

# **Foreclosing Accountability: The Limited Scope of the Seven Youth Inquest in Thunder Bay, Ontario**

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## **Author biography**

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## **Note from the Author:**

The original version of this paper contained errors that were patiently and graciously brought to the attention of the journal and the author by the Senior Policy Analyst of Nishnawbe Aski Nation, Tobey Meyer. In particular, this reprinted version of the article more faithfully represents the formation of jury rolls for coronial inquests in Ontario following the provincial issuing of Order-in-Council 1388 in August of 2011. To be clear, the original version wrongfully suggested that First Nations peoples were able to volunteer to be on the Seven Youth inquest jury; this was not the case, as they were only able to volunteer to have their names listed on jury rolls for coronial inquests in general (not the Seven Youth inquest in particular).

### Abstract

Between 2000 and 2011 seven students from First Nation communities across northern Ontario lost their lives while attending high school in Thunder Bay. These losses of Indigenous life became the subject of a joint provincial inquest that concluded in the summer of 2016. In this article the author offers a critical examination of the scope of this inquest as well as a broader chronological review of its proceedings. The focus is on the ways in which the presiding coroner shaped the scope of the inquest to include things like the alcohol consumption of the students and to exclude things like the quality of police investigations. The issue of First Nation Jury Representation and its role in delaying the inquest for several years is also contextualized. Ultimately, it is argued that the Seven Youth Inquest conforms closely to what Sherene Razack (2011; 2015) has written about the colonial function of inquests into the deaths of Indigenous peoples: mainly that such proceedings stage decontextualized narratives of First Nation dysfunction that are hostile to structural analysis and unlikely to animate opportunities for institutional accountability. Finally, it is argued that non-Indigenous coroners – who are trained in forensic pathology but lack training in federal Indian policy, treaty rights, and Indigenous histories – are unqualified to preside over provincial inquests into the deaths of First Nation people. In fact, this training (or lack thereof) may facilitate setting woefully limited scopes and therefore reproducing victim-blaming of First Nation youth in Canadian courtrooms.

**Keywords:** Provincial inquests; settler colonialism; federal Indian policy; First Nations education; Indigenous studies; treaty history; Thunder Bay

### Résumé

Entre 2000 et 2011, sept étudiants Autochtones ont trouvé la mort alors qu'ils poursuivaient des études secondaires à Thunder Bay. Ces derniers venaient de plusieurs communautés des Premières Nations à travers l'Ontario. La mort de ces jeunes Autochtones a été le sujet d'une enquête du coroner de la province de l'Ontario qui a été conclue à l'été 2016. Les auteurs de cet article offrent une explication critique de la portée de cette enquête ainsi qu'une analyse chronologique plus vaste des procédures. Le thème principal est la façon dont le coroner qui présidait l'enquête a orienté sa portée afin d'inclure, entre autres, la consommation d'alcool des étudiants tout en excluant d'autres éléments tels la qualité des enquêtes policières. Le problème de la représentation des Premières Nations sur la liste des jurés et le rôle que cela a joué sur le retardement du procès pendant plusieurs années sont aussi mentionnés. De plus, l'enquête sur la mort de ces sept étudiants se rapproche beaucoup à ce que Sherene Razack a écrit au sujet du rôle colonialiste des enquêtes qui touchent la mort des personnes autochtones (2011 ; 2015). Son argument principal étant que ces procédures mettent en scène des récits décontextualisés du dysfonctionnement des Premières Nations qui vont à l'encontre de l'analyse structurale et qui rendent la possibilité de démontrer la responsabilité institutionnelle peu probable. Pour finir, ils disputent le fait que les coroners non autochtones ne sont pas qualifiés pour présider les enquêtes provinciales liées à la mort des personnes autochtones. Bien qu'ils aient la formation nécessaire en médecine légale, ces derniers manquent de formation quant aux Lois sur les Indiens, aux

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droits issus des traités et à l'histoire des Autochtones. En effet, cette formation (du moins, ces lacunes) faciliterait la fixation d'une portée manifestement limitée, permettant, par conséquent, la condamnation répétée de la victime chez les jeunes des Premières Nations dans les salles d'audience canadiennes.

**Mots clés:** Enquête du coroner; colonialisme de peuplement; loi sur les Indiens; éducation des Premières Nations; études autochtones; histoire des traités; Thunder Bay

### **Crises of Community Safety in Thunder Bay**

The city of Thunder Bay, Ontario is not a safe place for Indigenous youth. Between 2000 and 2011 seven First Nation students from northern communities who had travelled to Thunder Bay to attend high school lost their lives under tragic and mysterious circumstances. A provincial coroner's inquest into these deaths began in October of 2015. It lasted 8 months, issued 145 recommendations, and found all seven deaths to be either accidental or to have undetermined causes. In what follows, I offer a critical review of the inquest that focuses on the multiple ways in which settler colonial racism operated within and around it; however, it is important to begin this article by underscoring the extent to which the safety of Indigenous youth in Thunder Bay has hardly improved since the summation of the inquest. In fact, things have only gotten worse.

