S.C.C. File No. 35475

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

CLIFFORD KOKOPENACE

Respondent

- and -

ABORIGINAL LEGAL SERVICES OF TORONTO INC., THE ADVOCATES' SOCIETY, CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES, THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, NATIVE WOMEN'S ASSOCIATION OF CANADA, NISHNAWBE ASKI NATION and **WOMEN'S LEGAL EDUCATION AND ACTION FUND INC.**

Interveners

RESPONDENT'S FACTUM

DOUCETTE BONI SANTORO FURGIUELE
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8
Delmar Doucette & Angela Ruffo
Tel.: (416) 597-6907
Fax: (416) 342-1766
Email: doucette@dbsfcounsel.com
ruffo@dbsfcounsel.com

SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8
Jessica Orkin
Tel.: (416) 979-4381
Fax: (416) 979-4430
Email: jorkin@sgmlaw.com

Counsel for the Respondent/Moving Party,
Clifford Kokopenace

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Brian A. Crane Q.C.
Tel.: (613) 233-1781
Fax: (613) 563-9869
Email: ed.vanbemmel@gowlings.com

Ottawa Agent for the Respondent/Moving Party,
Clifford Kokopenace

ORIGINAL TO: **THE REGISTRAR OF THIS HONOURABLE COURT**

COPIES TO:

HER MAJESTY THE QUEEN
Crown Law Office Criminal
720 Bay Street, 10th Floor
Toronto, ON M5G 2K1

Gillian E. Roberts
Deborah Calderwood
Tel.: (416) 326-2304
Fax: (416) 326-4656
Email: gillian.roberts@ontario.ca
deborah.calderwood@ontario.ca

Counsel for the Appellant/Responding Party, Her Majesty the Queen

BURKE-ROBERTSON LLP
441 MacLaren Street, Suite 200
Ottawa, ON K2P 2H3

Robert E. Houston, Q.C.

Tel.: (613) 236-9665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

Ottawa Agent for the Appellant/Responding Party,
Her Majesty the Queen

AND TO:

ABORIGINAL LEGAL SERVICES OF TORONTO INC.
415 Yonge Street, Suite 803
Toronto, ON M5B 2E7

Christa Big Canoe
Jonathan Rudin
Tel.: (416) 408-4041 ext. 225
Fax: (416) 408-4268
Email: canoecd@lao.on.ca
rudinj@lao.on.ca

Counsel for the Intervener, Aboriginal Legal Services of Toronto Inc.

COMMUNITY LEGAL SERVICES OTTAWA CENTRE
1 Nicholas Street, Suite 422
Ottawa, ON K1N 7B7

Tel: (613) 241-7008
Fax: (613) 241-8680

Ottawa Agent for the Intervener, Aboriginal Legal Services of Toronto Inc.

AND TO:

LAW OFFICE OF MARY EBERTS
95 Howland Avenue
Toronto, ON M5R 3B4

Mary Eberts
Tel.: (416) 923-5215
Email: eberts@ebertslaw.com

Counsel for the Intervener,
Native Women's Association of Canada (NWAC) and Canadian Association of Elizabeth Fry Societies (CAEFS)

BORDEN LADNER GERVAIS LLP
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi
Tel.: (613) 237-5160
Fax: (613) 230-8842
Email: neffendi@blg.com

Counsel for the Intervener,
Native Women's Association of Canada (NWAC) and Canadian Association of Elizabeth Fry Societies (CAEFS)

AND TO:

GREENSPAN HUMPHREY LAVINE
15 Bedford Road
Toronto, ON M5R 2J7

Brian H. Greenspan
Tel.: (416) 868-1755 ext. 222
Fax: (416) 868-1990
Email: bhg@15beford.com

HENSEL BARRISTERS
160 John Street, Suite 300
Toronto, ON M5V 2E5

Katherine Hensel
Tel.: (416) 966-0404
Fax: (416) 966-2999
Email: katherine@henselbarristers.com

Counsel for the Intervener,
The Advocates' Society

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 233-1781
Fax: (613) 563-9869
Email: ed.vanbemmel@gowlings.com

Ottawa Agent for the Intervener,
The Advocates' Society

AND TO:

THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
University of Toronto, Faculty of Law
39 Queen's Park Cres. East
Toronto, ON M5S 2C3

Cheryl Milne
Tel.: (416) 978-0092
Fax: (416) 978-8894
Email: cheryl.milne@utoronto.ca

WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)
260 Spadina Avenue, Suite 401
Toronto, ON M5T 2E4

Kim Stanton
Tel.: (416) 595-7170 ext. 223
Fax: (416) 595-7191
Email: k.stanton@leaf.ca

Counsel for the Interveners,
The David Asper Centre of
Constitutional Rights and the Women's
Legal Education and Action Fund

NORTON ROSE FULBRIGHT CANADA LLP
45 O'Connor Street, Suite 1500
Ottawa, ON K1P 1A4

Martha A. Healey
Tel.: (613) 780-8638
Fax: (613) 230-5459
Email:
martha.healey@nortonrosefullbright.com

Ottawa Agent for the Interveners,
The David Asper Centre of
Constitutional Rights and the Women's
Legal Education and Action Fund

AND TO:

FALCONERS LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Julian N. Falconer
Julian K. Roy
Marc E. Gibson
Tel.: (416) 964-3408
Fax: (416) 929-9179
Email: julianf@falconers.ca
julianr@falconers.ca
marcg@falconers.ca

Counsel for the Intervener,
Nishnawbe Aski Nation (NAN)

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel.: (613) 786-0171
Fax: (613) 788-3587
E-mail: jeff.beedell@gowlings.com

Ottawa Agent for Intervener,
Nishnawbe Aski Nation (NAN)

TABLE OF CONTENTS

PART I – OVERVIEW OF POSITION AND FACTS

A. The Respondent's position

[1] For centuries, the right to trial by jury has been recognized as a fundamental right under the common law system of criminal justice. Since 1982, for the most serious criminal offences in Canada, it has been a guaranteed right under s.11 of the *Charter of Rights and Freedoms*. Under s.626 of the *Criminal Code*, provincial legislation defines who is qualified to be a juror and who therefore can be summoned as a potential juror. In *Sherratt*, Justice L'Heureux-Dubé therefore recognized the central role of provincial legislation in upholding representativeness in the jury selection system:

> Provincial legislation guarantees representativeness, at least in the initial array. The random selection process, coupled with the sources from which this selection is made, ensures the representativeness of Canadian criminal juries.[1]

[2] At issue in the present appeal is whether Ontario, under its *Juries Act*, failed to comply with its constitutional obligation to assure representativeness in the 2008 Kenora jury roll from which the Respondent's jury was derived. The Honourable Frank Iacobucci, formerly of this Honourable Court, in his 2013 Report on *First Nations Representation on Ontario Juries*, which on the consent of all parties was received by the Court of Appeal as fresh evidence, made the following finding:

> [A]t present, the manner in which potential First Nations jurors are identified is ad hoc and contingent upon the efforts made by court staff to connect with First Nations to exercise their discretion to disclose a list of reserve residents. This ad hoc system has proven to be ineffective and results in a jury roll that is unrepresentative of all First Nations peoples on reserve.[2]

This finding is apposite to the root problem that led to underrepresentation on the 2008 Kenora jury roll.

[3] The Appellant contends that the majority of the Court of Appeal "interpreted and applied the concept of jury representativeness as so broad and powerful that it has potential to drastically change our approach to the jury system, affecting core principles such as random selection, the protection of juror privacy and the presumption of impartiality".[3] With respect, neither the law as interpreted by the full Court nor the law as applied to the facts by the majority cause such change; rather, the principles defined by the Court and applied by the majority expressly uphold the place of "random selection", do nothing to erode "juror privacy", and confirm representativeness as one of the core values that maintains the "presumption of impartiality". The Appellant also states that "[e]veryone…has been struck by the

---

1 *R v Sherratt*, [1991] 1 SCR 509 at 525.

2 First Nations Representation on Ontario Juries: Report of the Independent Review conducted by the Honourable Frank Iacobucci (Toronto: February 2013), *Appellant's Record* [*AR*], v.42, p.96 [Iacobucci Report].

3 Appellant`s factum, ¶1.

low participation of Aboriginal people in the jury system" but then contends that the concept of jury representativeness is ill-suited to remedy this problem.[4] With respect, it is the inaction of Ontario – which was far from "struck" by the stark problem of underrepresentation – that allowed the problem to fester for more than a decade prior to the Respondent's 2008 trial.

B. The facts

[4] In its factum, the Appellant states that it "relies on the facts set out in the three opinions of the Court of Appeal" and then go on to describe what are referred to as "additions and clarifications".[5] It is the Respondent's position that the Appellant in effect asks this Court to undertake a full reappraisal of the factual conclusions reached by the majority of the Court of Appeal. As a result, it is necessary to provide a fuller review of the facts.

a) The proceedings in the Superior Court of Justice

[5] The Respondent Clifford Kokopenace, an Aboriginal person from the Grassy Narrows First Nation reserve in the Kenora District, was charged with second degree murder. He was tried by a jury. On June 17, 2008, the jury found him not guilty of murder but guilty of the lesser included offence of manslaughter. The jury was then discharged and the matter was adjourned to September for sentencing. Prior to sentencing, Mr. Kokopenace's trial counsel learned for the first time, through an affidavit sworn days earlier by the Acting Supervisor of Court Operations in Kenora, of irregularities in the way that the 2008 Kenora jury roll had been assembled.[6] This information, which had not previously been publicly available, differed substantially from evidence that had emerged in the high-profile Kenora case of *Fiddler*, which had considered the issue of Aboriginal jury representation on the 1993 Kenora jury roll.[7] Based on the new information, trial counsel raised the possibility of a post-verdict *Charter* application. The trial judge properly concluded, however, that he was *functus officio*, and that the proposed *Charter* application would have to be brought on appeal.[8] As a result, extensive evidence was presented to the Court of Appeal as the trier of fact at first instance on the constitutional issue.

---

4 Appellant's factum, ¶2.
5 Appellant's factum, ¶6.
6 The affidavit, dated Sept. 8, 2008, was filed in September 2008 by Coroner's counsel at an inquest into two deaths that occurred at Kashechewan First Nation. See Affidavit of Rolanda Peacock, *AR*, v.10, p.205-206. Trial counsel became aware of the Peacock affidavit on or about September 12, 2008: see Affidavit of D. Gibson ¶5-8, *AR*, v.10, p.192-3 [Gibson Affidavit].
7 *R v Fiddler* (1994), 22 C.R.R (2d) 82 at 101-102 (Ont. Gen. Div.); Cross-examination of D. Gibson, *AR*, v.11, p.107-115.
8 Gibson Affidavit, ¶9-19 and Ex. F, *AR*, v.10, p.194-197, 215-231; Agreed Statement of Facts, *AR*, v.10, p.190; *R v Burke*, [2002] 2 S.C.R 857 ¶68-77; *R v Halcrow* (2008), 236 CCC (3d) 363 ¶24-33 (Alta CA); *R v Henderson* (2004), 189 CCC (3d) 447 at ¶29-39 (Ont CA); *R v Hobbs* 2010 NSCA 62 at ¶11.

b) Legislative Facts: Ontario's *Juries Act* and the compilation of Ontario jury rolls

[6] In Ontario, the *Juries Act* is the statutory mechanism to achieve representativeness, through the compilation of the jury rolls from which all juries are derived. In designing its system, Ontario has made legislative choices that affect the efforts that are required to ensure representativeness on the jury rolls in relation to on-reserve residents. Three choices are particularly important.

[7] First, Ontario has chosen to define the relevant community for jury rolls as each of its counties and districts, which are created for municipal organization and other purposes.[9] The *Juries Act* prescribes that a separate roll be created for each county and district every year.[10] Because the counties and districts vary greatly in municipal organization,[11] prospective jurors are selected from across the county or district through different mechanisms, depending on whether an area is municipally organized. Proportional inclusion of every municipality in the county or district is expressly required.[12]

[8] Functionally, at the initial stage in the jury selection process, inhabitants from each county or district are randomly selected to receive and complete jury service notices; on the basis of the completed notices, individuals who are shown to be eligible for jury service are entered onto the jury roll.[13] At the next stage in the process, persons on the roll are drawn at random to make up jury panels for civil and criminal sittings of the Superior Court of Justice and for the purposes of other Acts, such as the *Coroners Act*.[14] At the final stage for criminal proceedings, jurors are selected from the panel according to the procedures set out in the *Criminal Code*.

[9] Second, to compile its jury rolls, Ontario has chosen to rely upon data collected by the Municipal Property and Assessment Corporation (MPAC) through the property assessment process,

---

[9] The territorial divisions of Ontario are currently provided for in the *Territorial Divisions Act, 2002*, S.O. 2002, c.17 and Ontario Regulation 180/03 (Division of Ontario into Geographic Areas).

[10] *Juries Act*, R.S.O. 1990, c. J.3, s.2, s.6(2), 6(3) [*Juries Act*].

[11] In Ontario, for *all counties*, all of the area of the county is subject to municipal organization of one kind or another: see O.Reg. 180/03, Sched 1. For *many territorial districts* (including Kenora District), however, some areas of the district are municipally organized while others are unorganized: see O.Reg. 180/03, Sched 2.

[12] Since *counties* have no unorganized territory, s.6(2) ensures that the whole county is represented. For *territorial districts*, the combined effect of ss.5(2), 6(2), 6(3), 6(8) and 8(6) of the *Juries Act*, if properly implemented, ensures that the jury roll selection process will include potential jurors from all "municipalities", all "Indian Reserves", and any "unorganized territory". Pursuant to s.1(5) of the *Municipal Act, 2001*, S.O. 2001, the term "municipality" as employed in the *Juries Act*, O.Reg. 180/03 and the *Assessment Act*, R.S.O. 1990, c. A.31 has the same meaning as when this term is employed in the *Municipal Act*. The term "unorganized territory", which is also employed in the *Juries Act*, is defined in s.1(1) of the *Municipal Act* as "a geographic area without municipal organization"; as a matter of logical statutory interpretation, the term "unorganized territory" therefore also has a consistent meaning as a result of s.1(5) of the *Municipal Act*.

[13] Reasons of LaForme J.A., ¶127, *AR*, v.1, p.74 [Reasons], *Juries Act, supra*, ss.6(2)-(7), 7, 8, 9. The terms "jury questionnaire" and "jury notice" are used interchangeably in the record on this appeal. sometimes called "questionnaires" in the record because the notices contained questions that were to be completed before they were mailed back to the Provincial Jury Centre (PJC))

[14] *Juries Act, supra*, ss.5(1), 12, 13; *Criminal Code*, s.626; *Coroners Act*, R.S.O. 1990, c. C.37, s.34.

supplemented by other sources. By design, this data source excludes residents of lands that are designated as reserves under the *Indian Act*.[15] Ontario's choice to rely upon MPAC data thus gives rise to the need for a separate process if on-reserve residents are to be included in the jury rolls.[16] Section 6(8) of the *Juries Act* prescribes this separate process:

> 6(8) 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.

[10] Third, Ontario has chosen to assign the essential administrative work required for the main (off-reserve) and separate (on-reserve) processes in different manners. The work necessary to compile the jury rolls is assigned under the *Juries Act* to the "sheriff." In practice, the sheriff's responsibilities are divided between various Court Services Division (CSD) employees, both provincial and local, as follows:[17]

- Local CSD staff in the county or district determine the number of jury service notices to be sent for the following year, based on anticipated jury demands and other factors.[18]
- In respect of off-reserve jury notices, employees at the Provincial Jury Centre (PJC) inform MPAC of the number of notices to be sent for each county or district.[19] The Director of Assessment, a designated employee of MPAC, then randomly selects individuals to receive notices, for municipalities in every county and district.[20]
- In respect of on-reserve jury notices, the responsibility to obtain the names of on-reserve inhabitants, to select the individuals to receive notices, and to prepare and mail the notices are all performed by local CSD staff in the relevant county or district.[21]

---

[15] *Juries Act*, *supra*, s.6(2); *Assessment Act*, *supra*, s.3(1)(paragraph 1), 3(7), 14(1), 14(1.1), 15, 16, 16.1, 18; *Municipal Elections Act, 1996*, S.O. 1996, c.32, s.19 as am.; *Indian Act*, R.S.C. 1985, c. I-5, s.2 ("reserve"). In addition, First Nations communities located on lands that have not been reserved under the *Indian Act*, but which are considered "Indian Settlements", may not be captured through municipal assessment and enumeration, as these communities are located on Crown land, in areas without municipal organization, and residents of these communities may not pay rent or have leases: see *Assessment Act*, *supra*, ss.1(1) ("non-municipal territory"), 3(1)(paragraph 1), 3(7), 14(1), 14(1.1), 15, 18.

[16] By virtue of the legislative direction to MPAC in s.6(3) of the *Juries Act* to send questionnaires to residents of municipalities, the process also potentially excludes residents of unorganized territories in territorial districts (i.e., areas without municipal organization). However, the *Juries Act* provides for the inclusion of such persons through ss.5(2) and 8(6), according to which the sheriff is responsible for selecting the names of eligible persons residing in unorganized territory from certain identified lists or "from any other record available". Strictly speaking, the inclusion of the residents of "Indian Settlements" (the First Nations communities in the Kenora District that do not have reserves recognized under the *Indian Act*) that has occurred in Kenora District corresponds to s.8(6) of the *Juries Act*, rather than s.6(8).

[17] Assignments of the powers and duties of sheriff are currently provided for by s.73(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (this provision, under previous versions of the legislation, numbered as s.77(2) or s.94(2)). See Sheriff's designations and assignments in respect of Kenora District, Ex.2 to the Cross-Examination of L. Loohuizen [Loohuizen Cross], *AR*, v.20, p.3-17; Cross-Examination of S. Joy [Joy Cross], *AR*, v.25, p.204-5 (regarding the performance of the sheriff's duty of certifying the jury rolls).

[18] Reasons of LaForme J.A., ¶60, *supra* p.50; *Juries Act*, *supra*, s.5(1); Affidavit of L. Loohuizen ¶19, *AR*, v.11, p.130 [Loohuizen Affidavit]; Affidavit of S. Joy ¶5, *AR*, v.25, p.128 [Joy Affidavit]; Joy Cross, *AR*, v.25, p.195.

[19] *Juries Act*, *supra*, s.5(3); Joy Affidavit, ¶5-6, *supra*, p.288; Joy Cross, *AR*, v.25, p.196-7.

[20] *Juries Act*, *supra*, ss.1, 5(2), 6(1)-(3), 6(7); *Municipal Act*, *supra*, s.1(1), 1(2), 1(5); Joy Affidavit, ¶6-8, *supra*, *p.*128-29.

[21] Reasons of LaForme J.A., ¶60, *supra* p.50; *Juries Act*, *supra*, s.6(8); Joy Affidavit, ¶9-11, *supra*, p.129-32, 14; Affidavit of S. Bristo

- In respect of all notices, the Ministry of Revenue opens completed notices and reviews the answers given in them for jury service eligibility. PJC staff then enter the names of the eligible potential jurors onto the jury rolls.[22]
- Until 2012, the Director of Court Operations for the West Region performed the sheriff's responsibility of certifying each jury roll "to be the proper roll prepared as the law directs".[23]

[11] For off-reserve residents, then, the initial task of identifying potential jurors is centralized, as are all the other tasks thereafter. By contrast, for on-reserve residents, the initial task of identifying potential jurors under s.6(8) is completely decentralized: in each county or district in which an Indian reserve is situate, the local "sheriff" is made responsible for obtaining the names of reserve inhabitants "from any record available", selecting the names of prospective jurors, and mailing jury service notices to them.[24] Ontario has thus intentionally chosen to operate the separate process defined by s.6(8) through local personnel. As a result, for on-reserve residents, the success of identifying them as potential jurors is completely dependent on the work of local court staff.[25]

[12] Ontario's three legislative choices have been in effect since it first enacted the *Juries Act* in 1974.[26] These choices are the necessary context for understanding Ontario's failure to meet its constitutional obligations in the creation of the 2008 Kenora jury roll. Most importantly, any assessment of constitutional compliance must begin with the essential fact that on-reserve residents are excluded from the main selection process, and are then only included through a separate process that is necessarily and predictably dependent on the recurrent and extensive efforts of local staff. Other provinces have adopted different approaches to these issues.[27]

¶10-13, *AR*, v.37, p.114-115 [Bristo Affidavit].

[22] *Juries Act*, ss.7, 8; Joy Affidavit, ¶7-11, 14, *supra* p.129-132; Joy Cross, *AR*, v.25, p.199-200, pp.203-6; Bristo Affidavit, ¶10-13, *supra*.

[23] *Juries Act*, *supra*, s.9; Joy Cross, *AR*, v.25, p.204-204. The PJC was moved from London to Toronto in 2012 and placed under the responsibility of the Divisional Support Branch of CSD. Since this move, the Acting Director of the Divisional Support Branch certifies the jury rolls. See *R v Wabason*, 2014 ONSC 2394 at ¶2, 8.

[24] *Juries Act*, *supra*, s.6(8).

[25] Joy Affidavit, ¶9-10, *supra*, *p*.129.

