



Nishnawbe Aski Nation

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GRAND COUNCIL
TREATY #3

THE GOVERNMENT OF THE ANISHINABE NATION is Treaty #3



May 29, 2017

ORIGINAL BY MAIL

The Honourable Marie-France Lalonde
Minister of Community Safety and Correctional Services
25 Grosvenor St.
Toronto, ON M7A 1N8
Via Email: marie-france.lalonde@ontario.ca

Dear Minister Lalonde:

RE: Transfer of Thunder Bay Indigenous Death Investigations to RCMP

We are writing to you on behalf of Nishnawbe Aski Nation (NAN) and Grand Council Treaty #3 (GCT#3), whose territories together span all northern Ontario and whose members frequently reside in Thunder Bay. We write to express our lack of confidence in the Thunder Bay Police Service (TBPS). The TBPS continues to deny any problems with its delivery of services respecting our community members. This is the case despite the existence of an ongoing systemic review into systemic racism in the Thunder Bay Police Service. It is in these circumstances that we are seeking your leadership and support to bring in an outside police force to investigate three deaths of our community members that have occurred in the rivers of Thunder Bay.

We are formally requesting the intervention of the Royal Canadian Mounted Police (RCMP) to investigate the deaths of Stacy DeBungee, Tammy Keeash and Josiah Begg. By way of background we set out the general facts that we know concerning the three latest river deaths.

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

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

appointments. He also went missing on May 6, 2017 and volunteer search efforts were organized on May 9, 2017 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 later confirmed the volunteer search team correct, showing that he was near a bridge over the floodway in the hours before his disappearance. Finally, on May 18, 2017, 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 were undetermined, despite their police files being closed.

During the course of the inquest, the death of Stacy DeBungee triggered the now ongoing systemic review of racism in the TBPS by the Office of the Independent 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, 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.

Previous Attempts to Obtain an Independent Investigation

Given this report and the other unexplained and inadequately investigated river deaths, the DeBungee family and community leadership sought to have the file transferred to an independent police service.

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.

Chief Levesque responded on September 9, 2016 refusing to transfer the investigation. Chief Levesque noted that he had met in person with Commissioner Hawkes of the OPP, regarding the investigation of Mr. DeBungee’s death, and Commissioner Hawkes “clearly expressed” that he would not entertain such a request “during the course of an outstanding O.I.P.R.D. investigation.”

Gerry McNeilly, Director of the OIRPD then wrote to Commissioner Hawkes and Chief Levesque regarding his position on this issue, stating:

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>

It is in the public interest that the most effective and timely investigation possible take place into the death of Mr. DeBungee. The OIPRD Investigation is not designed to determine the cause of Mr. DeBungee's death or any of the core questions that a police investigation is designed to answer. The OIPRD investigation is confined to a determination as to whether past police activities should or should not lead to a disciplinary proceeding....

...if Chief Levesque is of the view that a request should be made by his Service to the OPP for investigative assistance in Mr. DeBungee's death, I support that request being made and being responded to by the OPP without regard to the existence of an outstanding and differently focused investigation by my office.

Receiving no response, the leadership of RRFN wrote to then Minister Orazzetti on October 5, 2016, seeking his assistance to transfer the investigation file. Though this correspondence was confirmed received by email on October 24, 2016, there was no response.

The crisis of confidence that led to the request for OPP investigative assistance has only deepened over time. It must now be described as a total loss of credibility with respect to the DeBungee, Begg, and Keeash families, their communities, and other Indigenous people in and around Thunder Bay. Since the OIPRD is currently investigating the deaths of Josiah Begg and Tammy Keeash as well as Mr. DeBungee, the OPP must be ruled out as a possible investigative body consistent with the reasoning behind the Commissioner's prior refusal.

Furthermore, the OPP has also had strained relations with First Nations. In Sioux Lookout, a service hub for northern First Nations communities, the OPP has been noted to have issues with over-policing and racial profiling.³ Only four months ago, Grand Chief Alvin Fiddler took this exact issue up with regard to Indigenous youth during a Little Bands hockey tournament taking place in Sioux Lookout. These incidents have compounded the issues that the OPP created in their initial refusal to investigate as whoever is tasked with the investigation of these deaths must have the confidence of the Indigenous community.