In May of 2017 two Indigenous youth named Josiah Begg and Tammy Keeash – aged 14 and 17 – went missing in Thunder Bay; after their lifeless bodies were recovered in local rivers, the Thunder Bay Police Service (TBPS) quickly declared that neither death was suspicious in nature despite contrary eyewitness testimony (Dunick, 2017; Fiddler and Jackson, 2017). In July of 2017, a First Nation woman named Barbara Kentner passed away in Thunder Bay after being hit by a trailer hitch thrown from a moving vehicle by an 18-year-old white male named Brayden Bushby, who is alleged to have yelled “got one!” after striking the fatal blow (MacDonald, 2017). In that very same month, Justice Murray Sinclair was appointed by the Ontario Civilian Police Commission (OCPC) to lead an investigation into the Thunder Bay Police Services Board and its issues with systemic racism (Alex, 2017). This OCPC probe was in addition to an already ongoing investigation by the Office of the Independent Police Review Director (OIPRD) into the ways in which systemic racism may have shaped police murder investigations in Thunder Bay since the early 1990s (Office of the Independent Police Review Director, 2018). Further, in January of 2018, the Chief of the TBPS faced criminal charges of obstruction of justice and breach of trust following his disclosure of confidential information to the city's then mayor Keith Hobbs (Walters, 2017). Hobbs, himself a former police officer, is (at the time of writing) facing criminal charges of extortion (Bruser, Talaga, and Cruickshank, 2017).

The OCPC and OIRPD investigations have now been released and public trust in the municipal police service is arguably at an all-time low. Making matters worse, the verdicts of the trials of Gerald Stanley and Raymond Cormier suggest to many that Brayden Bushby will be found not guilty for the murder of Barbara Kentner and that the Canadian criminal justice system is racist beyond reform. What is more, the apathy and dysfunction of senior city administration significantly exacerbated the already-existing culture of fear, mistrust, and hostility in the city. As an active member of the community of Thunder Bay (as well as a historian of the city), I was incredibly disappointed and deeply troubled by the continued failure of municipal leadership to come to terms with the urgency of the crisis of community safety in Thunder Bay. For example, mayor Hobbs, when pressed for comments on the city's reputation as a hot spot for anti-Indigenous violence and hate crimes, offered statements of which the following is representative: “we're still being hammered by the media and high-priced lawyers from Toronto telling us we're

not doing enough...I'm sick and tired of high-priced lawyers coming in and trying to drive a wedge between us and Indigenous people" (Thompson, 2016). The mayor was not alone in this attitude: for example, in 2017, the City Manager of Thunder Bay wrote a letter to *The Star* complaining that Thunder Bay's "social issues and racial divisions have been probed in an endless cycle of media stories and social media commentary. It's as if Thunder Bay has been put under a microscope and everyone is taking turns offering a diagnosis" (Gale, 2017). Shockingly, in the summer of 2017, when the Chief of Police was suspended pending criminal charges and the entire police service was under systemic review for its treatment of Indigenous peoples, acting TBPS Chief Sylvie Hauth told the media: "I don't see our current situation as a crisis...For us currently what we see is business as usual" (Jackson, 2017). As is evident from the acting chief's words, there exists a culture of normalization surrounding the settler colonial crisis in Thunder Bay that has been sanctioned by the very individuals responsible for showing leadership and initiative on the issue. For that reason, it has been extraordinarily difficult – if not freely impossible – for First Nations political leadership and legal representation to obtain some kind of accountability from municipal levels of government and law enforcement in Thunder Bay. As we shall see, this foreclosure of accountability was nowhere more evident than in the 2015-2016 inquest in Thunder Bay (hereafter referred to as the 'Seven Youth inquest').

### Objectives and Arguments

In what follows, I review the circumstances and processes surrounding the seven student inquest and argue that it conformed closely to what Sherene Razack has written of inquiries and inquests into the deaths of First Nations people: mainly, that "inquests, with their focus on individual pathology and an insistence on taking events out of history, make it difficult for Aboriginal people to interrupt the narrative of their dysfunction" (2017, p. 84). This was accomplished in the Seven Youth inquest when presiding coroner Dr. David Eden made rulings that the quality of police investigations were to be excluded from its scope. At the same time, and against the written wishes of family members of the victims, Eden ruled that alcohol consumption of the students was to be included within the scope of the inquest, thereby setting the stage for a legal proceeding that focused on individual pathologies and foreclosed structural and systemic analyses of the roles of racism and colonialism. As we shall see, Eden also acted as a gatekeeper on discussions of racism and treaty history at numerous points before and during the actual inquest, which made it exceedingly difficult for Indigenous lawyers or legal representatives of First Nation communities to pursue meaningful lines of questioning to key witnesses.

My primary objective is to contribute to a broader conversation on the Seven Youth inquest that was in many ways started by journalists such as Tanya Talaga and Jody Porter. In her award-winning *Seven Fallen Fathers: Racism, Death, and Hard Truths in a Northern City* (2017), Talaga challenges the discourses of dehumanization visited upon the seven students by focusing on the stories of the children, their families, and their communities. Talaga's book offers numerous hard-hitting critiques of Thunder Bay, the TBPS, and the Seven Youth inquest;

however, the central purpose of the text (at least to my reading) is not to focus on settlers and their social policies but on the realities of Indigenous experiences in Thunder Bay. Focusing more on settlers and social policy, my contribution is to argue that coroners simply do not have the proper training to preside over provincial inquests into the deaths of First Nation people, as they lack the background in treaty law, federal Indian policy, and other juridical and fiscal structures very relevant to questions of causation and prevention, as well as the formation of jury recommendations. In addition to the policy suggestion that individuals who preside over inquests into First Nation deaths have a robust background in Indigenous law, governance, and history, I also theorize that provincial inquests into the deaths of First Nation people in Ontario are a part of what Glen Coulthard called the “expansive range of recognition-based models of liberal pluralism that seek to reconcile Indigenous nationhood with Crown sovereignty via the accommodation of Indigenous identities in some form of renewed relationship with the institutions of the Canadian state” (2007, p. 2).

