

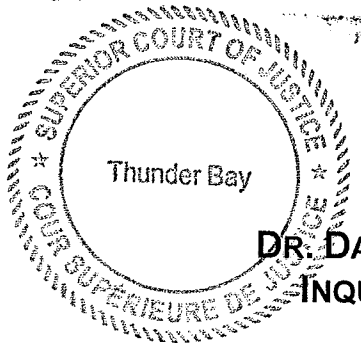
**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

IN THE MATTER OF the Inquest into the Death of Romeo Wesley;

AND IN THE MATTER OF an application pursuant to sections 2, 4, and 6(1) and 6(2) of the *Judicial Review Procedure Act*, RSO 1990, c. J.I;

AND IN THE MATTER OF an application for relief in the nature of *certiorari* and *mandamus* in aid in respect of the ruling of Dr. David Cameron, dated 22 December 2015

BETWEEN:



CAT LAKE FIRST NATION

Applicant

- and -

**DR. DAVID CAMERON, PRESIDING CORONER OF THE
INQUEST INTO THE DEATH OF ROMEO WELSEY**

Respondent

**NOTICE OF APPLICATION TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicant. The applicant requests that this application be heard before a Judge of the Superior Court of Justice sitting as a single Judge of the Divisional Court, sitting in Thunder Bay at the District Court House, 125 Brodie Street North, Thunder Bay, Ontario, P7C 0A3; or in the alternative, at the Osgoode Hall Law Courts before the

Superior Court of Justice (Divisional Court) at 130 Queen Street West, Toronto, Ontario, M5H 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record or no later than 2:00 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: 7 January 2016

Issued by:  _____
Local Registrar

Address of court office: 125 Brodie Street North
Thunder Bay, Ontario
P7C 0A3

To: MINISTRY OF THE ATTORNEY-GENERAL
Office of the Crown Attorney
85 Frederick Street
Kitchener, Ontario
N2H 0A7

LEILA MEKHERI, ASSISTANT CROWN ATTORNEY
Tel: (519) 741-3222
Fax: (519) 570-0031
Email: Leila.Mehkeri@ontario.ca

Coroners' Counsel

AND PETRONE HORNAK GAROFALO MAURO

TO: Barristers and Solicitors
76 Algoma Street North
Thunder Bay, Ontario
P7A 4Z4

GAVIN FREITAG

Email: gfreitag@petronelaw.on.ca

TIFFANY BOISVERT

Email: tiffany@petronelaw.on.ca

Tel: (807) 344-9191

Fax: (807) 345-8391

Counsel for the Wesley Family

AND MAJOR SOBISKI MOFFATT LLP

TO: Barristers and Solicitors
1 Seventh Street South
Kenora, Ontario
P9N 1P3

WILLIAM J. MAJOR

Email: wmajor@majorlaw.ca

YANA SOBISKI

Email: ysobiski@majorlaw.ca

Tel: (807) 468-1435

Fax: (807) 468-7275

Counsel for Mishkeegogamang Ojibway Nation

AND BEAMISH & ASSOCIATES

TO: Barristers and Solicitors
50 Queen Street
PO Box 1600, Stn. Main
Sioux Lookout, Ontario
P8T 1C3

CATHERINE BEAMISH

cathyb@beamishlaw.ca

SIMON M. OWEN

simono@beamishlaw.ca

Tel: (807) 737-2809

Fax: (807) 737-1211

Counsel for the Nishnawbe-Aski Police Service

APPLICATION

THE APPLICANT MAKES AN APPLICATION FOR:

1. An Order in the nature of *certiorari* quashing the Ruling dated 22 December 2015 of Dr. David Cameron, Presiding Coroner, in which the Honourable Coroner denied the applicant First Nation's motion for a change of venue of the Inquest into the death of Romeo Wesley from Sioux Lookout to Cat Lake First Nation;
2. An Order staying the Coroner's Inquest into the death of Romeo Wesley, scheduled to commence on Monday, 1 February 2016 in Sioux Lookout, Ontario, pending a decision from this Honourable Court on the main application for judicial review;
3. An Order in the nature of *certiorari*, with *mandamus* in aid, directing the Coroner to proceed with the Romeo Wesley Inquest at Cat Lake First Nation, commencing on a new date to be scheduled after consultation with the parties with standing;
4. In the alternative, an order in the nature of *certiorari*, with *mandamus* in aid, directing the Coroner to reconsider the Cat Lake Motion for a change of venue, with further written submissions and an oral hearing; and further directing the Coroner and/or the Ontario Provincial Police (OPP):
 - a. produce an unredacted copy of the OPP Security Branch Memorandum of 2 December 2015 ("OPP Security Memorandum"), to the Presiding Coroner, Dr. David Cameron, care of Dr. Dirk Huyer, Chief Coroner of Ontario;

