Court File No. CV-18-708

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOHN DOE, an Officer of the Waterloo Regional Police Service

Applicant

and

JACKIE BAKER on her own behalf as an Administrator of the **ESTATE OF BEAU BAKER, DECEASED; MICHAEL BAKER; DANIEL BAKER; THE WATERLOO REGIONAL POLICE SERVICES BOARD; OFFICE OF THE CHIEF CORONER; TORSTAR CORPORATION** and **CHIEF OF POLICE FOR THE WATERLOO REGIONAL POLICE SERVICE, BRYAN LARKIN**

Respondent

and

EMPOWERMENT COUNCIL

Interveners

and

CANADIAN BROADCASTING CORPORATION and
CTV, A Division of Bell Media Inc.

(Proposed Interveners)

FACTUM OF THE RESPONDENT JACKIE BAKER
on her own behalf as an Administrator of the ESTATE OF BEAU BAKER, DECEASED

PART I – THE FACTS

A. Overview

1. This Application arises in the context of the death of a young man, Beau Baker, who was fatally shot by an unidentified member (the Applicant or "Officer Doe") of the Waterloo Regional Police Service ("the Service") on April 2, 2015. An inquest into the death of Beau Baker is scheduled to commence in February 2019.

2. The Applicant seeks a variety of relief for the purpose of maintaining the anonymity of Officer Doe throughout the entirety of the Coroner's Inquest *inter alia*: that Officer Doe be referred to by pseudonym; that inquest materials be vetted for any identifying information; that the court issue a publication ban; that Officer Doe be permitted to testify either remotely or behind a screen; and, that there be a prohibition on cameras and recording devices during the Coroner's Inquest.

3. The Applicant points to social media posts as the basis for this requested relief. The Applicant views these social media posts as raising officer safety concerns.

4. The threshold issue is whether the Applicant has satisfied the onus of establishing that an anonymity order and publication ban are necessary in these circumstances, thereby requiring a deviation from the fundamental open-court principle.

5. The family of Beau Baker, represented by Jackie Baker on her own behalf, and as an Administrator of the Estate of Beau Baker, opposes the Application on the basis that there is zero merit to the request. Beyond surveillance of one social media poster and conducting a background check into a male suspect who referenced Beau Baker in an unrelated investigation by police, the Service has not conducted *any* investigation into the individuals behind the social media posts (beyond continued monitoring of social media).

6. The lack of police investigation into these social media posts is ostensibly at the request of Officer Doe, who is of the belief that such an investigation would require the disclosure of his identity, should charges be laid. The Service has respected the wishes of Officer Doe, notwithstanding that the Service acknowledges that they have an obligation to investigate credible threats. Further, the Service's key affiant, Superintendent Michael Haffner, acknowledges that without an investigation, there is no way of telling whether any social media comment presents a credible threat to officer safety.
7. As such, the Court is left with speculative evidence as to whether any social media comment poses a credible threat to officer safety.
8. Issuing the sought relief on the basis of speculative threats is antithetical to the open-court principle and the purpose of Coroner's Inquests - which is to make public the details of how a deceased came to his or her death. Absent national security concerns (which are not present in the herein case), Coroner's Inquests must proceed publicly. Further, the Coroner does not have the jurisdiction to order a publication ban.
9. It is on this summarized basis, that the Respondent Jackie Baker opposes this Application and respectfully requests that the Court deny the relief sought therein.

PART II – STATEMENT OF FACTS

A. Overview

10. The Applicant is now and was at all material times, employed as a police officer by the Waterloo Regional Police Service.
11. On April 2, 2015, the Applicant responded to a 911 call placed by civilian Beau Baker.
12. The events that followed concluded in the Applicant fatally shooting and causing the death of Beau Baker.

13. The Respondent, Jackie Baker, is the mother of the deceased Beau Baker and the Administrator of the Estate of Beau Baker.

