



Falconers LLP: How to litigate with a conscience

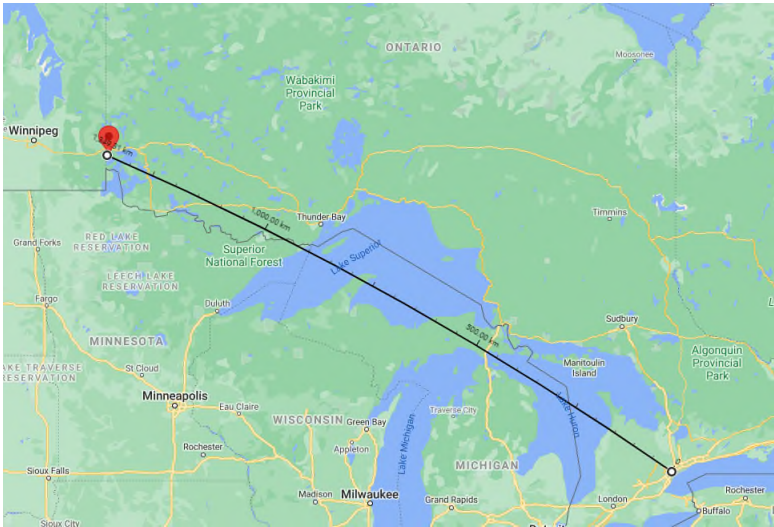
FUTURE LAWYERS – BE THE CHANGE CONFERENCE (JULY 10, 2021)

Falconair: Legal Services – as the Crow Falcon Flies



Falconair in Sandy Lake First Nation – May 24, 2021

Falconers LLP and Falconair



From Toronto (Pearson Airport) to:	Iskwewizaagegan First Nation – 1,349.42 km (838.49 mi)
	Atlanta, Georgia – 1,170.53 km (727.33 mi)
	Nashville, Tennessee – 1,030.50 km (640.32 mi)
	Jacksonville, Florida – 1,494.70 km (928.76 mi)

Falconair through the years



Choosing Life in Nishnawbe Aski Nation



A Response to Tragedy

- In January of 2017, two 12-year-olds took their lives in Wapekeka First Nation.
- Wapekeka had reported a suicide risk to Canada in a 2016 funding proposal.
- In the 2016 proposal, the community had asked for:
 - A mental health team to manage programs and counselling sessions;
 - Four youth mental health workers and the cost of having them; and
 - Programs using land-based activities, focusing on prevention and intervention.
- Canada only responded to the proposal after the two suicides. **Canada's response was that it was an "awkward time in the federal funding cycle" to give any funds.**

The Choose Life Initiative

- “Choose Life” is part of Jordan’s Principle
- Jordan’s Principle ensures that a First Nation’s child is not left without health care because of funding disputes between the federal and provincial governments.
- “Choose Life” funding came out of *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada*
 - Canadian Human Rights Tribunal, 2017 CHRT 7
- The Tribunal decided that, under Jordan’s Principle, there needed to be fast-track funding when youth are in crisis.



Nishnawbe Aski Nation
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Continuing to Choose Life



December 13, 2019

"How Ottawa and a First Nations organization found common ground on fighting youth suicide"

April 30, 2021

"NAN marks success of Choose Life program; calls for further funding"

"Since June 2017 [to 2019], the initiative has seen 208 applications approved for a total of about \$173 million . . . The money has flowed through the Jordan's Principle umbrella"

– Health Canada Representative

"What the program has done is to basically give the youth, and their communities, though [the] Choose Life program a reinvigoration, a pride in themselves,"

– NAN Deputy Grand Chief Walter Naveau

A Remoteness Quotient

- Also addressed in *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada*, 2017 CHRT 7 . . .

[19] . . . [NAN] has advocated that a new remoteness quotient be developed to ensure funding to remote northern communities reflects the high costs of living and the extraordinary costs of providing services in those communities.

Canadian Human
Rights Tribunal



[20] . . . The Panel ordered [Indigenous Affairs and Northern Affairs] INAC to immediately address how it determines funding for remote [First Nations Child and Family Services] FNCFS Agencies. **Current funding does not account for** such things as **travel** to provide or access services, the **higher cost of living** and service delivery in remote communities, the compounded effect of reducing core funding for remote agencies that may also be **smaller agencies** . . . the Panel ordered INAC to provide detailed information to clearly demonstrate how it is determining funding for remote FNCFS Agencies that allows them to meet the actual needs of the communities . . .

Iskatewizaagegan (Shoal Lake 39) v Winnipeg and Ontario



Gerald Lewis, chief of Iskatewizaagegan 39, also known as Shoal Lake 39, in northwestern Ontario, is seen on Thursday, March 25, 2021, beside the lake that is Winnipeg's sole source of drinking water. The community is in a legal dispute with Ontario and Winnipeg over the city's water-taking. (The Canadian Press/Handout)



\$500 Million Lawsuit for Water Taking



MARCH
2021

“About 100 million litres of fresh water flows west to the city of Winnipeg every day but the struggling Indigenous people who live on the shores of Shoal Lake say no benefits have ever flowed east to them.”