[26] The *Juries Act* was first enacted in 1974 (S.O. 1974, c.63). The provisions of interest, concerning the preparation of the jury rolls (ss.5-11), have in substance remained largely unchanged since 1974. Under the predecessor legislation, the *Jurors Act* (which dated back to 1909: S.O. 9 Edw. VII, c.34; R.S.O. 1914, c.64), the preparation of the jury rolls depended upon "local selectors" in each municipality, who were charged with selecting for jury service "such persons as in their opinion, or in the opinion of a majority of them, are, from the integrity of their characters, the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duties of jurors" (see *Jurors Act*, R.S.O. 1970, c.230, s.17(2)). Such "key man" systems of jury selection had been the subject of criticism in the United States, on the basis that the resulting juries did not constitute a representative cross-section of the community, and that the potential for racial discrimination and other subjective abuse was too great: see, for example, *Taylor v Louisiana*, *supra* at 529-530 and fn 8; *Castaneda v Partida*, 430 U.S. 482 at 497-498 (1977); *Rabinowitz v United States*, 366 F.2d 34 (5th Cir., 1966). The 1974 enactment of the *Juries Act* replaced the "key man" system that had been in place under the *Jurors Act* with a system of jury roll preparation based upon random selection and proportionate inclusion of all geographic areas of a county or district.

[27] In particular, no other province relies for jury purposes on a data source that necessarily fails to capture on-reserve residents. See

c) The development of a growing problem: 2000-2007

[13] From 1996 onward, the main policy document guiding the performance of the sheriff's duties under s.6(8) was CSD directive PDB #563. A copy of PDB #563 was distributed annually by the PJC to local CSD staff, as part of an annual direction to begin the s.6(8) work for the next year's jury roll.[28] Through 2008, PDB #563 was the main – and perhaps only – substantive instruction received by local CSD staff with respect to their s.6(8) duties.[29] It instructed:

1) "ascertain, check and confirm the reserves located in your county or district";
2) "attempt to obtain the band electoral list, or any other accurate list of residents, by writing letters, telephoning or visiting the reserves in your area";
3) calculate the number of on-reserve notices to be sent (using a prescribed formula);
4) perform a random selection of the required number of names from "the best possible list", and prepare and mail the notices to these persons;
5) provide interim and final reports to the PJC at various points in the process.[30]

[14] In regard to task (2), for several years prior to 2001, PJC staff had on an annual basis obtained from Indian and Northern Affairs Canada (INAC) lists of persons with registered Indian status affiliated with each First Nation in Ontario, by way of a request to INAC under the *Access to Information Act*.[31] These lists were distributed to local CSD staff, to be used by them for s.6(8) purposes if they were unable to obtain a list directly from a First Nation.[32]

Table of Provincial and Territorial Legislation, Appellant`s factum, Appendix E. It should be noted that the Ontario Commission on Systemic Racism recommended in 1995 that the *Juries Act* be amended to use OHIP data as the source for jury roll selection: see *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Toronto: Queen's Printer for Ontario, 1995) at 253.

[28] Bristo Affidavit, ¶11, *supra,* p.115 and Ex. 3, *AR,* v.37, p.159-162; Cross-Examination of S. Bristo, *AR,* v.38, p.95, 100-01 [Bristo Cross]; Loohuizen Cross, *AR,* v.17, p.50-51. From 2002 through 2008, this annual communication package was largely identical, including in the year at issue in this appeal: Joy Affidavit, ¶9, *supra,* p.129; Joy Cross, *AR,* v.25, p.215-17 and Ex. 5, *AR,* v.26, p.173-89; Loohuizen Cross, *AR,* v.17, p.50-51; Cross-Examination of C. McCalmont, *AR,* v.29, p.31-35 [McCalmont Cross]. Subsequent to the year at issue in this appeal, CSD developed a Jury Manual, which was first made available to CSD employees in Nov 2009 (with updated versions issued in Nov 2010 and Aug 2011). Chapter 7 of the Jury Manual restates and expands upon the instructions provided in PDB #563. See Bristo Affidavit, *supra,* p.113 at ¶6 and Ex.2, *AR,* v.37, p.140-57; Bristo Cross, *AR,* v.38, p.96-100.

[29] Loohuizen Cross, *AR,* v.17, p.50-60; Joy Cross, *AR,* v.25, p.215-219; McCalmont Cross, *supra,* p.35-7. Ch.4 of the Sheriffs' Procedure Manual (October 1992), referenced in PDB #563, provided some additional direction: See Ex. 4 to Bristo Cross, *AR,* v.39, p.88-109.

[30] PDB Memo #563: Ex. 3 to Bristo Affidavit, *AR,* v.37, p.159-62.

[31] The record on this appeal includes PJC's 1999 and 2000 requests to INAC, and INAC's response in 2000: See Joy Cross, *AR,* v.16, p.36-40 and Ex. 18-20, *AR,* v.27, p.70-75. The evidence available on this appeal does not permit determination of precisely when the practice of PJC requesting lists from INAC for the purposes of s.6(8) commenced, but it had been in place for at least almost a decade, if not longer. The October 1992 version of the Sheriffs' Procedure Manual reports "At present, the record used [for the purposes of s.6(8)] is the list of residents (not including addresses) of the reserve. This list is provided by the Department of Indian Affairs and Northern Development." (Sheriffs' Procedure Manual, Ch.4, p.2 of 18, Ex. 4 to Bristo Cross, *AR,* v.39, p.88-89). See also *Fiddler, supra* at 101 (Ont. Gen. Div., *per* Stach J., regarding the 1993 Kenora District roll); *R v Nahdee* (1994), 21 C.R.R (2d) 81 at 84, 90-91 (Ont. Gen. Div., regarding the 1994 Lambton County roll); *R v Ransley* [1993] O.J. No. 2828 at ¶23(1) (Ont. Gen. Div., regarding the 1993 Lambton County roll).

[32] Joy Affidavit, ¶19, *supra,* p.133-34; Joy Cross, *AR,* v.25, p.210, v.26, p.32-4, 36.

[15] INAC lists were last supplied in 2000.[33] When PJC staff submitted their annual request in 2001, INAC advised that in its view the 1983 federal-provincial agreement[34] under which lists had previously been released was no longer adequate to permit release under the *Privacy Act*. PJC staff recognized at this time that, as a result, local efforts to obtain lists of on-reserve residents would become increasingly important.[35] This recognition was not, however, translated into CSD practices or communicated to local staff: following INAC's refusal to provide updated lists, the annual PJC instruction to the local staff was modified to remove reference to the INAC lists, but it was not otherwise substantively changed.[36]

[16] After 2001, as the existing INAC lists became increasingly out-dated, there was no discernible change in CSD policy and practice. The annual instruction, enclosing a copy of PDB #563, was simply sent out. Moreover, while PDB #563 stated that interim and final reports were to be sent to the PJC, the reports were routinely not prepared or failed to contain the required information. There was thus no effective system of oversight in place to monitor local efforts and determine s.6(8) compliance.[37]

[17] With the 2006 jury roll, the PJC began to compile data on the response rates for on-reserve jury notices sent out pursuant to s.6(8). This data was compiled for each county and district, but not for individual reserves. The first time that local staff were informed of the response-rate results was in respect of the 2007 and 2008 jury rolls.[38] There was still no system in place, however, at the PJC or elsewhere in the CSD, to assess whether the statutory and constitutional standards relating to representativeness were being satisfied.[39]

[18] The instructions contained in PDB #563 were also incorrect and extremely misleading with respect to the nature of the band electoral lists that court staff were instructed to request from First Nations. PDB #563 expressly instructed that a "band electoral list" was the preferred source to obtain names of on-reserve residents for the purposes of s.6(8).[40] When this policy was first distributed, this

---

33 Reasons of LaForme J.A., ¶60, *supra* p.51.

34 Joy Cross, *AR*, v.26, p.112-3 and Ex. 25: Agreement between Canada and Ontario dated July 20, 1983, *AR*, v.27, p.82-87.

35 The briefing note of Sept 4, 2001 recommends: "CSD staff in the areas of the Province where reserves are located, should continue to follow written procedures *with increased emphasis on making local contact with the Chief and other appropriate senior band officials to negotiate obtaining best list of names available*" (p.2) [emphasis added]: Ex. 27 to Joy Cross, *AR*, v.27, p.89-91; See also Joy Cross, *AR*, v.26, p.76, 80-1 and Ex. 29: Email from Liz Boyce to S. Joy dated June 4, 2002, *AR*, v.28, p.93.

36 Joy Cross, *AR*, *v* 25, p.212, v.26, p.82-84 and Ex. 2, 3, 5, *AR*, v.26, p.164-8, 173-89.

37 Reasons of LaForme J.A., ¶108, *supra* p.67; Joy Cross, *AR*, v.26, p.86-91, 152-3; Loohuizen Cross, *AR*, v.28, p.55-61.

38 Loohuizen Affidavit, ¶82-83, *supra* p.49 at, 103-104; Loohuizen Cross, v 27, p.138-45; Joy Cross, *AR*, v.26, p.95-8.

39 Joy Cross, *AR*, v.26, p.86-93, 98-9, 102-109.

40 Reasons of LaForme J.A., ¶177, *supra* p.92-93; PDB #563, *supra* fn 30, p.159-60. The instruction regarding the preferred use of electoral lists, which also appeared in the 1994 predecessor memorandum PDB #406, repeated the instruction that had been provided in the 1992 version of the Sheriff's Procedure Manual: see PDB #406, p.2 and Sheriff's Procedure Manual, Chap. 4, p.2: Ex. 4-5 to Bristo Cross *AR*, v.39, p. 89, 91, 111.

instruction was legally correct: at the time, voting in elections held under the *Indian Act* regime was restricted to members "ordinarily resident on the reserve". However, in 1999 this Court's decision in *Corbiere* held that this restriction violated s.15. The resulting suspended declaration of invalidity expired in October 2000, and the *Indian Act* regulations were amended to give effect to the decision. Since then, band electoral lists used for *Indian Act* elections include members residing both on- and off-reserve.[41] Despite this significant legal change, PDB #563 continued to be distributed each year, and CSD staff received no instruction regarding the need to take steps to determine the nature of the lists used for s.6(8) purposes or regarding the proper interpretation and use of residence information that might be included on the lists.[42] Justice LaForme correctly concluded as follows in relation to this issue:

> [182] The practical effect of *Corbiere* is that it made any band electoral lists obtained from First Nations after its release much less valuable in terms of their utility for meeting the requirements of s.6(8) and identifying on-reserve residents eligible to serve on local juries, unless independent steps were taken to compensate for the inclusion of eligible voters living off reserve.
>
> [183] Everyone is presumed to know the law and to act accordingly… Certainly, of all entities, the Ministry of the Attorney General can be presumed to know the law, including changes to it and the implications of those changes. Yet, the evidence shows that CSD staff in Kenora, at any rate, only became aware of the significance of *Corbiere* to the utility of band electoral lists when the issue was raised in cross-examination in connection with these appeals – 12 years after the decision was released. The issue was addressed for the first time in CSD policy documents and practices in training materials prepared in August 2011. Overlooking a legal change of this nature demonstrates a considerable lack of attention and a high degree of indifference to the problem.

d) The Kenora District

[19] The judicial district of Kenora is the geographically largest in Ontario, making up about one third of Ontario's land mass.[43] Apart from nine municipalities, this huge district consists of "unorganized territory".[44] According to the 2006 census, the total population of the District was approximately 65,000. Slightly more than 50% of this population resided in the four largest municipalities – Kenora, Dryden, Sioux Lookout and Red Lake. The great majority of the remainder

---

[41] Reasons of LaForme J.A., ¶178-179, *supra* p.93; *Corbiere v Canada (Min. Indian Affairs)*, [1999] 2 SCR 203 at ¶24, 126; *Indian Act*, *supra*, ss.74, 77(1); Regulatory Impact Analysis Statement, C.Gaz.2000.II.2382-2390: Ex. 12 to Bristo Cross, *AR*, v.39, p.165.

[42] Bristo Cross, *AR*, v.38, p.74-77. The issue appears to have been completely overlooked by CSD superiors, until it was raised in July 2011 at the Bushie Inquest hearings: *Wabason*, *supra* at ¶9, 14; Decision of Coroner Eden at the Inquest into the death of Reggie Bushie, dated September 9, 2011 ¶13, 24(ii), 25; Loohuizen Cross, *AR*, v.18, p.219-221; Joy Cross, *AR*, v.26, p. 134-142; Bristo Cross, *AR*, v.38, p.170-1, 174-177, v.39, p.55. The first mention of this issue in CSD policy documents appears in training materials prepared in August 2011: Bristo Cross, *AR*, v.38, p.177-178, v.39, p.55-58 and Exhibit 10, *AR*, v.39, p.142, 51. At the time of the hearing of the appeal in the Court of Appeal in May 2012, the issue remained unaddressed in the Jury Manual, which was first released in 2009, with updated versions issued in 2010 and 2011: see Ex. 6 to Bristo Cross, v.39, p.125-126; Ex 8 to Loohuizen Affidavit, *supra* p.8-9; Ex. 2 to Bristo Affidavit, *supra* esp. p.153-54. Although the July 2012 version of the Jury Manual now directs that attention be paid to residence information contained in the lists, CSD's failure to understand the effects of *Corbiere* and integrate this legal reality into its policy and training continues to this day: see *Wabason*, *supra* at ¶9-10, 14-15, 23-26.

[43] See maps at Ex. 20 & 26 to Loohuizen Cross, v.23, p.100-2, v.24, p.2. See also Appendix V regarding the boundaries of Kenora District.

[44] O.Reg 180/03, Sched 2, Kenora.

resided in areas without municipal organization.[45] Ontario Court of Justice sittings occur at base courts in Kenora and Dryden, at satellite courts in Sioux Lookout and Red Lake, and at 26 fly-in or drive-to locations in the district. The Superior Court of Justice sits in the City of Kenora. Because some communities in the northeast of the District are closer to Cochrane and Thunder Bay, in the neighbouring judicial districts, indictments from those communities are almost invariably transferred on consent to Thunder Bay or Cochrane for trial.[46]

[20] Kenora District includes 70 separate parcels of land designated as reserves, of which 48 are populated or potentially populated.[47] The District also includes at least 8 Indian Settlements, non-reserve Crown land where a community of Aboriginal people resides.[48] These reserve and Indian Settlement lands are associated with 46 First Nations.[49] More than half of the First Nation communities in Kenora District are accessible only by air.[50] The population of these communities (the "on-reserve" population) was at least 21,000 in 2006,[51] and accounted for a significant proportion of the District's total population: estimates of the proportion of the total population of Kenora District that resides on-reserve range from 30.2 to 36.8%; and, for the over-18 population, from 21.5 to 31.8%.[52]

e) The effect in Kenora of the growing problem: 2000-2007

[21] In 2001, Kenora CSD employee Laura Loohuizen became responsible for the s.6(8) work in the

---

[45] These estimates are based on the 2006 census data, which excludes certain incompletely enumerated Indian Reserves: see Affidavit of A. Khan ¶23, 25-26, 52, 54, Table 22a, *AR*, v.2 p.18-9, 66-7, 71 [Khan Affidavit].

[46] Peawanuk, Attawapiskat and Kashechewan are serviced by Cochrane District, and Fort Hope, Lansdowne House and Marten Falls (Ogoki Post) are serviced by Thunder Bay District. OCJ fly-in sittings for these communities are also serviced by court staff from Thunder Bay or Cochrane. Loohuizen Affidavit, ¶9-10, *AR*, v.11, p.127; Loohuizen Cross, *AR*, v.17, p.123-130.

[47] Information as to whether a particular reserve is "populated or potentially populated" is taken from Statistics Canada census information. See Khan Affidavit, ¶16-18, 21-22, 59, Table 2, *supra*, p.13-17, 74-76 and Ex. K, *AR*, v.9, p.142-45.

[48] Eight Indian Settlements recognized by INAC fall within Kenora District, namely Fort Seven, Keewaywin, McDowell Lake, Lansdowne House, Summer Beaver, Slate Falls, Webequi and Winisk: see Khan Affidavit, ¶19, 21-22, 59, *supra*, p.14 and associated exhibits; *Indians and Bands on Certain Indian Settlements Remission Order*, SI/92-102; *Indians and Webequie Band on the Webequie Indian Settlement Remission Order*, SI/94-70; *Indians and Bands on Certain Indian Settlements Remission Order (1997)*, SI/97-127. The community of Koocheching First Nation appears to constitute an additional Indian Settlement in the Kenora District, which does not appear to be recognized by INAC: see Loohuizen Cross, *AR*, v.12, p.81-90; Cross-Examination of A. Tallman, *AR*, v.34, p.74, 82-89 and Ex. 5, *AR*, v.34, p.102-192.

[49] See Appendix I for a list of these 46 First Nations. These 46 First Nations are associated with reserve or Indian Settlement lands that fall in whole or part in the Kenora District. Some of these First Nations are also associated with other reserve lands located outside the Kenora District. Some First Nations have more than one reserve and/or settlement, and some reserves or settlements are associated with more than one First Nation. Of the 46 First Nations associated with reserve or Indian Settlement lands in the Kenora District, 44 (all except Kashechewan and Koocheching) are recognized as distinct "bands" under the *Indian Act*. See Khan Affidavit, *supra*, v.2, p.9-11, 15-18, 73-6 at ¶10-14, 22, 58-9, Tb.1 & 2; Loohuizen Affidavit, ¶9 and Ex. 2, *AR*, v.11, p.127, 174-5; Loohuizen Cross, *AR*, v.17, p.71-76; Tallman Cross, *supra*, p.73-75, 82-84 and Ex.5, *AR*, v.34, p.102-92.

[50] Loohuizen Affidavit, ¶10, *supra* p.127; CSD Annual Report 2009-10, p.13, Ex. 13 to Loohuizen Cross, *AR*, v.20, p160-7.

[51] The 2006 census figure for the reserves and Indian Settlements in Kenora District was 19,448; this census figure excludes several reserves which were incompletely enumerated, and also excludes Kashechewan, which had been evacuated due to flooding on the data collection date of the 2006 census. For further details and population estimates of the incompletely enumerated reserves and Kashechewan: See Khan Affidavit, ¶42-50, 53, Tables 18-21 and 23, *supra* p.57-65, 68-9.

[52] Khan Affidavit, ¶54-55 and Table 24, *supra* p.71-72.

District. She approached this work conscientiously. Justices LaForme and Goudge found, however, that her s.6(8) efforts were insufficient to provide representativeness, to a great extent due to a lack of proper training, oversight and support from the CSD Corporate authorities.[53]

[22] The steps taken by Ms. Loohuizen in respect of the 2008 jury roll can only be understood by reference to her work in previous years, because she was involved in an iterative process whereby what occurred one year influenced what occurred in succeeding years. When Ms. Loohuizen assumed responsibility for s.6(8) duties in 2001, her predecessor provided her with 42 INAC lists from 2000.[54] At the same time, she was warned by Justice Stach, the local Superior Court judge, that a challenge to the array had occurred in the past in respect of Aboriginal representation, and he expected the issue to arise again.[55] She was, however, given no training from CSD with respect to her s.6(8) duties.[56]

[23] In 2002, Ms. Loohuizen made inquiries to the PJC regarding the steps outlined in PDB #563. First, she sought direction about obtaining updated lists; she was told "[w]e have to attempt to obtain lists from the bands, failing that we use whatever list is available".[57] Second, she sought assistance to identify the reserves for which she had s.6(8) responsibility.[58] Third, she sought confirmation on how to use census data to calculate the number of s.6(8) notices that were to be sent out.[59]

[24] In 2002, Ms. Loohuizen erroneously concluded that there were 43 "reserve populations" in Kenora District. She overlooked three reserves located in the District,[60] and mistakenly included one located in Thunder Bay District.[61] Without CSD oversight, Ms. Loohuizen's erroneous conclusion was determinative: if she was unaware of a reserve, its residents could not be included in the jury roll. Ms. Loohuizen had INAC lists for 42 of the 43 First Nations that she identified, and no list for the other. In

---

53 Reasons of LaForme J.A., ¶169, 175, 194 and Reasons of Goudge J.A., ¶251, *supra* p.90, 92, 98, 119.

54 Loohuizen Affidavit, ¶37-39, *supra* p.137-38; Loohuizen Cross, *AR*, v.17, p.91-93.

55 Loohuizen Oct 26, 2011 Transcript: Exhibit 18A to Loohuizen Cross, *AR*, v.21, p.9-11, 19, 47-50.

56 Reasons of Laforme J.A., ¶168-69 and Reasons of Goudge J.A., ¶251, *supra* p.89-90, 119; Loohuizen Cross, *AR*, v.17, p.254-264 and Ex.18A (Loohuizen Oct 26, 2011 Transcript), *AR*, v.21, p.33-37, 46-47, 50; Joy Cross, *AR*, v.26, p.86-92, 152-3.

57 Loohuizen Affidavit, ¶41-42, *supra, p.*138 and Ex. 13-14, *AR*, v.12, p.27-32; Loohuizen Cross, *AR*, v.17, p.53-59.

58 Loohuizen Affidavit, *supra* and Ex. 3, *AR*, v.11, p.176-77; Loohuizen Cross, *AR*, *v* 17, p.73-75, 91-94, 101-106, 111-112 and Ex. 6-8, *AR*, v.20, pp.75-84.

59 Loohuizen Affidavit, *supra* note 18 & Ex.16, *AR*, v.12, p.15-6; Loohuizen Cross, *AR*, v.19, p.49-66.

60 Kashechewan, Marten Falls and Koocheching First Nations were overlooked: Loohuizen Cross, *AR*, v.17, p.71-76. The exclusion of Kashechewan and Marten Falls resulted from confusion on the part of Ms. Loohuizen regarding the northeast boundary of Kenora District: Loohuizen Cross, *AR*, v.17, p.75, 114, 169-178. Ms. Loohuizen overlooked references to Kashechewan in the documents available to her, in part because the name of the associated reserve – part of Fort Albany 67 – did not match: see Loohuizen Cross, *AR*, v.17 p.118-124. Ms. Loohuizen had received no instruction regarding the distinction between a "reserve" (a plot of land designated under the *Indian Act*) and a "First Nation" or "band" (a group of people), and therefore mistakenly believed that these concepts were interchangeable: see Loohuizen Cross, *AR*, v.17, pp.199; *AR*, v.18, p.4, 184-187; See also for example Loohuizen Affidavit, ¶9, 39, *supra* p.127, 137.

