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Slide 2: *Odhavji v Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69 [Iacobucci J.]

66 It is possible, I concede, that circumstances might arise in which the Board is required to address a particular problem in order to discharge its statutory obligation to provide adequate and effective police services. If there was evidence, for example, of a widespread problem in respect of the excessive use of force in the detention of visible minorities, the Board arguably is under a positive obligation to combat racism and the resultant use of excessive force. But as a general matter, courts should be loath to interfere with the Board's broad discretion to determine what objectives and priorities to pursue, or what policies to enact in pursuit of those objectives. Suffice it to say, the Board's decision not to enact additional policies or training procedures in respect of [s. 113\(9\)](#) does not constitute a breach of its obligation to provide "adequate and effective" police services.

Slide 3: *Odhavji* Factum Page

Court File No. 28425

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for Ontario)

BETWEEN:

THE ESTATE OF MANISH ODHAVJI, DECEASED, PRAMOD ODHAVJI,
BHARTI ODHAVJI AND RAHUL ODHAVJI

Applicants (Plaintiffs)

-and-

DETECTIVE MARTIN WOODHOUSE, DETECTIVE CONSTABLE PHILIP GERRITS, OFFICER
JOHN DOE, OFFICER JANE DOE, METROPOLITAN TORONTO CHIEF OF POLICE DAVID
BOOTHBY, METROPOLITAN TORONTO POLICE SERVICES BOARD
AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondents (Defendants)

APPELLANTS' FACTUM

“ . . . every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen” – *Roncarelli v. Duplessis*, per Abbott J., citing Dicey's “*Law of the Constitution*”

I. Overview

Slide 4: TBPSB Investigation Final Report by Senator Sinclair

“These issues are not the result of behaviours by individual racists...

They are indicative of a **broader, deeper and more systemic level of discrimination in which an unacceptable status quo is viewed as the normal state of affairs**, maintained and perpetuated by the structure and operations of organizations and agencies mandated to oversee them.”

(Sinclair Report, p. viii, publicly released Dec 2018)



Slide 5: TBPSB Investigation Final Report by Senator Sinclair

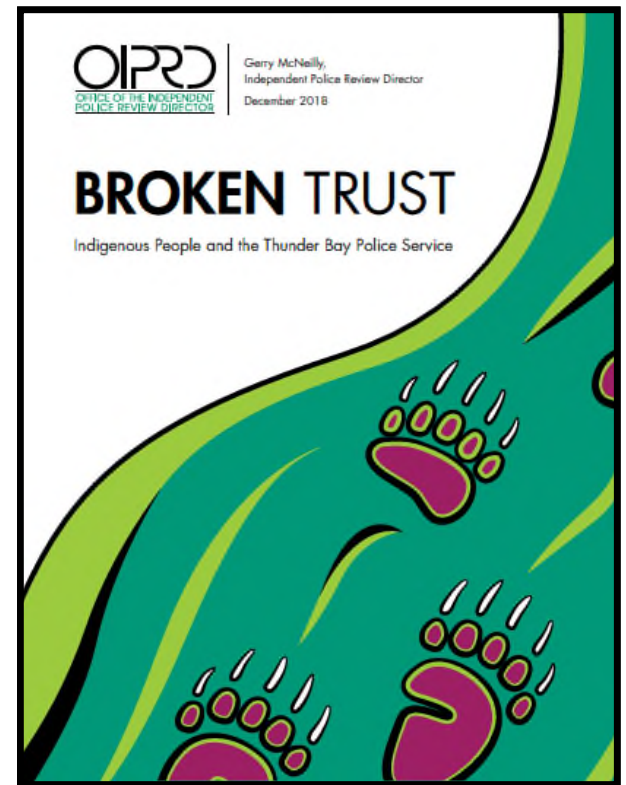
✈️ “The Board has failed to recognize and address the **clear and indisputable pattern of violence and systemic racism against Indigenous people in Thunder Bay.**”

(Sinclair Report, p. viii)

Slide 6: OIPRD's *Broken Trust* Report

“Overall I find systemic racism exists in the Thunder Bay Police Service at an institutional level.”