I am seeking not only to bring further critical attention to the Seven Youth inquest, but to put it into conversation with the fantastic work by the Expert Working Group on the Inquest into the Death of Brian Sinclair, a First Nation man who passed away in a Winnipeg hospital after failing to receive treatment for 34 hours (Browne, Gunn, LaRocque, Lavallee, Lavoie, and McCallum, 2014). Over the course of the Sinclair inquest, the province’s chief medical examiner commented that racism did not play a role in Sinclair’s death – a claim with which the expert working group took serious issue (McCallum, 2017). Undertaking a similar analysis that seeks to address questionable omissions from the scope of a provincial inquest, I demonstrate that the problems associated with provincial inquests into the deaths of First Nation people are national in scope. Of course, many of these critiques and connections will only be impactful or intelligible following a thorough review of the Seven Youth inquest and a robust detailing of the ways in which it failed to provide First Nation families and communities with institutional accountability. In my conclusion, I will return to these matters of social policy and social theory using the following review of the Seven Youth inquest as a reference point.

### **The Seven Students and the Numbered Treaties**

In November of 2000 fifteen-year-old Jethro Anderson went missing while attending high school in Thunder Bay. Jethro was from Kasabonika First Nation and loved animals: at the age of six, he made friends with a barn owl that was often seen perched on his arm (Talaga, 2017, p. 106). Tragically, Jethro’s remains were recovered in the Kaminisitiquia River and his death was quickly ruled a drowning by the Thunder Bay Police (Talaga, 2011). Curran Strang, who loved to sing gospel songs in Ojibwe, originally came to Thunder Bay in 2003 to attend high school (Talaga, 2017, p. 141). On 22 September 2005, Curran’s body was recovered in the McIntyre River (Ontario Office of the Chief Coroner, 2015). Paul Panacheese, a young man from Miskeegogamang First Nation, was a talented artist that enjoyed playing poker with his friends (Talaga, 2017, p. 168). Paul passed away in Thunder Bay in 2006. During the inquest, Paul’s mother Maryanne testified that her son had lived in ten different boarding homes while he

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stayed in Thunder Bay (Rivers, 2015). Robyn Harper, a young teenage girl from Keewaywin First Nation, was excited to follow her best friend, Karla, to Dennis Franklin Cromarty (DFC) high school – the all-Indigenous high school in Thunder Bay attended by students from northern First Nations (Talaga 2017, p. 180). Robyn passed away on 13 January 2007 and is one of two students (the other being Paul Panacheese) not to have been found in a body of water. In the fall of that same year, Reggie Bushie, a 15-year-old student from Poplar Hill First Nation, went missing. Reggie’s brother and best friend, Ricki, also travelled to Thunder Bay but was housed at a different boarding home than his brother, which was hard on both of them; upon learning of his brother’s death, Ricki stated: “there is no way my brother fell into the water and drowned,” claiming that “he was too good a swimmer” (Talaga, 2017, p. 209). On 10 November 2009, the remains of Kyle Morrisseau, the 17-year-old grandson of famed Anishinaabe artist Norval Morrisseau, were also recovered in a local river (Nishnawbe Aski Nation, 2012). Kyle, like Robyn, was from Keewaywin First Nation and, as Tanya Talaga wrote: “the deaths of two kids in a community of 350 people is the equivalent of losing seven hundred teenagers in Thunder Bay” (2017, p. 243). Two years later, in February of 2011, 15-year-old Jordan Wabasse went missing. Jordan was a gifted student, quite tall for his age, loved the Toronto Maple Leafs, and had dreams of playing hockey professionally (Talaga, 2017, p. 26-7). Like Jethro Anderson, Wabasse was found in the Kaministiquia River (Nishnawbe Aski Nation, 2017).

All seven students were in Thunder Bay accessing education services not available in their home communities. Shockingly, there are only five on-reserve high schools in northwestern Ontario (a geographical area that constitutes a quarter of the province); the majority of these schools have limited resources and only offer curriculum to grade ten (Talaga, 2015). Inadequate federal funding has also left many on-reserve schools in northwestern Ontario without computers, libraries, language programs, extra-curricular activities, and the inability to develop culturally appropriate curriculums (FNCFCSS, 2013; AFN, 2010). Making matters worse, a 2009 federal report identified many on-reserve schools as “unsafe and uncomfortable” (Rajekar and Mathilakath, 2009). Such educational inequities on reserve persist despite promises made in treaty. Northwestern Ontario is composed mainly of Treaty Nos. 3, 5, and 9. Treaties No. 3 (1873) and No. 5 (1875) each contain an identical passage promising that Her Majesty agrees to “maintain schools for instruction in such reserves...whenever the Indians of the reserve shall desire it.” Treaty No. 9 – signed in 1905 – contains the following clause: “His Majesty agrees to pay such salaries of teachers...and also to provide such school buildings and educational equipment as may seem advisable to His Majesty's government of Canada.” Historian John Long, who has undertaken exhaustive research on Treaty No. 9, echoes the idea that other treaties had already harmonized educational agreements in regards to the fiduciary responsibility of the Crown and the location of said schools (Long, 2010; Treaty 7 Elders and Tribal Council et. al., 1996).

