

Province ordered to explain why natives excluded from jury pools

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The Ontario Court of Appeal has ordered a senior court administrator to testify about what's being done to ensure people living on reserves are included on jury lists and that juries reflect a cross-section of the community

In a 3-0 decision Thursday, the court also took the unusual step of ordering a new inquest into the death of Jacy Pierre, a 27-year-old native man who died of a drug overdose in the Thunder Bay jail in 2007.

A coroner's inquest last year into Pierre's death was tainted, the court said, by unresolved concerns that First Nations members were under-represented in the pool of prospective jurors.

While the only documented evidence of natives being excluded from juries comes from Kenora, there is no reason to believe the problem is not more widespread, Justice John Laskin wrote in Thursday's decision.

But while Pierre's relatives and the family of Reggie Bushie, 15, who apparently drowned in the McIntyre River near Thunder Bay in 2007, have pressed for answers about how the jury lists are compiled in that region, the Ministry of the Attorney General and the coroner's system haven't been forthcoming.

"Instead, they got the runaround," Laskin said. "A lot of time and money might have been saved had the ministry and the coroners simply provided this information."

The families of the two young men argued it was important to include First Nations members on the list of prospective jurors because the coroners' inquests into their deaths were expected to devise recommendations for helping native communities deal with serious health and safety issues.

Bushie's family obtained an affidavit from a supervisor of court operations in Kenora showing First Nations people were almost entirely excluded from jury lists.

At one point, the province obtained names of First Nations residents from "band lists," but the federal government stopped providing them more than a decade ago.

The presiding coroners, Dr. Shelagh McRae and Dr. David Eden, refused to issue a summons requiring the director of court operations for Northwestern Ontario to testify at the Pierre and Bushie inquests about juror recruitment practices in the Thunder Bay district.

Ontario's Divisional Court and the Crown later took the position the coroner's inquests had no jurisdiction to inquire into the process of assembling jury lists and were powerless to grant a remedy if natives were found to be under-represented.

But Laskin disagreed, saying a coroner's jurisdiction to question the composition of a jury pool is implicit in their duty to arrange for a properly constituted jury at inquests.

"An inquest into the death of a First Nations person that is adjudicated by a jury chosen from a jury roll that excludes First Nations persons on reserves would not, in my view, be seen as a fair and just inquest or an inquest in which the public would have confidence," he said, writing for Justices Robert Sharpe and Karen Weiler.

"It would amount to an abuse of process."

Julian Falconer, a lawyer representing the families and Nishnawbe Aski Nation, said the decision has implications not just for coroners' inquests but for criminal trials because they draw jurors from the same lists.

Criminal lawyers in northwestern Ontario have long complained that native clients are invariably tried by all-white juries.

But from the moment his clients began asking questions that threatened to expose that "festering sore," the province went into "damage control mode," Falconer said.

"How does it keep happening that First Nations are not represented on juries?" he asked on Thursday. "They are overrepresented in the criminal justice system and certainly overrepresented in jails."

