



The Personal Cost of Police Oversight

CANADIAN ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

2021 ANNUAL CONFERENCE (MAY 11, 2021)

The Dafonte Miller Case: The Notification Loophole



TORONTO STAR



August 1, 2017: “Toronto police officer, brother accused of misleading investigators in Dafonte Miller case”

August 16, 2017: “Toronto, Durham police accused of covering up Dafonte Miller assault case”

June 26, 2020: “Judge finds off-duty Toronto cop guilty of assault, but says Dafonte Miller’s beating ‘probably’ much worse”

August 6, 2020: “‘We made the wrong decision that night’: New interim Toronto police chief apologizes for not calling SIU over Dafonte Miller beating”

The Dafonte Miller Case: The Notification Loophole



Investigation Report – July 30, 2020
Toronto Police Chief Mark Saunders

“The discretion about whether the matter falls within the SIU mandate and warrants investigation lies not with a chief of police but solely with the SIU director.”

“The information contained on the SIU website about on-duty/off-duty conduct in no way absolves a chief of police of his or her statutory obligations. It simply offers a public explanation about when the SIU director may choose to exercise *his or her* discretion to investigate a complaint in circumstances in which the officer is off-duty.”

“Stated differently, chiefs of police have an absolute obligation to report all police conduct – whether on-duty or off-duty – where it meets the SIU threshold; it is then within the SIU director’s discretion to determine whether that conduct will be investigated.”

OIPRD Report, Pg. 9, para 18.

Stacy DeBungee and *Broken Trust* in Thunder Bay



The cost of pursuing a “secret hearing”:

- Stacy DeBungee was found deceased by the McIntyre River on October 19, 2015. Thunder Bay police failed to conduct a competent death investigation including failing to protect the scene, failing to take photos, failing to gather evidence and failing to interview key witnesses.
- OIPRD complaints were filed by the family and his First Nation in 2016, OIPRD substantiated the charges.

“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)



Stacy DeBungee and *Broken Trust* in Thunder Bay



The cost of pursuing a “secret hearing”:

Timeline:

- April 22 2016: OIPRD retains the complaints filed on behalf of Brad DeBungee and former Chief Jim Leonard
- February 15 2018: OIPRD substantiates the complaints against three Thunder Bay Police officers
- July 25 2018: Superior Court of Justice appoints adjudicator Lee K. Ferrier to act in place of the Board
- September 20 2018: Adjudicator decides Extension hearing will happen *in camera*
- October 4 2018: Justice Helen Pierce grants stay of extension hearing to permit review of decision to hold a secret hearing
- December 27 2019: Court of Appeal for Ontario quashes secret hearing decision and sends it back to adjudicator for reconsideration
- October 7 2020: SCC denies Thunder Bay Police Service’s application for leave to appeal
- December 7 2020: Adjudicator decides hearing will be open to the public
- February 17 2021: Adjudicator grants extension application, meaning disciplinary proceedings can commence
- April 14 2021: first appearance in *PSA* proceedings, Thunder Bay Police Service and Staff Sergeant Kaucharik, Staff Sergeant Harrison and Sergeant Whipple

CBC v. Ferrier

Ontario Court of Appeal (2019 ONCA 1025)

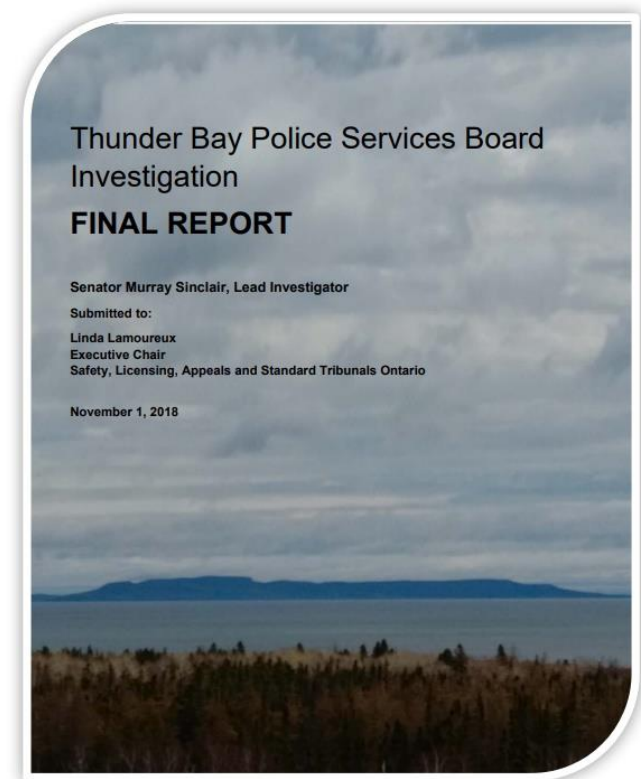
“In the portion of her reasons adopted by this court, Copeland J. stated, at paras. 50-52, as follows. The public meeting requirement of s. 35 of the Police Services Act fosters the objective of public confidence in decision making through transparency and accessibility to the public”. The rationale of openness to foster public confidence “is similar to the rationale for the open courts principle (it differs only in that the open courts principle has a further basis of ensuring that litigants are treated fairly)”.