On that basis, the death of First Nation students in Thunder Bay is not only a municipal crisis of community safety, but an example of the abrogation of treaties by a federal government

unwilling to keep its promises. Without question, the lack of high schools in First Nation communities in northwestern Ontario is an ongoing legacy of the genocidal residential school system as it continues to steal Indigenous children from their homes, families, and communities to pursue often assimilatory educational opportunities that are uniquely dangerous and often fatal. Thus, inequality in educational opportunity is one of the most direct ways in which settler colonial racism creates conditions on reserve and in urban cities that brings about the predictable loss of Indigenous life seen in locales such as Thunder Bay; however, this is hardly the only way in which racism and settler colonialism functioned within and around the inquest, as the matter of First Nation Jury Representation will reveal.

### **First Nation Jury Representation**

On 3 November 2007, two days after the discovery of Reggie Bushie, First Nation leadership began pressing for “a study on the impact of youngsters attending schools in urban centers far from their home communities” (“NAN, Poplar Hill”, 2007). This local political pressure encouraged Thunder Bay Coroner Dr. Michael Wilson to call a discretionary inquest into the death of Reggie Bushie. A discretionary inquest differs from a mandatory inquest, which is declared as a matter of course in situations such as the death of an individual in police custody (Ontario Ministry of Community Safety and Correction Services, 2015). In the interim, however, a 2008 mandatory provincial coroner’s inquest in Kenora, Ontario highlighted some of the structural problems related to jury representation in provincial proceedings. Specifically, the Kenora inquest was called to investigate the death of two Indigenous men in custody at the police detachment in Kashechewan First Nation. Troublingly, not a single member of the First Nation sat on the inquest’s jury, nor was there any Indigenous representation (Garrick, 2013). While this lack of representation on jury rolls is problematic by virtue of reproducing the historical evacuation of Indigenous peoples from legal spaces where decisions affecting them are made, it is also particularly troublesome in the specific context of a provincial inquest. For example, an Ontario government website explains that an inquest is to be heard by “a list of jurors *from the community*” and that these jurors are to put forth recommendations that “represent the voice of the *community*” (Ontario Office of the Chief Coroner, 2015 [emphasis added]). Its central purpose, then, is to provide accountability to the community of the deceased and to this offer the community a forum in which to make recommendations to prevent similar deaths in the future.

It is therefore unjustifiable and largely without purpose to hold an inquest into a First Nation death without any representation from that community on the jury. Indeed, the letter of the law says as much. Pursuant to the *Juries Act R.S.O.* (1990), if a jury roll is to be selected “in a county or district in which an Indian reserve is situate”, then names of individuals eligible for selection are to be obtained by “any record available.” The records that provincial authorities historically used for the creation of jury rolls have come from Indian and Northern Affairs Canada (who often use electoral lists); however, in the course of the 2008 Kenora inquest, it became widely known that Indian and Northern Affairs Canada had not provided provincial jury



rolls with band electoral lists since 2000, thereby making it impossible for provincial coronial inquests to secure Indigenous participation on juries.

In 2009, the issue of Indigenous representation on provincial jury rolls came to the fore during another coronial inquest that was investigating the death in custody of Jacy Pierre from Fort William First Nation at the Thunder Bay Jail. Aware of what had transpired in Kenora the previous year, the Pierre family wrote to the Attorney General's office to inquire as to whether or not the jury rolls of the Thunder Bay District included any First Nation peoples (ONCA, 2011). Reggie Bushie's family joined Jacy Pierre's in pursuing the issue of jury representation: "before each inquest began, the families of the deceased raised concerns about whether the jury roll from which coroners' juries are selected was representative... [and] produced compelling affidavit evidence showing that in the neighbouring District of Kenora the jury roll had excluded nearly all First Nation persons living on a reserve" (ONCA, 2011). Dr. David Eden, the coroner that eventually presided over the Seven Youth inquest, ensured that this lack of representation persisted when he denied a motion to issue a summons for the director of court operations for Northwestern Ontario to testify about juror recruitment practices in the region (Tyler, 2011). The Bushie inquest was granted a stay of proceedings while the issue of jury representation was raised with the federal government. Citing the issue of a non-representative jury, the Pierre family withdrew their participation from the inquest; incredibly, the Pierre inquest proceeded without the family and lasted a mere two days. (ONCA, 2011). In March of 2011, an Ontario Court of Appeal reached a judgement declaring that Dr. Eden had acted wrongfully in failing to deliver the summons and satisfy families' concerns regarding the make-up of provincial jury rolls.

