Court File No. DC-18-018-JR

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**(DIVISIONAL COURT)**

B E T W E E N:

**CANADIAN BROADCASTING CORPORATION**

Applicant

-and-

**LEE FERRIER, Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD**

Respondent

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# FACTUM OF THE INTERVENOR,

# THE FIRST NATION PUBLIC COMPLAINANTS

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November 22, 2018

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## PART I – OVERVIEW

1. This is the response by Brad DeBungee and former Rainy River First Nations Chief Jim Leonard (hereinafter collectively referred to as the "First Nation Public Complainants") to the Application commenced by the Applicant, Canadian Broadcasting Corporation ("CBC"), to quash the decision of the Honourable Mr. Ferrier dated September 20, 2018 (the "Decision"), ordering that a hearing under s. 83(17) of the *Police Services Act* (the "Hearing") be held *in camera.*
2. The First Nation Public Complainants support the Application and the position as set out by the CBC in its factum dated October 26, 2018.
3. Mr. Ferrier erred in finding that the *Dagenais/Mentuck*[1] test, and associated principles, did not apply to his decision.
4. Pursuant to s. 35(3) of the *Police Services Act* (the "*PSA*"), and the fundamental common law principle of openness and transparency, the Hearing was presumptively open to the public. Section 35(4) afforded Mr. Ferrier the discretion to exclude the public from the Hearing, but he was required to exercise that discretion in accordance with the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and the values therein as applied to the circumstances of this case. This balancing necessitated the application of the *Dagenais/Mentuck* test and due consideration to the presumption of openness in the judicial system by Mr. Ferrier.

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[1] *Dagenais v. Canadian Broadcasting Corp.*, S.C.R. 835

5. In finding that *Dagenais/Mentuck* did not apply to his decision, Mr. Ferrier failed to fulfill his obligation to exercise his discretion in accordance with *Charter* values. This is an error of law. Mr. Ferrier's decision should be quashed.

## PART II – BACKGROUND

### ***The Fundamental Public Interest Raised by the Hearing***

6. As described in its factum, the CBC, is just one of the many media outlets across Canada that have reported extensively on the death of Stacy DeBungee and the resulting proceedings to date. The story of Stacy DeBungee and the subsequent investigation into the Thunder Bay Police Service ("TBPS") conducted by the Office of the Independent Police Review Director ("OIPRD") has been featured on CBC's "*The National*" as well as "*The Fifth Estate*". The widely reported facts outlined in the Applicant's factum at paragraph 5 are adopted here for the purpose of these submissions, and include, *inter alia*:

    a. The body of Stacy DeBungee was discovered in the McIntyre River on the morning of October 19, 2015;

    b. The Thunder Bay Police Service issued a statement within hours indicating that the death was not suspicious;

    c. Rainy River First Nations hired an investigator who prepared a report that raised questions about leads that were not pursued by the TBPS;

    d. Questions raised by the investigator were published in documentary by the CBC's *Fifth Estate*;

    e. In or around February 14, 2018, the Ontario Independent Review Director (the "OIPRD") released its report and found that, *inter alia*, "the deficiencies in the investigation were so substantial – and deviated so significantly from what was

required as to provide reasonable and probable grounds to support an allegation of neglect of duty";

f. On March 5, 2018, as a result of the OIPRD Report and the substantiation of allegations that Stacy DeBungee's death was not adequately investigated by the TBPS, the First Nation Public Complainants, together with Grand Council Treaty #3 and Nishnawbe Aski Nation, held a joint press conference with respect to the OIPRD Report; and

g. The story of the OIPRD Report lead CBC's "*The National*" on the evening of March 4, 2018.

7. The public interest in the circumstances surrounding the death of Stacy DeBungee, and the fundamental public interest in the Hearing include:

a. The suspect refusal of the TBPSB to exercise any statutory decision-making authority that it has and the resulting appointment of Mr. Ferrier to adjudicate the Hearing in its place in a transparent and open manner;

b. Serious questions raised by the ongoing systemic investigations into the TBPSB and TBPS as related to governance and the way in which the service handles cases involving Indigenous members of the community;

c. Ensuring that each step of the complaints process towards resolution of this matter is credible to the community;

d. The historical and serious concerns as related to the strength of the public complaints process;

e. Concerns that the TBPS and TBPSB remain unable to gauge public concern and awareness of matters of great magnitude and importance to the public;

f. What should be generally unrestricted speech on matters as important as the administration of justice;

g. The interest of all citizens of Thunder Bay in ensuring effective and safe policing;

h. The fundamental interest that society has in allowing the public to monitor the police; and

i. Long awaited steps to reconciliation with Indigenous peoples in the context of over policing.