- b. produce the Terms of Reference for, and all criteria for identifying and assessing the security issues upon which the Justice Officials Protection and Investigations Section (JOPIS) of the Ontario Provincial Police (OPP), Nishnawbe-Aski Police Service ("NAPS"), and the Coroner relied in the investigation of the Inquest security issues and preparation of the OPP Security Memorandum;
- c. produce all OPP and associated forces of all notes, records, logs, interviews, electronic media, photos and video, etc. prepared in response to the OPP tasking by the Chief Coroner's Office and NAPS "...to review security issues relating to an Inquest on the First Nations Community of Cat Lake, commencing February 1, 2016 and with an anticipated conclusion in three to four weeks.";
- d. produce standard Inquest security protocols, criteria, etc. of the Office of the Chief Coroner of Ontario;
- e. produce all OPP, NAPS, and/or Coroner's standards and criteria for "security screening" of cleaning personnel for accommodations for participants in any Inquest in Ontario;
- f. produce including all notes, records and of the actual security screening security already investigated, undertaken and prepared for cleaning and other personnel at the Best Western Hotel in Sioux Lookout, where the Inquest is currently scheduled to be held, and all other locations occupied or to be occupied by the Inquest participants for the duration of the Inquest, including but not limited to the Coroner, Coroner's staff, Inquest party's and party counsel, in preparation for the current Inquest commencement date of 1 February 2016; and

- g. produce all weather forecasts and winter road construction projections for northwestern Ontario for the winter of 2016 commissioned by or relied on by the OPP or the Presiding Coroner.
5. Such further and other interim relief that may be necessary pending the final decision of this Honourable Court;
6. An Order allowing service of documents forming the basis for the application for judicial review to be effected by electronic service to counsel for the parties with counsel's consent;
7. An Order abridging the time for service and filing of the herein application, if necessary;
8. An Order for such further relief in the form of *certiorari* or *mandamus* if the said relief is necessary and applicable in the circumstances and not otherwise permitted by s. 9(1) of the *Judicial Review Procedures Act*;
9. Costs of the within application on a solicitor and client basis; and
10. Such further and other relief as the nature of the case may require and this Honourable Court permits.

THE GROUNDS OF THE APPLICATION ARE:

1. The Ruling of Dr. David Cameron provides a succinct review of the history of the death of Romeo Wesley and of the Inquest to date.
2. On 7 October 2015, the Cat Lake First Nation Motion Record for a change of venue of the Romeo Wesley Inquest was served on Coroner's Counsel and counsel for the parties.

3. 11 weeks later, on 22 December 2015, the Presiding Coroner, Dr. David Cameron, released his Ruling dismissing the Cat Lake motion for change of venue.
4. The Presiding Coroner erred in law and exceeded his jurisdiction when he predetermined an issue in the proceedings without providing the parties an opportunity to present evidence or to be heard, to wit, security issues.
5. The Presiding Coroner was in excess of his jurisdiction to the extent that his Ruling purports to be a general prohibition against holding Coroner's Inquests in any and all remote First Nations in Ontario.
6. The Ruling of Dr. David Cameron is not entitled to deference by the Divisional Court. A perceived security deficit is the essential reason for the refusal to grant the change of venue motion. Security issues are not within the core expertise of Coroner's Court to which it is entitled to deference by supervisory courts.
7. The Presiding Coroner unlawfully delegated his jurisdiction, or alternatively failed to exercise his jurisdiction, by surrendering his discretion and jurisdiction to the Ontario Provincial Police, who maintain, in effect, that only with a large, well-armed, paramilitary force occupying and patrolling Cat Lake First Nation 24 hours a day for the duration of the Romeo Wesley Inquest can the Inquest be conducted in safety in Cat Lake First Nation, or any remote First Nation for that matter.

Honour of the Crown:

8. The Supreme Court of Canada holds that the Crown has a general duty to act honourably as regards indigenous peoples and their rights. The Court refers to this as "the Crown's duty of honourable dealing" or more briefly "the honour of the Crown." The principle of "the honour of the Crown" has found expression and continues to develop in the jurisprudence since at least the 1984 Supreme

Court judgment in *Guerin v. The Queen*, [1984] 2 SCR 335: The honour of the Crown is always at stake in interactions with aboriginal peoples. The honour of the Crown has not been well served in the Romeo Wesley Inquest.

