





Holding an Entire Police Service to Account: The Legal Journey in Calling Out Police Racism Against Indigenous People in Thunder Bay






Litigation with a conscience.

PRESENTATION OVERVIEW



Context:

-  Over-Policed and Under-Protected
-  Anti-Indigenous Racism in Thunder Bay



Catalyst: The Death of Stacy DeBungee

-  The Timing
-  The Police “Investigation”
-  The Private Investigation

Response: Engaging the OIPRD

-  Individual Review
-  Systemic Review

Reaction: Stonewalling by the Police Service Board

-  Involving the Ontario Civilian Police Commission
-  The Board under Review

Results: Discipline in the Open

October 4, 2018

Superior Court Justice Helen Pierce:



- “Because of the complaint underlying this process – that policing practices related to Indigenous citizens in Thunder Bay are racist it is even more critical that every step in the complaint procedure be dealt with transparently.” (para 48)
- “Failing to proceed openly will only sow distrust in the complaints procedure. It will do nothing to address the community’s question about whether Thunder Bay’s approach to policing indigenous matters is racist.” (para 49)
- The balance of convenience favours transparency in the circumstances where racist policing is alleged.” (para 66)

Context: Over-Policed...



As far back as 1998, the Supreme Court was discussing racist stereotypes against Indigenous people and evidence that this results in systemic discrimination in the criminal justice system:

Racism against [Indigenous people] includes stereotypes that relate to credibility, worthiness and criminal propensity. As the Canadian Bar Association stated in Locking up Natives in Canada: A Report of the Committee of the Canadian Bar Association on Imprisonment and Release (1988), at p. 5:

*Put at its baldest, **there is an equation of being drunk, Indian and in prison.** Like many stereotypes, this one has a dark underside. It reflects a view of native people as uncivilized and without a coherent social or moral order. The stereotype prevents us from seeing native people as equals.*

There is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system[...].

- *R. v. Williams*, [1998] 1 SCR 1128, at para 58 (per McLachlin J, as she then was, for the Court)

Context: Over-Criminalized...



First Nations man spends 4 years in solitary confinement in northern Ontario awaiting trial

Adam Capay, 23, has been held in segregation since 2012

Jody Porter · CBC News · Posted: Oct 26, 2016 5:00 AM ET | Last Updated: October 26, 2016



Adam Capay has been held in solitary confinement, awaiting trial on a first-degree murder charge, for about 1,500 days. (Alison Jane Capay/askfm)

Context: ...and Under-Protected

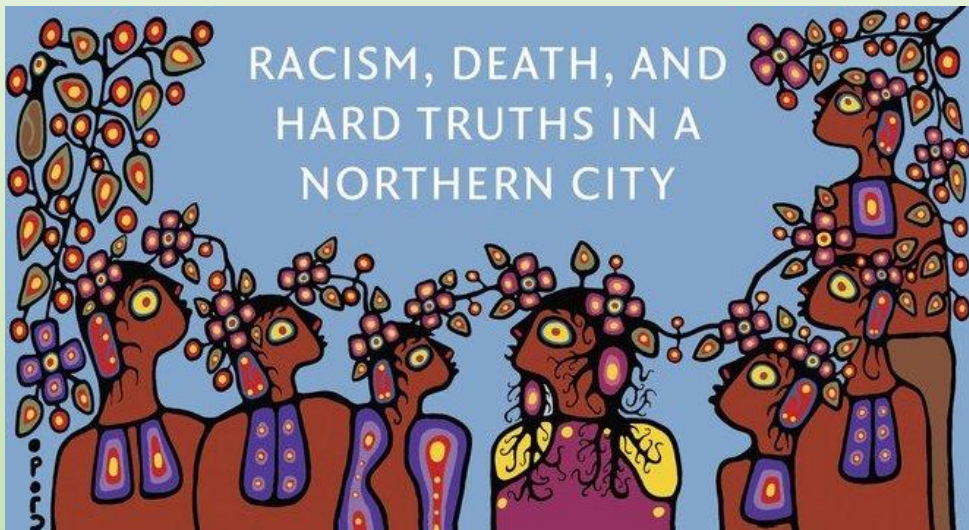
- ✈ Hand-in-hand with over-policing is under-protection of Indigenous people by police
- ✈ Former NWAC President Dawn Lavell-Harvard has spoken about this reality of double-edged racism specifically in relation to Indigenous women:

“The racism is that double-edged sword where it prevents us from getting attention from police when we are the victims but at the same time, it brings down the long arm of the law when our women eventually stand up for themselves.”