61 Reasons of LaForme J.A., ¶172, *supra* p.91-91; Ojibway of Saugeen First Nation is in fact located in Thunder Bay District. Loohuizen Cross, *AR*, v.18, p.20-26.

June 2002, she wrote to the Chief of each First Nation for which she had an INAC list and requested an updated one. She received no responses.[62] Ms. Loohuizen therefore used the INAC lists from 2000 to calculate the required number of s.6(8) notices and then to randomly select persons from the lists.[63] The INAC lists did not include specific addresses, so all the notices were sent "General Delivery" (GD).[64]

[25] The next three years, Ms. Loohuizen made no further efforts to obtain updated lists, and she therefore continued to rely on the old INAC lists.[65] In August 2006, she sent a letter to each Chief of the 43 First Nations she had identified, requesting current lists. She received four updated lists but no response from the other First Nations.[66] She therefore used the four new lists; continued to use 38 old INAC lists, and still had no list for one First Nation. Her s.6(8) work continued with little to no support or oversight from provincial CSD staff.[67]

[26] In regard to the efforts made by Ms. Loohuizen, Justice LaForme found:

> Throughout this period, Ms. Loohuizen again relied on the INAC band lists from 2000 for s.6(8) purposes, continuing the practice of CSD in this regard. Obviously, because the INAC band lists only included individuals over the age of 18, these lists would have become increasingly inaccurate with each passing year, as individuals newly turned 18 would not be captured unless an updated band list were obtained. This is a special problem for populations residing on reserve, which are generally disproportionately young. Any other changes in the interim, such as deaths or relocations, would also not be captured.[68]

[27] A decade earlier, in *Fiddler*, the response rate for s.6(8) notices in Kenora District was 33% for 1993, compared with an off-reserve rate of 60-70%.[69] Because completed notices were returned to the PJC, which did not monitor or report return rates, Ms. Loohuizen was unaware of the s.6(8) on-reserve response rates that were being achieved through her efforts, and that they were in fact declining. Nine years after *Fiddler* and 2 years after INAC stopped providing its lists, the s.6(8) on-reserve response rate in Kenora had fallen to 15.8% for 2002. By 2007, when the PJC for the first time provided Ms. Loohuizen with data concerning her s.6(8) response rate, it had fallen to 10.7% for 2006, and the eligible response rate had fallen to 7.6% – compared to an off-reserve eligible response rate of 55.7%.[70]

[28] The low on-reserve response rate in Kenora District was to a significant extent due to

---

[62] Reasons of LaForme J.A., ¶103, *supra p.*65; Loohuizen Affidavit, ¶43-52, *supra* p.138-41 and Ex. 20, *AR*, v.12, pp.43-45; Loohuizen Cross, *AR*, v.18, p.182-3.
[63] Reasons of LaForme J.A., ¶104, *supra* p.65-66; Loohuizen Affidavit, *supra*, p.141 at ¶51.
[64] Loohuizen Affidavit, ¶30, *supra* p.134.
[65] Loohuizen Affidavit, ¶54, 67, 71, *supra* p.141-42, 145-6; Loohuizen Cross, *AR*, v.18 p.182-84.
[66] Loohuizen Affidavit, ¶73-78 *supra* p.146-7; Loohuizen Cross, *AR*, v.18, p.182-4, 194.
[67] Reasons of LaForme J.A., ¶107-8, 170, *supra* p.39, 62; Loohuizen Affidavit, ¶74-80, *supra* p.147-148; Loohuizen Cross, *AR* v.18, 182-84.
[68] Reasons of LaForme J.A., ¶104, *supra* p.65-66.
[69] *Fiddler, supra* at 101-102 (Ont.Gen.Div.).
[70] Exhibit C to Joy Affidavit, *supra* p.165-72.

undelivered notices that were returned-by-post-office (RPO). The Kenora RPO rate was strikingly and disproportionately high – 27.7% for Kenora s.6(8) notices (compared to a province-wide RPO rate of 5.6%) in 2008 – but CSD took no steps to investigate or mitigate this problem.[71] Indeed, until the 2009 jury roll, the PJC did not collect response data on a reserve-by-reserve basis,[72] so no one inquired into the cause of Kenora's RPO problems (e.g., that many persons on the lists lived off-reserve;[73] and that GD mail was unlikely to reach recipients in many places[74]).

f) Efforts with respect to the Kenora jury roll in 2008

[29] During 2007, Ms. Loohuizen and the CSD's interpreter-liaison for the Northwest Region travelled to 15 fly-in reserves and went to the 2 of 4 reserves near Kenora that responded to her request to come visit. She also attempted to contact 10 additional First Nations by telephone. This was the first time in Ms. Loohuizen's experience that efforts beyond sending a letter had been made to obtain updated lists.[75] No efforts whatsoever were made in 2007 in relation to 16 First Nations within the District.[76] As a result of her efforts, Ms. Loohuizen received eight updated lists.[77]

[30] As set out above, Ms. Loohuizen had never received any assistance regarding the boundaries of Kenora District, and there was no system of oversight to ensure that local court staff were properly including all the reserves within their districts.[78] During 2007, Ms. Loohuizen made inquiries that caused CSD to realize that they had been mistaken about the boundary of Kenora District, and that as a result local CSD personnel had not been including two reserves that were located in it; but Ms. Loohuizen was instructed not to pursue lists for these reserves.[79] Despite her inquiries, CSD still did not

---

71 Joy Affidavit, ¶13 and Ex. C, *supra* p.131-132, 166, 168; Joy Transcript, *AR*, v.26, 102-118.

72 Loohuizen Cross, *AR*, v.18, p.109-116, 123-140; Joy Cross, *AR*, v.26, p.120-124.

73 See for example Band Lists received in 2006 and 2007 at Ex. 63 to Loohuizen Cross, Respondent's Record [RR], v.1, tab 1-29, v.2, tab 1-30--38; Loohuizen Cross, *AR* v.18, p.203-228; Tallman Cross, *AR*. v.33, p.128-134.

74 The data collected by the PJC in respect of the 2009 and later rolls provides an excellent example of how the GD problem played out for specific reserves. Eagle Lake First Nation (a road-accessible community without a local postal outlet, served by a rural mail carrier) consistently had a very high RPO rate, between 78% and 100% for the 2009 through 2012 rolls: Affidavit of E. Smith ¶28-30, *AR*, v.40, p.24 and Ex. K, *AR*, v.42, p.15-26 [Smith Affidavit]. These high RPO rates were probably caused by Ms. Loohuizen's mistaken use of the postal code for the nearby town of Eagle Lake, rather than the postal code for Eagle Lake First Nation, located in the community Migisi Sahgaigan. As a result, rather than the notices being directed to the mail carrier who served Eagle Lake First Nation in Migisi Sahgaigan, the s.6(8) notices were likely held at the GD window of the town of Eagle Lake post office until they were returned to the PJC as unclaimed. (Forsyth Cross, *supra* p.97-100, 141, 144-46, 151-154). See also Loohuizen Cross, *AR*, v.18, p.149-150.

75 Loohuizen Affidavit, ¶85-95, *supra p.*150-154 and Ex. 43-47, *AR*, v.12, p.16—v.13, p.155; Loohuizen Cross, *AR*, v.18, p.182-184; Loohuizen Oct 26, 2011 Transcript: Exhibit 18A to Loohuizen Cross, *AR*, v.21, p.89-91.

76 If the Ojibway of Saugeen First Nation is included (notwithstanding that it is located in Thunder Bay District), no efforts were made in 2007 in relation to 17 First Nations. Appendix II summarizes the efforts made by Ms. Loohuizen in 2007 to obtain updated lists.

77 Reasons of LaForme J.A., ¶113, *supra* p.69; Loohuizen Affidavit, ¶91, *supra* p.152.

78 Loohuizen Affidavit, ¶96-97, *supra* p.154; Loohuizen Cross, *AR*, v.27, p.93-94, 146-167 and Exhibit 19, *AR*, v.23, p.95-98; Joy Cross, *AR*, v.26, p.90-91.

79 Loohuizen Affidavit, ¶97, *supra* p.154 and Ex.47, *AR*, v.24, p.160; Loohuizen Cross, *AR*, v.17, p.160-162.

discover that Ms. Loohuizen was mistakenly including a reserve that is located in Thunder Bay District; and, conversely, that Thunder Bay District was including a reserve that was in fact in Kenora District.[80]

[31] By fall 2007, when the s.6(8) notices for the 2008 roll were mailed, Ms. Loohuizen was aware of 46 First Nations in the District and had the following lists: for 10 First Nations, band electoral lists that were current (from 2006 or 2007) but included off-reserve residents; for 32 First Nations, INAC lists from 2000; and for 4 First Nations, no lists.[81] Justice LaForme concluded:

> [116] It is obvious that the vast majority of the source lists for s.6(8) purposes for the 2008 jury roll were out-dated. The INAC band lists, which were used for a sizable portion of the District's population, would not include, by this time, people who had become adults since 2000. In addition, they would not capture on- and off-reserve movement within the populations of these 32 First Nations…
>
> [181] The evidence shows that Ms. Loohuizen knew prior to this that the band electoral lists she was provided with included off-reserve individuals, yet she continued to use these lists, without removing off-reserve individuals, to determine who would receive questionnaires. The evidence also shows that Ms. Loohuizen did not learn until 2011 that individuals residing off the reserve should not be included in the s.6(8) enumeration…
>
> [185] Therefore, the jury roll at issue in the present appeal was compiled, in respect of 42 of the 46 First Nations in the judicial district, from records that were objectively either significantly out-dated or inaccurate in a way that would give rise to distortions in representation. The state knew or ought to have known about these distortions in the source lists, and the evidence shows at least seven years where very little was done to ameliorate the situation…
>
> [187] The exact impact of these errors, in a quantitative sense, cannot be known on this record. However, the cumulative inaccuracies in the source lists inevitably bear on the likelihood that sufficient questionnaires would have reached individuals residing on-reserve.[82]

[32] When Ms. Loohuizen communicated the poor s.6(8) return rates for 2007 to Justice Stach, he directed her to increase the number of on-reserve notices, from 484 (for the 2007 roll) to 600 (for the 2008 roll).[83] Of the 600 notices sent, 60 were completed and returned, an on-reserve response rate of 10.0% for 2008; 166 (27.7%) were RPO as undelivered; and 374 (62.3%) were otherwise not delivered or not returned. Of the completed on-reserve notices, 34 persons were eligible for jury service, an on-reserve eligible response rate of 5.7%.[84] For the 2008 jury roll, the PJC sent 1,200 notices to the off-

---

[80] Loohuizen Cross, *AR*, v.17, p.158-162, v.18, p.26-40, 232—v.19, p.2; Joy Cross, *AR*, v.26, p.46-48.

[81] Reasons of LaForme J.A., ¶184, *supra* p.95; Loohuizen Affidavit, ¶76, 91, 98 *supra* p. 147, 152-53, 155; Band Lists: Exhibit 63 to Loohuizen Affidavit, *RR*, v.1-2. One of the INAC lists from 2000 was for the Ojibway of Saugeen First Nation, which is located in Thunder Bay District.It should be noted that the population of the 32 First Nations in respect of which INAC lists from 2000 were used is sizeable, representing about two-thirds of the total on-reserve population and about 20% of the total population of the district (based on population data in Table 18 in Khan Affidavit, *AR*, v.2, p.59-60).

[82] The Appellant mistakenly claims at Appendix B that a comparison of the Kenora and Simcoe no-response rates demonstrates that there is no connection between the currency of the list used for s.6(8) purposes and return rates. Appendix IV demonstrates that the Appellant's claim is founded on a misreading of the data.

[83] Loohuizen Affidavit, ¶82-84, *supra*, *p.*149-40 and Ex. 39, *AR*, v.24, p.101-113; Loohuizen Cross, *AR, v* 18, p.167-176.

[84] Loohuizen Affidavit, ¶103-104, *supra p.*157 and Ex. 54, *AR*, v.13, p.193.

reserve municipal population of Kenora District. The off-reserve eligible response rate was 55.6%.[85] In the result, the 34 on-reserve residents on the 2008 Kenora roll amounted to only 4.1% of the total, despite the fact that the total on-reserve population was 30.2 to 36.8% of the total population of Kenora District and the on-reserve adult population was 21.5 to 31.8% of the adult population of the District.[86]

[33] The stark underrepresentation described above was compounded by the formula prescribed in PDB #563 and used by Ms. Loohuizen. The formula is intended to ensure that the number of notices sent to the on-reserve population is proportionate to the number sent to the off-reserve population.[87] In practice, however, application of the prescribed formula inevitably led to a disproportionately low number of s.6(8) notices being sent in Kenora District; [88] as shown by the hypothetical examples given in Appendix III, the formula gives rise to significant distortions when the on-reserve population of the district is high.[89] This distortion was likely further compounded by Ms. Loohuizen's decision, in the absence of guidance from CSD, to estimate the on-reserve population of the District by counting the names on the out-of-date lists in her possession, rather than using current population statistics.[90]

g) What Ontario knew

[34] Justices LaForme and Goudge concluded that Ontario knew or ought to have known of the above-described problems. Justice Rouleau made a contrary finding on this issue, and therefore dissented in the result. All three justices concurred, however, on the applicable law.[91]

[35] In the lead judgment, Justice LaForme found that: from at least the mid-1990s the PJC had the necessary data to determine the on-reserve response rates for Kenora District; Kenora CSD staff also knew of their low response rate; the low response rate found in *Fiddler* in 1993 (33%) "should have put

---

[85] 667 of 1200 off-reserve questionnaires were returned and found eligible. PJC data does not permit the total off-reserve response rate to be determined. See Exhibit C to Joy Affidavit, *supra* p.166-72.

[86] The on-reserve residents on the roll were #16, 25, 38, 44, 52, 53, 119, 126, 194, 298, 309, 310, 311, 316, 354, 384, 402, 403, 404, 413, 426, 464, 475, 513, 554, 555, 590, 609 and 665: 2008 Kenora Jury Roll, *RR*, v.3, tab 3. The on-reserve residents on the panel were #3, 11, 13, 26, 69, 73, 85, 98, 139: Panel Lists, *RR*, v.3, tabs 4-5. See also Loohuizen Affidavit, ¶120, *supra* p. 161.

[87] The formula was prescribed in PDB #563, and remains in effect to this day under the Jury Manual: see PDB #563, p.3: Ex. 3 to Bristo Affidavit, *supra* note 30.; Jury Manual: Ex.2 to Bristo Affidavit, *AR*, v.37, p.154-55; Bristo Cross, *AR*, v.38, 184-5.

[88] Bristo Cross, *AR*, v.38, p.118-19, 131; Loohuizen Affidavit, ¶20, *supra* pp. 130-31. As noted above, the number of on-reserve notices sent for the 2008 Kenora jury roll was increased from 484 to 600 at the direction of Justice Stach, in response to the low on-reserve response rate. The record in these appeals does not permit a conclusion as to whether the distortion resulting from the county test formula meant, for the 2008 Kenora jury roll, that the 600 on-reserve notices sent that year corresponded to the proportionate number that ought to have been sent (i.e., that no increase to counteract underrepresentation was in fact implemented) or was lower than the proportionate number (i.e., the on-reserve population in fact received fewer jury notices than its proportionate share).

[89] See Appendix III for an analysis of the distortions caused by CSD's formula in districts with high on-reserve populations.

[90] Reasons of LaForme J.A., ¶174, *supra* p.91-92; Loohuizen Affidavit, ¶44, 79, 84, 126, *supra* p.139, 148-50, 164; Loohuizen Cross, *AR*, v.18, p. 258-260, v.19, 84-88. In recent years, CSD instructions have been modified, to ensure that court staff obtain and use the most up-to-date population figures: see Bristo Cross, *AR*, v.38, p.151-158.

[91] Reasons of LaForme J.A., ¶1-51, Reasons of Goudge J.A., ¶234, and Reasons of Rouleau J.A. ¶278, *supra* p.1-47, 112, 130.

the province on notice that without attention there could be a problem resulting in a jury roll being unrepresentative and in breach of the *Charter*"; "there were no discernible changes in CSD's policies and practices with respect to s.6(8) requirements" after 2000, when INAC stopped providing its lists; the PJC "blinded itself" to the falling response rate by not evaluating the data that it had on hand; nonetheless, by 2003 "at least on some level, the PJC knew that there may be a problem with representativeness"; by 2004 "on-reserve representativeness was a recognized concern" of the Kenora CSD staff; and the Ministry of the Attorney General (MAG) had been aware of the problem of low on-reserve response rates since at least 2001.[92] Justice LaForme concluded:

> [94] In spite of this history of decreasing rates of returns of questionnaires by Aboriginal on-reserve residents, the province's efforts were concentrated almost exclusively on obtaining Band electoral lists or "any lists" that the First Nations would provide in order to create the jury roll… Virtually nothing was done to address the deteriorating rate of return of questionnaires…
>
> [209] In this case, the numerous frailties in the source lists for s.6(8) purposes from which the 2008 Kenora jury roll was compiled ensured that the array could not be fairly chosen. Given what the state knew and ought to have known about the problem, the validity of its claim to reasonable efforts in the circumstances is undermined. The integrity of the process was fundamentally compromised by the inattention paid by the state to a known and worsening problem, year after year.

[36] In his concurring judgment, Justice Goudge noted that the facts had been "comprehensively described" by Justice LaForme. He then emphasized some of those facts, including that: there could "be little doubt that, for a number of years before 2008, the underrepresentation of Aboriginal on-reserve residents in the jury system in the Kenora District was a well known problem"; the great majority of the lists used were out-dated and "did not take into account those who turned 18 or died after 2000, or those who moved on or off reserve after 2000, and omitted several small reserves altogether"; the on-reserve RPO rate that was significantly higher than the off-reserve rate; and by 2008 "the comparatively low rate of return from Aboriginal on-reserve residents had been well-known by the state for a number of years as a significant contributing cause of the underrepresentation of Aboriginal on-reserve residents".[93] Justice Goudge concluded:

> [259] [The state's] constitutional obligation required it to make reasonable efforts to facilitate delivery of the questionnaires. While there may be many reasons that do not involve the state for questionnaires not reaching their intended recipients, there are clearly steps the state could have taken to make successful delivery more likely, beginning with a search for the cause or causes and what the state might do to assist.
>
> [260] The difficulty here was the state's inattention to this challenge. It appears that virtually nothing was done over the years, including for the 2008 jury roll, to determine the cause or causes of the on-reserve delivery problem or what the state could do to alleviate it…

---

92 Reasons of LaForme J.A., ¶83-93, 108 *supra* p.58-61.
93 Reasons of Goudge J.A., ¶242-249; *supra* p.115-118.

> [262] …[F]aced with this substantial challenge, which impaired the fair opportunity of Aboriginal on-reserve residents to have their perspectives included in the jury roll, inaction by the state in the face of action that it could have taken cannot meet the reasonable efforts standard required by the representativeness right of the appellant…
>
> [275] It is sufficient to repeat that the state left the serious challenge of low response rates with a junior employee [Ms. Loohuizen]. Through her, the state response, repeated year after year up to and including the 2008 jury roll can only be described as a failure. No attempts to engage with Aboriginal leaders appear to have been undertaken to determine the causes of prior response rates or what other ameliorative efforts might be undertaken by the state to encourage responses.
>
> [276] I do not think that a failed response, coupled with the failure to explore other steps the state might have taken to help, can be said to constitute the reasonable efforts required of the state to address this problem and do what it reasonably could to provide Aboriginal on-reserve residents with a fair opportunity to have their distinctive perspectives included in the 2008 jury roll. The challenge of low response rates was serious. It required more of the state.

[37] Justice Rouleau's dissent was grounded in a contrary finding concerning the state's knowledge, and a consequent contrary conclusion regarding the reasonableness of its efforts:

> [306] In reaching the conclusion that the government did not deploy reasonable efforts as required by the Charter, both of my colleagues rely on the fact that while the government knew return rates were deteriorating, little was done to encourage on-reserve residents to respond to jury notices, and Ms. Loohuizen was left to address the problem with no involvement of senior MAG staff. I respectfully disagree. The government was responding adequately to the problem as it was then understood. Starting in 2007, it would have become increasingly apparent that the problem was, and is, complex. In order to bring about an effective solution, time, study and consultation are needed…
>
> [317] … a low response rate does not necessarily mean the government has failed to perform its constitutional obligations… Before concluding that the government's efforts are constitutionally deficient with respect to a particular group, however, it must be shown that the government was or should have been aware of the reduced response rates, there were reasonable efforts available to it to encourage an increase in responses from this group, these efforts would have had a realistic prospect of success, and these efforts were not undertaken.