Standard of Review is Correctness

9. The appropriate standard of review for the judicial review sought in the within application is correctness. Coroners have historically been accorded deference. The reasons for deference are logical: medical expertise, a special understanding of the Coroners Act, and the discretionary nature of certain decisions. However, coroners are frequently called upon to address issues beyond their curial expertise and, in these cases, their decisions may be subject to scrutiny on the correctness standard.

Ruling of Dr. David Cameron:

10. At its heart, the essential rationale underpinning the Coroner's Ruling denying change of venue motion is security, far outside the expertise of Coroners.
11. The Presiding Coroner concluded globally in his Ruling that no Coroner's Inquests can be held in remote First Nations in Ontario, at paragraphs 17 and 28, at least for the foreseeable future:
 17. The structure of a coroner's inquest is set out in the *Coroners Act*. Although less prescriptive than some other judicial or administrative proceedings, the requirements are nonetheless fixed such that the participants, rules of procedure, and so on, do not lend themselves to flexibility that may be required in order to hold an inquest in a remote location.
 28. The current structure and requirements of a coroner's inquest in Ontario does not lend itself to having the inquest held in remote communities. ...

12. The OPP Security Memorandum is a cavalier, arbitrary and ill-informed analysis, the product of a secretive process conducted behind closed doors. The OPP Security Memorandum was relied on heavily by the Coroner, indeed was determinative of the First Nation motion for change of venue. It may be that the Coroner relied on the OPP Security Memorandum in good faith, bowing to their perceived expertise, but such good faith reliance, in these circumstances, does not immunize the Coroner's Ruling from judicial review or to deference from this Honourable Court.
13. In particular, the OPP Security Memorandum misconstrues and over-estimates the actual security issues at Cat Lake First Nation. Further, no reference is made or consideration given to the twenty (20) trained and trusted Peacekeeper security staff of Cat Lake First Nation, Mishkeegogamang Ojibway Nation. Other security personnel could have also been provided by other First Nations.
14. A review and comparison between the issues identified and conclusions pronounced in the OPP Security Memorandum with the Coroner's Ruling, particularly paragraph 16(a) through (h), reveal the overwhelming role that the OPP Security Memorandum played in the ultimate decision to deny the Cat Lake First Nation motion for change of venue.

Failure to Consult with First Nation

15. The Presiding Coroner acknowledged that there had been no meaningful consultation with the First Nation parties on security issues. (See in particular the final sentence of paragraph 11 of the Ruling):

11. Through the request of the presiding coroner, the Justice Officials Protection and Investigations Section of the OPP conducted a security audit of Cat Lake with respect to holding the proposed inquest there. This section of the OPP provides services to help assure the safety and well-being of personnel and the community in judicial proceedings such as a coroner's inquest. **Discussion and problem solving occurred among the presiding coroner,**

**coroner's counsel, constable, and investigating officer, and the
Justice Officials Protection and Investigations Section.**

[emphasis added]

16. None of the First Nation parties to the Inquest were provided with nor have any knowledge of the Terms of Reference for, and any and all criteria for identifying and assessing the security issues upon which the Justice Officials Protection and Investigations Section (JOPIS) of the Ontario Provincial Police (OPP) and the Coroner relied:

The Justice Officials Protection and Investigations Section (JOPIS) of the Ontario Provincial Police (OPP), at the request of the Chief Coroner's Office and Nishnawbe-Aski Police Service, (NAPS) have been tasked to review security issues relating to an Inquest on the First Nations Community of Cat Lake, commencing February 1, 2016 and with an anticipated conclusion in three to four weeks. The NAPS has requested the OPP take the lead in any security detail relating to an Inquest held on the Cat Lake First Nation Community.

OPP Security Branch Memorandum, 2 December 2015, p. 1, first paragraph

Through the request of the presiding coroner, the Justice Officials Protection and Investigations Section of the OPP conducted a security audit of Cat Lake with respect to holding the proposed inquest there.

Ruling of Dr. David Cameron, 22 December 2015, ¶11

17. Nor were the First Nation parties consulted as to the development, appropriateness or effectiveness of the Terms of Reference, or the criteria to be applied for identifying and assessing security issues,
18. The original Motion Record below, served 7 October 2015, stated that the traditions of aboriginal people are the same as Euro-Canadian legal principles in recognizing that investigation and inquiry, judgment, or punishment out of the sight of those involved does not serve the community's or citizens' interests.

