

Jury trials on hold

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No jury trials in Thunder Bay will move forward until the province deals with a lack of Aboriginal representation on the region's juries, a city criminal lawyer said Thursday.

"Any trial that is a homicide is a jury trial," said Gil Labine. "All the homicide trials are going to be held in abeyance until they can fix the problem of having the jury array — that is, the list of people who are going to be potential jurors — be representative of the people in Northwestern Ontario, which includes Aboriginal people."

First Nation representation on juries was thrust into the spotlight on Monday when Superior Court Justice Helen Pierce postponed a second-degree murder trial. She said there weren't enough Aboriginals among the pool of prospective jurors.

That came on the heels of last week's decision by Ontario's court of appeal, which ordered an inquest into whether Aboriginals are properly represented on the district's jury roll.

The Canadian Charter guarantees a trial in a timely manner, Labine said. In a practical sense, that means within about eight months in Ontario court, and within 12-14 months in Superior Court, he said.

"If it starts delaying too long, then . . . the charges can be stayed for delay and the breach of the Charter," Labine said. "Stayed means not withdrawn, but they're not prosecuted."

The matter can come back to court within a year, Labine said, but if that doesn't happen, the matter is not prosecuted at all.

The jury fix requires communication between First Nations communities and the province's Ministry of the Attorney General so that band lists can be provided for the purposes of compiling jury rolls.

Prior to 2000, Indian and Northern Affairs Canada (INAC) circulated those lists — compiled via band electoral lists — but stopped the practice at the request of First Nations, INAC spokeswoman Genevieve Guibert said in an email Thursday.

"It was determined that it was more appropriate for First Nations themselves, not the federal government, to decide if their electoral lists would be shared with other levels of government," Guibert said. "This change in practice was in direct response to requests from First Nations."

Since INAC stopped circulating its lists, the matter has fallen to provincial ministries. Ontario's Ministry of the Attorney General, for example, is in charge of contacting the relevant First Nations directly. They can then supply a list for use on the rolls.

In the case of Treaty #3 — the grand council of which represents First Nations west of Thunder Bay — the process is working, said Arthur Huminuk, the council's community justice projects co-ordinator. Treaty #3 First Nations do get requests from the ministry, and they do provide lists, he said.

In addition, workshops are held in Treaty #3 communities to raise awareness about jury duty, and what band members need to do to make sure they're included.

Nishnawbe Aski Nation (NAN) deputy grand chief Terry Waboose this week said a mechanism has to be developed so that band lists are developed in consultation with groups like NAN and the communities themselves.

As for INAC's statements about the lists, Waboose would only say, via email, "At no point did they tell First Nations that they have been excluded from the jury roll, and at no point did they make a serious effort to make sure that First Nation members were included on the jury roll, which the decision by the Court of Appeal clearly indicates."

Lawyer Julian Falconer, who has worked with NAN on the jury roll issue, said First Nations weren't made aware that INAC had stopped sending lists to the province until September 2008.

"That was disclosed to no one," Falconer said, adding that he wrote INAC and the provincial ministry on behalf of NAN in 2008 asking what happened.

"Not a word from them, not a peep," he said. "They have been silent, grossly silent, since September 2008.

"First Nations are no different than any other person in our country," he said. "Governments as a matter of course every day of the year seek the consent of all of the members of society for the purposes of limited releases of information that are in the public interest, or to help the person they are circulating the information for.

"At no time did INAC ever approach any First Nations leadership asking to release the lists for the purposes of the compilation of jury rolls, nor did INAC at any time advise any leadership of First Nations that by withholding the lists, the First Nations would be excluded from jury rolls."

In addition, the Ontario government never advised First Nations that the jury rolls were being compiled with out-of-date lists, nor did the province attempt to get the information from any other sources, Falconer said.