The Sinclair Report & A Broken Police Services Board

- On November 1, 2018, Senator Murray Sinclair issued the *Thunder Bay Police Services Board* Investigation report.
- The report focuses on systemic racism at the TBPS Board, and it led to the dismissal of the entire Board.

“The Board has failed to recognize and address the clear and indisputable pattern of violence and systemic racism against Indigenous people in Thunder Bay. Moreover, the Board’s failure to act on these issues in the face of overwhelming documentary and media exposure is indicative of willful blindness.”

Sinclair Report, p. viii



The Future of First Nation Policing

- The *Community Safety and Policing Act* (“CSPA”) will be in force January 1, 2022 in Ontario
- For First Nations, the CSPA includes an “opt-in” to become legally “constituted” bodies subject to provincial legislation.
- The Opt-in process will make the service subject to the same provincial standards applicable to all other forces, officers, and chiefs in Ontario.
- Once constituted, the Board will **have the same powers and duties as a municipal board and be subject to the same adequacy standards.**



The Future of First Nation Policing

- Opting in means that First Nation police services will be subject to oversight by civilian oversight bodies which have not historically been First Nations-oriented.
- These civilian oversight mechanisms will include:
 - Ontario Civilian Police Commission
 - Inspector General of Policing (currently the OIPRD);
 - Law Enforcement Complaints Agency (currently the OIPRD); and
 - Special Investigations Unit.
- The Ontario Police Arbitration and Adjudication Commission will be responsible for (1) arbitration of disputes over funding; and (2) appeals of police chief's disciplinary decisions.



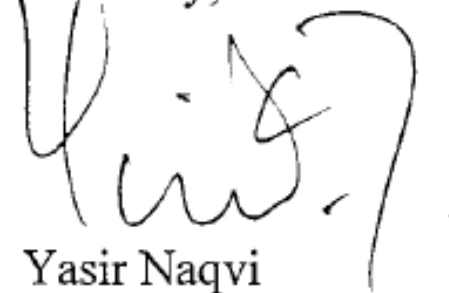
Culturally Competent Oversight

- These oversight agencies are not First Nations-specific. Under the previous (Wynne) government, assurances were provided about cultural competency:

I understand that NAN has identified training, representativeness and outcome measurement as the key areas in which cultural competence must be addressed; we are in agreement that a commitment to cultural competence encompasses these elements. We also see the value in working together to determine what relevant key performance indicators for cultural competency would look like and the best ways to track the outcomes that will be developed.

I look forward to our continued work in this important area.

Sincerely,



Yasir Naqvi
Attorney General



[Letter from AG Naqvi → NAN Grand Chief Fiddler, Aug 2016]

Culturally Competent Oversight

- The Ontario Ministry of Community Safety specifically committed to ensuring that cultural competence is embedded in the civilian oversight bodies.

I would like to reaffirm our commitment to ensuring that oversight and services are provided in a culturally competent manner. The Ministry of the Attorney General (MAG) has included language in their proposed legislation which creates a specific duty for the Ontario Policing Complaints Agency (OPCA) and Ontario Special Investigations Unit (SIU) Directors to consult with appropriate groups to create and deliver training to their employees that promotes recognition and respect for the rights and cultures of First Nations, Métis and Inuit.

Sincerely,



Marie-France Lalonde
Minister



[Letter from Minister of Community Safety Lalonde → NAN Grand Chief Fiddler, Nov 2017]

Wood v. Schaeffer

Supreme Court of Canada (2013 SCC 71)

“Police officers are entrusted by the communities they serve with significant legal authority, including, in some circumstances, the power to use deadly force against their fellow citizens. The indispensable foundation for such authority is the community’s steadfast trust in the police. Each and every day, thousands of officers across this country work diligently to earn that trust, often putting their own lives on the line.

But that trust can be tested — sometimes severely — when a member of the community is killed or seriously injured at the hands of a police officer. For that reason, the citizens of Ontario have charged an all-civilian Special Investigations Unit (“SIU”) with the delicate task of investigating such tragic incidents. [...]

No one is above the law. When a member of the community is killed or seriously injured by a police officer, it is not only appropriate to ask whether the police were acting lawfully, it is essential.”



Running the Numbers – A Cost Calculation: The Oversight Equation

Incident Impact – (minus) Effective Oversight = Incident Cost

For every negative police interaction there is an “Incident Impact”. The resulting cost of the Incident can be defined as the loss of public confidence in policing which will be inversely proportional to the effectiveness of police oversight. If we want to preserve public confidence in policing in the wake of a negative police interaction then it is essential that we maintain and enhance effective oversight.



Thank You!



Litigation with a conscience.