

Jury roll issues could cripple justice system

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If the issue of First Nation representation in jury pools isn't addressed in a timely fashion, accused criminals could walk free, says a Thunder Bay lawyer.

Rene Larson said under the Charter of Rights and Freedoms, accused people have the right to a timely trial.

"If that is not met, the charges could be dismissed," Larson said.

His comments came on the heels of Superior Court Justice Helen Pierce postponing a second-degree murder trial because there were not enough Aboriginals among the pool of prospective jurors.

Pierce made her decision to delay the trial until late fall after a ruling by Ontario's Court of Appeals which ordered an inquest into whether Aboriginals are properly represented on the district's jury roll.

However, Brendan Crawley, spokesman for the communication branch of the Ministry of the Attorney General, said the case before Pierce was an isolated one and other trials should not be delayed by the jury roll issue.

"The ruling of Madam Justice Pierce applied only to the specific case before her," Crawley said. "We plan to proceed with trials that are scheduled in courthouses across the province, including Thunder Bay."

Crawley said the ministry is working collaboratively with First Nations to ensure representation of members who live on reserve appear on the province's jury rolls.

Larson said the list of prospective jurors must include Aboriginals, including those living on reserve throughout the district before the issue can be truly rectified.

"If there are no Aboriginal people in the (prospective jury pool), a part of society is missing," Larson said.

Nishnawbe Aski Nation Deputy Grand Chief Terry Waboose said when the jury issues came to light, no one realized there had been an issue.

That information came to light at the coroner's inquest into the death of two Kashechewan men in a Nishnawbe-Aski Police Service holding cell in the community. The men died in early 2006 and the inquest was held in Toronto in 2009.

Crawley said the ministry has been working on the jury representation issue for some time and explained the current system.

"Names of potential jurors are taken from the most recent (voters) lists that the ministry obtains from the Municipal Property Assessment Corporation (MPAC)," Crawley said.

However, First Nations aren't included on the MPAC lists.

"In 2000, the federal government stopped providing us with the Indian and Northern Affairs Canada (INAC) list that would have information about First Nations members and that was used to identify prospective jurors living on First Nations reserves," Crawley said. "We have urged the federal government to reconsider its approach with respect to the INAC lists.

"And while we wait for action from the federal government, we are pursuing ways to increase the inclusion of First Nations persons living on reserve in Ontario's jury rolls through education and outreach."

Crawley said the ministry actively requests updated band lists "at several points each year with the goal of increasing the number of First Nations persons living on reserve on potential jury selection lists."

This is done through letters in syllabics, by phone and during in-person visits, he said.

However, Waboose said the ministry should have acknowledged there was an issue when it was pointed out at the inquest.

"The truth came out because an affidavit surfaced at an inquest and not because the Attorney General's office was upfront about the problem," Waboose said.

NAN and the families of Reggie Bushie and Jacy Pierre won a landmark Court of Appeals case March 10 recognizing their right to conduct inquiries into the validity of the juries formed in coroner's inquests into the deaths of their loved ones.

Pierre was 27 when he died of a drug overdose in the Thunder Bay District Jail in 2007. The Court of Appeals ordered a new coroner's inquest into his death as part of the March 10 ruling.

Bushie, from Poplar Hill, was 15 when he drowned in the McIntyre River in Thunder Bay. An inquest into his death has yet to proceed.

The Court of Appeal found "compelling affidavit evidence showing that in the neighbouring District of Kenora the jury roll had excluded nearly all First Nations persons living on a reserve."

It also found “there is no reason to think that the unrepresentativeness of the jury roll in the District of Kenora is unique. After 2000, the Provincial Jury Centre no longer received band electoral lists for the reserves in the District of Thunder Bay. No evidence was produced in connection with either inquest that court officials in the District of Thunder Bay had made any greater efforts than their counterparts in the District of Kenora to obtain up-to-date band lists.”

“This judgment has really turned up the volume to NAN’s claims that the Attorney General’s office is hiding the truth about the systematic exclusion of First Nations from jury rolls,” said lawyer Julian Falconer, who acted on behalf of NAN. “When we asked simple questions as to whether the law was followed, we couldn’t get answers.

“When we asked the Attorney General to conduct an inquiry and issue a report, he refused. It required this province’s highest court to order the attendance of the Attorney General official in charge to answer NAN’s questions.”

Waboose said NAN and the families shouldn’t have had to use the courts to overcome “stonewalling.”

“Now the Attorney General will have to provide answers under oath and the truth will be known about whether the problem that was so serious two and a half years ago is now fixed,” Waboose said. “Finally, NAN and the affected families will have answers.”