14. A Coroner's Inquest into the death of Beau Baker is currently scheduled to commence on February 4, 2019.

15. The Applicant is now seeking the following:

    a. An order that the Applicant be referred to by a pseudonym during the entirety of the Inquest into the death of Beau Baker proceedings ("the Inquest") and, further, that witnesses be instructed not to refer to the Applicant by the Applicant's given name but instead to the Applicant's pseudonym;

    b. An injunctive order (interim and permanent) prohibiting the release of the Applicant's identity by the Office of the Chief Coroner arising out of the Inquest and a mandatory order requiring that the name of the Applicant, along with any information that would identify the Applicant, directly or indirectly, be vetted from the disclosure materials or inquest briefs regarding the Inquest;

    c. A declaration and mandatory order that the Applicant be permitted to testify remotely for the purpose of the Inquest, or in the alternative, behind a screen visible only by the jury and the Coroner, so as to protect the Applicant from being photographed either during or while entering into or leaving the place of the Inquest;

    d. An order banning publication, in any form (including social media) of the identity or likeness of the Applicant, or any information that would reveal the identity of the Applicant including but not limited to photographs, drawings, age, sex, race, years of service, etc.; and,

e. An order requiring the prohibition of cameras or other devices with the ability to record audio or video or take photographs, not required by the Coroner, in or around the Inquest hearing room or any other place where the Applicant is to give evidence pertaining to these matters, before, during and after the Applicant testifies.

B. Affidavit Evidence filed by Applicant

16. In support of the requested relief, the Applicant has filed four affidavits as follows:

a. Affidavit of Karen Watson, sworn June 2, 2018;

b. Supplementary Affidavit of Karen Watson, sworn June 28, 2018;

c. Second Supplementary Affidavit of Karen Watson, sworn August 24, 2018; and,

d. Affidavit of Michael Haffner, sworn June 28, 2018.

17. Karen Watson is a legal assistant to counsel for the Applicant and Michael Haffner is an officer of the Waterloo Regional Police Service ("Service"), currently holding the rank of Superintendent.

18. The Applicant's affidavit material forms the basis for the requested relief by appending examples of social media posts that are of concern to the Service. As a result of these social media posts, the Service believes that protection of Officer Does identity is necessary for officer safety.

C. Cross-Examinations of Applicants' Affiants (October 2, 2018) & Answers to Undertaking

19. Affiants Karen Watson and Michael Haffner were cross-examined on October 2, 2018. The transcripts of these cross-examinations are included in the Responding motion record of the proposed media intervenors, CBC and CTV.

20. Under cross, it was clarified that the majority of Karen Watson's affidavit, in particular her June 2, 2018, affidavit, was based on information and belief provided to her either by the counsel she has assisted and/or by the Officer Doe in question.[1] It is for this reason that the herein Respondent takes the view that Ms. Watson's affidavit material is of little assistance to the court in determining the threshold issue of whether an anonymity order and publication ban are necessary in these circumstances, such that the fundamental open-court principle should be deviated from.

21. On the other hand, Superintendent Haffner's affidavit provides substantive material for the court to consider in assessing the threshold issue; however, the court should be aware that Superintendent Haffner has never investigated online threats and has not laid charges for uttering threats where the threats were made online.[2]

22. Superintendent Haffner's affidavit appends a selection of social media posts that he alleges are of concern to the Service. Under cross, Superintendent Haffner was asked to provide an undertaking to identify which of this material constituted death threats as referenced in paragraph 16 and Exhibit A of Superintendent Haffner's affidavit. In response, Superintendent Haffner produced a package of answers to this undertaking, which identified posts containing the shorthand "F.T.P", an acronym that stands for "Fuck the Police", alongside the following commentary from the Service:

> As well, the posts that use F.T.P. (and or "Fuck tha [or the] Police") is a reference to the N.W.A. song that is an anti-police but more importantly, specifically ends with a lyric about killing police officers ("And when I'm finished, it's gonna be a bloodbath of cops…"). While this song was a protest song specific to LAPD, it has become an anti-police anthem associated with a call for acts of violence, including

[1] Evidence of Karen Watson, Transcript dated October 2, 2018, at p. 1, ll. 1 to p. 4, Ll 14.
[2] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 2, ll. 15 to p. 3, Ll 12

killing police officers. One post specifically follows the comment that includes "F.T.P" with a call to kill police (note the Shares and Likes)[3]