With respect, this dissenting finding is fundamentally flawed. As the record and findings of Justices LaForme and Goudge show, Ontario knew about the problem of declining response rates for many years and had information about the decline and its causes, but failed to analyze it; and, as a result, failed to take steps that ought reasonably to have been taken to alleviate the problem. On the other hand, the Respondent, an indigent Aboriginal man with the limited resources of legally-aided counsel, was able to analyze this information once disclosed and identify numerous options that state might have considered, had it been paying appropriate attention.

h) Post-2008 Events

[38] In the months and years after September 2008, after the growing problem was made public, some changes were made by the PJC and the CSD in respect of the policies and practice concerning s.6(8) compliance. Still further changes were made after July 2011, when inquest hearings were held

regarding the 2011 Thunder Bay jury roll.[94] The notable changes included:

- As of the 2008 work cycle for the 2009 jury roll, the number of notices sent to persons living on-reserve has been increased by 30%, for all reserves. As of 2011 (for the 2012 jury roll), this 30% increase became standard policy, to remain in effect "until otherwise noted".[95]
- As of the 2009 jury roll, local CSD staff were required to document their efforts to obtain updated source lists from First Nations for the purposes of s.6(8).[96]
- As of the 2009 jury roll, local CSD staff were provided with telephone scripts, template letters and other aids to assist in their efforts to obtain updated source lists from First Nations.[97]
- In 2009, formal training with respect to jury matters, including the duties of the sheriff under s.6(8) was provided to all CSD staff. In August 2011, additional training, dealing specifically with s.6(8), was provided to CSD staff responsible for these duties.[98]
- Since 2009, data concerning reserve-by-reserve response rates has been collected, and more recently this data has been communicated to local CSD staff.[99]
- As of the 2011 work cycle for the 2012 jury roll, CSD Corporate and the PJC have collected details regarding the calculations performed by local CSD staff to determine the number of notices to be sent pursuant to s.6(8); these calculations have been checked and errors corrected.[100]
- As of the 2012 jury roll, RPO rates have been tracked on a reserve-by-reserve basis, and additional efforts made for reserves with very high RPO rates, in an effort to ensure delivery of jury notices.[101] These inquiry and follow-up efforts have yielded useful and probative information about the causes of the delivery problems for particular reserves.[102]
- As of the 2012 jury roll, the s.6(8) instructions for local CSD staff have been rewritten so that separate reference to PDB #563 is no longer required. More recently, these instructions include direction to local CSD staff to ensure that off-reserve residents who appear on the band lists are not improperly selected to receive s.6(8) notices.[103]

These additional efforts undertaken after September 2008 could not, however, affect the representativeness of the 2008 Kenora jury roll.

---

94 Decision of Coroner Eden at the Inquest into the death of Reggie Bushie, dated September 9, 2011.
95 Bristo Affidavit, ¶24-29, *supra* p.119; Bristo Cross, *AR*, v.38, p.137-141.
96 Loohuizen Affidavit, ¶111, 124, 135, *supra* p.159, 163-8; Loohuizen Cross, *AR*, v.18, p.77-9; Joy Cross, *AR*, v.26, p.94-5.
97 Bristo Cross, *AR*, v.38, p.165-6 and Exhibit 3, *supra* fn 30, p.70-77; Loohuizen Affidavit, ¶111, *supra p.*159.
98 Bristo Affidavit, ¶35, *supra* p.122; Ex. 10 to Bristo Cross, *AR*, v.39, p.137; Joy Cross, *AR*, v.26, p.19-20 and Exs. 14-15, *AR*, v.27, p.23-66.
99 Joy Cross, *AR*, v.26, p.100-2.
100 Joy Cross, *AR*, v.26, p.22-31, 93-94, 132-133; McCalmont Cross, *supra* p.59-62; Bristo Cross, *AR*, v.38, p.180-81.
101 Bristo Cross, *AR*, v.38, p.239—v.39, p.2; Loohuizen Cross, *AR*, v.18, p.145-153; Joy Cross, *AR*, v.26, p.118-124.
102 Loohuizen Cross, *AR*, v.137-139; Bristo Cross, *AR*, v.38, p. 239-41; *Wabason*, *supra* at ¶8(1), 30.
103 Bristo Cross, *AR*, v.25, p.205-206, 208-210; Joy Cross, *AR*, v.25, p.231-33, v.26, p.133-34 and Ex.12, *AR*, v.27, p.3-20; *Wabason*, *supra* at ¶9, 14, 24.

PART II – POSITION WITH RESPECT TO THE APPELLANT'S QUESTIONS

[39] The Respondent takes the following positions with respect to the Appellant's questions:

A. *What is the meaning of jury representativeness and how is it assessed?* Jury roll representativeness is an essential component of an accused's s.11(d) and s.11(f) rights; and the Court of Appeal's articulation of the *Charter* right of jury representativeness is fully consistent with Canadian constitutional principles.

B. *Did the state fulfil it's representativeness obligation in compiling the jury roll in Kenora in 2008?* The majority of the Court of Appeal correctly concluded that the state had failed to meet its representativeness obligations in respect of the 2008 Kenora jury roll.

C. *What is the appropriate approach to remedy if there is a problem with jury representativeness?* The majority of the Court of Appeal was correct in ordering a new trial; a declaration is not an appropriate and just remedy in the circumstances.

[40] The Respondent also raises the following additional question, pursuant to Rule 29(3):

D. Does the exclusion of Aboriginal people resident on-reserve from the jury rolls constitute a violation of s.15 of the *Charter*?

PART III – ARGUMENT

A. The content of the *Charter* right of jury representativeness under ss.11(d) and 11(f)

[41] This case turns on the definition of the Respondent's rights under ss.11(d) and 11(f) of the *Charter*. Specifically, it turns on the content of "representativeness" as a component part of these rights. The proper starting point of the analysis of *Charter* rights is well-established:

> [T]he proper approach to the definition of the rights and freedoms guaranteed by the *Charter* [is] a purposive one. The meaning of a right or freedom guaranteed by the *Charter* [is] to be ascertained by an analysis of the purpose of such a guarantee; it [is] to be understood, in other words, in the light of the interests it [is] meant to protect.
>
> In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought by reference to the character and the larger objects of the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concepts enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*. The interpretation should be… a generous rather than a legalistic one, aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter*'s protection.[104]

[42] The Respondent's right to the benefit of trial by jury and to a fair trial by an impartial tribunal are guaranteed by ss.11(d) and 11(f) of the *Charter*. For anyone tried by jury, these rights are inextricably linked. Before the Court of Appeal, the Crown acknowledged that "a right to

---

[104] *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at 344 [emphasis original].

representativeness is captured by ss.11(d) and (f) of the *Charter*";[105] before this Court, the Appellant appears to contest this point. The Respondent submits that a purposive interpretation of these rights demonstrates that jury roll representativeness is an essential component of ss.11(d) and 11(f).

a) Jury roll representativeness is an essential safeguard of institutional impartiality in trials by jury *and* indispensable to the jury's intended functions

[43] In *Williams*, this Court identified "a representative jury pool" as one of the "essential safeguard[s]" of the accused's s.11(d) right to an impartial jury.[106] This is a foundational principle upon which the Respondent relies. This Court's jurisprudence also establishes that representativeness is an essential requirement in ensuring that the jury serves the functions that its entrenchment in s.11(f) was intended to protect. In *Sherratt*, Justice L'Heureux-Dubé explained the jury's purpose as follows:

> Importantly, the development of the institution known as the jury and the process through which it came to be selected was neither fortuitous nor arbitrary but proceeded upon the strength of a certain vision of the role that that body should play… The jury, through its collective decision making, is an excellent fact finder; due to its representative character, it acts as the conscience of the community; the jury can act as the final bulwark against oppressive laws or their enforcement; it provides a means whereby the public increases its knowledge of the criminal justice system and it increases, through the involvement of the public, societal trust in the system as a whole.
>
> These rationales or functions of the jury continue to inform the development of the jury and our interpretation of legislation governing the selection of individual jurors. The modern jury was not meant to be a tool in the hands of either the Crown or the accused and indoctrinated as such through the challenge procedure, but rather was envisioned as a representative cross-section of society, honestly and fairly chosen. Any other vision may run counter to the very rationales underlying the existence of such a body.
>
> …
>
> The perceived importance of the jury and the Charter right to jury trial is meaningless without some guarantee that it will perform its duties impartially and represent, as far as is possible and appropriate in the circumstances, the larger community. Indeed, without the two characteristics of impartiality and representativeness, a jury would be unable to perform properly many of the functions that make its existence desirable in the first place.[107]

In other words, a purposive interpretation of the content of the s.11(f) right includes recognition that representativeness of the broader community is indispensable; and conversely, that an absence of representativeness fundamentally undermines the jury's *raison d'etre*.

---

[105] Crown factum in the Court of Appeal ¶7.
[106] *R v Williams*, [1998] 1 SCR 1128 at ¶47.
[107] *R v Sherratt*, [1991] 1 SCR 509 at 523-524 (*per* L'Heureux-Dubé J.) [emphasis added]. This principle, that "representativeness" is a fundamental characteristic of a jury able to perform its intended functions, has subsequently been adopted by the full Court: see *R v Find*, [2001] 1 SCR 863 at ¶43; *Williams*, *supra* at ¶46. See also *R v Pan; R v Sawyer*, [2001] 2 SCR 344 at ¶42; *R v Davey*, [2012] 3 SCR 828 at ¶30. The Appellant relies on the reasons of McLachlin J. (as she then was) in *R v Biddle*, [1995] 1 SCR 761 (at ¶56-58) as an authority discounting the importance of jury representativeness. This interpretation misreads *Biddle*, which concerned whether an all-female petit jury fashioned by the use of Crown stand-bys gave rise to a reasonable apprehension of bias. *Biddle* thus concerned representativeness *at the level of a particular petit jury*. It should also be noted that Justice McLachlin later wrote the reasons on behalf of the unanimous Court in *Williams*, *supra*, in which "a representative jury pool" was held to be one of the "safeguards" of the accused's s.11(d) rights (at ¶47).

[44] There are two basic stages in the jury selection process. The first stage is the institution of the jury roll and the panels drawn from it, from which all subsequent steps in the jury selection process necessarily follow. The second stage is the case-by-case or individual selection that results in the petit jury. In order to properly understand an accused's ss.11(d) and (f) rights, it is important to recognize the distinct characteristics of the "institutional" and "individual" stages of the jury selection process. This Court has held that the *Charter* guarantee to an impartial tribunal includes both institutional and individual aspects, each of which is required to maintain public confidence in our system of justice, which is crucial to its continued existence and proper functioning.[108] This Court has also noted that the strong presumptions of impartiality enjoyed by both judges and jurors under Canadian law depend upon the existence of robust institutional guarantees of impartiality.[109] For both judges and juries, institutional impartiality is thus essential to create the conditions for impartiality at the individual level.[110]

[45] The safeguards necessary for institutional impartiality are different for judges and juries: put simply, judges and juries are "instituted" in entirely different ways.[111] For juries, representativeness is one of the essential safeguards of institutional impartiality. Without representativeness, the institutional impartiality of the jury roll is lost. At the same time, random selection is also an essential safeguard of institutional impartiality throughout the jury selection process.[112] As a result, the precise composition of any given jury roll and of the jury panels derived from it cannot be controlled. Thereafter, individual impartiality at the petit jury level is assured through continued in-court random selection, the challenge for cause process and other trial safeguards.[113] The institutional impartiality obtained from representativeness operates directly only at the level of the jury roll. Thus, as the Court of Appeal explained, "[o]nly if the process begins with a properly representative jury roll, can the petit jury randomly derived from it have the required element of representativeness as described in *Sherratt*".[114] Because institutional jury impartiality is dependent on both representativeness and random selection,

---

[108] *R v Lippé*, [1991] 2 SCR 114 at 140; *R. v. Bain*, [1992] 1 SCR 91 at 102-103 (*per* Cory J. for the majority), 111-112 (*per* Gonthier, dissenting but not on this point), 147-148 (*per* Stevenson J. concurring).
[109] *Williams*, *supra* at ¶46-48; *Sherratt*, *supra* at 525; *Find*, *supra* at ¶41-42; *Lippé*, *supra* at 144-145.
[110] *Lippé*, *supra* at 534; see also *Ruffo v Conseil de la magistrature*, [1995] 4 SCR 267 at ¶43-46.
[111] In this regard, there is no merit to the Appellant's argument, at paragraph 26 of its factum, that since there is no requirement for representativeness in judge-alone trials, representativeness is not required for impartiality when trial occurs by jury.
[112] *Davey*, *supra* at ¶30-31; *Find*, *supra* at ¶20; *R v Bain*, *supra* at 113 (*per* Gonthier J. diss'g but not on this point); *R v Church of Scientology of Toronto* (1997), 116 CCC (3d) 1 at 62-63 (Ont CA), leave ref'd [1997] SCCA No. 683.
[113] *Sherratt*, *supra* at 536; *Williams* at ¶42, 45-47; *R v Parks* (1993), 84 CCC (3d) 353 at 363-365, 370-371, 378-379 (Ont. CA); *Church of Scientology*, *supra* at 62-63.
[114] Reasons of LaForme J.A., ¶27, *supra* p.38.

representativeness is not an absolute right but rather is an essential but qualified one.[115]

[46] The *Charter* right of representativeness thus focusses on the integrity of the *process* by which the roll is created: the state is required to make reasonable efforts to ensure that the jury roll provides the institutional platform that is necessary to permit the jury to fulfill its role as the conscience of the community and to maintain public confidence in the justice system. As is explained in more detail below, the state's representativeness obligation is not, however, limited to a negative prohibition on improper exclusions. The *Charter* standard of representativeness not only requires that the state refrain from intentional discrimination on improper grounds, but also that it guard against systemic discriminatory effects. The degree of substantive non-representativeness that is experienced in practice is therefore relevant to assessing the reasonableness of the state's efforts: when systemic underrepresentation of a distinctive segment of society has been (or ought to have been) identified, greater attention is required, and less tolerance is to be extended to official actions or inactions that compound the non-representative nature of the roll. The overarching structural importance of representativeness is thereby given effect in individual cases by insisting that, at the institutional level, the authorities responsible for the creation of the jury roll exercise the due diligence, commensurate with the circumstances, that is needed to achieve representativeness.

[47] The Court of Appeal's legal analysis of the *Charter* right of representativeness, set out in Justice LaForme's judgment and expressly adopted by both Justices Goudge and Rouleau,[116] reflects these principles. Justice LaForme stated:

> [49] In my view, to meet its representativeness obligation, the state must make reasonable efforts at each step of creating the jury roll. That includes the state's actions in compiling the lists, but also in sending the notices, facilitating their delivery and receipt and encouraging the responses to them. The objective of the state's actions must be to seek to provide the platform necessary to select an impartial petit jury and to maintain public confidence in the criminal justice system by providing groups that bring distinctive perspectives to the jury process with their fair opportunity to be included in the jury roll.
>
> [50] In summary the question posed is whether in the process of compiling the jury roll, Ontario made reasonable efforts to seek to provide a fair opportunity for the distinctive perspectives of Aboriginal on-reserve residents to be included, having regard to all the circumstances and keeping in mind the objective served by the representativeness requirement.

---

[115] *Scientology*, supra at 62-63.

[116] Reasons of LaForme J.A., ¶23-51, Reasons of Goudge J.A., ¶234 and Reasons of Rouleau J.A., ¶278, *supra* p.37-47, 112, 130.

b) The Court of Appeal's articulation of the right of jury representativeness is fully consistent with Canadian constitutional principles

[48] Contrary to the Appellant's assertion,[117] the Court of Appeal's interpretation of the *Charter* right of jury representativeness does not undermine the Canadian approach to jury selection, and does not require the adoption of American-style juror *voir dires*. Rather, the Court of Appeal's interpretation is fully consistent with the Canadian constitutional framework.

[49] In this regard, the Appellant's frequent allusion to problems arising from a right to absolute proportionate representation is a straw-man argument. The Respondent has never suggested that representativeness requires that particular groups be proportionally represented on the roll, and the Court of Appeal agreed, expressly stating that the right to a representative jury roll "does not require a jury roll in which each group is represented in numbers equivalent to its proportion of the population of the community as a whole".[118] The excerpts of the judgments of Justices LaForme and Goudge upon which the Appellant fixates for the purposes of its criticism have thus been taken out of context. These excerpts must be read along with the Court of Appeal's unanimous articulation of the applicable legal principles. The following passages from Justice LaForme's articulation of the law clearly establish that the whole Court was fully alive to the principles that the Appellant asserts were overlooked:

- The Court of Appeal's test is focused squarely on the reasonableness of the state's efforts, and not the results of those efforts:

> [T]he focus must be on the steps taken by the state to seek to prepare a jury roll that provides a platform for the selection of a competent and impartial petit jury that will ensure confidence in the jury's verdict and contribute to the community's support for the criminal justice system..
>
> In my view, to meet its representativeness obligation, the state must make reasonable efforts at each step of creating the jury roll…
>
> The reasonable efforts standard is a continuing one. If, as time passes, further steps that are reasonably available are needed to provide the fair opportunity to be included, they must be taken.[119]

- The Court of Appeal expressly noted that an exclusive focus on the make-up of the roll that results from the state's process was incompatible with the random selection process and juror privacy.[120]
- The Court of Appeal directly acknowledged the limits of the state's control and responsibility in relation to the process required to compile the jury roll, despite its central involvement:

> It must be noted that the state does not have exclusive control over these steps. For example, there may be practical impediments that stand in the way of the state being able to use lists that fully reflect the entire community, or there may be individuals who choose not to respond to the notices received, entirely apart

---

[117] Appellant's factum, ¶1, 35-36.
[118] Reasons of LaForme J.A., ¶43, *supra* p.17. This paragraph falls within the portion of LaForme J.A.'s reasons that were expressly adopted by the other members of the panel.
[119] Reasons of LaForme J.A., ¶45, 49, 51, *supra* p.45-47 [emphasis added].
[120] Reasons of LaForme J.A., ¶43, *supra* p.45.

> from any action of the state. However, the state's actions clearly matter for both these steps of the process. The state has an important role in compiling the lists and sending the jury service notices and in facilitating delivery and receipt of the notices and the responses to them.[121]

[50] The Respondent submits that the Appellant's repeated invocation of the spectre of proportionate representation sidesteps the real issue: what efforts are reasonably to be expected of the state in preparing the jury roll, when it has knowledge that a distinctive segment of the community is persistently and starkly underrepresented on the roll, in circumstances where the group in question accounts for a sizeable proportion of the local population, is treated separately by the legislative scheme, and has a well-known history of systemic disadvantage and alienation from the justice system.

[51] According to the Appellant, any requirement that attention be paid to the actual composition of the jury roll will necessarily provoke an entirely different approach to the jury process, in which impartiality can only be ensured by way of extensive, American-style *voir dires*.[122] The Appellant thus claims that the recognition of representativeness as part of an accused's rights under ss.11(d) and 11(f) will compel a reappraisal of the established principles of the Canadian jury system, including the presumption of impartiality, the importance of random selection and respect for juror privacy. This argument is based on the false premise that there is an inexorable link between the standard employed to assess institutional impartiality, and the safeguards in place to ensure individual impartiality at the petit jury level. Rather, the presumption of juror impartiality is *Charter*-compliant only because of a web of safeguards at the institutional and individuals levels, which include a representative jury pool, random selection, the challenge for cause process, and other trial safeguards.[123] Thus, the presumption of impartiality at the individual juror level does not render jury roll representativeness less important within the Canadian constitutional context. Instead, representativeness is one of the pillars that permits the presumption of impartiality to be *Charter*-compliant.

[52] An insistence that the state have regard to the results of its efforts, and inquire into and respond to the potential discriminatory effects of its actions and inactions within the jury roll compilation process, does not mean that a standard of proportionate representation is to be imposed. Rather, it properly acknowledges that, in the context of entrenched patterns of systemic disadvantage, randomness alone will be insufficient to safeguard institutional impartiality. As a result, the state must ensure that its jury roll compilation efforts are responsive to systemic underrepresentation, to ensure that the jury roll

---

[121] Reasons of LaForme J.A., ¶47, *supra p.*46 [emphasis added].
[122] Appellant's factum, ¶36, 51.
[123] *Sherratt*, *supra* at 522-526, 532-533, 536-537; *Find*, *supra* at ¶20-24; *Williams*, *supra* at ¶45-47.

process does not itself compound existing systemic disadvantage. This does not mean that the state is to be held responsible for results that it cannot control, but it does mean that the state is not permitted to ignore these results when assessing what reasonable efforts it must make. The reasonable efforts standard may thus require the state to make additional or different efforts in order to counteract existing patterns of systemic disadvantage that interfere with the substantive representativeness of the roll.

[53] This approach is consistent with the principles of substantive equality, the "animating norm" of the *Charter* equality guarantee.[124] Contrary to the Appellant's contention,[125] a concern for substantive equal treatment of distinct groups of prospective jurors is easily and properly accommodated within a purposive interpretation of the s.11 jury representativeness right. This Court has affirmed that *Charter* rights must be interpreted contextually and in light of broader societal concerns.[126] In this vein, societal equality concerns have properly been employed to inform the interpretation of the accused's fair trial rights.[127] The Respondent thus submits that it is entirely appropriate that the *Charter* commitment to substantive equality inform the reasonable efforts standard that applies to assess whether the state has complied with its obligation to ensure the institutional impartiality of the jury.

