possession of any accounts, money, books, papers, matters or things that have been in his or her possession as such officer, a judge of the Superior Court of Justice, upon application of the successor in the office of such person or of the Attorney General or of some person by his or her authority, and on notice to the person affected, may order that such accounts, money, books, papers, matters and things be forthwith delivered to such successor in office or to such person as the judge may direct, and in default that such person be committed to a correctional institution for such period as the judge may direct, or until he or she complies with the directions of the order, and may authorize the sheriff for the area in which the same may be found to forthwith seize and take such accounts, money, books, papers, matters and things, and deliver them to the persons to whom they have been directed to be delivered. R.S.O. 1990, c. P.45, s. 15; 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

Procedure when public officer interested in question before him

16 Where by any general or special Act any person or the occupant for the time being of any office is empowered to do or perform any act, matter or thing and such person or the occupant for the time being of such office is disqualified by interest from acting and no other person is by law empowered to do or perform such act, matter or thing, then he or she or any interested person may apply, upon summary motion, to a judge of the Superior Court of Justice, who may appoint some disinterested person to do or perform the act, matter or thing in question. R.S.O. 1990, c. P.45, s. 16; 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

2. *Police Services Act*, RSO 1990, c. P. 15

Meetings
35 (1) The board shall hold at least four meetings each year.
Quorum
(2) A majority of the members of the board constitutes a quorum.
(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

Exception
(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,
(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or
(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public. R.S.O. 1990, c. P.15, s. 35.

Hearings, procedure
Six-month limitation period, exception
83 (17) If six months have elapsed since the day described in subsection (18), no notice of hearing shall be served unless the board, in the case of a municipal police officer, or the Commissioner, in the case of a member of the Ontario Provincial Police, is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. 2007, c. 5, s. 10.

CANADIAN BROADCASTING CORPORATION Applicant (Appellant in C66998)	and	LEE FERRIER, Q.C., et al. Respondents (Respondents in Appeal) THE FIRST NATION PUBLIC COMPLAINANTS Respondent (Appellant in C66995)	Court File No.: C66995 & C66998

ONTARIO
COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

FACTUM OF THE RESPONDENT, LEE FERRIER, Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD

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