23. Superintendent Haffner was cross-examined on what if any steps were taken to investigate these social media posts in order to distinguish between those posts that are examples of venting typical of social media and those posts which represent credible threats to officer safety. Superintendent Haffner's evidence was, in summary, as follows:

    a. That the Service respected the wishes of Officer Doe not to have his name released to the individuals that were making the threats in the event charges were laid;[4]

    b. That Officer Doe was asked if he wanted the police to investigate the social media posts and Officer Doe said that he did not want these social media posts investigated for the purposes of laying charges;[5]

    c. That notwithstanding Officer Doe's wishes, that the police would still have a duty to investigate any threats that they considered credible which could potentially lead to the laying of charges;[6]

    d. Superintendent Haffner agreed that without an investigation, there is no way of telling whether any social media comment presents a credible threat to officer safety based on the comments themselves;[7] [8]

    e. Under cross-examination, Superintendent Haffner identified only one example where police have taken investigative steps beyond simply monitoring social media. Superintendent Haffner stated on cross that the Service had visited and spoken to a Mr. Michael Vickers who is believed to have posted a photo of himself

[3] Answers to Undertakings of Superintendent Michael Haffner, October 5, 2018, at top of p. 3
[4] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 10, ll. 24 to p. 13, Ll 7
[5] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13, ll. 8-11
[6] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13 ll. 42-20
[7] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 21 ll. 27 to p. 22, Ll 7
[8] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 30 ll. 11-22

holding a firearm, in response to a social media conversation about Beau Baker.[9] Superintendent Haffner was asked to provide an undertaking providing the summary of any police visit with Mr. Vickers. In his answer to this undertaking, Superintendent Haffner clarified that the Service did not directly speak with Mr. Vickers; rather, the Service placed Mr. Vickers under surveillance and nothing arose from this surveillance.[10]

f. Superintendent Haffner was also asked to provide an undertaking indicating whether any other comments/posts were investigated (other than the aforementioned Mr. Vickers). In his answer to this undertaking, Superintendent Haffner stated that on January 5, 2016, an officer briefing was prepared and disseminated to all members in response to social media posts and officers were reminded to maintain vigilance. Secondly, on April 19, 2016, the Service interviewed a male in a separate unrelated investigation. During the course of this investigation, the subject male referenced Beau Baker. The Intelligence Branch was made aware of this comment, leading the Intelligence Branch to complete a background investigation into the subject male. Thirdly, the Intelligence Branch has flagged known individuals should these posters interact with police in the future and the Service continues to monitor social media.[11]

24. Aside from the above referenced examples, the Respondent understands the Applicant's evidence to be that, aside from the surveillance of Mr. Vickers and some background investigation into a male who referenced Beau Baker in an unrelated interaction with

[9] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13, ll. 12 to p. 11, Ll
[10] Answers to Undertakings of Superintendent Michael Haffner, October 5, 2018, bottom of p. 1, Answer to Question 3.
[11] Answers to Undertakings of Superintendent Michael Haffner, October 5, 2018, Part B., pg 6-7.

police, the Service has not conducted an investigation into the social media posters, beyond monitoring of social media, which continues to this day.

25. Further, the Service is not claiming that there are any threats of violence coming from the Baker family.[12] [13]

26. As to the unprecedented nature of the sought relief, the Service's evidence is as follows:

    a. This is not the first time that a member of the Service has killed a civilian, causing community concern;[14]

    b. However, this is the first time that an officer involved in killing a civilian has requested that their identity remain anonymous; and,[15]

    c. This is also the first time that the Service has accommodated the involved Officer's request for anonymity by taking steps to prevent the release of the Officer's identity in the course of the investigation into a complaint filed before the Office of the Independent Police Review Director ("OIPRD"), the Special Investigations Unit ("S.I.U") investigation and now these forthcoming Coroner's Inquest proceedings.[16]

PART III – ISSUES

27. The issue for the court is whether the Applicant has satisfied the onus of establishing that an anonymity order and publication ban are necessary in these circumstances, such that they warrant deviating from the fundamental open-court principle.