Moving water from Shoal Lake to Winnipeg? Yeah, you need a 150km-long aqueduct

A Legal Claim for a Sacred Gift

The Gift of Shoal Lake to the Nation

25. What is often considered to be part of the geography or a valuable natural resource to settler Canadians is a critical part of the identity of the community of the Nation. This water gives the community life and they in turn define themselves by their responsibility for the protection of such a gift.
31. The plaintiff's culture is coextensive with the land. The community's traditional knowledge of Shoal Lake and the surrounding land itself has been transmitted through the Nation's oral traditions, spiritual beliefs, and practices. Shoal Lake and the surrounding land include significant areas where the transmission of Anishinaabe teachings, traditions, and values to future generations has taken place and continues to take place. In this way, Shoal Lake and the surrounding land provide not only the means for life, but the manner of bimaatziwin (to live a good life). In turn, the Nation acts as stewards or caretakers of all that has been given.



February 2021: ONSC recognizes “Indigenous Law”



[48] The law that governs the relationship between Canada and Aboriginal peoples of Canada is what is now known as Aboriginal law. **Indigenous law is not the same as Aboriginal law.** Both before and after the arrival of European settlers, the Aboriginal peoples in North America had well-developed civilizations that had legal systems and legal customs. Those discrete legal systems are the source of Indigenous law, the law that governs the first cultures as discrete civilizations or civil societies. **The case at bar concerns Aboriginal law, not Indigenous law.**

- **Justice Perrell, *IIFN39 First Nation v. Winnipeg*, 2021 ONSC 1209**

CITATION: Iskatewizaaagegan No. 39 Independent First Nation v. Winnipeg (City), 2021 ONSC 1209
COURT FILE NO.: CV-20-00644545-0000
DATE: 2021/02/17

ONTARIO SUPERIOR COURT OF JUSTICE

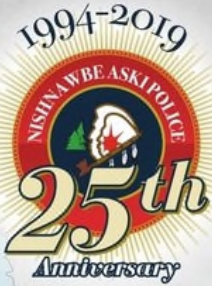
BETWEEN:)	
)	
ISKATEWIZAAGEGAN NO. 39)	
INDEPENDENT FIRST NATION)	Julian N. Falconer, Akosua Matthews and
Plaintiff)	Mary (Molly) Churchill for the Plaintiff
)	
- and -)	
)	
CITY OF WINNIPEG and HER)	Thor Hansell and Shea Garber for the
MAJESTY THE QUEEN IN RIGHT OF)	Defendant the City of Winnipeg
ONTARIO)	
Defendants)	Sarah Valair and Catherine Ma for the
)	Defendant Her Majesty the Queen in Right
)	of Ontario
)	
)	HEARD: January 20, 2021

PERELL, J.

REASONS FOR DECISION

Nishnawbe Aski Police Service & First Nations Policing in Ontario

NISHNAWBE ASKI POLICE SERVICE



LEGEND

- Indigenous Communities
- Non-Indigenous Communities
- Nishnawbe Aski Nation Boundary
- Police Regions

First Nations Policing – Underfunded, Underserviced



- NAPS and Nishnawbe Aski Nation have raised concerns about the lack of funding of community policing for decades
- Underfunding of First Nations police services, as with many other areas of funding, is common across Canada
- First Nations are constantly caught in the middle of a reverse tug-of-war for funding between the federal and provincial governments due to shared jurisdiction.



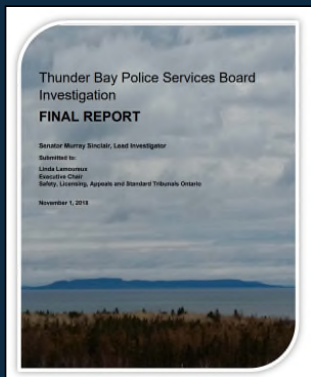
The Future of First Nation Policing

- **As a result of years of extensive advocacy by First Nations communities and police services, such as NAPS,** a new “legislative option” for has been developed in Ontario.
- Under the option, the same provincial standards will finally be applicable to FN police forces.
- Under the CSPA, a funding arbitrator:

“**must consider whether any First Nation board policies intended to reflect the cultural traditions of the First Nations that are in the board’s area of policing responsibility affect the funding required to provide adequate and effective policing.**” *CSPA*, s. 51(7)



Thunder Bay Police Service and the Devaluing of Indigenous Lives





Thunder Bay Police Service
Chief of Police – Sylvie Hauth
“Business as Usual”

Racism is an Expensive Exercise:

“Hauth cited legal issues like the Stacy DeBungee investigation and the Ontario Civilian Police Commission’s review as well as the search for a new police chief for causing the board’s budget to balloon.”