***Mr. Ferrier Erred in His Decision to Hold the Hearing in camera***

8. The OIPRD investigative report identified numerous significant concerns with respect to the TBPS' investigation, or lack thereof, into the death of Stacy DeBungee. These concerns were sufficient to form the basis of substantiated allegations of misconduct against three (3) TBPS officers (the "Respondent Officers").

9. The purpose of the s. 83(17) Hearing is to adjudicate the reasonableness of the delay in service of notices of disciplinary hearings on the Respondent Officers as more than six (6) months had elapsed. Whether or not the delay is found to be reasonable directly affects the rights and interests of the parties: if the delay is found to be reasonable, the service of notices may occur and misconduct hearings may be initiated; if the delay is found to be unreasonable, no misconduct hearing can occur. A s. 83(17) hearing would, in the normal course, be conducted by the Thunder Bay Police Services Board (the "TBPSB"); however, in these circumstances, the TBPSB declined to exercise its duty, citing a conflict of interest on the basis of an ongoing systemic review into the TBPSB by the Ontario Civilian Police Commission.

10. Mr. Ferrier was appointed pursuant to s. 16 of the *Public Officers Act* to exercise the powers and duties ordinarily imposed on the TBPSB. Accordingly, Mr. Ferrier was to decide whether the delay was reasonable and disciplinary proceedings against the Respondent Officers could be initiated.[2]
11. The Hearing pursuant to s. 83(17) was scheduled to be heard September 21, 2018.
12. The issue as to whether the Hearing would be held *in camera* was first raised on an initial scheduling conference call between the parties on July 20, 2018.
13. Pursuant to conference calls and direction by Mr. Ferrier, the parties were invited to make submissions on the *in camera* issue. The Position of the First Nation Public Complainants was provided to Mr. Ferrier on August 21, 2018[3], the positions of the TBPS and the Respondent Officers' were provided on September 10, 2018[4], and the final responding submission was provided by the First Nation Public Complainants on September 14, 2018.[5]
14. Upon learning of the likelihood that the Hearing would be closed to the public, CBC contacted Mr. Ferrier by email on September 16, 2018 and advised that CBC wished to make submissions. Mr. Ferrier thereafter directed CBC to provide written submissions. At 7:11 pm on September 17, 2018, Mr. Ferrier advised of a deadline of 4:30 pm on September 19, 2018 for CBC's submission.
15. Despite less than 48 hours to prepare, CBC provided its submissions along with a substantial amount of supporting case law to Mr. Ferrier at 3:38 pm on September 19, 2018.

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[2] Affidavit of Sajeela Veldhuis, Record of Proceedings at Exhibit A, pg. 4
[3] *Ibid* at Exhibit C, pg. 55
[4] *Ibid* at Exhibits D & E, pg. 64 and pg. 74
[5] *Ibid* at Exhibit F, pg. 83

16. The decision on whether the extension Hearing would be heard *in camera* on the basis of the parties' submissions (the "Decision")[6] was sent to the parties the following morning at 9:07 am. The Decision made no mention whatsoever of CBC's submissions, and provided that the extension Hearing shall be held *in camera* in keeping with the established practice of the TBPSB.

17. Further, at paragraph 31, the Decision explicitly stated that the *Dagenais/Mentuck* test had no application in the circumstances:

> The *Dagenais/Mentuck* line of cases have no application to a board meeting where specific statutory provisions apply, where the Board is not a Court, there is not a judicial or quasi-judicial proceeding, and the Board is performing an administrative act.

***The Stay Application***

18. Following receipt of the Decision, CBC brought an application for a stay of the Hearing, pending judicial review (the "Stay Application"). As a result of this motion, the Hearing was adjourned by Mr. Ferrier pending a decision on the stay of proceedings by the Divisional Court. There is currently no new date for the Hearing.