In an effort to address the issue, the Governor General issued Order-in-Council 1388 in August of 2011 and appointed previous former Supreme Court of Canada Justice Frank Iacobucci to head an independent review into the issue of Indigenous representation on provincial juries. The report was not published until February 26<sup>th</sup> of 2013. In the interim, two more First Nation students (Kyle Morriveau and Jordan Wabasse) died in Thunder Bay. In response to these deaths, the Bushie inquest was expanded to include all seven First Nation students. Iacobucci's report found that the "most significant systemic barrier to the participation of First Nation peoples in the jury system in Ontario is the negative role the criminal justice system has played in their lives, culture, values, and laws throughout history...[and] that until significant and substantive changes are made to the criminal justice system, the issue of jury participation will not improve" (Iacobucci, 2013). In citing Indigenous mistrust of a settler colonial legal system as the 'most significant *systemic* barrier' rather than the non-compliance of federal and provincial governments with the *Juries Act (1990)*, the Iacobucci report arguably betrayed a poor understanding of the ways in which Indigenous people were excluded from provincial juries. To his credit, however, Iacobucci's report did include a sober diagnosis of the settler colonial crises afflicting Canadian courts across the north that is particularly provocative when read in light of the recent trials of Gerald Stanley and Raymond Cormier:

There is not only the problem of a lack of representation of First Nation peoples on juries that is of serious proportions, but it is also regrettably the fact that the justice system generally as applied to First Nation peoples, particularly in the North, is quite frankly in a crisis. If we continue the *status quo* we will aggravate what is already a serious situation, and any hope of true reconciliation between First Nations and Ontarians generally will vanish.

That Iacobucci called the situation a “crisis” was a significant finding. Accordingly, on the 7<sup>th</sup> of March, (then Deputy) Grand Chief of Alvin Fiddler and members of NAN’s legal team issued a call for quick action on the report, with Fiddler stating clearly: “We want the implementation committee to be formed fairly quickly” (Garrick, 2013). Member of Parliament and representative of the Kenora-Rainy River district Sarah Campbell also called for urgency and insisted that if the justice system failed to address the crisis, “First Nations will never be willing participants in it” (Garrick, 2013). It was not until the 21<sup>st</sup> of June 2013 that the Ministry of the Attorney General of Ontario announced the formation of its Jury Review Implementation committee, of which Fiddler was a co-chair (Ministry of the Attorney General, 2013). This review committee was also guided by NAN Elder and former Chief of Matachewan First Nation Barney Batise, who named the group *Debwewin* (or ‘truth’) (Debwewin, 2015). This group advised the Attorney General and tracked the recommendations produced by the Iacobucci Report. The most relevant of these recommendations for our purposes was no. 17, which called for the “the Ministry of the Attorney General, in consultation with the Implementation Committee, [to] institute a process that would allow for First Nations individuals to volunteer to be on the jury roll for the purposes of empanelling a jury for a coroner’s inquest.” (Iacobucci, 2013, p. 11).

Eventually, teams consisting of NAN political leadership, legal representation, and translators undertook what one law firm (Falconers LLP) termed “Operation Invite,” wherein trips were taken to remote northern communities for the purposes of gathering First Nations names that would volunteer on provincial coronial inquests (Vincent, 2014). Though unprecedented, this strategy to ensure representative jury rolls was done with some urgency following the decision of the Chief Coroner of Ontario, Dr. Dirk Huyer, to delay a long list of provincial coronial inquests (including the Seven Student Inquest) given his inability to guarantee that the proceedings would have had representative juries (Porter, 2014 July 15). Thus, while Operation Invite offered a band-aid solution to the problem of non-representative juries in Ontario’s coronial inquests, it is worth noting at this juncture that the issue placed First Nation families in direct and open legal conflict with Dr. David Eden, the coroner who later presided over the Seven Youth inquest. Unfortunately, this was not the only time that such tensions inflected the pre-inquest proceedings, as struggles to set the scope appeared to have been a rather serious point of contention.

### **Setting the Limited Scope of the Inquest**

On 13 September 2013, NAN issued a preliminary submission on the scope of the inquest. The submission included three requests of note (at least for the purposes of this article): first, that the quality of police investigations be included within the scope of the inquest and that policing practices be subject to scrutiny and recommendations within a legal setting; second, families requested that the scope of the inquest clearly identify and include racism, rather than the much larger category of ‘discrimination’ which, families feared, would be too broad to enable meaningful discussion during the inquest; third, families of the victims were very clear in their requests that alcohol not become the sole focus of the inquest to the exclusion of all other factors (Aboriginal Legal Services of Toronto and Falconers LLP, 2015). Unfortunately, these requests caused some friction between NAN’s legal representation and Dr. David Eden, who was responsible for issuing a ruling on the scope of the inquest. It is important to review the fabric and context of these disagreements in more detail as they are central to the story of how the inquest failed to animate a moment for institutional accountability for families of the victims.

In February of 2015, a series of written submissions were submitted by Nishnawbe Aski Nation to the coroner’s court speaking to the issue of the inquest’s scope. One of these submissions read as follows: “The Families and NAN respectfully submit that the Inquest must address racism. It must look at the way youth are treated by the community in Thunder Bay and by the Police parties. More specifically the Families submit that it is important for the Inquest to hear knowledge of how First Nation and Aboriginal communities experience racism in a sociological context that speaks to experiences that their children had in daily interactions with institutions and communities in Thunder Bay” (Aboriginal Legal Services of Toronto and Falconers LLP, 2015, p. 6). In April of 2015, Dr. Eden issued his ruling on the scope of the inquest, which replied to the families’ concerns regarding the particularity of racism as a form of discrimination in the following fashion:

The question before me is whether one particular basis for discrimination should be given precedence in the wording of the scope. The statute and case law does not require it. Even though not required by law, it could be possible that racism should be included because of the specific circumstances. There are fact [sic] situations in which racism-based discrimination could be seen as the sole or predominant form of discrimination involved. I have considered that, and find is [sic] not the case here (Eden, 2015, p. 25).