[54] The Appellant is equally mistaken in its assertion that the majority of the Court of Appeal ignored the importance of causation.[128] The limited scope of the state's control over the outcome of the jury roll process was directly acknowledged in both majority judgments, as were the numerous and complex factors beyond the direct control of the state that contribute to the underrepresentation of on-reserve residents on the jury roll.[129] The majority concluded, however, on the basis of the evidence, that the state had been unreasonably inattentive to the serious known and worsening problem, and had consequently failed to inquire into and implement different approaches that were reasonably available to it and that would have been of assistance in addressing the problem of the stark and continuing underrepresentation of on-reserve residents.[130] On the basis of these factual findings, the majority concluded that the state had failed to satisfy the reasonable efforts standard. The majority's causation analysis was thus not tied to results. Rather, it was directly and properly tied to the ultimate issue:

---

[124] *Withler v Canada (Attorney General)*, [2011] 1 SCR 396 at ¶2; *R v Kapp*, [2008] 2 SCR 483 at ¶14-15.
[125] Appellant's factum, ¶58.
[126] *R v Mills*, [1999] 3 SCR 668 at ¶61-64; *R v Khelawon*, [2006] 2 SCR 787 at ¶48.
[127] *Mills*, *supra* at ¶90-92; *Williams*, *supra* at ¶48.
[128] Appellant's factum, ¶59-61.
[129] Reasons of LaForme J.A., ¶49 and Reasons of Goudge J.A., ¶259, 266, *supra* p.46-47, 122, 125
[130] Reasons of LaForme J.A., ¶166-7, 171, 183, 203, 208-212 and Reasons of Goudge J.A., ¶249, 260-2, 274, 276, *supra* p.89-90, 94-95, 102, 104-05, 118, 122-23, 128.

whether the state had made reasonable efforts in all of the circumstances.

[55] The Appellant's criticism of the majority's analysis is in fact grounded in an assertion that a direct, but-for causation element ought to be required, such that the state will effectively be absolved of all responsibility if it cannot be demonstrated that state's jury roll regime directly caused the underrepresentation at issue. Such an approach, which draws on the causation standard set in American fair cross-section jurisprudence,[131] is inappropriate in the Canadian constitutional context. The American causation standard is rooted in that country's equality jurisprudence, which has interpreted the Fourteenth Amendment's equal protection clause as protecting against intentional discrimination only, leaving no obligation on the state to address discriminatory effects.[132] This restrictive approach has been resolutely rejected by this Court,[133] because it is inconsistent with the principles of substantive equality. The Canadian constitutional framework recognizes, without difficulty, discrimination that results from the effects of state action, and not from its purpose. This profound difference ought properly to be reflected in the standard of causation required in relation to the *Charter* right of jury representativeness.

[56] This Court has consistently held that the requirement of a direct, but-for causal connection between state action and the claimed harm is an inappropriate standard in the *Charter* context.[134] This jurisprudence confirms that state action can properly attract *Charter* scrutiny when it contributes to the violation of a *Charter* right, even if third parties are the predominant proximate cause of the harm.[135] As this Court recently held in *Bedford*, for *Charter* purposes, "[w]hat is required is a sufficient connection, having regard to the context of the case".[136] The Respondent submits that the "sufficient causal connection" standard identified in *Bedford* is also the appropriate standard to assess the connection between the state's jury roll efforts and the resulting roll, in order to decide whether the reasonable efforts standard underpinning the s.11 representativeness guarantee has been satisfied. The relevant context will include such factors as the state's real and constructive knowledge, the circumstances of the

---

[131] *Duren v Missouri*, 439 US 357 at 364 (1979); *Berghuis v Smith*, 130 S.Ct. 1382 at 1395. See also *People v Robinson*, No. 285416, 2009 WL 3365778 at 4-5 (Mich. Ct. App., 2009).

[132] See *Hernandez v New York*, 500 US 352 at 359-360, 362 (1991) (exclusion challenge under 14th Amendment, requiring proof of discriminatory intent or purpose). See incorporation of this requirement into fair cross-section claims in *United States v Rioux*, 930 F.Supp. 1558 at 1578 (D Conn 1995); *United States v Horne*, 4 F.3d 579 at 588 (8th Cir. 1993). See also Nina W. Chernoff, "Wrong About the Right: How Courts Undermine the Fair Cross-Section Guarantee by Confusing It With Equal Protection," (2012) 64 Hastings LJ 141 at 167-182.

[133] *Brooks v Canada Safeway Ltd.*, [1989] 1 SCR 1219 at 1239-1240; *Eldridge v British Columbia*, [1997] 3 SCR 624 at ¶62.

[134] *Canada (Attorney General) v Bedford*, [2013] 3 SCR 1101 at ¶73-78; *Canada (Prime Minister) v Khadr*, [2010] 1 SCR 44 at ¶19-21; *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR at ¶54-55.

[135] *Bedford*, *supra* at ¶76, 89*; Vriend v Alberta*, [1998] 1 SCR 493 at ¶75, 84; *Dunmore v Ontario (AG)*, [2001] 3 SCR 1016 at ¶26

[136] *Bedford*, *supra* at ¶78.

group whose underrepresentation is at issue, and the structure of the statutory scheme – precisely the test applied by the majority in the Court of Appeal.

c) Provincial jury legislation is the means by which the state seeks to meet its constitutional representativeness obligations

[57] The Appellant appears to suggest that the various provincial jury Acts governing out-of-court jury roll compilation process and the *Criminal Code* provisions governing the in-court jury process ought to serve as primary sources for interpreting the purpose and meaning of the *Charter* right of jury representativeness as a component of ss.11(d) and 11(f).[137] At the same time, the Appellant seems to criticize the Court of Appeal for grounding its analysis in the unchallenged statutory provisions of Ontario's *Juries Act* and interpreting the scope of the state's constitutional obligations in light of the existing statutory regime. The Appellant argues that the Court of Appeal's analysis thereby presumes that the policy choices underpinning Ontario's statutory regime are constitutionally required.[138] The Appellant errs in both respects. The Appellant's reliance on provincial legislation to interpret the content of the *Charter* right of jury representativeness effectively inverts the required constitutional analysis, and improperly suggests that the statutory provisions should determine or limit the scope of protection offered by ss.11(d) and 11(f). To the contrary, the *Charter* rights must be interpreted in a purposive manner, in order to set the standard against which the legislation and state action is to be tested.[139]

[58] The Respondent submits that the enactment and implementation of provincial jury legislation must be understood as the means by which the state seeks to meet its constitutional obligations to ensure a representative jury roll. The provincial governments' responsibility in this regard is consistent with the division of powers set out in ss.91(27) and 92(14) of the *Constitution Act, 1867*: provincial jurisdiction over the administration of justice includes a responsibility to provide for the institutional impartiality of the jury rolls and panels, while federal jurisdiction over the criminal law and matters of criminal procedure includes the responsibility to ensure the impartiality of the petit jury in particular cases.[140]

[59] In devising and implementing a system to satisfy its responsibility, a Province must inevitably make legislative and administrative choices, including with respect to the source(s) from which names are to be selected for potential inclusion on the roll, the procedure by which selection of names is made, the scope of the geographic area from which selection of names is made, and the classes of individuals

---

[137] See Appellant's factum, ¶17, 21-22.
[138] See Appellant's factum, ¶55, 71.
[139] *Big M*, *supra* at 343-344.
[140] *R v Barrow*, [1987] 2 SCR 694 at 712-713; *Find*, *supra* at ¶19.

who are to be excluded from jury service. It is therefore not surprising that significant variation exists in relation to each of these choices across the Provinces.[141] These legislative and administrative choices also shape the state efforts that are required to ensure constitutional compliance: because there is legislative and administrative variation in the means chosen by Provinces to create their jury rolls, the nature of the steps that the Province will be required to take to achieve constitutional compliance may differ. So long as the constitutional standard set by the *Charter* is satisfied, these are matters of public policy falling within the jurisdiction of the legislature.

[60] A challenge to the constitutional adequacy of the jury roll by an accused can proceed on a number of different bases, depending on the circumstances. An accused might argue that the legislation itself necessarily violates the representativeness guarantee, in which case a constitutional challenge to the statute would be required.[142] Alternatively, as in the present case, an accused might argue that the representativeness problem results from the manner in which the legislation has been implemented, in which case the state's legislative choices form the essential factual backdrop against which the constitutional adequacy of the state's implementation efforts must be assessed. Regardless of which type of challenge is brought, the province's legislative choices will necessarily frame the analysis.

d) Ontario's choice to treat on-reserve Aboriginal residents separately must ground the assessment of the constitutional adequacy of the state's efforts in this case

[61] The Respondent did not challenge the legislative choices embedded in Ontario's *Juries Act* in relation to the inclusion of on-reserve residents. Rather, he challenged the implementation of those choices as they related to the inclusion of on-reserve Aboriginal residents on the 2008 Kenora jury roll. The Court of Appeal's analysis was thus properly grounded in the administration of the *Juries Act* in relation to on-reserve residents. Ontario has chosen to implement its representativeness obligation through a statutory regime that treats on-reserve residents separate and apart, and that predictably requires recurrent and extensive efforts to ensure the inclusion of those persons on the jury rolls. The Court of Appeal appropriately treated these legislative choices as part of the context against which the constitutional sufficiency of the state's efforts was to be assessed. This approach does not confound the state's constitutional obligation with the legislative mechanism chosen to satisfy it, and it does not constitutionalize a particular legislative mechanism. Instead, it ensures that the state is properly held to account for the manner in which it discharges its constitutional responsibility in respect of jury

---

[141] See the differences in provincial jury legislation identified in the Appellant`s factum, ¶21, footnotes 28, 29, 32, 34 and Appendix E.
[142] The challenges to the exclusion of non-citizens in *Scientology* and *R v Laws* (1998), 41 OR (3d) 499 (CA) occurred on this basis.

representativeness, while respecting the legislature's unchallenged legislative choices.

[62] The Respondent submits that the majority of the Court of Appeal therefore correctly held that the required assessment of the reasonableness of the state's efforts must be informed by two particular contextual factors: first, the state's special relationship with Aboriginal peoples; and second, the fundamental estrangement of Aboriginal people from the criminal justice system.[143] The relevance of these two contextual factors is heightened by the choices Ontario has made in devising its jury regime and the unique circumstances of Aboriginal peoples. Ontario's regime necessitates a separate process by which the state must interact with prospective jurors who reside on-reserve: given the structure of the *Juries Act*, if these steps are not undertaken, on-reserve residents will be excluded entirely from participation in the jury system. Ontario's regime also obliges the state to engage directly with First Nations at the collective (band) level, to obtain the lists of names that are required pursuant to s.6(8).

[63] In these circumstances, it is appropriate to expect that the state's actions in implementing its jury regime in relation to on-reserve residents will be informed by an understanding of its special relationship with Aboriginal peoples, as well as by its knowledge of the profound estrangement of Aboriginal people from the criminal justice system. Appropriate regard by the state to these contextual factors is essential to ensure that the jury regime it has designed does not compound the ongoing systemic discrimination experienced by Aboriginal people in the criminal justice system. This is a straightforward application of the well-established *Charter* principle of substantive equality, based in a recognition that "the concept of equality does not necessarily mean identical treatment and that the formal 'like treatment' model of discrimination may in fact produce inequality".[144]

[64] In the context of the interaction between Aboriginal people and the criminal justice system, in the sentencing context and more broadly, this Court has noted the unsatisfactory consequences of a formalistic equality approach. *Gladue*, *Ipeelee* and their progeny thus direct that attention be paid to the unique systemic and background circumstances of Aboriginal people as well as the sanctions that may be appropriate in light of the individual's particular Aboriginal heritage or connection. The resulting "*Gladue* principles" are grounded in a vision of substantive equality, and a recognition that the systemic disadvantage faced by Aboriginal peoples means that their differences must be taken into account if they

---

[143] Reasons of LaForme J.A., ¶121-134, 135-151 and Reasons of Goudge J.A., ¶241, *supra* p.71-82, 86-87.
[144] *Kapp*, *supra* at ¶15.

are to be treated fairly.[145] As this Court noted in *Ipeelee*, *Gladue* is based on "an acknowledgement that to achieve real equality, sometimes different people must be treated differently".[146]

[65] The Appellant concedes that "*Gladue* principles" "must undoubtedly be considered in determining, and assessing, what will amount to reasonable efforts by the state". The Appellant then asserts, however, that the majority of the Court of Appeal went further, and somehow employed *Gladue* to "mandate success or proportionate representation on the roll".[147] This criticism is entirely unfounded. It rests on a misreading of the majority judgments. Justice LaForme clearly held that the reasonableness of the state's efforts was to be assessed in light of the principles derived from *Gladue*.[148] The portion of his judgment seized upon by the Appellant – in which Justice LaForme observed that given the continuing significance of the history of colonialism, different efforts by the state that might be required to achieve "real equity" – drew expressly upon *Ipeelee*; it simply reflects the principle that the state's conduct ought properly to be guided by the principle of substantive equality, rather than formal parity of treatment.[149] Similarly, Justice Goudge noted that the fundamental estrangement of Aboriginal people from the justice system "simply enhances the importance of the state's efforts to provide Aboriginal on-reserve residents with the opportunity to be included in the annual jury roll".[150] Thus, contrary to the Appellant's claim, the majority's reliance on *Gladue* does not suggest that the state is responsible for the actual composition of the roll and does not "mandate…proportionate representation".

[66] The Appellant also argues that the majority approach, and in particular references by the majority to the honour of the Crown, "provides certain groups of people with a constitutional entitlement to extra efforts aimed at their proportionate inclusion in a jury roll".[151] This criticism also rests on a misreading of the majority judgments. Neither Justice LaForme nor Justice Goudge held that the state owed Aboriginal people resident on-reserve an independent constitutional duty, separate from the particular statutory regime that the state had chosen to implement its s.11 jury representativeness

---

[145] *R v Gladue*, [1999] 1 SCR 688 at ¶64-68, 87-88; *R v Ipeelee*, [2012] 1 SCR 433 at ¶67-68, 71, 75, 79; *United States of America v Leonard*, 2012 ONCA 622 at ¶51-52, 60, leave ref'd [2012] SCCA No. 490; *Frontenac Ventures Corp v Ardoch Algonquin First Nation* (2008), 91 OR (3d) 1 at ¶57 (CA), leave ref'd [2008] SCCA No. 357.
[146] *Ipeelee*, *supra* at ¶71.
[147] Appellant's factum, ¶64.
[148] Reasons of LaForme J.A., ¶146, *supra* p.80.
[149] Reasons of LaForme J.A., ¶145, 151, *supra* p.80-82 citing *Ipeelee*, *supra* at ¶72 and *Leonard*, *supra* at ¶52. The use of the term "real equity" in Justice LaForme's reasons, as opposed to the words "real equality" that were employed in paragraph 71 of *Ipeelee*, appears to result from the reproduction of a minor error in transcription that is apparent in paragraph 52 of Sharpe J.A.'s decision in *Leonard*, in which the word "equity" was substituted for "equality" in quoting from *Ipeelee*.
[150] Reasons of Goudge J.A., ¶241(c), *supra* p.114.
[151] Appellant's factum, ¶72.

obligations. To the contrary, both Justice LaForme and Justice Goudge expressly rooted the state's particular obligations in respect of on-reserve residents in the specific statutory regime that Ontario had chosen as the mechanism to implement its representativeness obligations.[152] Neither imposed any specific duties on the state in respect of Aboriginal on-reserve residents, apart from the overarching s.11 obligation to make reasonable efforts to provide a fair opportunity for their distinctive perspectives to be included, having regard to all the circumstances; and did not aim at "proportionate representation".

[67] The honour of the Crown "finds its application in concrete practices", and these practices vary depending on the circumstances.[153] Reference to the "honour of the Crown" thus evokes a body of experience regarding the state's special relationship with Aboriginal people and the particular approaches that have proven successful in fostering and maintaining this relationship, including consultation, government-to-government engagement and the purposive interpretation of state obligations.[154] Justices LaForme and Goudge appropriately relied upon this body of useful experience in assessing the reasonableness of Ontario's efforts. It served to reinforce the factual conclusions reached by both majority judges, on the basis of the Iacobucci Report and other evidence, that there were additional steps that the state could have taken to address underrepresentation, had it acted on its knowledge in a diligent and attentive manner, and not delegated its constitutional responsibilities to a junior bureaucrat.[155] Contrary to the Appellant's assertion,[156] neither Justice LaForme nor Justice Goudge held that the constitutional doctrine of the honour of the Crown gave rise to an independent duty to consult with on-reserve residents in relation to their inclusion on the jury roll. Rather, both concluded that in the particular circumstances of this case and given the structure of the statutory regime, the state could not claim to have satisfied the constitutional standard of reasonable efforts when it had failed entirely to take any steps to engage with Aboriginal leaders.[157] This is primarily, if not exclusively, a factual determination. It most certainly is not a pronouncement of constitutional doctrine.

[68] The Appellant appears to fault the Court of Appeal for not articulating an abstract legal framework that will readily dispose of all the possible issues that might arise in future cases, and for not

---

[152] Reasons of LaForme J.A., ¶127-128 and Reasons of Goudge J.A., ¶241(b), *supra* p.74, 114.
[153] *Manitoba Metis Federation Inc. v Canada (Attorney General)*, [2013] 1 SCR 623 at ¶73.
[154] *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511 at ¶16, 25; Manitoba Metis, supra at ¶73-78.
[155] Reasons of LaForme J.A., ¶202-204, 208-209 and Reasons of Goudge J.A., ¶272-273, 275, *supra* p.101-2, 104, 127-28.
[156] Appellant's factum, ¶69.
[157] Reasons of LaForme J.A., ¶127, 130-3, 201, 206 and Reasons of Goudge J.A., ¶241(b), 265, 271, 273, 275, *supra* p.74-6, 101, 103, 114, 124, 126-8.

providing the state with clear instructions as to what is required for *Charter* compliance.[158] This criticism is misplaced. The majority's approach was properly rooted in the particular factual and legal context of this case. Several aspects of this context are noteworthy. First, this case involves a unique statutory regime that specifically treats one group of people in a different manner than all others. Second, the group whose representation on the roll was at issue in this case is unique: the geographically-bounded group targeted by the statutory regime – on-reserve residents – is almost exclusively Aboriginal, meaning that the statutory regime itself identifies a group that has a well-established common identity and a particular history of disadvantage.[159] Third, this case involved unique and stark factual circumstances: on-reserve residents account for roughly one-third of the population of Kenora District, but only 4% of the 2008 jury roll, and despite Ontario's long-standing knowledge of the persistent problem of underrepresentation, its response was characterized by continual inattention. Finally, by the time that the Court of Appeal rendered its judgment, the state had finally embarked upon a process of study, consultation and policy review. Given these circumstances, the Court of Appeal cannot be faulted for choosing to render a decision that disposed of the legal issues before it, while declining to dictate what steps were required of the state.[160] In holding that Ontario's inaction up to and including 2008 failed to satisfy the reasonable efforts standard, the majority judgments placed no constraint on Ontario's policy choices in this sphere. This approach fulfills the court's obligation to review the constitutionality of state conduct in respect of an individual before the court, while maintaining appropriate respect for the government's prerogative over policy matters.[161]

B. The majority of the Court of Appeal properly concluded that the state had failed to meet its representativeness obligations in respect of the 2008 Kenora jury roll

[69] The Appellant's challenge to the conclusion reached by the majority of the Court of Appeal is not in fact based in any dispute regarding the applicable principles. In this Court, the Appellant has for the first time conceded that the make-up of the jury roll that results from the state's efforts is a relevant factor to be considered in assessing whether the constitutional reasonable efforts standard has been met. The Appellant's factum includes the following critical acknowledgement:

> Whether the [representativeness] standard has been met will depend on an objective assessment of the circumstances known at the time, focusing on the efforts made. While results may be considered, it is for

---

[158] Appellant's factum, ¶1, 57.
[159] Note, in particular, *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at ¶13-15; *Williams*, *supra* at ¶58; *R v Van der Peet*, [1996] 2 SCR 507 at ¶30; *R v Sappier*, [2006] 2 SCR 686 at ¶45.
[160] Reasons of Goudge J.A., ¶262, 274, *supra* p.123, 128.
[161] *Vriend*, *supra* at ¶136, 138-139; *M. v H.*, [1999] 2 SCR 3 at ¶78; *Mahe v Alberta*, [1990] 1 SCR 342 at 391-393.

> the purpose of assessing the reasonableness of the efforts, and not as an end in themselves. For example, if there is a poor response rate, the state may need to look into why, and make reasonable efforts, within its power, to address the cause or causes, such as an issue with the delivery of questionnaires, or a problem understanding the questionnaire due to its technical nature.[162]

In substance, this is the precise standard applied by the majority of the Court of Appeal, and which Justices LaForme and Goudge concluded Ontario had failed to meet.