- As quoted in Kristy Kirkup (The Canadian Press), “Examine police behaviour in missing, murdered Indigenous women inquiry, advocates say”, CBC News:

<https://www.cbc.ca/amp/1.3564695>

Context: ...and Under-Protected



Part of cover of Tanya Talaga's Book, *Seven Fallen Feathers: Racism, Death, and Hard Truths in a Northern City*



Verdict of Coroner's Jury Office of the Chief Coroner


The Coroners Act - Province of Ontario Name(s) of the deceased: Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morrisseau, Jordan Wasasse
Held at: Thunder Bay, ON
From the: 5th of October, 2015
To the: 28th of June, 2016

Context: Racism in Thunder Bay



#thisisthunderbay



**Nishnawbe Aski Nation**
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Catalyst: The Death of Stacy DeBungee




✈ Stacy Lance DeBungee was found dead in Thunder Bay's McIntyre River on October 19, 2015. He was a member of Rainy River First Nations, and had been living in Thunder Bay for over ten years. He was 41 years old.




✈ About two weeks before Stacy's body was found in the river, a Coroner's Inquest started that was looking into the death of seven Indigenous youth who had died in Thunder Bay between 2000 and 2011.

✈ The circumstances of Stacy's death seemed eerily similar to those of five of the seven youths.

Catalyst: The Death of Stacy DeBungee

-  Questions were being asked at the Inquest about why, in the absence of evidence about how the youths had ended up in the water, officials assumed they had ended up there accidentally, with no foul play.
-  And yet only three hours after Stacy's body was discovered, the Thunder Bay Police Service (TBPS) published a press release stating, "An initial investigation does not indicate a suspicious death."
-  25 hours after Stacy's body was discovered, the TBPS issued a second press release identifying Stacy as the deceased and stating his death "has been deemed as non-criminal."

Catalyst: The Death of Stacy DeBungee

 At the Seven Youth Inquest, on November 5, 2015, Det. A. Wayne Shorrock, former Staff Sargent of the Thunder Bay Police Service was cross-examined about the investigation into the drowning of Jethro Anderson. The following line of questions were directed at the practice of early media releases and what they might reveal about the investigative practices of the TBPS:

Q. Can you explain why this particular death would have been cited as no foul play being suspected?

A. I would have to base my answer on the reports that were submitted both from the attending coroner, any autopsy, postmortem, as well as the officers involved, sir.

Q. Right. And the reason you cite all those factors is because once those, that information comes in, it's appropriate to make that kind of call that no foul play is suspected, right?

A. It certainly provides us with additional information, but there are still witnesses to be interviewed, statements to be corroborated if possible.

Q. What you wouldn't do is declare that no foul play is suspected before, for example, the postmortem came in, correct?

A. Correct.

Q. Right. And the reason you wouldn't do that is it would reflect the closed mind to the possibilities, agreed?

A. Yes sir.

Q. A kind of tunnel vision, agreed?

A. Yes sir.

Catalyst: The Death of Stacy DeBungee

Stacy's family and Rainy River First Nations hired a private investigation company to investigate Stacy's death. Founding partner and retired Detective Sergeant from the Toronto Police service, David Perry, conducted the investigation.

Mr. Perry interviewed key people whom the TBPS had never bothered to contact. He concluded that based on the information available to him, Stacy's death should have been treated as a criminally suspicious death.

