



NAN Seeks Answers from Attorney General on Jury Rolls

March 16, 2011

THUNDER BAY – Nishnawbe Aski Nation (NAN) Deputy Grand Chief Terry Waboose responded today to Ontario Ministry of the Attorney General statements regarding the selection of juries in Ontario. “Many of the initiatives referred to in the Attorney General’s release were only commenced in 2009 following public revelations at the Kashechewan Inquest (September 2008) that First Nations had been systematically excluded from jury rolls in the Kenora district,” said NAN Deputy Grand Chief Terry Waboose. “Even though Indian and Northern Affairs Canada (INAC) stopped circulating lists in 2000, neither Ontario nor the federal government informed First Nations that they were being left off jury rolls. The truth came out because an affidavit surfaced at an inquest and not because the Attorney General’s office was upfront about the problem.”

In March 10, 2011, NAN and two First Nation families won a landmark Court of Appeal judgment recognizing their right to conduct inquiries into the validity of the juries that have been empanelled in the Thunder Bay Judicial District. The appeals followed the refusals by the presiding coroners at the Inquest into the Death of Reggie Bushie and the Inquest into the Death of Jacy Pierre to summons the court official responsible for assembling the Thunder Bay jury roll to give evidence as to whether First Nations people were adequately represented.

NAN’s request for a summons followed startling revelations in September 2008 that the Kenora Judicial District jury roll only contained names of First Nations people from 14 of NAN’s 49 First Nations.

The Court of Appeal expressed their view on the seriousness of the situation when they found that there exists:

2. “compelling affidavit evidence showing that in the neighbouring District of Kenora the jury roll had excluded nearly all First Nations persons living on a reserve.”

68. Ms. Peacock’s affidavit [from Kashechewan Inquest, September 2008] shows that court officials did very little to obtain other records and, as a result, the District of Kenora jury roll was manifestly unrepresentative.

71. There is no reason to think that the unrepresentativeness of the jury roll in the District of Kenora is unique. After 2000, the Provincial Jury Centre no longer received band electoral lists for the reserves in the District of Thunder Bay. No evidence was produced in connection with

either inquest that court officials in the District of Thunder Bay had made any greater efforts than their counterparts in the District of Kenora to obtain up-to-date band lists.

“The Court’s findings that the District of Kenora jury roll was manifestly unrepresentative and that there is no reason to think that the unrepresentativeness of the jury roll in the District of Kenora is unique is of tremendous significance for those seeking fair and impartial trials in Ontario,” said Julian Falconer, one of the lawyers acting on behalf of NAN. “This judgment has really turned up the volume to NAN’s claims that the Attorney General’s office is hiding the truth about the systematic exclusion of First Nations from jury rolls. When we asked simple questions as to whether the law was followed, we couldn’t get answers. When we asked the Attorney General to conduct an inquiry and issue a report, he refused. It required this Province’s highest court to order the attendance of the Attorney General official in charge to answer NAN’s questions. It should never have to come to this.”

Since 2008, a NAN-led coalition offered to partner with the Attorney General’s office to fix the failures in the justice system. NAN sought and was denied information about the extent of the problem and this “run around”, as described by the Court, has continued to this day. The Court of Appeal described it this way:

72. “My concern about the representativeness of the jury roll in the District of Thunder Bay is fuelled by the unwillingness of either the coroners or Mr. Gordon to be forthcoming about how the roll was established. The Pierre family and the King family requested information about the records used to obtain the names of First Nations persons on reserves, the number of jury questionnaire sent to on-reserve residents, and the number of First Nations persons on the jury roll from which inquest jurors are chosen (see for example the letter reproduced at paragraph 8 of these reasons). Their request for this information was quite reasonable. But they did not get any answers. Instead, they got the run around. A lot of time and money might have been saved had the Ministry and the coroners simply provided this information.”

Even though the NAN-led coalition wrote both the Governments of Ontario and Canada, INAC has, until now, been completely silent on these issues. In the end, the law is clear: the Province through the Sheriff has the following legal duty, as Section 6(8) of the Juries Act states:

In the selecting of persons for entry in the jury roll in a county or district in which an Indian reserve is situate, the sheriff shall select names of eligible persons inhabiting the reserve in the same manner as if the reserve were a municipality and, for the purpose, the sheriff may obtain the names of inhabitants of the reserve from any record available.

The Court of Appeal found that Ontario officials “court officials did very little to obtain other records” (par. 68) and that there is little reason to believe the situation is better in neighbouring Thunder Bay.

“The only means that NAN has been able to use to overcome this stonewalling is through court orders and summonses,” said Waboose. “Now the Attorney General will have to provide answers under oath and the truth will be known about whether the problem that was so serious two and a half years ago is now fixed. Finally, NAN and the affected families will have answers.”