(Broken Trust, p. 9, published Dec 2018)



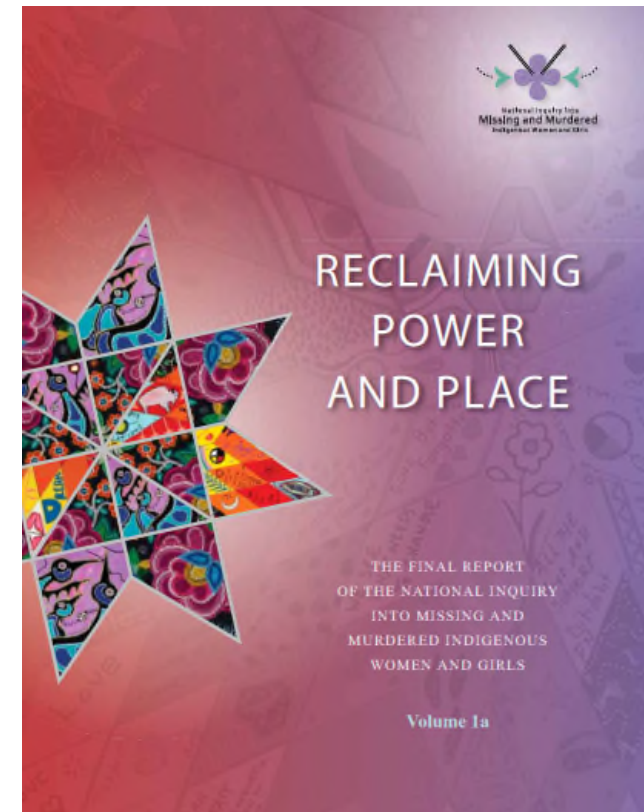
Slide 7: OIPRD's *Broken Trust* Report

“Officers repeatedly **relied on generalized notions about how Indigenous people** likely came to their deaths, and **acted, or refrained from acting**, based on those biases.”

(Broken Trust, p. 182)

Slide 8: MMIWG *Reclaiming* Report

“Dismissal, contempt, and outright discrimination, in which police evoke racist stereotypes about Indigenous people as drunks, runaways, or prostitutes, and which ignore the insights that families bring them that something is wrong, were [...] reported by [...] families when they described their initial encounters with police. Similarly, assumptions about Indigenous people being “out partying” was another common response from the police.” (Vol. 1A, p. 650, published June 2019)



Slide 9: MMIWG *Reclaiming* Report

“Media portrayal has resulted in the **dehumanization of Indigenous Peoples**, which in turn manifests and perpetuates views that Indigenous women, girls, and 2SLGBTQQIA people are “less than” non-Indigenous people; that they are not worthy of the same rights and protections as non-Indigenous people; and that they are burdens on Canadian society.”

(Reclaiming Power and Place, Vol. 1A, p. 394) (June 2019)

Slide 10: Justice Pierce, *CBC v. TBPSB*, 2018 ONSC 5872 (Oct 4, 2018)

[48] In my view, on the facts of this case, it is important for the court to consider the extent to which the public can expect openness in administrative decision-making. Because of the complaint underlying this process - that policing practices related to Indigenous citizens in Thunder Bay are racist - it is even *more critical* that every step in the complaint procedure be dealt with transparently.

[49] Each step of the complaint process is a step on the way towards resolution to which transparency must attach if the process is to be credible to the community. Failing to proceed openly will only sow distrust in the complaints procedure. It will do nothing to address the community's question about whether Thunder Bay's approach to policing indigenous matters is racist.

Slide 11: Chief Justice Strathy (Sept 22, 2020)



“Historically marginalized and vulnerable communities in Canada are asking whether our society, our governments, and our justice system, can really deliver on the promise of equity and justice for all peoples. Or whether the promise is often simply justice, fair treatment and prosperity for those who are privileged by race, colour or socio-economic status.”

(Chief Justice Strathy, Opening of the Courts 2020 – Remarks from the Chief Justice of Ontario, Sep. 22, 2020)

Slide 12: Chief Justice Strathy (Sept 22, 2020)



“In Canada, the promise of a "just society", made fifty years ago, has yet to be realized, particularly for many members of indigenous, black and racialized communities, the homeless and the impoverished. Can we truly say that we have embraced reconciliation with our indigenous communities? Or that we have done our utmost to repair the consequences of discrimination, isolation and abuse of indigenous, black and racialized peoples? Or that members of black, indigenous and racialized communities are respected and, equally important, see themselves as full and equally respected members of our society? Will this horrendous global pandemic teach us anything about the commonality of human suffering, the humanity and dignity of all peoples and what it means to share this planet with others?”