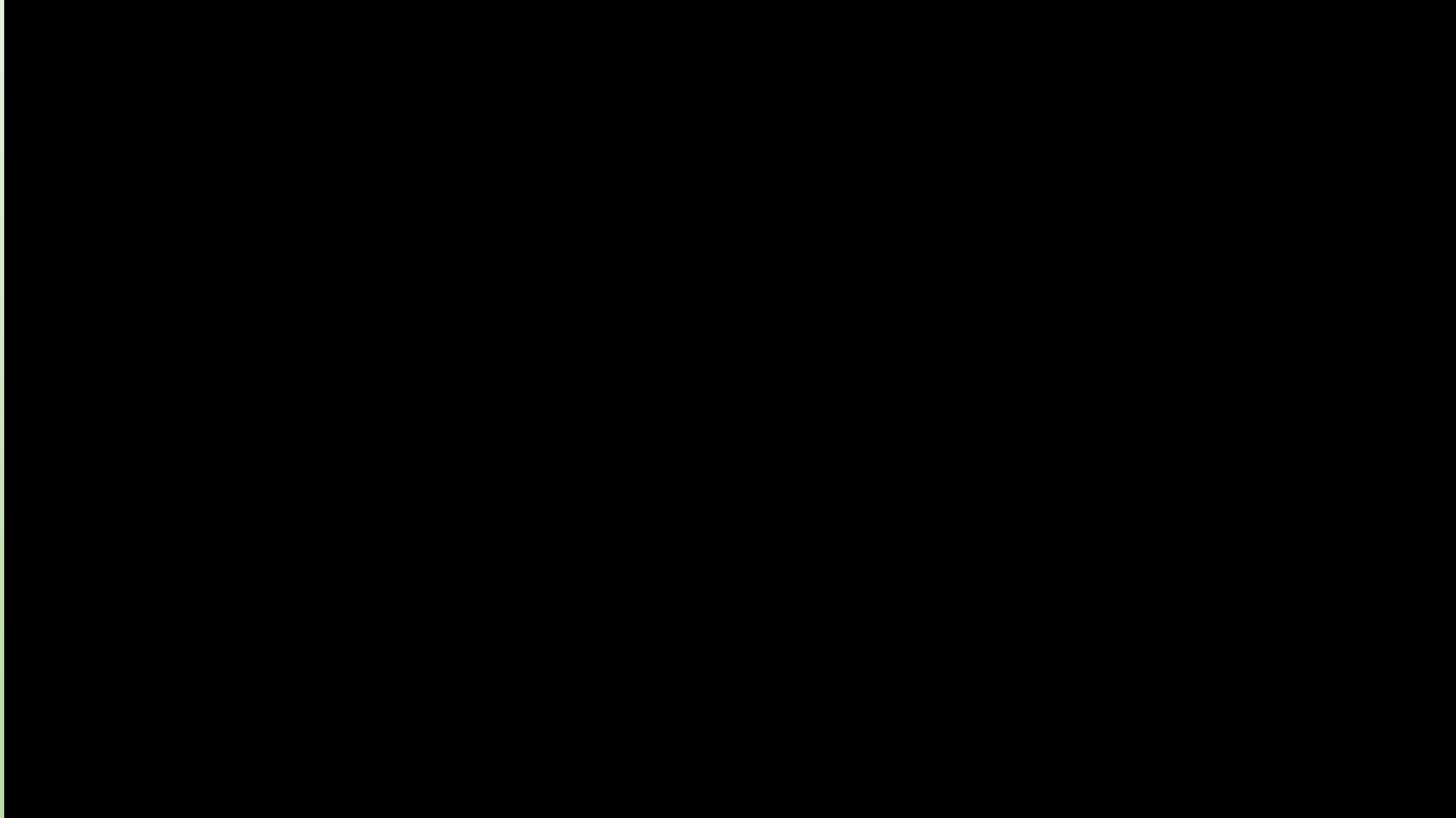


Catalyst: The Death of Stacy DeBungee


“It also appears that the Thunder Bay Police made an assumption that because the deceased was native, intoxicated, and reportedly sleeping alongside the river, that the only way he could have ended up in the river was by simply rolling over in his sleep. It is the Investigator’s opinion that there are a number of other ways that Stacy DeBungee could have ended up in the river.”


- ISN’s Preliminary Report: Stacy Lance DeBungee Sudden Death Investigation, pp. 27-28.


Catalyst: The Death of Stacy DeBungee





Response: Engaging the OIPRD

 Stacy's brother, Bradley DeBungee, and former Chief of Rainy River First Nations, Jim Leonard, jointly submitted a Complaint to the OIPRD in early 2016

 Officially retained by OIPRD on April 22, 2016


 Two aspects:


 Individual conduct: complaint alleged misconduct against the investigating officers


 Systemic racism: a request for a systemic review of the TBPS to identify underlying causes of individual officers' failures

Response: Engaging the OIPRD

OIPRD's misconduct findings, February 15, 2018:

 Finding of **discreditable conduct**: “At the scene, investigators did not know whether [Stacy] was intoxicated at the material time. Nonetheless, they showed little determination to truly keep an open mind as to what transpired. Even the evidence of [Stacy]’s intoxication did not point only to an accidental drowning, nor did it exclude, without proper investigation, foul play contributing to how he ended up in the river. The police were not justified in adopting an approach which too readily assumed that intoxication explained a sudden death, or warranted a diminished level of diligence in investigating what happened.”