[70] The basis for the Crown's appeal in this case is therefore in its essence a disagreement with the findings of fact made by Justices LaForme and Goudge. It bears repeating that the Court of Appeal dealt with the representativeness issue as a court of first instance. The Court of Appeal had the benefit of the extensive record of fresh evidence, as well as several days of oral argument, which included a detailed review of the evidence by both parties. The panel remained seized with the case while the fresh evidence was gathered,[163] and its familiarity with the case as a whole was enhanced by its involvement in the development of the fresh evidence, through rulings and directions on disclosure disputes.[164] The findings of fact made by the majority are entitled to significant deference.[165] On further appeal, such findings – including the weight to be assigned to the evidence and the inferences to be drawn from the facts – are only to be disturbed if they are clearly wrong, unsupported by the evidence or otherwise tainted by palpable and overriding error.[166] This deferential standard of review also applies to the trier of fact's determinations of mixed fact and law, unless the determination was clearly based on an extricable error in principle or a failure to consider all relevant circumstances.[167]

[71] A "palpable and overriding" error must be capable of clear identification.[168] The Appellant has made no effort to meet this well-established burden. Instead of engaging with the facts found by the majority of the Court of Appeal, the Crown seeks to induce a reassessment of the factual record by this Court, by selectively highlighting certain aspects of the record that was before the Court of Appeal. This represents a disregard for the principles of appellate review.[169]

[72] It is the Respondent's respectful position that the central factual findings made by the majority

---

[162] Appellant's factum, ¶38 [emphasis added].
[163] *R. v. Kokopenace*, 2011 ONCA 536 at ¶64 (regarding Part I of the appeal, dated July 29, 2011), *AR*, v.1, p.18.
[164] *R. v. Kokopenace*, 2011 ONCA 635 (directions regarding an application for disclosure brought by the accused, dated October 7, 2011); *R. v. Kokopenace*, 2011 ONCA 759 (ruling regarding disclosure, dated December 1, 2011), *AR*, v.1, p.19-28.
[165] *R v Davey*, [2012] 3 SCR 828 at ¶64; *R v Yumnu*, [2012] 3 SCR 777 at ¶17, 28.
[166] *R v Clark*, [2005] 1 SCR 6 at ¶9; *Housen v Nikolaisen*, [2002] 2 SCR 235 at ¶10, 19, 21-25; *Bedford*, *supra* at ¶48-49. This standard of review is applicable to findings of fact made by an appellate court on the basis of fresh evidence: *Davey*, *supra* at ¶10, 64-65; *Yumnu*, *supra* at ¶17; *R v Emms*, [2012] 3 SCR 810 at ¶18; *R v W.E.B.*, 2014 SCC 2 at ¶2.
[167] *R v Buhay*, [2003] 1 SCR 631 at ¶45; *R v Oickle*, [2000] 2 SCR 3 at ¶22, 71; *Housen*, *supra* at ¶36-37.
[168] *Clark*, *supra* at ¶9; *Housen*, *supra* at ¶5-6; *H.L. v Canada (Attorney General)*, [2005] 1 SCR 401 at ¶69-70.
[169] *Bedford*, *supra* at ¶48-49.

are dispositive of this appeal, even if the legal test for representativeness urged by the Appellant (quoted above at paragraph 69) is adopted by this Court. The Appellant's challenge to the legal analysis and conclusions of the majority is contingent on a reversal of these central factual findings made by the majority. Three factual findings are worthy of note in this context:

- First, the majority concluded that the state knew about the serious problem of the underrepresentation of Aboriginal on-reserve residents in the jury system in Kenora long before the issue received public attention in 2008.[170]
- Second, the majority found that the state's efforts in respect of the 2008 jury roll were characterized by "inattention" and an inappropriate assignment of responsibility for the issue to a junior member of the public service. This pervasive inattention and inappropriate delegation of responsibility were found to have caused a number of mistakes and missed opportunities that exacerbated the non-representative nature of the roll, including: the failure to compile and review response rate data; the failure to provide appropriate training and instruction to local CSD staff; the exclusion of several reserves from the s.6(8) process; the failure to update s.6(8) instructions to reflect the *Corbiere* decision; the failure to consider different modalities of engagement; the failure to take any steps to investigate or address the significant delivery problem; and the failure to inquire into the causes of poor response rates.[171]
- Third, the majority concluded that, prior to 2008, additional steps falling within the state's control could and should have been taken to address the underrepresentation issue, if proper attention had been paid to the problem and appropriate steps taken to investigate it in a timely way.[172]

It is therefore respectfully submitted that there is no basis for this Court to interfere with these factual findings, which were amply explained in the majority judgments and are fully supported by the record. The Respondent thus submits that the majority of the Court of Appeal properly concluded that Ontario failed to meet its representativeness obligations in respect of the 2008 Kenora jury roll.

C. The majority of the Court of Appeal was correct in ordering a new trial

[73] The question of the appropriate remedy for the violation of the Respondent's *Charter* rights was decided by the majority as a court of first instance. The dissenting opinion did not reach this issue. The majority's exercise of its remedial discretion is to be treated with deference: an appellate court is only to intervene if the remedy resulted from a misdirection or was so clearly wrong as to amount to an injustice.[173] It is therefore respectfully submitted that there is no such basis for appellate intervention.

---

[170] Reasons of LaForme J.A., ¶166-167, 171, 183, 209, and Reasons of Goudge J.A., ¶243, 249, 263, *supra* p.117-118, 122-123, 130, 132-133, 146, 150-151, 156.
[171] Reasons of LaForme J.A., ¶162, 168, 170, 183, 194, 201-202, 206, 208-211, and Reasons of Goudge J.A., ¶251, 260-262, 264, 275, *supra* p.117-118, 122-123, 130, 132-133, 146, 150-151, 156.
[172] Reasons of LaForme J.A., ¶203-204, 208, and Reasons of Goudge J.A., ¶259, 260-262, 265, 272-274, 276, *supra p.*117-118, 122-123, 130, 132-133, 146, 150-151, 156.
[173] *R v Regan*, [2002] 1 SCR 297 at ¶117; *R v Bellusci*, [2012] 2 SCR 509 at ¶17-18; *R v Babos*, 2014 SCC 16 at ¶48.

[74] The Appellant's challenge to the remedy granted by the Court of Appeal rests on the faulty premise that a meaningful distinction exists between the content of ss.11(d) and 11(f) in relation to jury representativeness, such that the only possible *Charter* violation in this case relates to s.11(f).[174] This assertion ignores this Court's express recognition in *Williams* that jury roll representativeness is "an essential safeguard of the accused's s.11(d) *Charter* right to a fair trial and an impartial jury".[175] More fundamentally, the Appellant's analysis would empty the institutional aspect of the s.11(d) impartiality guarantee of all meaning when trial occurs by jury. *Lippé* confirms that institutional impartiality is a vital aspect of the s.11(d) guarantee:

> The objective status of the tribunal can be as relevant for the "impartiality" requirement as it is for "independence". Therefore, whether or not any particular judge harboured pre-conceived ideas or biases, if the system is structured in such a way as to create a reasonable apprehension of bias on an institutional level, the requirement of impartiality is not met. As this Court stated in *Valente*, *supra*, the appearance of impartiality is important for public confidence in the system… If a judicial system loses the respect of the public, it has lost its efficacy… [P]ublic confidence in the system of justice is crucial to its continued existence and proper functioning.[176]

Just as judicial impartiality must be present at both institutional (structural) and individual levels to ensure fairness and public confidence, so too jury impartiality must be present at both levels. The Appellant ignores this reality. Jury representativeness is not a technicality. Rather, it is a fundamental safeguard of the right to a fair trial by an impartial jury.

[75] The majority found that the state's failure to make reasonable efforts to provide a fair opportunity for on-reserve residents to be included in the 2008 Kenora jury roll undermined public confidence in the integrity and administration of the justice system.[177] This conclusion is amply supported by the majority's findings of fact. The relevant legal principles, concerning the exercise of remedial discretion in circumstances in which the integrity of the administration of justice is undermined, are well-established. In particular, the authorities clearly confirm that in such cases a finding of actual prejudice is not a prerequisite for remedial relief, particularly when the remedy is a new trial and not a stay of proceedings.[178] It is also well-established that the *Criminal Code* s.670 and s.671 curative provisions are inapplicable in circumstances in which the appearance of justice has been undermined.[179] As there is no way to determine what jury would have resulted from a *Charter*

---

[174] Appellant's factum, ¶79, 82.
[175] *Williams*, *supra* at ¶47.
[176] *Lippé*, *supra* at 140-141 [original emphasis removed, underlined emphasis added].
[177] Reasons of LaForme J.A., ¶227, *supra* p.109.
[178] *R v Nixon*, [2011] 2 SCR 566 at ¶41; *R v O'Connor*, [1995] 4 SCR 411 at ¶62-4, 75, 81-2; *R v Mills*, [1986] 1 SCR 863 at 926-7; *Davey*, *supra* at ¶50-1, 74; *R v Khan*, [2001] 3 SCR 823 at ¶16; *R v Cameron* (1991), 64 CCC (3d) 96 at 101-2 (Ont CA).
[179] *Barrow*, *supra* at 717; *R v Rowbotham* (1988), 41 CCC (3d) 1 at 33-6 (Ont CA); *R v Butler* (1984), 63 CCC (3d) 243 at 260-1

compliant process, the authorities mandate that prejudice is to be inferred when the composition of the jury may have been affected.[180] As a matter of principle, the appearance of fairness and public confidence in the justice system dictate that the Crown cannot be permitted to take advantage of the uncertainty that results from the state's failure to comply with its representativeness obligations.[181]

[76] It was thus entirely appropriate for the majority to conclude that the possibility that the Respondent's jury would have been the same even if the state had made the requisite reasonable efforts – which amounts to a claim that no actual prejudice has been demonstrated – was not a bar to s. 24(1) relief. The Court of Appeal expressly considered and addressed all of the factors that the Appellant now asserts were overlooked:[182]

- The majority accepted that Ms. Loohuizen exhibited dedication and thoughtfulness in her efforts, and "did the very best she could within the limits of her relatively junior position, and the very limited training she had received".[183] The majority nevertheless found, for reasons that were amply explained and supported by the evidence, that the state as a whole had been inattentive and indifferent to the known and worsening problem. In such circumstances of systemic failure, the absence of bad faith could not be determinative.
- The Court also rejected the Crown's argument that trial counsel's failure to raise the jury representativeness issue at trial precluded a new trial, finding that "[t]rial counsel's assumption, as stated in his cross-examination, that the state was complying with its obligations, was a reasonable one".[184] The Appellant's suggestion that a failure to exercise due diligence ought to be inferred from trial counsel's failure to request disclosure relating to the jury roll rings hollow. The Crown actively resisted providing disclosure regarding jury composition issues until after the Court of Appeal's decision in *Pierre v. McRae* in 2011.[185] Moreover, in circumstances in which the state controlled all the relevant information, the Appellant cannot *both* assert that local CSD staff acted reasonably "in the circumstances known to Ontario at the time"[186] *and* contend that trial counsel ought to have suspected that there was a systemic problem with the representativeness of the jury roll.

[77] The notion of a right without a remedy is antithetical to the Charter.[187] A "just and appropriate" remedy under s. 24(1) must vindicate the claimant's Charter rights in a responsive, effective and meaningful manner.[188] Contrary to the Appellant's contention, a declaration alone will not vindicate the

---

(BCCA).

[180] *R v Cloutier*, [1979] 2 SCR 709 at 724; *Parks*, *supra* at 380.

[181] *Parks*, *supra* at 380; *R v Gamble*, [1988] 2 SCR 595 at 648; *Peters v Kiff*, 407 US 493 at 504 (1972).

[182] Appellant's factum, ¶82, 85, 87.

[183] Reasons of Goudge J.A., ¶251, *supra* p.119. See also Reasons of LaForme J.A., ¶189, 194, *supra* p.97-98.

[184] Reasons of LaForme J.A., ¶230, *supra* p.110.

[185] *Pierre v McRae*, 2011 ONCA 187; Reasons of LaForme J.A., ¶55-56, *supra* p.48-49.

[186] Appellant's factum, ¶78.

[187] *Mills*, *supra* at 971-972; *R v 974649 Ontario Inc.*, [2001] 3 SCR 575 at ¶19-20.

[188] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003] 3 SCR 3 at ¶25, 55; *Canada (Attorney General) v PHS Community Services Society*, [2011] 3 SCR 134 at ¶142.

Respondent's *Charter* rights. A declaration alone will offer no meaningful remedy to the Respondent for the fact that his *Charter* rights were breached when he was tried by a jury selected from a roll that lacked the essential safeguard of representativeness: the conviction resulting from this fundamentally tainted process will remain in force. Declarations have been held to offer an effective and flexible remedial option in cases in which alternative remedies are unavailable or inappropriate, for example when the underlying dispute between the parties has become moot but judicial pronouncement on the relevant principles would nevertheless serve a practical purpose,[189] or when no other remedy is available to vindicate the individual's right,[190] or when the particular circumstances militate against a more specific judicial remedy, generally because the government is better placed to make the necessary decision within a range of constitutional options declared by the court.[191] In cases in which a declaration is granted notwithstanding the availability of a more direct judicial remedy to vindicate the individual's rights, the determination that a declaration is appropriate and just is nevertheless predicated on a connection between the remedy and the breach for the individual whose rights had been violated: the court expects the government to take specific and tangible action to comply with the declaration and remedy the violation experienced by the individual claimant.[192] When this expectation does not hold true, the inappropriateness of declaratory relief has been recognized.[193] This is the situation in the present case, as the Appellant does not intend to do anything to vindicate the Respondent's rights in response to the proposed declaration. In these circumstances, a bare declaration is neither appropriate nor just. A new trial is the least intrusive available remedy.

[78] Moreover, the Court of Appeal considered the lesser remedy of a declaration, but properly concluded that "the only effective remedy is to order a new trial", because "a declaration could not restore public confidence in the criminal justice system going forward, nor could it restore public confidence that justice was done in the [Respondent's] case".[194] The Court of Appeal's assessment in this regard is reinforced by the fact that the systemic problems uncovered with respect to the 2008 Kenora jury roll continue more than six years later, as the recent invalidation of the 2014 Thunder Bay

---

[189] *Solosky v The Queen*, [1980] 1 SCR 821 at 830-833; *Manitoba Metis, supra* at ¶131-132; *Multani v Commission scolaire Marguerite-Bourgeoys*, [2006] 1 SCR 256 at ¶82.
[190] *Gamble*, *supra* at 644-645, 648-649; *Kelso v The Queen*, [1981] 1 SCR 199 at 210; *Dumont v Canada (Attorney General)*, [1990] 1 SCR 279 at 280, rev'g 52 DLR (4th) 25 at 38-42 (MB CA).
[191] *Mahe*, *supra* at 391-393; *Khadr*, *supra* at ¶33-47; *Eldridge*, *supra* at ¶96.
[192] *Mahe*, *supra* at 393; *Eldridge*, *supra* at ¶96; *Khadr*, *supra* at ¶39, 47.
[193] *PHS Community Services Society*, *supra* at ¶146-150; *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, [2000] 2 SCR 1120 at ¶258-261 (per Iacobucci J. dissenting in part).
[194] Reasons of LaForme J.A., ¶228, *supra* p.109.

jury roll confirms.[195] The Appellant's criticism of the majority's decision in regard to the appropriate remedy thus not only fails to address the critical issue of public confidence in the administration of justice, but also stubbornly denies the existence of an ongoing and still festering problem.

D. The exclusion of Aboriginal people resident on-reserve from the jury rolls constitute violations of s.15 of the *Charter*

[79] To establish a s.15 violation, it must be shown that (1) the impugned law or government action creates a distinction based on an enumerated or analogous ground, and that (2) the distinction creates a disadvantage by perpetuating prejudice or stereotyping.[196] The assessment whether a law or action violates the "animating norm" of substantive equality requires a contextual focus upon the actual impact of the law or action.[197] Laws or actions that lead to discriminatory effects need not be intentional to run afoul of s.15.[198]

a) Public interest standing and the breach of potential jurors' s.15 rights

[80] The circumstances that result in an underrepresentation of on-reserve residents on the jury roll give rise to a violation of the s.15 rights of potential jurors resident on-reserve. The impugned state action creates and exacerbates a distinction on the basis of on-reserve residence that significantly diminishes the opportunity of on-reserve Aboriginal people to serve on a jury, exacerbating their existing disadvantage and alienation in the criminal justice system. The Court of Appeal declined to consider this issue on the basis that the Respondent should not be granted public interest standing because he sought a personal remedy under s.24(1) and because "he offered no reason why prospective jurors could not reasonably and effectively challenge the state's actions."[199] This Court has recently held, however, that the strict approach applied by the Court of Appeal to the third factor of the public interest standing test constitutes an error in principle, as the presence of other potential litigants does not preclude such standing: "the question is whether this litigation is a reasonable and effective means to bring a challenge to court."[200] Further, the three *Borowski* factors to be considered when assessing public interest standing are not to be treated as a rigid checklist but are interrelated considerations to be weighed and applied in a flexible and generous manner that serves the underlying purposes of the law of standing, including the proper allocation of judicial resources, maintenance of an adversarial context,

---

195 *Wabason, supra*.
196 *Kapp, supra* at ¶17; *Withler, supra at* ¶30 ; *Quebec (AG) v. A,* [2013] 1 SCR 61 ¶324-325 (per Abella J. for the maj on this pt).
197 *Withler, supra* at ¶2, 37-40, 43, 54; *Quebec v A, supra at* ¶319, 324.
198 *Withler, supra* at ¶64; *Eldridge, supra* at ¶60-62; *Vriend, supra* at ¶82-86.
199 Reasons of LaForme J.A., ¶220-22, *supra* p.107-108.
200 *Manitoba Metis, supra* at ¶43; *Canada (AG) v Downtown Eastside Sex Workers,* [2012] 2 SCR 524 at ¶60, 67-70.

and ensuring that public acts are not immune from challenge.[201]

[81] The Respondent submits that consideration of the *Borowski* factors demonstrates that he is an ideal candidate to advance a s.15 claim in regard to the impact of the state's actions on potential jurors who reside on-reserve:

- The impugned practices raise a serious issue regarding non-compliance with s.6(8) of the *Juries Act*, resulting in the violation of s.15 rights.
- The issue affects the Respondent directly, because it had an impact on the representativeness of his jury. The necessary adversarial setting is properly assured, and that the Respondent sought personal relief under s.24(1) of the *Charter* cannot detract from his genuine interest in this issue.
- The factors to consider in assessing the "reasonable and effective means of bringing the issue to court" weigh in favor of granting the Respondent public interest standing. The existence of other potential claimants must be assessed in light of "practical realities", including the alienation and disadvantage experienced by Aboriginal people vis-à-vis the justice system, as well as the diffuse nature of any prospective juror's interest in ensuring an equal opportunity to serve as a juror. It is unreasonable to expect that a prospective juror resident on-reserve, already alienated from the criminal justice system, and who suffers a less direct impact than the Respondent, will be inclined or able to launch such a constitutional claim. Granting public interest standing to the Respondent to advance a s.15 claim would thus provide access to justice for disadvantaged persons in society whose rights are affected by the impugned state (in)action.[202]

[82] The first stage to establish a s.15 violation is easily satisfied: the distinction in question is made on the analogous ground of Aboriginality-residency.[203] In regard to the second stage, the Court can take judicial notice of facts and draw logical inferences from those facts to find that s.15(1) has been infringed; the claimant need not always adduce data or other social science evidence.[204] The starting point of the second stage of the analysis in the present case is the well-established failure of the justice system as it relates to Aboriginal people, including their simultaneous overrepresentation as accused persons and their estrangement from the criminal justice system.[205] This systemic discrimination suffered by Aboriginal people in the criminal justice system was accepted in the Court below.[206]

[83] The jury is one of our most venerable institutions,[207] and presents a means towards

---

[201] *Sex Workers*, *supra* at ¶20, 23, 26-32, 36-45, 49-51, 73-74; *Minister of Justice of Canada v Borowski*, [1981] 2 SCR 575 at 598; *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236 at 252-253; *Finlay v Canada (Minister of Finance)*, [1986] 2 SCR 607 at 631; *Corp. of Canadian Civil Liberties Assn. v Canada (Attorney General)* (1998), 40 OR (3d) 489 at 496-497 (Ont CA).
[202] *Sex Workers*¸ *supra* at ¶51, 67-70.
[203] *Corbiere*, *supra* at ¶13-15, 62.
[204] *Law v Canada*, [1999] 1 SCR 497 at ¶77-78.
[205] This Court has repeatedly instructed that judicial notice be taken of these facts: *Gladue*, *supra* at ¶61-63; *Ipeelee*, *supra* ¶60.
[206] Reasons of LaForme J.A., ¶218, *supra* p.106-107.
[207] Iacobucci Report, *supra* p.1

reconciliation of particular importance to Aboriginal communities, to remedy the long-standing "dysfunctional relationship between Ontario's justice system and Aboriginal peoples in this province."[208] Inclusion in the jury process presents an opportunity to "reduce the ways in which [the justice system] discriminates against aboriginal people and…adds to Aboriginal alienation".[209] Rather than seizing this opportunity, the state's (in)actions have the effect of diminishing the opportunity of Aboriginal on-reserve jurors to participate in the jury process. The cumulative effect of this state (in)action perpetuates the alienation of Aboriginal people from the justice system.

[84] The state's failure to provide a substantively equal opportunity for on-reserve residents to be included on the 2008 Kenora jury roll exacerbated the existing disadvantage experienced by prospective Aboriginal on-reserve jurors, and breached their s.15 rights. This violation cannot be justified under s.1, as the minimal impairment branch is not satisfied when the state failed to make reasonable efforts.

b) Infringement of the accused's personal s.15 rights

[85] The exclusion of on-reserve residents from proper representation on the 2008 Kenora jury roll also violated the Respondent's personal s.15 rights. The Court of Appeal accepted that the first stage of the s.15 test was satisfied, but then took the view that, in the absence of evidence, the second stage of the test – disadvantage – could not be made out.[210] As noted above, evidence is not required to show disadvantage where it can be logically inferred. Further, in the context of *Charter* litigation, this Court has repeatedly recognized that facts cannot be demonstrated with greater precision than the subject matter permits.[211] Therefore, the Respondent's s.15 claim must be considered in the context of the well-recognized fact that direct evidence as to the decision making processes of Canadian jurors is impossible to produce given jury secrecy rules and s.649 of the *Criminal Code*.[212]

[86] The racism against Aboriginal people that has translated into systemic discrimination in the criminal justice system[213] is reflected in the relationship between Aboriginal people and juries; the jury system, "like Ontario's justice system in general, has not often been a friend to aboriginal people in Ontario." It has historically been used as a tool to punish and persecute the practices of First Nations,

---

[208] Iacobucci Report, *supra p.*2.
[209] *Ipeelee, supra* at ¶69.
[210] Reasons of LaForme J.A., ¶217-219, *supra* p.106-7.
[211] *R v Spence*, [2005] 3 SCR 458 at ¶64.
[212] See for example *Pan, supra* at ¶100; *Williams, supra* at ¶36.
[213] *Williams, supra* at ¶58; See also Iacobucci Report, *supra* p.36.

and has resulted in the jury being regarded as an instrument of injustice by Aboriginal people.[214] This disadvantage is exacerbated by the systemic underrepresentation of on-reserve Aboriginals on the roll.