(Chief Justice Strathy, Opening of the Courts, Sep. 22, 2020)

Slide 13: *CBC v. Ferrier*, 2019 ONCA 1025
(Dec 27, 2019)

“[69] [...] The racial tension between the Indigenous community and the TBPS, the distrust of the Indigenous community towards the TBPS and the current state of administration of criminal justice all point strongly to the need for openness and transparency.”
[*per* Sharpe JA] (Dec 27, 2019)

Slide 14: OIPRD Findings (Investigative Report of Feb 15, 2018)

“The CIB investigators prematurely determined that the death was non-criminal. The available evidence did not support the conclusion that foul play had been excluded. This infected the entire approach to the minimal investigation which followed.” (p. 104)

Slide 15: OIPRD Findings (Investigative Report of Feb 15, 2018)

“No formal statements were taken from any of the individuals who were with the deceased shortly before his death. [...] These **individuals should have been formally interviewed** at the earliest opportunity.” (p. 107)

Slide 16: OIPRD Findings (Investigative Report of Feb 15, 2018)

“The CIB investigators, **most importantly** [Officer #1], **did not review, on an ongoing basis, supplementary occurrence reports** in the investigative file, and as a result, was **unaware, for example, of the informal interview** with KK conducted at the scene by a uniformed officer **in which a witness described a physical altercation between Indigenous men at the scene the night before** the deceased’s body was found. **Formal interviews should have been conducted** of KK and others informally interviewed by uniformed officers at the scene.” (p. 111)

Slide 17: OIPRD Findings (Investigative Report of Feb 15, 2018)

“The CIB investigators provided **inadequate or no direction to the Forensic Identification Unit** in a manner consistent with treatment of the sudden death as a potential homicide. **No video was taken** of the scene; **no photographs** of the body itself or the riverbank in close proximity to the river were taken. **No consideration was given to holding the scene until the autopsy** had been conducted. **No measurements** were taken at the scene.” (p. 114)

Slide 18: OIPRD Findings (Investigative Report of Feb 15, 2018)

“The TBPS’s **efforts to contact FF**, who, by some accounts, was the last person known to be alone with the deceased, **were sporadic and were given the lowest priority**. The interview ultimately conducted with FF **took place a long time after the material events.**” (p. 115)

Slide 19: OIPRD Findings (Investigative Report of Feb 15, 2018)

“The matter was **not dealt as an investigation subject to Major Case Management. It should have been.** Even if it was not formally so designated, there was **no investigative plan, no organized evaluation of ongoing steps** to complete the investigation, all stemming from a **mischaracterization** of the nature of the investigation.” (p. 116)

Slide 20: OIPRD Findings (Investigative Report of Feb 15, 2018)

“No broader canvas of the local businesses and area residences was conducted, standard fare for a potential homicide” (p. 117)

Slide 21: OIPRD Findings (Investigative Report of Feb 15, 2018)

“[Officer #1] chose not to meet with Civilian Witness 7, the private investigator and former homicide detective. [Officer #1] said that he was not going to speak to any private investigator about the case.” (p. 117)

Slide 22: OIPRD Findings (Investigative Report of Feb 15, 2018)

“[...Because of the premature determination that this was a non-suspicious death, no forensic examination was conducted on the exhibits.” (p. 118)

Slide 23: OIPRD Findings (Investigative Report of Feb 15, 2018)

Discrimination

- “... the evidence **overwhelming supports the inference** that [Officer #1] and [Officer #2] **prematurely concluded that SD rolled into the river and drowned without any external intervention.** It can also be reasonably inferred that this **premature conclusion may have been drawn because the deceased was Indigenous.**” (p. 123)
- “It can reasonably be inferred that the **investigating officers failed to treat or protect the deceased and his family equally and without discrimination based on the deceased’s Indigenous status.**” (p. 124)