CITATION: Doe v. Baker, 2018 ONSC 6240
COURT FILE NO.: CV-18-708
DATE: 2018-10-25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
JOHN DOE, an Officer of the Waterloo Regional Police Service	Lucas O'Hara, Counsel for the Applicant
Applicant	
– and –	
JACKIE BAKER, on her own behalf and as Administrator of the ESTATE OF BEAU BAKER, DECEASED; MICHAEL BAKER; DANIEL BAKER; THE WATERLOO REGIONAL POLICE SERVICES BOARD; OFFICE OF THE CHIEF CORONER; TORSTAR CORPORATION and CHIEF OF POLICE FOR THE WATERLOO REGIONAL POLICE SERVICE, BRYAN LARKIN	Akosua Matthews, Counsel for the Respondents, Jackie Baker, on her own behalf and as Administrator of the Estate of Beau Baker, Deceased, Michael Baker and Daniel Baker James Bennett, Counsel for the Respondent, The Waterloo Regional Police Services Board Christopher Diana and Michael Blain, Counsel for the Office of the Chief Coroner Gary Melanson, Counsel for the Respondent, Chief of Police for the Waterloo Regional Police Service, Bryan Larkin
Respondents	
– and –	
EMPOWERMENT COUNCIL	
Intervener	Anita Szigeti, Counsel for the Intervener
– and –	
CANADIAN BROADCASTING CORPORATION and CTV, A Division Of Bell Media Inc.	Iain MacKinnon, Counsel for the Proposed Intervener
Proposed Interveners	
	HEARD: October 15, 2018

THE HONOURABLE MR. JUSTICE P.J. FLYNN

REASONS FOR DECISION

[1] This Application is brought in the context of a mandatory inquest pursuant to the *Ontario Coroner's Act*, following the April 2, 2015 death of one Beau Baker, after the use of force by the Applicant, John Doe, a member of the Waterloo Regional Police Service.

[2] The inquest is scheduled to commence February 4, 2019.

[3] The Applicant seeks various forms of relief to ensure anonymity, including, that the Applicant's name be redacted from the Inquest Brief, that the Applicant be referred to by a pseudonym throughout the inquest, that the Applicant be permitted to testify remotely or behind a screen and that a publication ban be ordered to forbid publication of the Applicant's name.

[4] The basis for these requests is alleged threats to the Applicant's safety on social media.

[5] In other circumstances, applications concerning the conduct of an inquest are brought before the presiding coroner.

[6] The position of the Chief Coroner is that while the presiding coroner has extensive jurisdiction to control the inquest process, including anonymizing names, deciding what material goes into the Inquest Brief and determining the admissibility of evidence, there is no jurisdiction to order a publication ban. In other words, the presiding coroner has full jurisdiction to control the process and the players' with standing at the inquest, the presiding coroner has no jurisdiction to control the media or other observers outside the forum.

[7] At the hearing of the Application, I heard from counsel for the Applicant, and counsel for the Waterloo Regional Police Services Board (without Factum) and counsel for Waterloo Regional Police Chief, Bryan Larkin (without Factum), both supporting the Applicant's request.

[8] Opposing the Applicant's request, I heard from counsel for Jackie Baker, Beau's mother, then counsel for Canadian Broadcasting Corporation and CTV, as well the Intervener, The Empowerment Council.

[9] While the Office of the Chief Coroner did file responding material, including a Factum, counsel chose not to make oral submissions. In fact, that Factum set out that because the coroner may have to determine some of the issues raised on the Application, the Chief Coroner thought it not appropriate to take a position on the merits of the Application.

[10] Much of the argument centred on the so-called "open court" principle, as has found expression in *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835 and *R. v. Mentuck*, 2001 SCC 76.

[11] That principle is said in *Vancouver Sun (Re)* 2004 SCC 43, to be a cornerstone of the common law where publicity, openness and access are fundamental in establishing and maintaining public confidence in the integrity of the courts … and why the parties and the public at large abide by the decisions of the courts.

[12] The parties opposing the Application say that the relief the Applicant is seeking will directly infringe that core value.

[13] Counsel for the Waterloo Regional Police Service Board answered that attack by arguing that the accommodation being sought (to protect the Applicant's identity) is but a minor infringement to the open court principle.

[14] What the Applicant and his supporters miss in this thrust is a proper consideration of section 32 of the *Coroner's Act*, R.S.O. 1990, c.37:

Inquest Public

> 32. An inquest shall be open to the public except where the coroner is of the opinion that national security might be endangered or where a person is charged with an indictable offence …

[15] The legislation has specifically addressed the issue of open court and laid out two exceptions, neither of which are argued by the Applicant.

[16] Nor has the Applicant argued that section 32 ought to be struck for being ultra vires the legislature or unconstitutional.