19. Cat Lake specifically referred to and relied on the *Osnaburgh/Windigo Tribal Council Justice Review Committee Report* ("the *Osnaburgh/Windigo Justice Report*"), released 31 July 1990, Recommendation 41 of which states:
 41. More inquests should be held in a full and complete manner in order to play a preventive role and to provide an educational basis for the community to identify why people died, to dispel rumours about how the deaths occurred and to draw public attention to the dreadful socio-economic conditions which play a significant role in many avoidable deaths in these communities.
20. In the face of the nature of and manner in which the OPP Security Memorandum was prepared, and the Coroner's Ruling, reference must now be made in this application to the immediate following recommendation of the *Osnaburgh/Windigo Justice Report*, Recommendation 42, which speaks directly to First Nation participation in "devising solutions" to issues of policing and courts, stating:
 42. The Nishnawbe-Aski Nation, the Windigo Tribal Council and the First Nations themselves must be closely involved in devising solutions with Canada and Ontario. Whether the initiative involves socio-economic issues or relates to policing, courts or corrections, the representatives of the **First Nations organizations must be fully engaged in devising their own solutions** for what has been rightly described as the domestic issue most noted to Canada's disadvantage on the international stage.
21. Other than cursory initial discussions during a site visit to Cat Lake First Nation on 29 October 2015 by the Coroner and staff, and an OPP representative, there has been no discussion of security issues with the political leadership, members or representatives of Cat Lake First Nation or any other First Nation or aboriginal organization.
22. This is all the more egregious as Cat Lake First Nation offered to participate in on-going security discussions, originally on 29 October 2015, which offer was never accepted, and finally rejected on 9 December 2015. The bald decision

refusing the change of venue motion was first communicated the following morning, 10 December, without reasons.

23. Legal counsel for Cat Lake First Nation requested a copy of the OPP Security Audit on 10 December 2015. Coroner's Counsel advised that the Security Audit is a confidential OPP document, and its release was a decision to be made by the OPP.
24. The OPP Security Memorandum was not produced to Cat Lake First Nation until noon on Monday of this week, 4 January 2016. A copy of the redacted OPP Security Memorandum was only provided to counsel for the parties, including Cat Lake First Nation after Coroner's Counsel had been advised of the First Nation's instructions to its legal counsel to proceed with an application for judicial review of the Coroner's Ruling denying the change of venue motion.

Exclusive Use of Cat Lake School for Coroner's Court:

25. The OPP Security Memorandum states, *inter alia*, at p. 1, final paragraph:

The local school has been identified as the site for the Inquest. The gymnasium is the specific location within the school. A review of information supplied from Coroner's Constables has indicated the above noted location will remain open as an educational facility and as such, will pose potential security issues. A review of information supplied from Coroner's Constables has indicated the above noted location will remain open as an educational facility and as such, will pose potential security issues.

26. Cat Lake First Nation Chief and Council, Education Director, School Principal, and legal counsel had discussed since August 2015 the option of closing the school for education purposes for the duration of the Inquest between 1 and 19 February 2016.

27. The school was already scheduled to be closed for a week in early February for Teacher Professional Development out of the community. The scheduled week-long March break would have been advanced to February, and the students would have been given a third week off during the Inquest, which classes would be made up between March and June 2016.
28. It was decided to propose to continue to operate the school during the Inquest, and to cancel classes if this proved too difficult for the students. Had the First Nation been consulted about the perceived security issues associated with dual use of the school during the Inquest, the First Nation was willing and had already considered closing the school for the Inquest. But Cat Lake First Nation was never consulted.

Future Alternatives:

29. Cat Lake First Nation has already recognized that holding the Inquest in the First Nation after winter passes will require adjustments to its original proposal. Cat Lake will lose exclusive and dedicated access to and use of the Ministry of Natural Resources and Forestry ("MNRF") Firebase for hosting the Inquest after the fire season begins in the spring. But while the exclusive access to the O-shkee Meekena Youth Healing Centre and catering services is essential if the Inquest is to be held at the First Nation, use of MNRF Firebase is not.
30. Cat Lake First Nation has the opportunity to address the loss of the MNRF Firebase if the Inquest is hosted by Cat Lake between mid-June to the end of August. The school year will be over, which will allow exclusive and dedicated access to the whole of the school, and all seven (7) of the teacherages, each of which has 3 bedrooms, full kitchen and bathroom facilities, and common area.
31. More beds will be available with this arrangement than under the original proposal. The Presiding Coroner and staff will lose the dedicated office /

boardroom and electronic suite at the MNRF Firebase, but that can be made up by making different arrangements for exclusive dedicated office and boardroom area within the school.