[87] As triers of fact, each juror is inevitably influenced by his or her individual world view when finding facts from the evidence and reaching a verdict.[215] This Court has recognized that the distinctive experiences and world views of Aboriginal people may "provide the necessary context for understanding and evaluating case-specific information".[216] Moreover, as McLachlin J. (as she then was) observed in *Williams,* juror partiality against Aboriginal accused persons is less likely to exist when the jury pool is drawn from a community with a large Aboriginal population.[217]

[88] State (in)action that perpetuates the systemic underrepresentation of on-reserve Aboriginal residents on the jury roll materially decreased the likelihood that the Respondent's jury would include the perspectives of Aboriginal people, and thereby deprived him of the ameliorative effects that the more proportionate inclusion of Aboriginal people in the jury pool would have had in combatting the widespread racism that infects the criminal justice system. This constitutes a disadvantage for the Respondent that exacerbates the historical discrimination he already faces as an Aboriginal person in the criminal justice system. This s.15 violation cannot be justified under s.1, as the minimal impairment branch is not satisfied in circumstances in which the state failed to make reasonable efforts to ensure in the inclusion of on-reserve residents in the jury roll.

PART IV & V – COSTS & ORDERS REQUESTED

[89] The Respondent makes no submissions in regard to costs. The Respondent respectfully requests that this appeal be dismissed. In addition, given the passage of time and the fact that the Respondent's sentence expiry date will have passed by the time this appeal is heard, the Respondent requests that this Court stay the order of a new trial.

ALL OF WHICH is respectfully submitted, on behalf of Mr. Kokopenace, by

"Delmar Doucette" JO — Delmar Doucette

JO — Jessica Orkin

"Angela Ruffo" JO — Angela Ruffo

---

[214] Iacobucci Report, *supra* p.54-55.
[215] See *R v S. (R.D.),* [1997] 3 S.C.R 484 at ¶39 (*per* McLachlin and L'Heureux-Dube JJ. conc'g). See also *Pan, supra* at ¶61.
[216] *Ipeelee, supra* at ¶60, 74. See also *Gladue, supra* at ¶37, 44, 50, 70-74.
[217] *Williams, supra* at ¶41.

PART VI – TABLE OF AUTHORITIES

#	Document	Cited at Para.
JURISPRUDENCE		
1.	*Berghuis v. Smith*, 130 S.Ct. 1382	55
2.	*Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219	55
3.	*Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101	56, 70, 71
4.	*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 S.C.R. 524	80
5.	*Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134	77
6.	*Canada (Prime Minister) v. Khadr*, [2010] 1 S.C.R. 44	56, 77
7.	*Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236	80
8.	*Castaneda v. Partida*, 430 U.S. 482 (1977)	12
9.	*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203	18, 68, 82
10.	*Corp. of Canadian Civil Liberties Assn. v. Canada (Attorney General)* (1998), 40 O.R. (3d) 489 (Ont. C.A.)	80
11.	Decision of Coroner Eden at the Inquest into the death of Reggie Bushie, dated September 9, 2011	38
12.	*Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3	77
13.	*Dumont v. Canada (Attorney General)*, [1990] 1 S.C.R. 279, rev'g 52 D.L.R. (4th) 25 (MB CA)	77
14.	*Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016	56
15.	*Duren v. Missouri*, 439 U.S. 357 (1979)	55
16.	*Eldridge v. British Columbia*, [1997] 3 S.C.R. 624	55, 77, 79
17.	*Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607	80
18.	*Frontenac Ventures Corp v. Ardoch Algonquin First Nation* (2008), 91 O.R. (3d) 1 (C.A.), leave ref'd [2008] S.C.C.A. No. 357	64

#	**Document**	**Cited at Para.**
19.	*H.L. v. Canada (Attorney General)*, [2005] 1 S.C.R. 401	71
20.	*Haida Nation v. British Columbia (Minister of Forests)*, 2004 3 S.C.R. 511	67
21.	*Hernandez v. New York*, 500 U.S. 352 (1991)	55
22.	*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235	70, 71
23.	*Kelso v. The Queen*, [1981] 1 S.C.R. 199	77
24.	*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497	82
25.	*Little Sisters Book and Art Emporium v. Canada*, [2000] 2 S.C.R. 1120	77
26.	*M. v. H.*, [1999] 2 S.C.R. 3	68
27.	*Mahe v. Alberta*, [1990] 1 S.C.R. 342	68, 77
28.	*Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 S.C.R. 623	67, 77, 80
29.	*Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575	80
30.	*Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256	77
31.	*People v. Robinson*, No. 285416, 2009 WL 3365778 (Mich. Ct. App., 2009)	55
32.	*Peters v. Kiff*, 407 U.S. 493 (1972)	75
33.	*Pierre v. McRae*, 2011 ONCA 187	76
34.	*Quebec (Attorney General) v. A*, [2013] 1 S.C.R. 61	79
35.	*R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575	77
36.	*R. v. Babos*, 2014 SCC 16	73
37.	*R. v. Bain*, [1992] 1. S.C.R. 91	44, 45
38.	*R. v. Barrow*, [1987] 2 S.C.R. 694	58, 75
39.	*R. v. Bellusci*, [2012] 2 S.C.R. 509	73
40.	*R. v. Biddle*, [1995] 1 S.C.R. 761	43
41.	*R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295	41, 57
42.	*R. v. Buhay*, [2003] 1 S.C.R. 631	70

#	**Document**	**Cited at Para.**
43.	*R. v. Burke*, [2002] 2 S.C.R. 857	5
44.	*R. v. Butler* (1984), 63 C.C.C. (3d) 243 (B.C.C.A.)	75
45.	*R. v. Cameron* (1991), 64 C.C.C. (3d) 96 (Ont. C.A.)	75
46.	*R. v. Church of Scientology of Toronto* (1997), 116 C.C.C. (3d) 1 (Ont. C.A.), leave ref'd [1997] S.C.C.A. No. 683	45, 60
47.	*R. v. Clark*, [2005] 1 S.C.R. 6	70, 71
48.	*R. v. Cloutier*, [1979] 2 S.C.R. 709	75
49.	*R. v. Davey*, [2012] 3 S.C.R. 828	43, 44, 4, 70, 75
50.	*R. v. Emms*, [2012] 3 S.C.R. 810	70
51.	*R. v. Fiddler* (1994), 22 C.R.R. (2d) 82 (Ont. Gen. Div.)	5, 14, 27
52.	*R. v. Find*, [2001] 1 S.C.R. 863	43, 44, 45, 51, 58
53.	*R. v. Gamble*, [1988] 2 S.C.R. 595	75, 77
54.	*R. v. Gladue*, [1999] 1 S.C.R. 688	64, 82, 87
55.	*R. v. Halcrow* (2008), 236 C.C.C. (3d) 363 (Alta. C.A.)	5
56.	*R. v. Henderson* (2004), 189 C.C.C. (3d) 447 (Ont. C.A.)	5
57.	*R. v. Hobbs*, 2010 NSCA 62	5
58.	*R. v. Ipeelee*, [2012] 1 S.C.R. 433	64, 65, 82, 83, 87
59.	*R. v. Kapp*, [2008] 2 S.C.R. 483	53, 63, 79
60.	*R. v. Khan*, [2001] 3 S.C.R. 823	75
61.	*R. v. Khelawon*, [2006] 2 S.C.R. 787	53
62.	*R. v. Laws* (1998), 41 O.R. (3d) 499 (C.A.)	60
63.	*R. v. Lippé*, [1991] 2 S.C.R. 114	44, 74
64.	*R. v. Mills*, [1986] 1 S.C.R. 863	75, 77
65.	*R. v. Mills*, [1999] 3 S.C.R. 668	53

#	**Document**	**Cited at Para.**
66.	*R. v. Nahdee* (1994), 21 C.R.R. (2d) 81 (Ont. Gen. Div.)	14
67.	*R. v. Nixon*, [2011] 2 S.C.R. 566	75
68.	*R. v. O'Connor*, [1995] 4 S.C.R. 411	75
69.	*R. v. Oickle*, [2000] 2 S.C.R. 3	70
70.	*R. v. Pan; R. v. Sawyer*, [2001] 2 S.C.R. 344	43, 85, 87
71.	*R. v. Parks* (1993), 84 C.C.C. (3d) 353 (Ont. C.A)	45, 75
72.	*R. v. Ransley* [1993] O.J. No. 2828 (Ont. Gen. Div.)	14
73.	*R. v. Regan*, [2002] 1 S.C.R. 297	73
74.	*R. v. Rowbotham* (1988), 41 C.C.C. (3d) 1 (Ont. C.A.)	75
75.	*R. v. S. (R.D.)*, [1997] 3 S.C.R. 484	87
76.	*R. v. Sappier*, [2006] 2 S.C.R. 686	68
77.	*R. v. Sherratt*, [1991] 1 S.C.R. 509	1, 43, 44, 45, 51
78.	*R. v. Spence*, [2005] 3 S.C.R. 458	85
79.	*R. v. Van der Peet*, [1996] 2 S.C.R. 507	68
80.	*R. v. W.E.B.*, 2014 SCC 2	70
81.	*R. v. Wabason*, 2014 ONSC 2394 (Ont. S.C.J.)	10, 18, 38, 78
82.	*R. v. Williams*, [1998] 1 S.C.R. 1128	43, 44, 45, 51, 53, 68, 74, 85, 87
83.	*R. v. Yumnu*, [2012] 3 S.C.R. 777	70
84.	*Rabinowitz v. United States*, 366 F.2d 34 (5th Cir., 1966)	12
85.	*Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267	44
86.	*Solosky v. The Queen*, [1980] 1 S.C.R. 821	77
87.	*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3	56
88.	*Taylor v. Louisiana*, 419 U.S. 522 (1975)	12
89.	*United States v. Horne*, 4 F.3d 579 (8th Cir. 1993)	55

#	**Document**	**Cited at Para.**
90.	*United States of America v. Leonard*, 2012 ONCA 622, leave ref'd [2012] S.C.C.A. No. 490	64, 65
91.	*United States v. Rioux*, 930 F.Supp. 1558 (D Conn 1995)	55
92.	*Vriend v. Alberta*, [1998] 1 S.C.R. 493	56, 68, 79
93.	*Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396	53, 79
LEGISLATION		
94.	*Access to Justice Act*, S.O. 2006, c.21, Sched A, s.14	Appendix V
95.	*An Act to Amend the Courts of Justice Act*, 1984, S.O. 1989, c.55, s.3	Appendix V
96.	*An Act to Express the Consent of the Legislative Assembly of the Province of Ontario*, Statutes of Ontario, 1912 (2 Geo. V), c.3	Appendix V
97.	*An Act to Express the Consent of the Legislature of Ontario to an Alteration of the Limits of the Province*, S.O. 1950, c.48	Appendix V
98.	*An Act to Extend the Boundaries of the Province of Ontario*, Statutes of Canada, 1912 (2 Geo. V), c.40	Appendix V
99.	*Assessment Act*, R.S.O. 1990, c. A.31, s. 1(1) ("municipality"), ("non-municipal territory"), 3(1)(paragraph 1), 3(7), 14(1), 14(1.1), 15, 16, 16.1, 18	7, 9
100.	*Constitution Act, 1867*, s.91(27), 92(14)	58
101.	*Coroners Act*, R.S.O. 1990, c. C.37, s.34	8
102.	*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, s. 73(2), 74, 79.1	10
103.	*Criminal Code*, R.S.C. 1985, c. C-46, s.626, 629-631, 670, 671	8
104.	*Indian Act*, R.S.C. 1985, c. I-5, s.2, "band", "band list", "council of the band", "elector", "Indian", "Indian Register", "member of a band", "registered", "Registrar", and "reserve"; 5, 6, 8, 9, 10, 11, 74, 77, 77(1)	9, 18
105.	*Indians and Bands on Certain Indian Settlements Remission Order (1997)*, SI/97-127	20
106.	*Indians and Bands on Certain Indian Settlements Remission Order*, SI/92-102	20
107.	*Indians and Webequie Band on the Webequie Indian Settlement Remission Order*, SI/94-70	20
108.	*Juries Act*, R.S.O. 1990, c. J.3, s.1, 2, 5(1)-5(3), 6(1)-6(8), 7, 8, 9, 12, 13, 44	7, 8, 9, 10, 11

#	**Document**	**Cited at Para.**
109.	*Juries Act*, S.O. 1974, c.63	12
110.	*Jurors Act*, R.S.O. 1970, c.230, s.17(2)	12
111.	*Jurors Act*, S.O. 9 Edw. VII, c.34; R.S.O. 1914, c.64	12
112.	Minister's Order dated December 17, 1997, Ontario Gazette, Vol. 131-2, p.44-45	Appendix V
113.	*Municipal Act*, 2001, S.O. 2001, c.25, s.1(1), "unorganized territory", "single-tier municipality", "upper-tier municipality", "municipality", "lower-tier municipality"; 1(2), 1(5)	7, 9, 10
114.	*Municipal Elections Act*, 1996, S.O. 1996, c.32, as amended, s.19	9
115.	O. Reg. 180/03 *(*Territorial Division Act, 2002*)* s.1, Sched 2, Kenora	7, 19
116.	O. Reg. 705/89 *(Designation of Regions)*	Appendix V
117.	*Patricia Act*, R.S.O. 1927, c.5	Appendix V
118.	Proclamation, April 27, 1909, Ontario Gazette, Vol XLII, No. 18, p.548-549	Appendix V
119.	*Territorial Division Act*, 2002, S.O. 2002, c.17, Sched E, s.1	7
120.	*Territorial Division Act*, R.S.O. 1970, c.458, s.1 1¶46	Appendix V
121.	*Territorial Division Act*, R.S.O. 1980, c.497, s.1, 1¶44	Appendix V
122.	*Territorial Division Act*, R.S.O. 1990, c. T.5, s.1 and Schedule, ¶44	Appendix V
SECONDARY SOURCES		
123.	Nina W. Chernoff, "Wrong About the Right: How Courts Undermine the Fair Cross-Section Guarantee by Confusing It With Equal Protection," (2012) 64 Hastings LJ 141, p. 167-182	55
124.	*Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Toronto: Queen's Printer for Ontario, 1995), p. 253	12

PART VII – RELEVANT LEGISLATIVE PROVISIONS

A. *Assessment Act*, R.S.O. 1990, c. A.31

Definitions
1. (1) In this Act,

"municipality" means a local municipality; ("municipalité")

"non-municipal territory" means territory without municipal organization; ("territoire non municipalisé")

Property assessable and taxable, exemptions
3. (1) All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:

Crown lands
1. Land owned by Canada or any Province.

Certain Crown land, non-municipal territory
3. (7) Despite subsection (1), land in non-municipal territory that is not registered under the Land Titles Act or the Registry Act is not liable to assessment, taxation or classification unless the land is described in subsection 18 (1) or (1.1) of this Act. 2006, c. 33, Sched. A, s. 4 (4).

ASSESSMENT ROLL
Contents
14. (1) The assessment corporation shall prepare an assessment roll for each municipality, for each locality and for non-municipal territory and the assessment roll shall contain the following information as well as the information required under subsections (1.1) and (1.2):

Définitions
1. (1) Les définitions qui suivent s'appliquent à la présente loi.

«municipalité» Municipalité locale. («municipality»)

«territoire non municipalisé» Territoire non érigé en municipalité. («non-municipal territory»)

Évaluation foncière et imposition de biens immeubles et exemptions
3. (1) Les biens immeubles situés en Ontario sont assujettis à l'évaluation foncière et imposables, sous réserve des exemptions d'impôt dont bénéficient les biens suivants :

Terres de la Couronne
1. Les biens-fonds qui appartiennent au Canada ou à une province.

Certaines terres de la Couronne : territoire non municipalisé
(7) Malgré le paragraphe (1), les biens-fonds situés en territoire non municipalisé qui ne sont pas enregistrés en application de la Loi sur l'enregistrement des droits immobiliers ou de la Loi sur l'enregistrement des actes ne sont ni assujettis à l'évaluation foncière, ni imposables, ni susceptibles d'être classés, sauf s'ils sont visés au paragraphe 18 (1) ou (1.1) de la présente loi. 2006, chap. 33, annexe A, par. 4 (4).

RÔLE D'ÉVALUATION
Contenu
14. (1) La société d'évaluation foncière prépare, pour chaque municipalité, pour chaque localité et pour le territoire non municipalisé, un rôle d'évaluation dans lequel figurent les renseignements suivants ainsi que ceux qu'exigent les paragraphes (1.1) et (1.2) :

1. The name and surnames, in full, if they can be ascertained, of all persons who are liable to assessment in the municipality or in the non-municipal territory, as the case may be.

2. The amount assessable against each person who is liable to assessment, opposite the person's name.

3. A description of each property sufficient to identify it.

4. The number of acres, or other measures showing the extent of the land.

5. The current value of the land.

6. The value of the land liable to taxation.

7. The value of land exempt from taxation.

8. The classification of the land.

9. Such other information as may be prescribed by the Minister. 2006, c. 33, Sched. A, s. 13 (1).

Additional contents, land in a municipality or locality

14. (1.1) The assessment roll shall also contain the following information respecting land in a municipality or locality:

1. The name of every tenant who is a supporter of a school board.

2. The type of school board the owner or tenant, as the case may be, supports under the Education Act.

3. Whether the owner or tenant, as the case may be, is a French-language rights holder.

1. Les nom et prénom complets, s'ils peuvent être vérifiés, des personnes assujetties à l'évaluation dans la municipalité ou dans le territoire non municipalisé, selon le cas.

2. Le montant de l'évaluation à l'égard de chaque personne qui est assujettie à l'évaluation, indiqué en regard de son nom.

3. Une description de chaque bien suffisante pour en permettre l'identification.

4. La superficie exprimée en acres ou en une autre unité de mesure indiquant l'étendue du bien-fonds.

5. La valeur actuelle du bien-fonds.

6. La valeur de la partie du bien-fonds assujettie à l'impôt.

7. La valeur de la partie du bien-fonds exemptée d'impôt.

8. La classification du bien-fonds.

9. Les autres renseignements que prescrit le ministre. 2006, chap. 33, annexe A, par. 13 (1).

Contenu additionnel : biens-fonds situés dans une municipalité ou dans une localité

14. (1.1) Le rôle d'évaluation contient également les renseignements suivants sur les biens-fonds situés dans une municipalité ou dans une localité :

1. Le nom de chaque locataire qui est contribuable d'un conseil scolaire.

2. Le genre de conseil scolaire auquel le propriétaire ou le locataire, selon le cas, accorde son soutien aux termes de la Loi sur l'éducation.

3. Une mention indiquant si le propriétaire ou le locataire, selon le cas, est titulaire des droits liés au

4. Religion of the owner or tenant, as the case may be, if he or she is Roman Catholic.

5. In the case of a corporation, whether the corporation is a designated ratepayer under the Education Act.

6. Whether the land is liable to school taxes only.

7. The value of the land leased to tenants referred to in subsection 4 (3) of the Municipal Tax Assistance Act. 2006, c. 33, Sched. A, s. 13 (1).

français.

4. La mention de la religion du propriétaire ou du locataire, selon le cas, s'il est catholique.

5. Dans le cas d'une personne morale, une mention indiquant s'il s'agit d'un contribuable désigné aux termes de la Loi sur l'éducation.

6. La mention du fait que le bien-fonds n'est assujetti qu'aux impôts scolaires, le cas échéant.

7. La valeur du bien-fonds loué à bail à des locataires visés au paragraphe 4 (3) de la Loi sur les subventions tenant lieu d'impôt aux municipalités. 2006, chap. 33, annexe A, par. 13 (1).

ENUMERATION

15. (1) For the purposes of the Municipal Elections Act, 1996, the assessment corporation shall conduct an enumeration of the inhabitants of a municipality and locality at the times and in the manner directed by the Minister and for the purpose of section 18 of that Act, the Minister may establish different dates for different municipalities. 1997, c. 43, Sched. G, s. 18 (11); 2000, c. 5, s. 6.

RECENSEMENT

15. (1) Pour l'application de la Loi de 1996 sur les élections municipales, la société d'évaluation foncière procède à un recensement de la population des municipalités et des localités aux moments et de la manière qu'ordonne le ministre et, pour l'application de l'article 18 de cette loi, le ministre peut fixer des dates différentes pour des municipalités différentes. 1997, chap. 43, annexe G, par. 18 (11); 2000, chap. 5, art. 6.

Same, non-municipal territory

(2) Where necessary for the purposes of elections to boards constituted under the District Social Services Administration Boards Act or under other provincial statutes, the Minister may direct the assessment corporation to conduct an enumeration of the inhabitants of all or part of the non-municipal territory and the assessment corporation shall do so at the times and in the manner required by the Minister. 2007, c. 7, Sched. 1, s. 2.

Idem : territoire non-municipalisé

(2) Si cela est nécessaire aux fins d'élections à des conseils constitués en vertu de la Loi sur les conseils d'administration de district des services sociaux ou d'autres lois provinciales, le ministre peut enjoindre à la société d'évaluation foncière de procéder à un recensement de la population de tout ou partie du territoire non municipalisé, auquel cas la société d'évaluation foncière s'exécute aux moments et de la manière qu'exige le ministre. 2007, chap. 7, annexe 1, art. 2.