 Finding of **neglect of duty** by investigative officers who “misconceived” their responsibilities, and “failed to follow up with identified witnesses in an adequate or timely way. In any event, police must be proactive in building trust in relation to each investigation. Little or none of that occurred here. Civilian Witness 7’s offer to share what he learned with investigators was spurned for no valid reason.”


 Finding of **neglect of duty** by supervisory Acting Inspector, noting she did not bear sole responsibility for inadequate supervision and oversight of the death investigation: “At the time of the investigation, TBPS did not have a formal review process for ongoing death investigations. That raised obvious systemic issues. A culture of critical assessment by supervisors of ongoing death investigations did not appear to exist, certainly in relation to sudden death cases”


Response: Engaging the OIPRD




OIPRD's systemic findings





 Originally expected over the summer; now expected this Fall.

 In its misconduct findings released in March 2018, the OIPRD did find:

 that “obvious systemic issues” were raised by the fact that the “TBPS did not have a formal review process for ongoing death investigations” at the time of its investigation into Stacy’s death; and


 that it “can reasonably be inferred that the investigation” conducted by Detective Harrison and Detective Constable Whipple, contrary to the *Human Rights Code*, did not uphold Stacy’s dignity and worth. There was overwhelming evidence that the detectives prematurely concluded that Stacy rolled into the river and drowned without any external intervention, and it can be reasonably inferred the conclusion may have been drawn because Stacy was Indigenous.


Reaction: The Board and the OCPC

-  Stacy's family and Rainy River First Nations tried to get before the TBPS Board to express concerns about the investigation into Stacy's death.
-  The Board denied them this opportunity.
-  Stacy's family and Rainy River First Nations thus filed a complaint with the Ontario Civilian Police Commission expressing concern with the Board's governance, and its refusal to engage with the public on matters of public interest.
-  Senator Murray Sinclair was appointed to conduct an investigation into the TBPS Board.

Reaction: The Board and the OCPC


Senator Sinclair's interim report

-  released November 2017





-  "Concerns about systemic racism, discrimination and bias are central to this investigation"

Senator Sinclair's final report

-  Not yet released

-  Initially due March 31, 2018; then extended to mid-summer; then end-of-summer

Reaction: Discipline Proceedings

-  Whether disciplinary proceedings will be commenced under the *Police Services Act* against the investigating officers remains to be seen.
-  Due to the length of the OIPRD investigation, the Chief of the TBPS was directed to bring an application before the TBPS Board 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.
-  The TBPS Board raised a concern that, because it was being investigated by the Ontario Civilian Police Commission, there might be a reasonable apprehension of bias if it heard the application. It brought an application to have a third party be appointed to hear the Chief's application. The honourable retired Justice Ferrier was so appointed.
-  Retired Justice Ferrier decided to hold the hearing, originally scheduled for September 2018, *in camera*. CBC, supported by Stacy's brother and Rainy River First Nations, successfully sought an injunction to have the hearing stayed until Justice Ferrier's decision is judicially reviewed this December.

Reaction: Discipline Proceedings


- ✎ Justice Ferrier decided to hold the hearing, originally scheduled for September 2018, *in camera*.
- ✎ CBC, supported by Stacy's brother and Rainy River First Nations, successfully sought to have the hearing stayed until Justice Ferrier's decision is judicially reviewed this December.
- ✎ The efforts to have the police service held accountable, and held accountable *in the open*, continue

Thunder Bay Police Chief Identifies Systemic Racism as Expensive Enterprise



 “Police board more than \$200,000 over budget”

(October 18, 2018 *Chronicle Journal* article)

 Thunder Bay Police Chief Sylvie Hauth cites: “legal issues like the Stacy DeBungee investigation and the Ontario Civilian Police Commission’s review...” for “...causing the board’s budget to balloon.”



Thunder Bay Courthouse,
N.E. Corner of Justice and Archibald.


It Takes a Village to Raise a Racist Police Service


There's no crisis in Thunder Bay and it's 'business as usual' says acting police chief

National News | June 7, 2017 by Kenneth Jackson Attributed to: | 11 Comments

"Police bashing rhetoric has to stop"

(October 4, 2016 *Chronicle Journal* Letter to the Editor)

 "Yes, I'm a police officer. Does that make me a "systemic racist"? I hope not. I was raised to respect everyone. I had friends of all races, religions. My upbringing was not easy."

 "As for me being a 'systemic racist', put your paintbrush away. It is a gross generalization and it is very offensive."



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