Weather / Winter Road Issues

32. The OPP Security Bureau is wrong to believe that all Winter Roads are the same. The Winter Roads of central northwestern Ontario are a network of roads stretching north from the jump off point of Pickle Lake and Mishkeegogamang Ojibway Nation, to which access to the southern, all-year road network is achieved later as you travel to other First Nation farther north. Cat Lake First Nation is one of the southernmost communities in the Winter Roads network, one of first to be reached each year, and for whom the Winter Road remains open the longest. Cat Lake First Nation Chief Russell Wesley estimated on 4 January 2016 that the winter road to Cat Lake First Nation will be open for heavy truck and other vehicle traffic by the weekend of 16 - 17 January 2016, notwithstanding the generally warmer weather conditions this winter.
33. Further, although lay opinions as to future weather conditions are hardly a ground for judicial review, this Honourable Court can take judicial notice that if flights cannot make it into Cat Lake First Nation because of inclement weather, it is more than likely that the Sioux Lookout Airport is also not allowing flights in or out, and that the same may also apply to the Thunder Bay Airport.
34. The Cat Lake First Nation motion for change of venue had the full support of all parties with standing for the Inquest, except the Nishnawbe-Aski Police Service, which was not opposed to the motion.
35. The First Nation motion also has the full support of the Nishnawbe-Aski Nation and the Windigo First Nations Council.

Live Webcasting

36. The Presiding Coroner states at paragraph 24 of his Ruling:
- Holding the inquest in Cat Lake would not significantly cloud the public nature of the inquest for other citizens of Ontario, as there are plans to broadcast the inquest live on the internet.
37. This conclusion demonstrates a fundamental misunderstanding of the purpose of the change of venue motion, which is to remember and revive the long forgotten recommendations of *Osnaburgh/Windigo Justice Report* that an Inquest needs:
- a. to be held in a full and complete manner in order to play a preventive role; and
 - b. to provide an educational basis for the community to identify why people died,
 - c. to dispel rumours about how the deaths occurred; and
 - d. to draw public attention to the dreadful socio-economic conditions which play a significant role in many avoidable deaths in these communities
38. Other than the final component of Recommendation 41, none of these recommendations can be achieved, indeed do not make any sense, unless the Inquest is conducted in the face of, and within the body of the injured community that has suffered the death. The question needs to be asked, "What preventive role or educational basis is provided by an Inquest that no member of the injured remote First Nation observes, participates in, or even understands the language?"
39. Indeed, if all Inquests can be broadcast on the internet, why even bother leaving Toronto?

40. Finally, what does the Presiding Coroner's Ruling indicate about the commitment of the Province of Ontario to ensure greater opportunity for representation on and participation in juries at Coroner's Inquests by aboriginal persons from remote First Nations? The same alleged problems with winter weather travel that militate against holding an Inquest at Cat Lake First Nation would prevent their travel back and forth to their communities. But their travel issues are of lesser importance?
41. The Presiding Coroner has breached the principles of natural justice and transparency.
42. Sections 2, 4, and 6(1) and 6(2) of the *Judicial Review Procedure Act*, R.S.O., 1990, c. J.1, as amended;
43. Sections 30(1), 47 and 50 of the *Coroners Act*, R.S.O. 1990, c. C.37, ss. 47, as amended;
44. The Common Law and the principles of natural justice;
45. The *Osnaburgh/Windigo Tribal Council Justice Review Committee Report*, released 31 July 1990.
46. The Goudge Inquiry, the *Inquiry into Pediatric Forensic Pathology in Ontario*.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

1. The Affidavit of Mary Dale Bird, Area Director, Nishnawbe-Aski Legal Services Corporation, to be sworn 7 January 2016;
2. The materials filed upon the motion before the Honourable Coroner;

3. Such further and other materials as counsel may advise and the Court permits.

Date: 7 January 2016

BIRD & THATCHER
Barristers and Solicitors
215 Camelot Street
Thunder Bay, Ontario
P7A 4B2

FRANCIS J. THATCHER
Tel: (807) 345-6001
Fax: (807) 344-7221
Email: thatcher@tbaytel.net
LSUC #31697F

Counsel for the Applicant

CAT LAKE FIRST NATION

Applicant

and

**DR. DAVID CAMERON, PRESIDING CORONER OF THE
INQUEST INTO THE DEATH OF ROMEO WESLEY**

Respondent

Court File No.: *DC-16-0001*

**SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceeding commenced at:

THUNDER BAY

**NOTICE OF APPLICATION
TO DIVISIONAL COURT
FOR JUDICIAL REVIEW**

BIRD & THATCHER
Barristers and Solicitors
215 Camelot Street
Thunder Bay, Ontario
P7A 4B2

FRANCIS J. THATCHER
Tel: (807) 345-6001
Fax: (807) 344-7221
Email: thatcher@tbaytel.net
LSUC #31697F

Counsel for the Applicant,
Cat Lake First Nation