



June 3, 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 President of the B.C. Civil Liberties Association to thank you for your prompt action in response to our letter of May 31, 2011 on the issue of aboriginal representation on juries. That our juries adequately reflect the diversity of our communities is a priority for us, and clearly for your government as well.

Jury trials are a fundamental feature of our justice system. That has been so for centuries. Blackstone wrote in 1765 that "trial by jury ever has been, and I trust ever will be, looked upon as the glory" of the English legal system. British Columbia and Canada received as part of our legal inheritance that tradition. Courts have repeatedly recognized that, including, for example, Cartwright, J., in *King v. Colonial Homes Ltd.*,¹ wrote: "This Court has more than once affirmed that the right to trial by jury is a substantive right of great importance of which a party ought not to be deprived except from cogent reasons."

More recently, Cory, J., in *R. v. G. (R.M.)*² wrote that:

The jury system is clearly a significant factor in many democratic regimes. This is emphatically true in Canada. It is extremely important to our democratic society that jurors as representatives of their community may make the decision as to the guilt or innocence of the accused before the court based solely on the evidence presented to them. There is a centuries-old tradition of juries reaching fair and courageous verdicts. That tradition has taken root and been so well and fearlessly maintained that it has flourished in this country. Our courts have very properly stressed the importance of jury verdicts and the deference that must be shown to those decisions. Today, as in the past, great reliance has been placed upon those decisions. That I think flows

¹ 4 D.L.R. (2d) 561 at p. 566, [1956] S.C.R. 528 at p. 533

² [1996] 3 S.C.R. 362 at para. 13

*from the public awareness that 12 members of the community
have worked together to reach a unanimous verdict.*

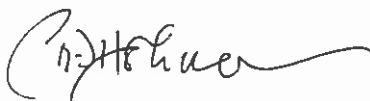
The *Charter of Rights and Freedoms* enshrines as a constitutional right of accused persons trial by jury in serious criminal cases, setting out in section 11 of the *Canadian Charter of Rights and Freedoms* that “Any person charged with an offence has the right... to the benefit of trial by jury where the maximum punishment is imprisonment for five years or a more severe punishment.”

The right to a jury trial in civil cases is well-established in common law and is reflected to some extent in the rules of our superior courts and in legislation. All of that underscores the importance of ensuring representativeness of juries.

We look forward to the results of your investigation, and if reform is needed, we urge you to consult with aboriginal organizations to ensure their cooperation and support for any amended policies.

On behalf of the Board of the BCCLA, I offer you the BCCLA’s full assistance and cooperation in any relevant aspect of your investigation.

Yours Truly,

A handwritten signature in black ink, appearing to read 'R. Holmes', with a stylized flourish at the end.

Robert Holmes, Q.C.
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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