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[12] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p.37, ll. 12-22.
[13] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 54, ll. 16-18
[14] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 40, ll. 14-26 to p. 41, Ll 1-8
[15] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 19, ll. 21-26 to p. 20, Ll 1-9; p. 41, Ll. 9-18
[16] Affidavit of Karen Watson, Sworn June 2, 2018, Supplementary Application Record of the Applicant, Tab 1, paras. 8-10; Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 4, ll. 20-23

PART IV – LAW AND ANALYSIS

A. Anonymity Orders

28. An underlying major premise to the integrity of the judicial system in any democracy is the strong presumption of openness and public access to all aspects of court proceedings. For justice to be truly done, it must also be seen to be done. Put succinctly, the public interest demands openness, including the public identification of the parties, as the norm.

B. (A.) v Stubbs, [1999] **O.J. No. 2309, 97 O.T.C. 15 at paras 11-12**

29. The present Application seeks to depart from that norm, and associated principles that call for openness in the courts, by requesting an anonymity order that will require the Applicant be referred to by a pseudonym throughout the Inquest and a full ban on the publication of the Applicant's identity, likeness and any information that would, directly or indirectly, identify the Applicant.

30. The jurisdiction for a court to grant an anonymity order is found in Rule 40. 01 of the *Rules of Civil Procedure* which deals with injunctive relief. The test to be applied in deciding whether to grant such an order requires the applicant to establish:

    a. That there is a serious issue to be tried;

    b. That there is a likelihood of irreparable harm; and

    c. The balance of convenience favours granting the order.

Jane Doe v D'Amelio, [2009] O.J. No. 4042, 98 O.R. (3d) 387 at para 13

31. Applications of this nature often turn on the second step of the above test. The onus is on the party seeking anonymity to prove that he or she will suffer irreparable harm if the order is not issued. **Evidence of irreparable harm must be clear and not speculative**. The subjective feelings and sensibilities of a party cannot be the test for giving an anonymity order. Additionally, the jurisprudence considers potential impacts on employment and reputation to be inadequate to warrant an order of confidentiality.

B. (A.) v Stubbs, [1999] O.J. No. 2309, 97 O.T.C. 15 at paras 22-27

John Doe v R, 2014 FC 737 at para 30

32. The use of pseudonyms should only be permitted in exceptional circumstances, where there is clear evidence that irreparable harm will ensue. Additionally, the court has an obligation to consider the overriding interests of justice notwithstanding the position the parties may take on the matter.

Fairview Donut Inc. v TDL Group Corp., 2010 ONSC 6688 at para 34

B. (A.) v Stubbs, [1999] O.J. No. 2309, 97 O.T.C. 15 at para 15

33. The jurisprudence makes it clear that anonymity must only be allowed in the most exceptional of circumstances and that clear evidence will be required to justify departing from the presumption that proceedings will be public and parties will be identified.

34. In the present Application, the only evidence put forward by the Applicant is a subset of online social media comments ("the online comments") that range in content from expressing discontent for the Applicant directly, to expressing discontent for police officers generally.

35. With respect to the online comments that are directed at police officers and/or policing in general, it is respectfully submitted that such comments can not be reasonably construed as direct and credible threats to the Applicant and/or the Applicant's family. This is especially the case in the current circumstances where the Service has not investigated the social media posters (beyond Mr. Vickers), ostensibly due to Officer Doe's request.[17] Further, the Service's key affiant, Superintendent Haffner agrees that without an investigation, there is no way of telling whether any social media comment presents a credible threat to officer safety based on the comments themselves.[18] [19]

36. To determine if a reasonable person would consider particular words or comments as a threat, a court must consider the words objectively, review the words in light of the circumstances in which they were uttered, consider the manner in which they were uttered, and consider who the words/comments were addressed to.

***R v Clemente*, [1994] 2 S.C.R. 758, [1994] 8 W.W.R. 1 at para 13**

37. Here, the online comments were made in the aftermath of a civilian being fatally shot by a police officer. It would be a reasonable inference in such circumstances that the public would be upset and would want a proper explanation of the where, when, what, who, why and how of the situation. The online comments were not addressed to the Applicant nor communicated to the Applicant directly but rather addressed to, and published on, a public, open-source, social media page(s), in particular Facebook.