This leaves no credible alternative in Ontario to investigate these tragedies with the professionalism that every loss of life deserves.

As a "police force for Canada", but currently free of any involvement in northern Ontario, the RCMP is the best placed investigative agency to complete these investigations and provide a credible report. There is both precedent and legal authority to bring in the RCMP where a local police service is unable or unwilling to provide unbiased services itself. For example:

- As recently as 2016, the RCMP laid fraud and money laundering charges against senior executives in the Ontario Provincial Police Association after they were brought in to investigate misuse of association funds.⁴
- In 2001, then-Toronto Police Chief Julian Fantino requested that the RCMP investigate corruption charges against members of his force after theft charges were laid against thirteen members for mishandling of funds used to pay informants and "scores" of drug charges were thrown out of court over credibility concerns. A senior RCMP officer subsequently took over

³ <http://aptnnews.ca/2017/02/16/ontario-human-rights-commissioner-in-northwest-ontario-to-get-feedback-on-issues-that-affect-first-nations/>

⁴ Douglas Quan, "Three ex-OPP union leaders among those charged with fraud, money laundering after RCMP probe" (National Post, June 16, 2016), online: < <http://news.nationalpost.com/news/canada/three-former-opp-union-leaders-among-those-charged-with-fraud-money-laundering-following-rcmp-probe> >

the investigation, which was expanded to examine whether officers had also committed perjury. An RCMP spokeswoman noted at the time that it was “not unusual” for the RCMP to be called in for this kind of investigation.⁵

- In 2000, the Chief of the Saskatoon Police similarly called the RCMP to “maintain public trust and the trust of our aboriginal community.” This followed the “starlight tours” death of Neil Stonechild and survivor Darrell Night, Indigenous men who had been dropped off by police outside the city. Although there is no provincial police force in Saskatchewan, this demonstrates the familiarity of the RCMP with similar issues to those raised around Thunder Bay.⁶

Pursuant to s. 20 of the *Royal Canadian Mounted Police Act*, the RCMP has the authority to enter into agreements with a province or municipality to aid in the administration of justice. The Solicitor General of Ontario has broad authority over policing in the province pursuant to s. 3 of the *Police Services Act*. We respectfully request that you recommend an independent investigation of the Thunder Bay river deaths by the RCMP. If the Thunder Bay Police Services Board refuses to cede jurisdiction, then we request your support in bringing this matter to the Ontario Civilian Police Commission.

Time is of the essence, given the diminishing returns as time passes in police investigations and the obvious potential for further tragedies. The Thunder Bay river deaths are an epidemic that urgently needs to be addressed by law enforcement before further tragedies occur.

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 at the police service it is supposed to oversee, 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.⁷

By simply aligning itself with police after months of silence, it appears the Board has failed to understand or execute its role as a civilian oversight body. The TBPS and its Board have now taken a fully adversarial position to the Indigenous people they are supposed to represent. Indeed, the Board has 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 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 required by the *Police Services Act*.

Our communities and the affected families require and deserve an independent and professional investigation into the river deaths. The sooner a proper investigation happens, the sooner we will

⁵ Colin Freeze, “Chief calls in RCMP to probe Toronto police” (Globe and Mail, Thursday, August 16, 2001), online: <http://www.walnet.org/jane_doe/news/toronto_2001/gandm-010816.html>

⁶ Merlin Brass, “Starlight Tours” (CBC News, July 2, 2004), online: <<http://www.cbc.ca/news2/background/aboriginals/starlighttours.html>>

⁷ 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.

understand our losses, be permitted to grieve them, and be reassured that similar Indigenous deaths will not continue to occur because of police indifference.

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 *Premier Kathleen Wynne*
 Deputy Minister Matthew Torigian, Ministry of Community Safety and Correctional Services
 Minister Ralph Goodale, Public Safety Canada
 Deputy Minister Matthew Brown, Public Safety Canada
 Commissioner Bob Paulson, Royal Canadian Mounted Police
 Gerry McNeilly, Independent Review Director
 Chair Jacqueline Dojack, Thunder Bay Police Services Board
 Deputy Chief Sylvie Hauth, Thunder Bay Police Service
 Julian N. Falconer, Legal Counsel