[17] If I correctly recall the lessons of Professor Driedger, a specific legislative provision (like s.32) ousts the common law.

[18] I don't agree with the Applicant that the relief requested is a minor accommodation. Nor that it doesn't impact the coroner's mandate, which is to determine the identity of the deceased and how, when, where and by what means the deceased came to his death.

[19] The coroner's jury may make recommendations directed to the avoidance of further deaths, or respecting any other matter arising out of the inquest, but is expressly prohibited from making any findings of legal responsibility or expressing any legal conclusions.

[20] The Applicant asks me to overlook the mandatory nature of s.32 and urges me to use my inherent jurisdiction to do so.

[21] This is so because the Applicant, who has twice been cleared of any wrongdoing by separate independent investigations (the SIU and the OIPRD), claims that there are credible

reasons to believe that the Applicant's personal safety would be jeopardized should the Applicant's identity be revealed to the public.

[22] The Waterloo Regional Police Service monitored "open-source" social media and news reports about Mr. Baker's death. They concluded that there were substantial concerns for the safety of the Applicant and the Applicant's family and friends, including colleagues on the Waterloo Regional Police Service.

[23] Those postings are crude threats and vitriolic rants and are all anonymous.

[24] But the Applicant, the Police Service and the Chief, all concede that other than open-source monitoring, the Service conducted no real criminal investigation and no proper Threat Assessment, not only because it would be difficult to ascertain the actual person(s) behind the posts but because the Applicant does not want to be identified as part of such an investigation. And the Applicant is unable to quantify the amount of risk, should the Applicant's identity be made public.

[25] The Applicant and supporters point to Harper J.'s interim ruling "that there is a possibility of serious harm" and his order that "no one shall publish the names of the officers or any information leading reasonably to the identity …".

[26] It should be noted that this was occasioned by an inadvertent mistake by Applicant's counsel, by which Ms. Baker came into possession of the identity of the Applicant and another officer and promptly disclosed them in a radio interview.

[27] To Ms. Baker's credit, after Harper J.'s ruling, she posted a message on Facebook advising of the interim publication ban and asking readers to post details of any threats against the officers.

[28] Officer safety does not fit into one of the two exceptions under s.32 to the public nature of the proceeding.

[29] Much as I am sympathetic to the officer's concerns about the need and vitriol that have or may be visited upon the officer, there is no evidence of any specific threats or acts of intimidation against Officer Doe.

[30] And certainly none that will constitute a real and substantial risk should the Applicant be identified during the inquest process.

[31] In my view "a possibility of serious harm" cannot trigger the exercise of my jurisdiction, such as would negate the plain words of section 32.

[32] Neither an anonymity order nor a publication ban are necessary nor justified in this case.

[33] There is a high level of public interest in this matter. The public has a right to scrutinize and comment upon the administration of justice in this coroner's inquest. That can only be effectively accomplished in the bright light of day: there is no better disinfectant that bright sunlight.

[34] Justice must be done and patently be seen to be done.

[35] The coroner has nothing to hide to get to the jury's answers to the questions.

[36] The deleterious effects of the orders sought on both the open court principle and the *Charter* freedom of expression rights of the media and the public far outweigh any illusory salutary benefits of an anonymity order and/or a publication ban.

[37] Better the gleam of sunlight than that of whitewash.

[38] I would note that I made my ruling giving some weight to the Affidavit evidence of Karen Watson, for the sake of argument.

[39] Of course, Ms. Watson's evidence was hearsay and not the best evidence.

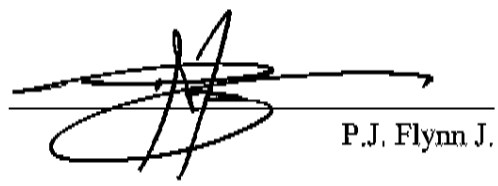
[40] In any event, for these reasons, I would dismiss the Applications and deny the Applicant's request for an anonymity order and a publication ban. The Presiding Coroner can otherwise deal with any concerns about process or procedure.

Costs

[41] I would encourage the parties to resolve the matter of costs.

[42] It is clear that the Respondents were successful before me. Unless something very unusual is at play, they should be entitled to costs.

[43] So, on or before November 22, 2018, I ask all Respondents to serve and file with me at my Kitchener Chambers costs submissions consisting of Form 57-B Costs Outline, not exceeding 3 pages, Bill of Costs and any relevant Offer to Settle the Application; and on or before December 22, 2018, the Applicant(s) shall serve and file their Form 57-B Costs Outline, their Bill of Costs and any relevant Offer to Settle.



P.J. Flynn J.

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P.J. Flynn J.

Released: October 25, 2018