[17] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13, ll. 8-11
[18] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 21 ll. 27 to p. 22, Ll 7
[19] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 30 ll. 11-22

38. Facebook and social media websites are, regrettably, ripe with comments such as these. In a decision of the Ontario Court of Justice dealing in part with whether or not certain comments posted on Facebook were threats, evidence was called that indicated that Facebook users embellish their character, that they deliberately say provocative things to elicit a response from other Facebook users, and that they construct alternate online personas.

***R v Sather*, 2008 ONCJ 98 (CanLII) at para 9**

39. The Applicant has not indicated or presented any evidence of any attempts or steps taken to investigate these alleged threats, beyond placing Mr. Vickers, who posted a photo of himself holding a firearm, under surveillance and conducting a background check on a male who was under an unrelated investigation by police. If the online comments were in fact being considered as serious and credible threats, such comments would have been investigated by police. A police force that legitimately believed one of its officers' lives was in danger, would take steps to properly investigate threats made against that officer. Indeed, the Service has acknowledged that it has a duty to investigate credible threats and that this could lead to the laying of charges.[20]
40. The Applicant has not indicated that he has been the target of any direct threats or threatening behaviour outside of the online comments.

[20] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13 ll. 42-20

B. Publication Bans

41. In addition to the test for anonymity orders articulated above, further considerations are relevant here as an order allowing a party to use a pseudonym is a form of publication ban.

***G.-L. v OHIP (General Manager)*, 2014 ONSC 5392 (CanLII) at para 7**

42. In assessing whether to issue a publication ban, or more generally to deviate from the open-court principle, the proper analysis holds that such a ban should only be ordered when:

a. such an order is necessary in order to prevent a serious risk to the proper administration of justice because reasonably alternative measures will not prevent the risk; and,
b. the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

***R v Mentuck*, 2001 SCC 76 at para 32**

43. This test for publication bans applies to all discretionary court orders that limit freedom of expression and freedom of the press in relation to legal proceedings and/or that affects the openness of proceedings.

Toronto Star Newspapers Ltd. v Ontario, 2005 SCC 41 at para 7

Canadian Broadcasting Corp. v The Queen, [2011] 1 SCR 65, 2011 SCC 3 (CanLII) at para 13

44. The "risk" referred to in the above analysis must be a real and substantial risk. It must be a risk that is well grounded in the evidence. Publication bans are not available as protection against remote and/or speculative dangers.

***R v Mentuck*, 2001 SCC 76 at para 34**

***Dagenais v Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, 120 D.L.R. (4th) 12 at para 80**

45. The open court principle is a cornerstone of the common law. It assumes that publicity, openness and access are fundamental in establishing and maintaining public confidence in the integrity of the courts and understanding of the administration of justice. Additionally, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by decisions of the courts.

***Vancouver Sun, (Re),* 2004 SCC 43 at paras 24-25**

46. The open court principle is inextricably linked to the freedom of expression protected by section 2 (b) of the *Canadian Charter of Rights and Freedoms* and advances the core values therein. The freedom of the press to report on judicial proceedings is a core value. The relief the Applicant is seeking will directly infringe that core value.

***Toronto Star Newspapers Ltd. v Ontario,* 2005 SCC 41 at para 29**

***Vancouver Sun, (Re),* 2004 SCC 43 at para 26**

47. The Applicant submits that he will have an easier testimonial experience if the remedies being requested are granted and as such will "enhance" the fact-finding exercise of the Inquest. With respect to the Applicant, the ease or stress of one's testimonial experience is not a relevant consideration on an Application of this nature; however, the jurisprudence

suggests the opposite: that fact-finding is better enhanced through publicity. The interests of justice are better served when parties are properly identified by name. Witnesses are more likely to be truthful in their testimony if they know it is subject to being scrutinized by an audience within the context of their identity being known. A person must be responsible for his or her words and actions and this is more likely with his or her identity being known to the public.