19. The Stay Application was heard by Madam Justice Helen Pierce, a senior judge based in Thunder Bay on September 25, 2018.

20. In her reasons for decision, Justice Pierce found that there was a serious issue to be tried, proceeding with the Hearing *in camera* would cause irreparable harm, and the balance of convenience favoured a stay pending this application for judicial review.

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[6] *Ibid* at Exhibit I, pg. 141

21. Throughout her reasons for judgment, Justice Pierce emphasized the public's interest in the issues in this particular circumstance, and how those issues must be examined "through the understanding of the social and legal context in which a dispute arises."[7]

22. Justice Pierce went on to state that, "the issues in this litigation are of keen interest to members of the Thunder Bay community, including or perhaps especially its Indigenous citizens."[8]

23. When addressing the OIPRD's submission that "he represents the public interest"[9], Justice Pierce held that "the public interest in this complaint is broader and more nuanced than the Director's aspirational mandate to operate in the public interest under the *Police Services Act*", and "[i]t is not a Toronto-centric interest, but stems from the communities that these parties inhabit."[10]

24. Justice Pierce found it "telling that the Director's position" is not shared by the First Nation Public Complainants, or the CBC, who "articulated different aspects of the public interest, each from its own perspective."[11]

25. On the facts of this case, Justice Pierce held that "it is important for the court to consider the extent to which the public can expect openness in administrative decision-making. 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."[12]

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[7] *Canadian Broadcasting Corporation v. Thunder Bay Police Services Board*, 2018 ONSC 5872, at para. 13, Applicant's Book of Authorities, Tab 1
[8] *Ibid* at para. 14
[9] *Ibid* at para. 32
[10] *Ibid*
[11] *Ibid* at para. 33
[12] *Ibid* at para. 48 [emphasis in original]

26. In granting the Stay Application, it is clear throughout her reasons that Justice Pierce specifically acknowledged the significance that transparency carries in this particular case:

> Each step of the complaint process is a step on the way towards resolution to which transparency must attach if the process is to be credible to the community. 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.[13]

## PART III – ISSUES

27. The issue on this judicial review application is whether the Decision should be quashed given that Mr. Ferrier failed to apply the *Dagenais/Mentuck* analysis when determining whether the Hearing should be conducted *in camera*.

## PART IV – LAW AND ANALYSIS

### ***Standard of Review***

28. The standard of review on this application is correctness. Any discretionary order banning publication that goes beyond the scope tolerated by the proper application of *Charter* principles constitutes an error of law reviewable on a standard of correctness.[14]

29. Mr. Ferrier did not consider any *Charter* principles in the Decision. He found instead that the *Charter* principles enshrined in the *Dagenais/Mentuck* analysis did not apply despite the jurisprudence. The result of Mr. Ferrier's failure to apply the *Dagenais/Mentuck* test was a discretionary order that went beyond the scope tolerated by the proper application of Mentuck *Charter* principles.

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[13] *Ibid* at para. 49

[14] *H. (M.E.) v Williams*, 2012 ONCA 35 at paras 35-37, Applicant's Book of Authorities at Tab 9

***Openness/Open Court Principle***

30. The Supreme Court of Canada has emphasized on many occasions that the open court principle is a hallmark of a democratic society and applies to all judicial proceedings. Public access to courts guarantees the integrity of the judicial process by demonstrating that justice is administered in a non-arbitrary manner and in accordance with the rule of law.[15]

31. The open court principle is inextricably linked to freedom of expression protected by s. 2(b) of the *Charter* and advances the core values therein. The freedom of the press to report on judicial proceedings is a core value. Equally, the right of the public to receive information is also protected by the constitutional guarantee of freedom of expression.[16]

32. To achieve a balance between freedom of expression and other important rights and interests, the Supreme Court of Canada developed the adaptable *Dagenais/Mentuck* test.

33. It is well established that the *Dagenais/Mentuck* analytical approach and the principles it represents apply to all discretionary decisions that affect the openness of proceedings.[17] Whether it arises from common law, statute or rules of court, discretion must be exercised in accordance with the *Charter* and the values therein.[18]

34. Mr. Ferrier however, held that *Dagenais/Mentuck* did not apply in these circumstances and thus fell into an error of law.

