

ORIGINAL BY MAIL

RE: Application for Inquiry and Appointment of Administrator Respecting Thunder Bay Police Services Board

The body of 17-year-old Tammy Keeash was found in the Neebing-McIntyre Floodway on May 7, 2017. She was from North Caribou Lake First Nation and living in a Thunder Bay group home. She was reported missing on May 6, 2017 after she missed curfew at the home. TBPS did not issue a missing person notice. Tammy was a trained Junior Canadian Ranger who was familiar with water

safety, but a post-mortem examination found that her death was consistent with drowning. The TBPS quickly announced that there was “no evidence to indicate criminality” in her death.¹

On May 18, 2017, the body of 14-year-old Josiah Begg was found in the McIntyre river. He lived in Kitchenuhmaykoosib Inninuwug First Nation and was in Thunder Bay with his father for medical appointments. He also went missing on May 6, 2017 and volunteer search efforts were organized on May 9 by NAN and the Bear Clan. The TBPS began a ground search on May 10. On May 15, 2017, the TBPS announced that there was “no evidence” that Josiah had gone near the river, and actively discouraged First Nation volunteer searchers who believed differently.² Surveillance footage showed that he was near a bridge over the floodway in the hours before his disappearance. Finally, on May 18, the TBPS called in an underwater recovery team and began searching area waterways.

These deaths are strikingly similar to six previous drownings in Thunder Bay rivers. The deaths of five youth who passed away between 2000 and 2011 were the subject of the Seven Youth Inquest in 2016, which found that causes of death in three of the five cases was undetermined, despite their police files being closed.

The subsequent death of Stacy DeBungee triggered the now ongoing systemic review of racism in the TBPS by the Office of the Independent Police Review Director (OIPRD). On October 19, 2015, Mr. DeBungee’s body was found in the McIntyre River. Three hours after the discovery, the TBPS published a press release stating that “[a]n initial investigation does not indicate a suspicious death”. In a second press release, published 25 hours after the discovery, the TBPS released Mr. DeBungee’s name and declared that “Mr. DeBungie’s [sic] death has been deemed as non-criminal”. It remains unknown how Stacy DeBungee came to be in the river, and the TBPS is still in charge of the investigation.

After the investigating officers concluded that Mr. DeBungee’s death was an accident prior to identifying him, conducting a *post mortem*, or taking any meaningful investigative steps, his family and community, Rainy River First Nations (RRFN), hired a private investigator. The investigator provided a report to the family and community leadership. The report concluded that the TBPS made determinations about the death in the absence of information a reasonable police investigation would have obtained from family and witness interviews, amongst other actions.

An Absence of Leadership from the Board

The Thunder Bay Police Services Board has failed to provide any leadership during these investigations and the OIPRD systemic review.

During the time period of the systemic review, the leadership of RRFN sought the both the assistance and an opportunity for discussion with the Board, and on both occasions was stonewalled. On July 21, August 29, and September 1, 2016, correspondence was sent to Chief Levesque seeking the reassignment of the DeBungee file to another police service. Failing to receive any response, including any acknowledgement of the correspondence, a letter was sent to Chairperson Jacqueline Dojack, asking her to follow up with the Chief of Police. While there was eventually a response from Chief Levesque refusing to transfer the investigation, there was no response from Chairperson Dojack. When the leadership of RRFN wrote to then Minister Orazzetti on October 5, 2016, seeking

¹ Thunder Bay Police, “Tammy Keeash Investigation Update” May 12, 2017, online: www.thunderbaypolice.ca/news/tammy-keeash-investigation-update.

² Judy Porter, “‘No evidence’ missing Indigenous teen when into river, Thunder Bay police say” May 15, 2017, online: CBC News, <http://www.cbc.ca/news/canada/thunder-bay/josiah-begg-river-search-1.4116105>

his assistance to transfer the investigation file, Chairperson Dojack was copied on the correspondence. Again, there was no response.

Then, on October 21, 31 and December 19, 2016 correspondence was sent on behalf of the DeBungee family and Rainy River First Nations to John Hannam, Secretary of the Thunder Bay Police Services Board, seeking to make a deputation to the Board regarding the relationship between Indigenous people and the Thunder Bay Police Service. This time, the leadership of RRFN was met with a direct refusal from Chair Dojack, as it would be “inappropriate to engage in dialogue at this time while the [OIPRD] investigation is still ongoing.”

In addition to this complete stonewalling, the Board has previously refused to make any public statements to address the fears of the Indigenous community. Despite a dire need for public leadership, its members simply abandoned their responsibilities by remaining silent.

Tellingly when, on May 25, 2017, the Vice-Chair of the Thunder Bay Police Services Board finally broke the Board’s longstanding silence on the OIPRD systemic review, it was to unequivocally deny any basis for Indigenous concerns. Instead of silence, the Board’s new public position professes nothing but contempt for our interests and the members of the community who raised them.

Demonstrating that the Board has already pre-determined the outcome of the ongoing OIPRD Investigation into systemic racism, Vice Chair McKinnon declared “I don’t anticipate anything like that coming out ... There are no facts that there is systemic racism in the Thunder Bay Police Service.” Notably absent was any consideration of the Indigenous perspective, except to deny its legitimacy.³

Both the Vice-Chair and President of the Police Association denied any need for a change in leadership.⁴ This statement was made in the context where Chief Levesque has been charged with obstruct justice under s. 139 of the *Criminal Code*, and breach of trust under s. 122 of the *Criminal Code*. Though the facts underlying these charges have not yet reached the public, it is known that one of the conditions of Chief Levesque’s release on a promise to appear (attached) is to abstain from communicating with the Deputy Chief of Police, Sylvie Hauth, Chairperson Jacqueline Dojack, Vice-Chair McKinnon, Donald Smith, Al Laakonen or any other members or staff of the Thunder Bay Police Services Board. Further, at the same time as denying a need for a change in leadership, the Police Services Board placed Chief Levesque on administrative suspension until the final disposition of his charges.