***B. (A.) v Stubbs*, [1999] O.J. No. 2309, 97 O.T.C. 15 at para 36**

48. In addition to the jurisprudence and common law principles that consistently stress the importance of openness and publicity, it is noteworthy that Section 32 of the *Coroner's Act* states that an inquest shall be open to the public. [emphasis added]

***Coroners Act*, R.S.O. 1990, c C.37 s 32**

49. A coroner's inquest is presumptively public, and that presumption may be departed from only exceptionally. The Respondent relies on sections of the Factum of the Respondent, the Office of the Chief Coroner, as follows:

    a. The nature and purpose of a Coroner's Inquest[21] in particular that an inquest is presumptively public and can only proceed *in camera* where the Coroner is of the opinion that national security might be endangered[22] (a factor that is not present in this herein case); and,

[21] Factum of the Respondent, the Office of the Chief Coroner, at paras. 18-24.
[22] Factum of the Respondent, the Office of the Chief Coroner, at para. 21

b. The jurisdiction of a presiding Coroner,[23] which does not include any jurisdiction to order a publication ban.[24]

50. The Applicant is seeking an anonymity order and full publication ban on identity. This is a substantial deviation from the open-court principle and general presumption that the public and press will have access to proceedings. Additionally, it is contrary to the statutory presumption that a coroner's inquest shall be public and subverts part of the very purpose that such an inquest is designed to serve – that is, to make public the details of how a deceased came to his or her death.

51. While the online comments are indeed unfortunate, they alone are not sufficient to warrant the displacement of the open court principle, nor do they amount to the clear and convincing evidentiary basis required to grant the orders requested here. The evidence presented in support of the present Application in the form of the online comments is of the type of "speculative danger" cautioned against in the jurisprudence and would not be seen as credible threats by a reasonable person in the circumstances.

Dagenais v Canadian Broadcasting Corp., [1994] 3 S.C.R. 835, 120 D.L.R. (4th) 12 at para 80

52. The evidence is speculative in the following ways: Officer Doe's anonymity request included a request that the Service not conduct an investigation into the social media posters, which the Service has largely honoured;[25] [26] that notwithstanding Officer Doe's wishes, the police still have a duty to investigate any credible threats;[27] the Service's key

[23] Factum of the Respondent, the Office of the Chief Coroner, at paras. 25-35
[24] Factum of the Respondent, the Office of the Chief Coroner, at paras. 33-35
[25] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 10, ll. 24 to p. 13, Ll 7
[26] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13, ll. 8-11
[27] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 13 ll. 42-20

affiant agreed that without an investigation, there is no way of telling whether any social media comment presents a credible threat to officer safety based on the comments themselves;[28] [29] and, aside from the two aforementioned examples (surveillance of Mr. Vickers and a background check on a male during an unrelated investigation where the male referenced Beau Baker), the Service has not conducted an investigation into the social media posters, beyond monitoring of social media, which continues to this day. As a result, the potential danger behind these social media posts remains speculative to this date.

C. Concluding Summary

53. The Court should be clear-eyed in understanding that Officer Doe and the Service has created a catch-22 of sorts: Officer Doe is so concerned about these social media posts that he does not want the Service to investigate them. As such, the Court is left with simply taking the word of police that these posts represent credible threats. At the same time, the Service's key affiant acknowledges that without an investigation, there is no way of assessing the credibility of these purported threats. In a case where the requested relief is extraordinary, and where the harms are speculative, the Court should not grant such an application - the result of which would be unprecedented.

54. To summarize, the Applicant has not satisfied the relevant legal tests or evidentiary burdens for the relief being requested in this Application. The Applicant has not established that the relief being requested is necessary to avoid a serious risk to the proper administration of justice as is required by the common law, nor has the Applicant established that the

[28] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 21 ll. 27 to p. 22, Ll 7
[29] Evidence of Michael Haffner, Transcript dated October 2, 2018, at p. 30 ll. 11-22

salutary effects of the relief requested outweigh the deleterious effects on the rights and interests of the parties and the public.

55. If it is found that the Applicant has satisfied the test for the orders sought, the court must still have regard for the overriding interests of justice. Here, it is respectfully submitted that the overriding interests of justice demand publicity and openness in these circumstances. To conclude otherwise is to allow the open-court principle, the presumption of a public Coroner's inquest, and the strong interest of the public and the Respondent Jackie Baker in having the Applicant properly identified by name, to be sacrificed in the name of a series of social media comments.

PART IV – ORDER SOUGHT

56. It is respectfully requested that this Application be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, this 9th day of October 2018.

Julian N. Falconer (LSUC #29465R)
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