***Specific Statutory Provisions are Irrelevant***

35. Mr. Ferrier held that because specific statutory provisions apply, it was not necessary to apply the *Dagenais/Mentuck* line of authorities. However, regardless of the application of

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[15] *Vancouver Sun, Re*, 2004 SCC 43 at paras 23-25, Applicant's Book of Authorities at Tab 10
[16] *Ibid* at para. 26
[17] *Canadian Broadcasting Corp. v The Queen*, 2011 SCC 3 at para 13, Joint Book of Authorities at Tab 22
[18] *Supra* note 14, at para. 31

specific statutory provisions, Mr. Ferrier was making a discretionary decision in ordering that the Hearing would proceed *in camera*. His discretion to make that decision in these circumstances derives from the specific provisions of the *PSA*. The Supreme Court of Canada has held that discretion, whatever its source, must be exercised in accordance with the *Charter*:

> Discretion must be exercised in accordance with the *Charter*, whether it arises under the common law, as is the case with a publication ban (*Dagenais*, *supra*; *Mentuck*, *supra*); is authorized by statute, for example under s. 486(1) of the *Criminal Code* which allows the exclusion of the public from judicial proceedings in certain circumstances (*Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, *supra*, at para. 69); or under rules of court…[19]

36. Additionally, Mr. Ferrier noted the presence of applicable statutory provisions but failed to turn his attention to the application of s. 35 (3) of the *PSA* which creates a presumption that hearings and meetings of police services boards are open to the public:

> Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

37. Subsection (4) of the same section affords discretion to exclude the public from a hearing or meeting in particular circumstances:

> The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,
>
> (a) matters involving public security may be disclosed and, **having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public**; or
>
> (b) intimate financial or personal matters or other matters may be disclosed of such a nature, **having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the**

[19] *Supra* note 14 at para. 31

> **desirability of adhering to the principle that proceedings be open to the public**. [emphasis added]

38. As is evident from the language of the *PSA*, beyond the common law obligation to consider the openness principle and the balancing contemplated by the *Dagenais/Mentuck* analysis, Mr. Ferrier was under a statutory obligation to do so.

39. Mr. Ferrier further erred in law when considering this Hearing to be analogous to *ex parte* situations (the swearing of an information or a pre-enquete hearing) which are presumptively held *in camera*. By contrast, the Hearing was and is presumptively open to the public pursuant to s. 35(3) of the *PSA*.

40. The language of s. 35 on its face, which calls for an application of the openness principle and *Dagenais/Mentuck*, is directly at odds with the reasoning of Mr. Ferrier who found that these authorities did not apply to his decision and as such, did not engage in any form of balancing or weighing interests as contemplated by the caselaw and the *Charter*. The *Dagenais/Mentuck* authorities do apply to the Decision, by way of common law as well as statute. By failing to apply these authorities and associated principles, Mr. Ferrier erred in his application of the law.

***Mr. Ferrier's Finding that the Board is not a Court***

41. Whether or not the Board is a court is irrelevant to the applicability of *Dagenais/Mentuck*. The principle of openness applies to administrative tribunals and boards. Furthermore, the protection of *Charter* guarantees is a fundamental and pervasive obligation, regardless of the adjudicative forum.[20] This is another basis on which Mr. Ferrier ought to have considered

[20] *Toronto Star v AG Ontario*, 2018 ONSC 2586

the *Dagenais/Mentuck* line of authorities. As the caselaw states, the openness principle is inextricably linked to the protection of freedom of expression in the *Charter*, and the fact that the board is not a court does not detract from this.

***Mr. Ferrier's Finding that the Hearing is Not a Judicial or Quasi-Judicial Proceeding***

42. Mr. Ferrier erred by finding that the Hearing was not a judicial or quasi-judicial proceeding. Supreme Court jurisprudence identifies a number of factors to be considered in determining whether a proceeding is judicial/quasi-judicial. Applying these considerations to the facts of the present case, it is clear that the Hearing – whose purpose is to adjudicate whether the delay in serving a notice of hearing to institute a misconduct hearing against the officers was reasonable – is a quasi-judicial proceeding.