At this point, we view this blanket denial of the concerns of Indigenous communities as a complete abdication of responsibility, and leaves the community without adequate and effective policing.

Legal Duties of the Board

By simply aligning itself with officers after months of silence and closing its collective mind to glaring investigative oversights, it appears the Board has failed to understand or execute its role as a civilian oversight body. The Thunder Bay Police Services Board has now taken a fully adversarial position to the Indigenous people it is supposed to represent and used evidence of systemic failures as an opportunity to show solidarity with police. It has buried its head in the sand and denied any need for

³ Doug Diaczuk, “Police board responds to OIPRD review” (TB Newswatch, May 25, 2017), online: <<https://www.tbnewswatch.com/local-news/police-board-responds-to-oiprd-review-623896>>. That same day, Chief Levesque was suspended by the Board.

⁴ Doug Diaczuk, “Police board responds to OIPRD review” (TB Newswatch, May 25, 2017), online: <<https://www.tbnewswatch.com/local-news/police-board-responds-to-oiprd-review-623896>>

change while closing its mind to independent review. Under these circumstances, it cannot be said that it is providing adequate and effective services to Thunder Bay's Indigenous community.

As you know, the Board's responsibilities are set out in s. 31 of the *Police Services Act (PSA)*. This section states that the Board has the following responsibilities:

31. (1) A board is responsible for the provision of adequate and effective police services in the municipality and shall,
- (a) appoint the members of the municipal police force;
 - (b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;
 - (c) establish policies for the effective management of the police force;
 - (d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;
 - (e) direct the chief of police and monitor his or her performance;

The Board's role and responsibilities have been the subject of much comment by reports and judicial decisions. One oft cited report is that of the Ontario Civilian Commission on Police Services, Report of an Inquiry dated August 1992. That report made it clear that the interests of a Police Services Board differ widely from those of the police force and its individual officers:

The Police Services Board is responsible for providing civilian monitoring of the force and setting policies for its operation. Because of this obligation to monitor and because police investigate allegations against their own members, expectations for scrutiny by the Police Services Board, as representatives of the community, are high. It is imperative that Police Services Boards understand their role and are held accountable to the public. Their function is a crucial one; Boards exist to ensure that the policing services provided meet community standards.⁵

Similarly, in *Booth v Huxter*, the Court cited the same report and stated that:

... the Police Services Board is meant to act as the civilian overseer of the police on behalf of the community. The Board exists to ensure that the policing services provided meet community standards.⁶

The Honourable John Morden elaborated on this role, and fixed police service boards with maintaining the legitimacy of the service:

The *Police Services Act* has empowered police boards, through their policy-making and resource allocation powers, to shape the way in which policing is done. Police boards are the intermediary between the police and the public, acting as a conduit to receive and impart information, providing a forum to ensure public sentiment makes its way to the ears of law enforcers, and, ultimately, arbitrating interests in determining what is incorporated into the policies that guide the actions of the police. Where the police board fulfills these functions, the legitimacy that is so important to policing by consent, rather than coercion, is maintained.⁷

In *Odhavji Estate v Woodhouse*, one of the many issues addressed by the Supreme Court of Canada was whether the Metropolitan Toronto Police Services Board had a duty to take reasonable care to ensure that police officers cooperated with the Special Investigations Unit ("SIU"). In doing so, the

⁵ The Ontario Civilian Commission on Police Services Report of an Inquiry into Administration of Internal Investigations by the Metropolitan Toronto Police Force, (August 1992) at p. 4-5.

⁶ *Booth v Huxter*, [1994] OJ No 52.

⁷ Honourable John W. Morden, "Independent Civilian Review Into Matters Relating to the G20 Summit" (June, 2012) at 82.

Supreme Court opined on the Board's responsibilities in a situation where the Board might have a positive obligation to act:



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.⁸

This is a situation where the Board must have a positive obligation to act. The river deaths are an epidemic that urgently needs to be addressed by law enforcement before further tragedies occur. Alternating silence, denial, and contempt of evidence-based Indigenous concerns about a widespread and racialized policing crisis is not in fulfilment of the statutory obligation to provide adequate and effective police services.

We respectfully request that the Commission exercise its powers to investigate and inquire into the shocking administrative failures of the Thunder Bay Police Services Board. The Indigenous community around Thunder Bay deserves a police board that represents the public interest, including Indigenous members of the community, rather than blindly defending the police at all costs.

We look forward to a prompt response.

Sincerely,


Grand Chief Alvin Fiddler
Nishnawbe Aski Nation
Ogichidaa Francis Kavanaugh
Grand Council Treaty #3
Chief Jim Leonard
Rainy River First Nations

cc *Minister Marie-France Lalonde, Ministry of Community Safety and Correctional Services*
 Deputy Minister Matthew Torigian, Ministry of Community Safety and Correctional Services
 Director Gerry McNeilly, Office of the Independent Police Review Director
 Chair Jacqueline Dojack, Thunder Bay Police Service Board
 Deputy Chief Sylvie Hauth, Thunder Bay Police Service
 Julian N. Falconer, Legal Counsel

⁸ *Odhavji Estate v Woodhouse* [2003] 3 SCR 263 at para 66.