Thus, while racism was not banned completely from the content of conversations held in the legal space of the Seven Youth inquest, it is interesting to note that issues of intersectionality formed rifts between families of the victims (who stressed the particularity of racism) and Dr. David Eden, who decided over and against the wishes of the families that racism would not be

given any specific privilege in discussions of discrimination. What informed Eden's decision remains unclear in the actual text of the ruling: he merely writes that he has 'considered' the matter and finds that it is 'not the case' that racism ought to be given a particular focus. This leads one to question what factors Eden considered or what kind of training he could have been drawing upon when making such impactful decisions on such intersectional issues. Certainly, a background in forensic pathology does not qualify one to judge properly of such matters and to exert this authority against the stated requests of First Nation families. What is more, this ruling on racism within the scope of the inquest recalled an episode in the Brian Sinclair inquest, wherein a chief medical examiner for the province suggested that racism did not play a role in the death of an Indigenous man following a 36 hour wait in an emergency room wherein he was 'ignored to death' (Annable, 2016). Flagging the question of whether or not provincial inquests into the death of First Nation people ought to be presided over by non-Indigenous forensic pathologists, I will carry on to what were perhaps more striking disagreements between the families and Eden regarding the scope of the inquest.

In the same joint submission mentioned above, NAN's legal team also made a request on behalf of the families of victims to expand the scope of the Seven Youth inquest to include the quality and investigatory practices of the Thunder Bay Police Service. At this point in time, racism in TBPS investigations into the deaths of Indigenous people was a factual reality. In 2013, for example, Detective John Read of the TBPS accidentally sent out a satirical press-release mocking a First Nation murder victim that had the subject heading "Fresh Mouth Killer Captured!" (*The Globe and Mail*, 19 Sept. 2012). Allegedly, the e-mail was not supposed to be sent to media outlets but to a senior commanding officer. When First Nation leadership filed an Ontario human rights complaint regarding the mock press release, mayor Keith Hobbes and Deputy Chief of the TBPS Andrew Hay (who happens to be the father of the author) denied that the incident was racial in nature ("Thunder Bay Police," 2012). This development strained what was already a shaky relationship between NAN and the TBPS and informed the desires of families and their legal representatives to include police investigations within the scope of the inquest. Eden denied this request in his ruling, citing the fact that this was a coronial inquest and not a public inquiry. Eden claimed that he had no basis on which to judge the quality of a police investigation, nor any authority to prosecute misconduct under the *Coroner's Act* (Eden, 2015). Eden also claimed that "policing is a technical field... and the assessment of policing is not within the knowledge and experience of members of the general public and on that basis the motion that is denied is for this inquest to undertake a broad, comprehensive inquiry into the quality and competence of the Thunder Bay Police" (Eden, 2015, p. 19). Given that there are currently two different ongoing provincial investigations into racism in the TBPS – one which looks at murder investigations specifically – it is reasonable to assume that the quality of police investigations was indeed an important piece of the puzzle and its exclusion from the scope of the inquest was, in retrospect, an error. Eden's omission of police investigations would not have been so problematic, however, were it not for the way in which the issue of alcohol consumption was handled.

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In their joint submission to the coroner's court, the families of the seven students were very clear that, if alcohol consumption were to be included within the scope of the inquest and cited as a possible cause of death, that this should not be done in concert with the exclusion of all other factors. It is important to quote from this submission at length to fairly represent the arguments of the families:

In the scope of the inquest, as it currently stands, the issue of alcohol and other substance abuse has been isolated as an important aspect of the student's personal lives... This focus on potential addiction issues problematically reinforces discriminatory views in play... it is absolutely crucial to include other struggles, which may give context to addictions or be totally unrelated to them. Substance abuse is relevant to this inquest, but cannot become the focus, appear to be the sole struggle in the students' lives, and end up as the determining factor in their behavior (Aboriginal Legal Services Toronto and Falconers LLP, 2015, p. 13).

In response, Eden claimed that:

alcohol and drug use have a strong causal relationship with the deaths, and therefore evidence about them could be material to the development of practical and effective preventive recommendations which are within the jurisdiction of an inquest jury. They are not subsumed or implicit in another area of the scope. To remove them from the scope would be inconsistent with the facts as currently known (2015, p. 14)

That the presiding coroner cited alcohol as having a 'strong causal relationship' with the deaths *before* the start of the inquest is deeply troubling, particularly in combination with the refusal to give racism a particular focus and to remove the quality of police investigations from the scope of the inquest. That Dr. Eden believed that meaningful preventative recommendations could be made on the basis of discussions about alcohol also flies in the face of local knowledges and lived experiences. For example, I myself attended Sir Winston Churchill high school in Thunder Bay from 2002 until 2006, which is located directly beside DFC high school (where six of the seven students attended). Due to the culture of drinking in Thunder Bay combined with the pressures of being a teenager, it is neither feasible nor reasonable to expect teenagers to completely abstain from alcohol. Indeed, expecting young teenagers in Thunder Bay not to experiment with drugs and alcohol follows a similar logic of attempting to prevent teen pregnancy by advocating for abstinence. There is also a massive double standard in Thunder Bay wherein young white children who get into trouble drinking (as I did many times throughout high school) are seen as boys having a good time or 'being boys', whereas young Indigenous children who do the exact same thing are constructed as putting themselves in positions of fatal danger.