43. Dickson J articulated four questions relevant to determining whether a proceeding is quasi-judicial.[21] Answering these questions on the basis of the present facts, it is clear that the Hearing is a quasi-judicial proceeding. The questions articulated by Dickson J are as follows:

    1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
    2) Does the decision or order directly or indirectly affect the rights and obligations of persons?
    3) Is the adversary process involved?
    4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?

44. An application of the above considerations to the circumstances of this matter leads to the conclusion that the Hearing before Mr. Ferrier is indeed quasi-judicial.

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[21] *Minister of National Revenue v. Coopers and Lybrand*, [1979] 1 SCR 495, 1978 CanLII 13 (SCC) at 504 [*per* Dickson J, for the Court]; see also *British Columbia (Attorney General) v British Columbia (Information &* Privacy Commissioner*)*, 2004 BCSC 1597, Joint Book of Authorities at Tab 1

45. The specific language of section 83(17) contemplates the board making a determination as to reasonableness based on a given set of circumstances. This wording suggests a hearing-type process whereby facts are presented, positions are taken, and a decision is eventually made based on the facts and positions. Indeed, the context made it clear that each party was prepared to make submissions before Justice Ferrier at a hearing, after which he would come to his decision regarding reasonableness of the delay.

46. Further, application of the second consideration above indicates that the proceedings are quasi-judicial such that the decision or order will affect the rights and obligations of the parties involved as well as the public. To state the obvious first, the decision will affect the rights of the officers involved as it will determine whether they will face disciplinary proceedings under the *PSA*. Additionally, it will affect the rights of the First Nation Public Complainants. A person who makes a complaint to the OIPRD has a right to have that complaint investigated and a right to have it proceed to a hearing.[22] That right will, of course, be directly impacted by Mr. Ferrier's final decision on the matter.

47. Furthermore, the outcome of the Hearing will impact the media's right to report on, and the public's right to receive information relating to, the proceedings before Mr. Ferrier. As the Supreme Court of Canada found in *Vancouver Sun (Re)*:

> The open court principle is inextricably linked to the freedom of expression protected by section 2(b) of the *Charter* and advances the core values therein. The freedom of the press to report on judicial proceedings is a core value. Equally, the right of the public to receive information is also protected by the constitutional guarantee of freedom of expression. The press plays a vital role in being the conduit through which the public receives that information regarding the operation of public institutions. Consequently, the open court principle is not to be lightly interfered with.[23]

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[22] *Stewart et al. v Office of the Independent Police Review Director et al.*, 2014 ONSC 6150 (CanLII) at para. 8, Joint Book of Authorities at Tab 30

[23] *Supra* note 14 at para. 26

48. Additionally, application of the third consideration above indicates that the proceeding is quasi-judicial: the adversarial process is quite clearly involved given that the position of the various parties in respect of the Hearing are completely different.

49. Finally, application of the fourth consideration above also indicates that the proceeding is quasi-judicial: there is an obligation on Mr. Ferrier, acting in the place of the board, to apply and consider substantive rules on a case by case basis. An application pursuant to section 83(17) of the *PSA* by definition entails a consideration of the particular circumstances of each individual case, and the making of a finding as to reasonableness based on those particular circumstances.

50. Furthermore, in *Danyluk*, Binnie J. discussed the difference between non-judicial administrative decisions and judicial/quasi-judicial decisions in the context of an issue estoppel analysis. A key element in identifying a proceeding or decision as judicial/quasi-judicial is that the decision-maker was exercising adjudicative, as opposed to investigative, functions.[24] At the Hearing, Mr. Ferrier will be doing more than investigating facts and coming to factual conclusions; he will be adjudicating whether the delay in serving the notice of hearing was reasonable, and as provided above this decision affects the rights and obligations of the parties. The fact that the decision will be adjudicative in nature is yet another factor which contributes to the conclusion that the Hearing is a quasi-judicial proceeding.

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[24] *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, 2001 SCC 44 (CanLII), at paras 35, 40-42 [*per* Binnie J, for the Court], Appendix "A" to this Factum

51. All of the factors considered above suggest that Mr. Ferrier was making a quasi-judicial decision. He was thus obliged to apply the *Dagenais/Mentuck* test to his decision regarding the openness of the Hearing.