The Chronicle Journal
October 18, 2018

Thunder Bay Mayor Bill Mauro: Systemic Reports are “Unfair” and Bring City “Undue Negative Attention.”

“Almost three of every 10 hate crimes committed against Indigenous people in Canada happen here in Thunder Bay, where Indigenous people account for 13 per cent of the population.”

The Globe and Mail, March 23, 2019

Seven Youth Inquest



- In May 2012, Nishnawbe Aski Nation (“NAN”) wrote to the Chief Coroner calling for a Joint Inquest into the Deaths of Seven Youth.
- Reggie Bushie, Jethro Anderson, Jordan Wabasse, Kyle Morriveau, Curran Strang, Paul Panacheese, and Robyn Harper.
- All had died in Thunder Bay while attending high school.



The Death of Stacy DeBungee

Stacy DeBungee's 2015 Death Triggered Systemic Review Complaint with Ontario Independent Police Review Director (OIPRD) with the support of Rainy River First Nations.

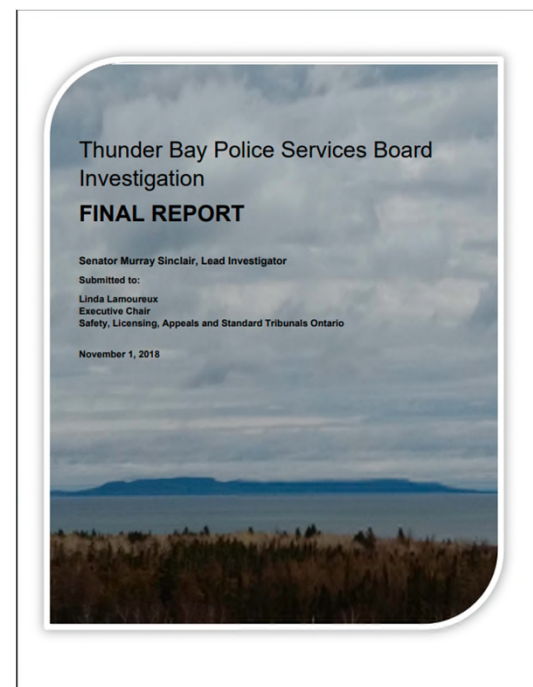
Broken Trust and Sinclair Report

- OIPRD *Broken Trust* Report

- 2 years
- 44 Recommendations

- Justice Sinclair Report

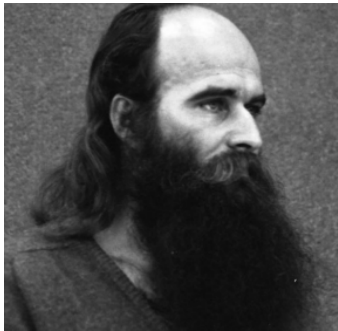
- 1 year
- 33 Recommendations



Other Work in the Spotlight: 1992 – Today

- R v R.T., 1992 ONCA
- R v Budreo, 2000 ONCA
- Dafonte Miller

R v R.T., 1992 ONCA



- Roch Thériault led a cult, living with 8 women, 26 children, and several followers.
- He killed a cult member, disemboweling them. He cut off the arm of another.
- For the amputation, he was charged with several counts of aggravated assault.
- **Mr. Thériault (the appellant) had entered guilty pleas three days after his arrest, at his first appearance and without the assistance of counsel.**

Issues on Appeal:

- (i) Were the guilty pleas valid?
- (ii) Did the trial judge make an adequate inquiry before accepting the guilty pleas?
- (iii) Should the trial judge have accepted the guilty pleas based on the facts? (Did the defence of extreme intoxication exist)?
- (iv) Regardless of the validity of the pleas, was the appellant denied his constitutional rights during the proceedings?

R v Budreo, 2000 ONCA



Pedophile law is constitutional, appeal court finds

JANUARY 2000

A controversial law allowing potential child molesters to be placed under tough bail conditions -- even if they have never been convicted of a sex offence -- is constitutional, the Ontario Court of Appeal ruled yesterday.

...

We are living in a new world where we charge people for what they may do in the future," Julian Falconer, a lawyer for Mr. Budreo, said in an interview. "I think this is a very dangerous way to run a society."

...

"From a constitutional point of view, this is as Kafkaesque as it gets."

The Dafonte Miller Case: Police Violence and Cover-ups



- Young Black man brutally assaulted by off-duty police officer Michael Theriault.
- Officers of two police forces conspired to cover it up from the Chiefs of Police and Special Investigations Unit



“I think that if the justice system is to, in any way, keep up with the times, it's going to have to be able to **factor in the role of racism** in these kinds of cases **and I don't think we're there.**”

– Julian Falconer, interviewed by the Law Times