

**ONTARIO
SUPERIOR COURT OF JUSTICE
-DIVISIONAL COURT-**

Between

CANADIAN BROADCASTING CORPORATION

Applicant
(Responding Party on the Motion)

-and-

THUNDER BAY POLICE SERVICES BOARD

Respondent
(Responding Party on the Motion)

-and-

**BRAD DeBUNGEE and JIM LEONARD (“THE FIRST NATION PUBLIC
COMPLAINANTS”)**

Proposed Intervenor
(Moving Party on the Motion)

**NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE FIRST NATION
PUBLIC COMPLAINANTS**

THE PROPOSED INTERVENOR, BRAD DeBUNGEE and JIM LEONARD (“THE FIRST NATION PUBLIC COMPLAINANTS”), will make a motion to a single judge of the Divisional Court on Tuesday, September 25, 2018 at 11:00a.m., or soon after that time as the motion can be heard, at the Thunder Bay Courthouse, 125 Brodie Street North, Thunder Bay, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- a) An order granting leave to the First Nation Public Complainants to intervene as an added party in the present application.

THE GROUNDS FOR THE MOTION ARE:

1. The First Nation Public Complainants have a direct and substantial interest in the present application.
2. Brad DeBungee, brother of Stacy DeBungee – both of whom are/were members of Rainy River First Nations – and Jim Leonard, former chief of Rainy River First Nations, filed a complaint with the Office of the Independent Review Director (“OIPRD”) on March 18, 2016, alleging misconduct against several officers of the Thunder Bay Police Service (“TBPS”) in relation to the investigation into the death of Stacy DeBungee.
3. The OIPRD retained the complaint on April 22, 2016 and launched an investigation. It distributed its finalized report on its investigation on February 15, 2018, i.e. almost 22 months after it had retained the complaint. The OIPRD concluded that there was sufficient evidence to believe on reasonable grounds that some TBPS officers had committed misconduct of a serious nature.
4. The Chief of the TBPS was directed to bring an application pursuant to s. 83(17) of the *Police Services Act* before the Thunder Bay Police Services Board (“TBPSB”) to permit service of the notices of hearing on the officers, because more than six months had elapsed since the complaint had been retained by the OIPRD.
5. The TBPSB raised a concern that, due to other investigations that were ongoing, there might be a reasonable apprehension of bias if it heard the s. 83(17) application. The TBPSB thus brought an application requesting a disinterested person be appointed to hear the s.

83(17) application, and on July 25, 2018 the application was granted and the Honourable Lee K. Ferrier, Q.C. (“Mr. Ferrier”) was appointed.

6. The s. 83(17) hearing was originally scheduled for September 21, 2018 in Thunder Bay. The First Nation Public Complainants are a party to the s. 83(17) hearing.
7. Board hearings such as a s. 83(17) hearing are presumptively open to the public, but can be held *in camera* in certain situations. Mr. Ferrier accepted written submissions on whether the hearing should be held *in camera*.
8. The Responding Party on this motion, the Canadian Broadcasting Corporation (“CBC”), has reported extensively on investigations into the TBPS and the TBPSB. The CBC provided written submissions on the issue of whether the s. 83(17) hearing should be held *in camera*.
9. On September 20, 2018, Mr. Ferrier decided that the s. 83(17) hearing would be held *in camera*.
10. The CBC has brought an application for a temporary stay of the s. 83(17) hearing pending judicial review of Mr. Ferrier’s September 20, 2018 decision. The CBC did not name the First Nation Public Respondents in its application for a stay. Given their party status at the s. 83(17) hearing, however, the First Nation Public Respondents have a direct and substantial interest in the present application.
11. The First Nation Public Respondent’s proposed intervention will not prejudice any party to the present application.
12. Rule 13.01 of the *Rules of Civil Procedure*.
13. Such further and other grounds as counsel may advise and this honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The herein Notice of Motion ; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED this 25th day of September, 2018.

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First Nation Public Complainants

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Superior Court of Justice

AND TO: CBC
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AND TO: Thunder Bay Police Services Board
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AND TO: Thunder Bay Police Service
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AND TO: AG Ontario
Crown Law Civil
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AND TO: Office of the Independent Police Review Director
c/o Jean Iu
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AND TO: Shawn Harrison; Shawn Whipple; Susan Kaucharik
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Court File No: 598/18

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NOTICE OF MOTION

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