



JUL 11 2011

Mr. Jason Gratl  
Vice-President  
British Columbia Civil Liberties Association  
Suite 550 – 1188 West Georgia Street  
Vancouver BC V6E 4A2

Dear Mr. Gratl:

I am writing further to my letter to you of June 2, 2011 regarding First Nations representation on juries. I have also received a letter dated June 3, 2011 from Mr. Robert Holmes, President of the British Columbia Civil Liberties Association, on this matter.

The ministry takes very seriously the need to make reasonable efforts to ensure the source from which jury summonses are randomly selected represents a cross-section of the adult population. Data from the provincial voters' list is used by sheriffs to summons persons to attend court. Currently, approximately 2.7 million names and addresses of British Columbia residents comprise this database. The group of people who attend court for the jury selection process are referred to as the jury panel. A jury is selected from the panel to sit at trial.

The data sources used in British Columbia and Ontario for jury duty purposes are fundamentally different. In Ontario, name and address information is obtained initially from municipal assessment lists. As summarized in *Pierre v. McRae*, it is known that these assessment lists do not include the names of First Nations persons living on reserves. As such, Section 6(8) of the Ontario *Juries Act* requires the Ontario sheriffs to select names of eligible persons inhabiting the reserves in the same manner as if the reserves were a municipality and that the sheriffs may seek to obtain the names of inhabitants of the reserves. In contrast, sheriffs in British Columbia use data collected by Elections BC. It is my understanding that Elections BC makes every reasonable effort to enumerate persons wherever they reside in British Columbia, including persons living on reserves. If these residents choose to be enumerated, their name and address information is currently contained in the database that sheriffs have access to. If residents choose not to be enumerated, then that is their conscious decision. Therefore, the primary data source used by British Columbia sheriffs is inclusive of persons residing on reserves, providing those persons choose to be enumerated.

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The sheriff policy provided to your organization was first prepared approximately 20 years ago and illustrates the extra steps taken by Sheriff Services in an attempt to include residents of reserves that choose not be enumerated for voting purposes. I appreciate that you have brought to my attention that these extra efforts may not have occurred recently in some instances.

To improve the sheriffs' database in this regard, Mr. Rob Wood, Assistant Deputy Minister, Court Services Branch, has written to all Band leaders in the province requesting their lists of persons residing on reserves. Band leaders may provide this information with the prior authorization of the persons included on the lists. Responses received with names and addresses will be checked to determine if they are already included in the sheriffs' database. If not, they will be added to the sheriffs' database. This database will be used as the summoning source for all jury trials and Coroner's Inquests. To maintain this database, Mr. Wood's office will solicit this information annually from Band leaders.

You note in your letter that there is no such thing as an "enumerated" Band. You should be aware when the policy was first developed and implemented, Elections BC performed door-to-door enumerations. At that time, Elections BC was aware which Bands chose to refuse enumerators access to the residents of the reserve. This information was available to the sheriff and permitted the sheriff to ask for Band lists from those Bands not enumerated. The current practise is for Elections BC to use a mail-based enumeration and, therefore, Elections BC is not aware which persons living on a reserve choose or refuse to be enumerated. Given this reality, the policy will be updated to request name and address information from all Bands in British Columbia. This step has been taken with the letter to all Band leaders from Mr. Wood.

The one-hour, one-way driving radius guideline was developed for all jury trials. The guideline was established to prevent undue hardship for all jury panellists travelling to court for jury selection purposes and for those persons selected as a juror at trial. The one-hour, one-way driving guideline is only a guideline and can be expanded for any trial.

With regard to arranging for transportation of First Nations jurors to attend court, jurors at trial receive the reimbursement of reasonable travel expenses. Sheriff offices do not arrange travel for jury panellists.

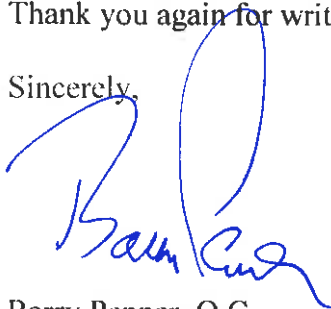
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It is important to note that sheriffs must be impartial when selecting a jury panel. The jury panel must be selected randomly from a pool of citizens in the community. The database that British Columbia sheriffs obtain from Elections BC is significantly different than the database that Ontario sheriffs obtains from the municipal assessment roles in that First Nations persons living on reserves are included to some degree in the British Columbia database.

Unfortunately, no one knows to what degree they choose to be enumerated. The important point is that they were given an opportunity to be included in the database. As I have mentioned, Mr. Wood is in the process of taking the extra step of requesting Band lists of persons living on reserves so that additional names can be added to the database.

Thank you again for writing and bringing these concerns to my attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry Penner". The signature is stylized and written over a large, faint blue oval shape.

Barry Penner, Q.C.  
Attorney General

pc: Mr. Robert Holmes, Q.C.  
Mr. David Loukidelis  
Mr. Rob Wood