***Style of Cause***

52. Paragraph 5 of Regional Senior Justice Madam Warkentin's October 16, 2018, Endorsement as related to the CourtCall video and telephone conference states that:

> The issue of whether those currently identified as intervenors in the style of cause may seek to be named as respondents shall be an issue to be determined by the Panel.

53. Justice Pierce's decision in paragraph 7 grants intervenor status to the OIPRD, the First Nation Public Complainants, the Thunder Bay Police Service, and the Respondent Officers pursuant to s. 13.03(1) of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194.

54. The OIPRD indicated via email and again on the CourtCall video and telephone conference before Justice Warkentin that it intended to raise this issue at this judicial review and more specifically, would seek to be named as a "respondent" as opposed to Justice Pierce's ordered "intervenor".

55. This issue is a "procedural issue"[25] that was appropriately considered and dealt with by Justice Pierce and respectfully should not take up valuable time or distract the court from the issues at hand.

56. The OIPRD has had full opportunity to participate in this proceeding, and pursuant to Rule 13.01, is entitled to raise new legal arguments. There is no legal basis for the OIPRD to raise this issue at this time.

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[25] *Supra* note 6 at para. 7

***Conclusion***

57. Mr. Ferrier's Decision is based on a misunderstanding of the significance affixed to the openness principle. Notably, his failure to even mention the submissions of the CBC in the Decision suggests that he failed to appreciate the vital role played by the media in disseminating information relating to the operation of public institutions as emphasized by the Supreme Court in *Vancouver Sun (Re)*.

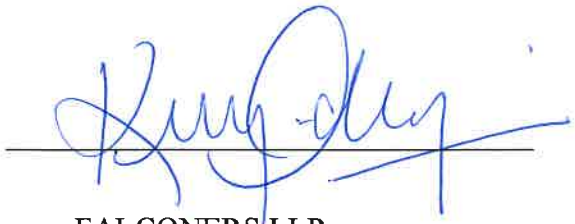
58. The reasons cited by Mr. Ferrier in deciding not to apply *Dagenais/Mentuck* are not supported by the important circumstances of this case as articulated by Justice Pierce, and the considerations that are so vitally important to not only the First Nation Public Complainants, but also the citizens of Thunder Bay: a transparent, open, and credible complaints process and police service that is accountable to the people that it serves.

59. The jurisprudence is clear that the openness principle is a cornerstone of the common law and the protection of *Charter* guarantees is a pervasive obligation regardless of the forum. This demands that Mr. Ferrier exercise his discretion in accordance with *Charter* values and with due consideration to the *Dagenais/Mentuck* authorities, which he did not do. Therefore, his decision is unconstitutional on its face.

## PART V: RELIEF SOUGHT

60. The First Nation Public Complainants respectfully request that that Mr. Ferrier's Decision be quashed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of November 2018 BY:**



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Applicant

-and-

**LEE FERRIER, Q.C., EXERCISING POWERS AND DUTIES OF THE THUNDER BAY POLICE SERVICES BOARD**

Respondent

**CERTIFICATE RE: ESTIMATE OF TIME**

Falconers LLP, counsel for the First Nation Public Complainants, estimates that the time required for oral argument on behalf of the First Nation Public Complainants will be approximately 45 minutes.

DATED at the City of Thunder Bay this 22nd day of November, 2018

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**Schedule "A" – List of Authorities**

*Dagenais v. Canadian Broadcasting Corp.*, S.C.R. 835

*Canadian Broadcasting Corporation v. Thunder Bay Police Services Board*, 2018 ONSC 5872

*H. (M.E.) v Williams*, 2012 ONCA 35

*Vancouver Sun, Re*, 2004 SCC 43 at paras 23-25, Applicant's Book of Authorities at Tab 10

*Canadian Broadcasting Corp. v The Queen*, 2011 SCC 3

*Toronto Star v AG Ontario*, 2018 ONSC 2586

*Stewart et al. v Office of the Independent Police Review Director et al.*, 2014 ONSC 6150 (CanLII)

*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, 2001 SCC 44 (CanLII)

## Schedule "B" – Legislation

*Police Services Act* **R.S.O. 1990, c. P.15**

**Section 35(3)**

Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

**Section 35(4)**

The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

*Rules of Civil Procedure* **R.S.O. 1990, c. C.43**

**13.01** (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.