It is clear from the submission of the families that NAN and its legal representation were concerned long before the inquest began that Dr. Eden would facilitate proceedings in a way that shone a spotlight on the students' decisions, choices, and individual pathologies but that kept larger structural issues in the dark. Indeed, this appears to be exactly what took place at the inquest, as First Nation lawyers and legal representatives were often frustrated to find that the presiding coroner, police lawyers, or forensic pathologists regularly privileged alcohol consumption as a causative aspect of the student deaths in their testimonies or lines of questioning. For example, in April of 2016, Dr. Toby Rose – a forensics expert from the University of Toronto – was called to the stand. Dr. Rose, who had been absent for the previous six months of testimony and presentations of evidence, was defending her views on the primary role of alcohol in a particular series of student deaths when NAN lawyer Meaghan Daniel stated, in apparent exasperation: "If you have alcohol on one side of the balance and six months worth of testimony of what happened that night with those kids, you still tip in favour of the alcohol?" (Porter, 8 April 2016). This friction between NAN's lawyers and Dr. Toby Rose added to an already fraught courtroom atmosphere made all the more tense by Dr. Eden's decision to disrupt lines of questioning that strayed too far from forensic pathology.

Early in the inquest, Dr. David Eden made it clear that he was not sold on the relevance or purpose of dedicating much court room time to reviewing treaty history. As one reporter recalled of a particular episode at the Inquest, "Coroner Dr. David Eden interrupted the questioning of a witness at the inquest ...when Etienne Esquega, the lawyer for the Northern Nishnawbe Education Council [NNEC], began asking about treaty rights." (Porter, 2 February 2016). Regarding the history of treaty promises related to the funding of schools and teachers in reserve communities, Eden was reported to have asked "How does this line of questioning assist the jury in making recommendations?" and also to have said categorically that "this inquest will not be resolving disputes relating to treaty obligations... it's not something on which the jury can make a finding" (Porter, 2 February 2016). In March of 2016, Jonathan Allen, the Deputy Director of the education branch of Indigenous Affairs and Northern Development Canada, testified at the inquest and insisted that he was "not going to engage in a discussion on adequacy of funding" nor was he prepared to accept the claim that a funding gap exists between First Nation children and the rest of Ontario (Porter, 14 March 2016). Allen's testimony (or lack thereof) on the issue of a funding gap provoked a response from well-known Canadian economist Don Drummond, who went to the media citing a report he had issued which explained that the funding gap was indeed real and on-reserve First Nation students received at least thirty percent less funding than off-reserve students (Porter, 14 March 2016). Thus, there was during the inquest a particular moment wherein an official from the federal government responsible for the administration of education policy and funding models was having his feet held to the fire, so to speak, while being cross-examined by an Indigenous lawyer well-versed in the reality of inequities and inequalities of First Nation education. However, the presiding coroner (who had little to no background in these matters) interrupted this line of questioning, claimed that the

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inquest was not the place for such discussions, and made it clear that jurors were not going to be making any recommendations that addressed the abrogation of treaties.

By refusing families their request that the inquest provide a particular focus on racism and the quality of police investigations, Eden made it difficult for First Nation lawyers, community representatives, and political leaders to “interrupt the narrative of their own dysfunction” (Razack, 2015, p. 84). Eden’s focus on alcohol as a ‘causal factor’ (even before the inquest began) became a theme of the tensions between NAN lawyers and expert witnesses such as Dr. Toby Rose. What is more, Eden’s reluctance to discuss treaty rights or admit the quality of police investigations into the scope of the inquest further facilitated the construction of the seven students as damaged, as unmanageable problems, and as architects of their own demise. Without question, the picture most often painted at the inquest was not of a hostile settler city in the grips of a crisis of community safety; rather, the seven students became pathologized as problems a well-meaning settler city had to solve. Thus, despite the best efforts and proactive attempts of legal representatives from NAN and NNEC to shine a spotlight on racism, the abrogation of treaties, the quality of police investigations, and other relevant areas of the issue, the scope of the inquest as determined by consecutive rulings made such conversations very difficult to have (if at all).

The Seven Youth inquest ended in June of 2016. It lasted eight months and issued 145 recommendations. All deaths were found to have accidental or undetermined causes. As Tanya Talaga writes, “the families, who had waited years for an explanation of their children’s deaths, got none. If anything, they were left with even more questions” (Talaga 2017, p. 282). These questions were often raised by the testimony of First Nation youth at the inquest. For instance, a young First Nation teenager testified that she was taunted and teased by Thunder Bay police officers while in a holding cell with officers allegedly drawing crude cartoons of ‘Indians’ and referring to her as a ‘savage’ (Porter, 30 October 2015). At another point in the inquest, a statement of facts was read by the coroner’s counsel covering the testimony of a young First Nation man who claimed that, in 2008, he had been attacked by strangers and thrown in the river in Thunder Bay while attending high school (Porter, 8 April 2016). Events such as these demonstrated the extent to which the TBPS and the city of Thunder Bay in general was seen by First Nation youth as extremely dangerous and overtly racist. In Thunder Bay, it is widely believed that at least three of the seven students were victims of murder, that police have failed to understand the nature of the problem, and that a serial killer or series of violent individuals are committing hate-based acts of violence on Indigenous peoples with little fear of reprisal or investigation. Hate crimes – such as rotten eggs and epithets being hurled at Indigenous peoples on the city streets from moving vehicles – continue to take place almost daily in Thunder Bay (“Thunder Bay Police,” 2018).

