



May 31, 2011

Honourable Barry Penner
Ministry of the Attorney General
Victoria, BC

VIA FAX: (250) 387-6411

Dear Mr. Attorney:

RE: Administration of Jury Rolls and aboriginal participation

I write to you in my position as Vice-President of the B.C. Civil Liberties Association. We write to you concerning our fears of a systemic issue leading to widespread aboriginal under-representation on coroner, civil and criminal juries in British Columbia. In particular, we are concerned that the current Sheriff's policy in compiling the jury list and ensuring aboriginal participation is under-inclusive of aboriginal people who live on rural reserves or who choose not to register to vote and participate in Canadian electoral processes. Further, we are concerned that even this problematic policy is not being implemented by Sheriffs offices in B.C. As an organization committed to anti-discrimination and fair representation in all aspects of democratic participation, we believe it is essential that juries in British Columbia reflect the makeup of our provincial demographics. We are certain that the A.G. B.C. shares these values and beliefs, and so we are writing to ask for your assistance.

Background

A series of recent court decisions in Ontario have found that First Nations groups there were not being adequately included on jury rolls. Prior to 2000, we understand that Indian and Northern Affairs Canada circulated a list of band members to provincial governments for the purpose of jury selection. After that practice ceased, responsibility shifted to the provinces and in Ontario fell to Ontario's Ministry of the Attorney General to contact bands directly and obtain names for the jury rolls. According to the Ontario Court of Appeal in their 2011 decision *Pierre v. McRae*, Ontario's Ministry of the Attorney General had not been adequately performing this duty and the oversight resulted in First Nations individuals living on reserves being excluded from the jury selection process.¹ When the Ontario issue was brought to our attention, we investigated and have now become concerned that jury rolls in British Columbia may suffer from a similar lack of First Nations representation.

¹ <http://www.canlii.org/en/on/onca/doc/2011/2011onca187/2011onca187.html>

Research on the issue

On April 5th, 2011, we submitted a freedom of information request to your office inquiring into the policy and procedure of compiling jury rolls, including any procedure aimed at ensuring proportionate representation of First Nations groups. On April 26th, we received an excerpt of the Sheriff Policy Manual stating that Sheriffs' Offices are responsible for contacting First Nations bands within a one-hour radius that have not been enumerated in order to request a list of names and addresses to be added to the Jury Management System (JMS), the database used to select potential jurors. The relevant section reads:

10.3 Creating a Jury Panel

- a. The method of selection must be entirely random and unbiased.
- b. The Jury Management System (JMS) has been programmed to randomly select names by Alga rhythm [sic]
- ...
- g. Sheriffs' Offices are responsible for determining, [sic] if First Nations reserves within the one-hour radius have been enumerated.
- h. If a reserve was not enumerated, the Sheriff's Office should ask the band, in writing, for a list of names and addresses to use for jury selection.
- i. If the request is refused, no further action is to be taken.
- j. If the request is accepted, the band's list of eligible jurors can be manually added to the panel list through the JMS program.

On reviewing this policy, it was immediately obvious to us that many aboriginal reserves are much further than 100km from any Sheriff's office and would not be captured by this recruitment effort. Further, it is our understanding that many aboriginal people do not self-identify as "Canadian" or fear that registering to vote could compromise their treaty rights, and therefore do not register to vote and would not be on the enumerated voter list. Finally, given the marginalization and poverty of many aboriginal reserves, we were surprised that the policy did not contemplate special accommodation to ensure participation by people from reserves, including arranging for transportation and liaison with local band councils beyond a single written letter.

On May 26, 2011 we contacted Sheriffs' services in Vancouver to ask about the current policy's actual implementation. We were informed by Jag Johal that no practice is in place of which he was aware to implement even this under inclusive policy.

We then contacted Elections B.C. to obtain a list of enumerated bands in the province. Unfortunately, and likely contrary to Freedom of Information rules, we were informed that this information is available only to provincial MLAs and political parties.

Through our office's local MLA, Spencer Herbert, we were able to get the following response from Elections B.C., which confirms that there is no such thing as an "enumerated" band, as described in the Sheriff's policy, and no apparent way for a Sheriff to verify such a thing:

In 2009, Elections BC used a mail-based enumeration process and sent enumeration notices to all registered voters and to all residences that Canada Post directly reaches. This was combined with a media campaign and outreach supported by EBC's Liaison Officers. EBC also enumerated long-term-care facilities and worked to reach out to homeless individuals and other underrepresented or highly mobile groups.

During an election we require the District Electoral Officers to identify First Nations and other groups in their districts, to support the electoral processes and to obtain election workers. We also use this information to dispatch enumerators as required by law.

We also contacted a number of First Nations bands, including the Musqueam Indian Band and the Kitsumkalum First Nation on May 24, 2011, and the Shuswap Indian Band and the Ucluelet First Nation on May 26, 2011. All of the individuals that we spoke to had never been contacted, or heard of anyone in their band being contacted, by the Sheriff's Office to request information for jury rolls as described in the Sheriffs' policy. This included Kitsumkalum First Nation's Band Manager, who has held that position for the past 35 years, whose band is within 100km of the Terrace Sheriff's office, and who had never heard of such a practice.

Request for investigation and immediate reform

In light of the under inclusiveness of the policy itself, and the apparent lack of implementation of this already problematic policy, we are extremely concerned that there is a systemic problem of First Nations underrepresentation in British Columbia juries. Of immediate concern to us is that some jury pool lists may have not been updated for many reserves for more than a decade in British Columbia.

We strongly urge you to investigate the adequacy of the policies of the Sheriff's office that are aimed at ensuring adequate First Nations representation on jury rolls, and the actual implementation of these

policies. If, as we suspect, you confirm our suspicions that aboriginal people are disproportionately underrepresented on juries, while they remain disproportionately represented in our jails, we ask that you take immediate steps to fix the jury selection process immediately.

Yours Truly,



Jason Gratl
Vice-President

cc: Chief Justice Lance Finch, B.C. Court of Appeal, VIA FAX: (604) 660-1951
Chief Justice Robert Bauman, B.C. Supreme Court, VIA FAX: (604) 660-2420
Chief Coroner Lisa Lapointe, Coroners Service BC, VIA FAX: (604) 660-7766
National Chief Sean Atleo, Assembly of First Nations, VIA FAX: (613) 241-5808
Grand Chief Stewart Phillip, Union of B.C. Indian Chiefs, VIA FAX: (604) 684-5726
Grand Chief Ed John, First Nations Summit of B.C., VIA FAX: (604) 926-9923
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