## Conclusion

As I prepared the final manuscript revisions to this paper, the trials of Gerald Stanley and Raymond Cormier concluded and two white men were found not guilty in the murders of two Indigenous youth – Colten Boushie and Tina Fontaine. These verdicts have confirmed what is a dangerous precedent and given the appearance that the Canadian criminal justice system is unwilling to treat the murder of Indigenous peoples as criminal losses of life; instead, discourses of dehumanization that centre around alcohol and the pathologizing of Indigenous youth continue to make social justice impossible in a Canadian settler colonial context. In Thunder Bay, this translates into a public feeling of dread and anxiety over the upcoming trial of Brayden Bushby, accused of second degree murder in the death of Barbara Kentner. The freeing of Stanley and Cormier also opens up old wounds for Indigenous community members in the region who are reminded of the lack of justice, answers, and accountability they received following the conclusion of the Seven Youth inquest.

Also of relevance here is the way in which the trial of Gerald Stanley in particular has put the issue of First Nation Jury Representation back into federalist and provincial discussions of reform and reconciliation; however, the story of the Seven Youth inquest (in addition to the trial of Gerald Stanley) should impress upon social theorists the extent to which jury representation might fairly be thought of as a band-aid approach that seeks to repair a colonial relationship by asking Indigenous peoples to deepen their participation and investment in colonial state apparatuses and institutions. Theorizing from the community context of Thunder Bay, I simply cannot see how equal jury representation in provincial inquests or even municipal criminal court proceedings can be presented as a potential solution to the crisis of community safety ongoing in the city (much less across the lands currently known as Canada). Indeed, it seems appropriate to deploy Glen Coulthard’s critique of the Canadian liberal politics of recognition to provincial inquests into the deaths of Indigenous peoples and to understand them as sites of settler colonial crisis management instead of transformative legal proceedings that meaningfully animate opportunities for institutional accountability or facilitate new relationships between First Nation people and regimes of Canadian juridical power (2014).

Indigenous systems of law, governance, and community safety appear to be the only sensible option available given the current circumstances of apathy and dysfunction afflicting Canada’s court systems and the senior administration of the city of Thunder Bay. Rather than investing in historically racist and colonialist court proceedings, Coulthard agitates for an “explicitly non-state orientation of [a] radicalized politics of Indigenous empowerment” (2006, p. 17). Fortunately, these kinds of radical, non-state oriented, and grassroots Indigenous initiatives already exist in Thunder Bay, as the Bear Clan Patrol has been active in the city for some time, creating capacity for a model of community safety and Indigenous governance workshopped in Winnipeg and taken up by community activists on the streets of Thunder Bay (*CTV News*, 7 December 2017). Thus, while it is admittedly difficult to conceive of social policy objectives based on a radical politics of non-state orientation *in theory*, transformative change can be much easier *in practice*, as support for local Indigenous-led and grassroots initiatives



becomes not only an ethical imperative but a social act grounded in a rigorous political philosophy supported by high-octane critical theory of the sort offered by Coulthard.

Though I, as an individual scholar, do not see the slow reform of Canadian settler legal regimes as a feasible political goal based on my reading of Coulthard and my reaction to the Stanley and Fontaine verdicts, I concede that there are politics and possibilities of uncertainty in matters of such complexity. Accordingly, I find it prudent to speak to possible state-centred policy objectives that might address some of the problems of provincial inquests into the deaths of Indigenous peoples. As mentioned in my introduction and flagged at certain points throughout this paper, I question whether provincial inquests into the death of Indigenous peoples ought to be coronial inquests presided over by a forensic pathologist. Though an Indigenous coroner would certainly be preferable in such settings, this solution of equal representation may also be a band-aid approach, since it leaves largely unaddressed the extent to which a background in forensic pathology does not qualify one to understand the complexities of treaty rights, federal Indian policy, Indigenous histories, and the social experiences of First Nation peoples in settler cities, which are all major constitutive factors related to losses of Indigenous life in urban spaces. In short, then, forensic pathologists have shown themselves to be largely unqualified to preside over provincial inquests into the deaths of First Nation people. Social policy objectives seeking to shift provincial inquests from coronial inquests (limited by the Coroner's Act [1990]) to court proceedings presided over by Indigenous legal experts seem to be promising alternatives. In making this case, however, it is important to flag another issue and be clear on the implications of my own argument.

While I maintain that coroners should be replaced by more properly trained Indigenous legal experts in the context of provincial inquests into First Nation deaths, this in no way suggests that coroners do not have important work to do within and for First Nation communities in northwestern Ontario. As reported recently in *The Globe and Mail*, losses of life in First Nation communities that result from fire, suicide, accidents, and other unforeseen causes are regularly not investigated by a coroner (Galloway, 2019). For example, after a deadly fire took four lives in Mishkeegogamang First Nation in February of 2014, a call was placed to the coroner's office, though no coroner came. After four days had elapsed, untrained members of the community were forced to do their best at preserving the remains, which had been damaged by their exposure to snow and open air (Galloway, 2019). As residents of the region will know, the community of Mishkeegogamang is less than a six-hour drive from Thunder Bay, which removes any excuse of "remoteness" or "isolated" First Nations receiving lesser forms of care from coroners due to inaccessibility. To repeat, then, the history of coronial inquests into First Nations deaths in Ontario seems to suggest that these proceedings would be more optimally and equitably presided over by an Indigenous expert with training in federal Indian policy and treaty law; however, there remains ample opportunity for those with titles and training in forensic pathology to work in ways that improve rather than reduce the chance for accountability in Ontario's courtrooms.

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