Annual school support list

16. (1) Every year, the assessment corporation shall prepare a list showing, for each municipality or locality, name of every person who is entitled to support a school board and the type of school

Liste annuelle indiquant le soutien scolaire

16. (1) Chaque année, la société d'évaluation foncière dresse, pour chaque municipalité ou localité, une liste qui indique le nom de chaque personne qui a le droit d'accorder son soutien à un

board that the person supports. The corporation shall deliver the list to the secretary of each school board in the municipality or locality on or before September 30 in the year. 1997, c. 43, Sched. G, s. 18 (12).

Preparation of list
(2) Subject to subsection (3), the list referred to in subsection (1) shall be prepared on the basis of information contained in the last enumeration, including updates thereto under section 15. 1991, c. 11, s. 2; 1997, c. 31, s. 143 (8).

Application respecting school support
(3) Any person may apply in a form approved by the Minister to the assessment corporation to have his or her name included or altered in the assessment roll as a supporter of a type of school board under the Education Act. 1997, c. 31, s. 143 (9); 1997, c. 43, Sched. G, s. 18 (13).

School support
(4) Unless an application is received and approved by the assessment corporation under section 16 to the contrary, the assessment corporation shall indicate in the assessment roll that a person is an English-language public board supporter if that person is entitled to be such a supporter under the Education Act. 1997, c. 31, s. 143 (10); 1997, c. 43, Sched. G, s. 18 (14).

Format of list
(5) At the request of the secretary of the school board, the assessment corporation may deliver the list referred to in subsection (1) in a format that will facilitate the use of mechanical or electronic means in the printing, reproduction or other use of the list. R.S.O. 1990, c. A.31, s. 16 (5); 1997, c. 43, Sched. G, s. 18 (15).

conseil scolaire et le genre de conseil auquel elle accorde ce soutien. Elle remet cette liste au secrétaire de chaque conseil scolaire de la municipalité ou de la localité au plus tard le 30 septembre de l'année. 1997, chap. 43, annexe G, par. 18 (12).

Préparation de la liste
(2) Sous réserve du paragraphe (3), la liste visée au paragraphe (1) est dressée à partir des renseignements figurant dans le dernier recensement et comprend les mises à jour faites aux termes de l'article 15. 1991, chap. 11, art. 2; 1997, chap. 31, par. 143 (8).

Demande relative au soutien scolaire
(3) Toute personne peut présenter une demande, rédigée sous la forme qu'approuve le ministre, à la société d'évaluation foncière dans le but de faire ajouter son nom au rôle d'évaluation à titre de contribuable d'un genre de conseil scolaire prévu par la Loi sur l'éducation ou d'y faire modifier son statut en ce sens. 1997, chap. 31, par. 143 (9); 1997, chap. 43, annexe G, par. 18 (13).

Soutien scolaire
(4) À moins qu'elle ne reçoive et n'approuve une demande à l'effet contraire en vertu de l'article 16, la société d'évaluation foncière indique dans le rôle d'évaluation qu'une personne est contribuable des conseils publics de langue anglaise si elle a le droit d'être un tel contribuable aux termes de la Loi sur l'éducation. 1997, chap. 31, par. 143 (10); 1997, chap. 43, annexe G, par. 18 (14).

Forme de la liste
(5) À la demande du secrétaire du conseil scolaire, la société d'évaluation foncière peut présenter la liste mentionnée au paragraphe (1) sous une forme qui en facilite l'impression, la reproduction ou autre par des moyens mécaniques ou électroniques. L.R.O. 1990, chap. A.31, par. 16 (5); 1997, chap. 43, annexe G, par. 18 (15).

Regulations
(6) The Minister may make regulations prescribing the procedures to be used by a person applying to the assessment corporation under subsection (3). 1997, c. 5, s. 10 (2); 1997, c. 43, Sched. G, s. 18 (16).

Approval of application
(7) If the assessment corporation is satisfied that the inclusion or alteration requested in an application under subsection (3) should be made, the corporation shall approve the application; its approval is indicated by the signature of its agent or employee. 1997, c. 43, Sched. G, s. 18 (17).

Delivery of application by assessment corporation
(8) If the assessment corporation approves an application under subsection (3), the assessment corporation shall deliver a copy of the approved application to the secretary of each school board in the municipality or locality in which the applicant is entitled to support a school board. 1997, c. 31, s. 143 (11); 1997, c. 43, Sched. G, s. 18 (18).

Refusal to approve application
(9) Subject to subsection (10), if in the opinion of the assessment corporation, the statements made by an applicant in the applicant's application under this section do not show that the applicant is entitled to have the list amended as requested, the corporation shall inform the applicant in writing that the application is refused, that the school support of the applicant as designated on the list prepared under this section will be confirmed on the notice of assessment to which the applicant is entitled under section 31 and that the applicant may, upon receipt of the notice of assessment, appeal the school support designation as confirmed by the assessment corporation to the Assessment Review Board under section 40. R.S.O. 1990, c. A.31, s. 16 (9); 1997, c. 43, Sched. G, s. 18 (19).

Règlements
(6) Le ministre peut, par règlement, prescrire la marche à suivre par la personne qui présente une demande à la société d'évaluation foncière en vertu du paragraphe (3). 1997, chap. 5, par. 10 (2); 1997, chap. 43, annexe G, par. 18 (16).

Approbation de la demande
(7) Si la société d'évaluation foncière est convaincue qu'il convient d'effectuer l'ajout ou la modification qui fait l'objet de la demande présentée en vertu du paragraphe (3). La signature de son mandataire ou employé (ou : la signature de son mandataire ou employé fait foi de son approbation.) 1997, chap. 43, annexe G, par. 18 (17).

Remise de la demande par la société d'évaluation foncière
(8) Si elle approuve une demande présentée en vertu du paragraphe (3), la société d'évaluation foncière en remet une copie au secrétaire de chaque conseil scolaire de la municipalité ou de la localité dans laquelle l'auteur de la demande a le droit d'accorder son soutien à un conseil scolaire. 1997, chap. 31, par. 143 (11); 1997, chap. 43, annexe G, par. 18 (18).

Refus d'approuver la demande
(9) Sous réserve du paragraphe (10), si la société d'évaluation foncière est d'avis que les déclarations de l'auteur d'une demande présentée en vertu du présent article ne démontrent pas que l'auteur de la demande a le droit de faire modifier la liste comme il le demande, elle informe par écrit celui-ci que la demande est rejetée, que le soutien scolaire qui figure sur la liste dressée en vertu du présent article sera confirmé sur l'avis d'évaluation auquel l'auteur de la demande a droit en vertu de l'article 31, et que celui-ci peut, dès qu'il reçoit l'avis d'évaluation, interjeter appel de la désignation du soutien scolaire telle qu'elle est confirmée par la société d'évaluation foncière devant la Commission de révision de l'évaluation foncière en vertu de l'article 40. L.R.O. 1990, chap. A.31, par. 16 (9); 1997, chap. 43, annexe G,

par. 18 (19).

Application considered after delivery of notice of assessment
(10) Where an application under this section has been received by the assessment corporation before the day fixed for the return of the roll but has not been considered by the corporation until after the delivery of the notice of assessment provided for in section 31, the assessment corporation shall, if the corporation refuses the application, inform the applicant in writing that the inclusion or amendment requested in the application is refused and that an appeal may be taken by appealing to the Assessment Review Board the applicant's school support designation as shown on the notice of assessment delivered under section 31 but, where the assessment corporation approves the application, the corporation shall deliver to the applicant an amended notice of assessment. R.S.O. 1990, c. A.31, s. 16 (10); 1997, c. 43, Sched. G, s. 18 (19); 1998, c. 33, s. 3.

Examen de la demande après remise de l'avis d'évaluation
(10) Si la société d'évaluation foncière a reçu la demande présentée en vertu du présent article avant la date de dépôt du rôle mais qu'elle ne l'a examinée qu'après la remise de l'avis d'évaluation prévu à l'article 31, et qu'elle la rejette, elle informe par écrit l'auteur de la demande du refus de l'ajout ou de la modification qui fait l'objet de la demande. Elle informe en outre par écrit l'auteur de la demande qu'il peut être interjeté appel auprès de la Commission de révision de l'évaluation foncière de la désignation du soutien scolaire de l'auteur de la demande qui est indiquée sur l'avis d'évaluation qui a été remis en vertu de l'article 31. Toutefois, si la société d'évaluation foncière approuve la demande, elle remet à l'auteur de celle-ci un avis d'évaluation modifié. L.R.O. 1990, chap. A.31, par. 16 (10); 1997, chap. 43, annexe G, par. 18 (19); 1998, chap. 33, art. 3.

Information from landlords
16.1 (1) For the purposes of sections 15 and 16, on or before July 31 in each year, every owner of a property with seven or more self-contained residential units shall provide the assessment corporation with the information described in subsection (2). 1997, c. 5, s. 11; 1997, c. 43, Sched. G, s. 18 (20).

Renseignements à fournir par les locateurs
16.1 (1) Pour l'application des articles 15 et 16, le propriétaire d'un bien comptant au moins sept logements autonomes fournit à la société d'évaluation foncière, au plus tard le 31 juillet de chaque année, les renseignements mentionnés au paragraphe (2). 1997, chap. 5, art. 11; 1997, chap. 43, annexe G, par. 18 (20).

What information is required
(2) The information referred to in subsection (1) is the names and unit numbers of the persons who, during the 12-month period that ends with, and includes, July 1 in the year in which the information is provided,

(a) have become residential tenants of the property;

(b) have ceased to be residential tenants of the property; or

Renseignements exigés
(2) Les renseignements visés au paragraphe (1) sont le nom et le numéro de logement des personnes qui, au cours de la période de 12 mois qui se termine et qui comprend le 1er juillet de l'année au cours de laquelle les renseignements sont fournis, selon le cas :

a) sont devenus locataires du bien;

b) ont cessé d'être locataires du bien;

c) sont restés locataires du bien mais ont changé

(c) have continued to be residential tenants of the property but have changed units. 1997, c. 5, s. 11.

ASSESSMENT OF CROWN LANDS

18. (1) Despite paragraph 1 of subsection 3 (1),

(a) the tenant of land owned by the Crown shall be assessed in respect of the land as though the tenant were the owner if rent or any valuable consideration is paid in respect of the land; and

(b) an owner of land in which the Crown has an interest shall be assessed in respect of the land as though a person other than the Crown held the Crown's interest. 1997, c. 29, s. 8.

Same

(1.1) Despite paragraph 1 of subsection 3 (1), the person or entity who has the statutory right created by subsection 114.5 (1) of the Electricity Act, 1998 to use land owned by the Crown shall be assessed in respect of the land as though the person or entity were the owner. 2002, c. 1, Sched. C, s. 1 (1).

Definitions

(2) For the purposes of this section,

"rent or any valuable consideration" shall be deemed to have been paid, in the case of an employee using as a residence land belonging to the Crown, where there is a reduction in or deduction from the salary, wages, allowances or emoluments of the employee because of the use or where the use is taken into consideration in determining the employee's salary, wages, allowances or emoluments; ("loyer ou autre contrepartie de valeur")

"residence" means a building or part of a building used as a domestic establishment and consisting

de logement. 1997, chap. 5, art. 11.

ÉVALUATION DES TERRES DE LA COURONNE

18. (1) Malgré la disposition 1 du paragraphe 3 (1) :

a) le locataire d'un bien-fonds qui appartient à la Couronne est visé par une évaluation à l'égard de ce bien-fonds comme s'il en était le propriétaire si un loyer ou une autre contrepartie de valeur est payé à l'égard du bien-fonds;

b) le propriétaire d'un bien-fonds sur lequel la Couronne a un intérêt est visé par une évaluation à l'égard de ce bien-fonds comme si une personne autre que la Couronne détenait l'intérêt de celle-ci. 1997, chap. 29, art. 8.

Idem

(1.1) Malgré la disposition 1 du paragraphe 3 (1), la personne ou l'entité qui a le droit légal, créé par le paragraphe 114.5 (1) de la Loi de 1998 sur l'électricité, d'utiliser un bien-fonds qui appartient à la Couronne est visée par une évaluation à l'égard de ce bien-fonds comme si elle en était le propriétaire. 2002, chap. 1, annexe C, par. 1 (1).

Définitions

(2) Les définitions qui suivent s'appliquent au présent article.

«locataire» S'entend au sens de l'article 1 et s'entend en outre d'une personne qui utilise un bien-fonds appartenant à la Couronne en tant que résidence ou à des fins connexes, quels que soient les rapports entre cette personne et la Couronne à l'égard de l'utilisation. («tenant»)

«loyer ou autre contrepartie de valeur» Le loyer ou toute autre contrepartie de valeur sont réputés avoir été versés par l'employé qui utilise comme résidence un bien-fonds appartenant à la Couronne si, de ce fait, le traitement, le salaire, les

of two or more rooms in which persons usually sleep and prepare and serve meals; (“résidence”)

“tenant”, in addition to its meaning under section 1, also includes any person who uses land belonging to the Crown as, or for the purposes of, or in connection with, his or her residence, irrespective of the relationship between him or her and the Crown with respect to the use. (“locataire”) R.S.O. 1990, c. A.31, s. 18 (2).

Application to forest resource licences

(3) This section does not apply to the interest of a person in a licence under Part III of the Crown Forest Sustainability Act, 1994 or to any right in forest resources harvested or used or to be harvested or used under the licence, or to improvements or equipment temporarily used in connection with operations under the licence. 1994, c. 25, s. 79.

indemnités ou les émoluments de cet employé subissent une baisse ou font l’objet de retenues ou qu’il est tenu compte de l’utilisation lors de l’établissement de ce traitement, de ce salaire, de ces indemnités ou de ces émoluments. («rent or any valuable consideration»)

«résidence» Bâtiment ou partie de bâtiment qui sert de loyer familial comportant deux pièces ou plus où des personnes dorment et préparent et servent des repas, de façon habituelle. («residence») L.R.O. 1990, chap. A.31, par. 18 (2).

Non-application aux permis forestiers

(3) Le présent article ne s’applique pas aux droits d’une personne sur un permis visé à la partie III de la Loi de 1994 sur la durabilité des forêts de la Couronne, ni à un droit sur des ressources forestières récoltées ou utilisées ou devant être récoltées ou utilisées en vertu du permis, ni à des aménagements ou au matériel utilisés temporairement dans le cadre des opérations effectuées en vertu du permis. 1994, chap. 25, art. 79.

B. *Canadian Charter of Rights and Freedoms*

GUARANTEE OF RIGHTS AND FREEDOMS
Rights and freedoms in Canada
1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

LEGAL RIGHTS
Proceedings in criminal and penal matters
11. Any person charged with an offence has the right
(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

GARANTIE DES DROITS ET LIBERTÉS
Droits et libertés au Canada
1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

GARANTIES JURIDIQUES
Affaires criminelles et pénales
11. Tout inculpé a le droit :
a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;

b) d'être jugé dans un délai raisonnable;

c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;

d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;

f) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;

g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

EQUALITY RIGHTS

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (84)

DROITS À L'ÉGALITÉ

Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

Programmes de promotion sociale

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

RECOURS

Recours en cas d'atteinte aux droits et libertés

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

C. *Constitution Act, 1867*

VI. DISTRIBUTION OF LEGISLATIVE POWERS - Powers of the Parliament

Legislative Authority of Parliament of Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

> 27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

> 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of

VI. DISTRIBUTION DES POUVOIRS LÉGISLATIFS - Pouvoirs du parlement

Autorité législative du parlement du Canada

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

> 27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle.

POUVOIRS EXCLUSIFS DES LÉGISLATURES PROVINCIALES

Sujets soumis au contrôle exclusif de la législation provinciale

92. Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

> 14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de

Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;

D. *Coroners Act,* R.S.O. 1990, c. C.37

LIST OF JURORS

34. (1) A coroner may by his or her warrant require the sheriff for the area in which an inquest is to be held to provide a list of the names of such number of persons as the coroner specifies in the warrant taken from the jury roll prepared under the Juries Act. R.S.O. 1990, c. C.37, s. 34 (1).

Idem

(2) Upon receipt of the warrant, the sheriff shall provide the list containing names of persons in the number specified by the coroner, taken from the jury roll prepared under the Juries Act, together with their ages, places of residence and occupations. R.S.O. 1990, c. C.37, s. 34 (2).

Eligibility

(3) No person who is ineligible to serve as a juror under the Juries Act shall be summoned to serve or shall serve as a juror at an inquest. R.S.O. 1990, c. C.37, s. 34 (3).

Idem

(4) An officer, employee or inmate of a hospital or an institution referred to in subsection 10 (2) or (3) shall not serve as a juror at an inquest upon the death of a person who died therein. R.S.O. 1990, c. C.37, s. 34 (4).

LISTE DES JURÉS

34. (1) Le coroner peut, par son mandat, exiger que le shérif d'une localité où doit se tenir une enquête lui fournisse une liste de noms dont il précise le nombre, extraits de la liste des jurés dressée en vertu de la Loi sur les jurys. L.R.O. 1990, chap. C.37, par. 34 (1).

Idem

(2) Sur réception du mandat, le shérif fournit la liste contenant le nombre de noms précisé par le coroner et indiquant l'âge, le lieu de résidence et la profession des personnes dont le nom y figure. Ces noms sont extraits de la liste des jurés dressée en vertu de la Loi sur les jurys. L.R.O. 1990, chap. C.37, par. 34 (2).

Qualités requises

(3) Quiconque est inhabile à être membre d'un jury en vertu de la Loi sur les jurys ne doit pas être juré à une enquête ni être assigné à cette fin. L.R.O. 1990, chap. C.37, par. 34 (3).

Idem

(4) Un dirigeant, un employé ou un pensionnaire d'un hôpital ou d'un établissement visés au paragraphe 10 (2) ou (3) ne doit pas être juré à une enquête qui porte sur un décès survenu à cet endroit. L.R.O. 1990, chap. C.37, par. 34 (4).

Excusing from service

(5) The coroner may excuse any person on the list from being summoned or from serving as a juror on the grounds of illness or hardship. R.S.O. 1990, c. C.37, s. 34 (5).

Exclusion of juror with interest

(6) The coroner presiding at an inquest may exclude a person from being sworn as a juror where the coroner believes there is a likelihood that the person, because of interest or bias, would be unable to render a verdict in accordance with the evidence. R.S.O. 1990, c. C.37, s. 34 (6).

Excusing of juror for illness

(7) Where in the course of an inquest the coroner is satisfied that a juror should not, because of illness or other reasonable cause, continue to act, the coroner may discharge the juror. R.S.O. 1990, c. C.37, s. 34 (7).

Continuation with reduced jury

(8) Where in the course of an inquest a member of the jury dies or becomes incapacitated from any cause or is excluded or discharged by the coroner under subsection (6) or (7) or is found to be ineligible to serve, the jury shall, unless the coroner otherwise directs and if the number of jurors is not reduced below three, be deemed to remain properly constituted for all purposes of the inquest. R.S.O. 1990, c. C.37, s. 34 (8).

Exemption

(5) Le coroner peut exempter quiconque dont le nom figure sur la liste d'être assigné pour être juré à une enquête du coroner ou d'être membre d'un jury s'il est malade ou s'il devait subir un préjudice. L.R.O. 1990, chap. C.37, par. 34 (5).

Récusation d'un juré intéressé

(6) Le coroner qui préside à une enquête peut récuser une personne comme juré s'il croit qu'à cause d'un intérêt ou d'un préjugé, cette personne risque d'être incapable de rendre un verdict fondé sur la preuve. L.R.O. 1990, chap. C.37, par. 34 (6).

Juré libéré pour maladie

(7) Si, au cours d'une enquête, le coroner est convaincu qu'un juré ne devrait pas continuer à exercer ses fonctions par suite de maladie ou pour une autre cause raisonnable, il peut libérer ce juré. L.R.O. 1990, chap. C.37, par. 34 (7).

Poursuite de l'enquête avec un jury réduit

(8) Si, au cours d'une enquête, un membre du jury décède, devient incapable d'agir pour une raison quelconque, est récusé ou libéré par le coroner en vertu du paragraphe (6) ou (7), ou est déclaré inhabile à être juré, le jury est réputé régulièrement constitué aux fins de l'enquête, à moins que le coroner n'en ordonne autrement et à condition que le nombre des jurés ne soit pas réduit à moins de trois. L.R.O. 1990, chap. C.37, par. 34 (8).

E. *Courts of Justice Act*, R.S.O. 1990, c. C.43

ADMINISTRATION OF THE COURTS

Court officers and staff

Exercise of powers

73. (2) A power or duty given to a registrar, sheriff, court clerk, bailiff, assessment officer, Small Claims Court referee or official examiner under an Act, regulation or rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Attorney General or a person designated by the Deputy Attorney General. 2006, c. 21, Sched. A, s. 14.

Destruction of documents

74. Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the Deputy Attorney General, subject to the approval of,

(a) in the Court of Appeal, the Chief Justice of Ontario;

(b) in the Superior Court of Justice, the Chief Justice of the Superior Court of Justice;

(c) in the Ontario Court of Justice, the Chief Justice of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 14.

Regions

79.1 (1) For administrative purposes related to the administration of justice in the province, Ontario is divided into the regions prescribed

ADMINISTRATION DES TRIBUNAUX

Personnel judiciaire

Exercice des pouvoirs

73. (2) Une fonction ou un pouvoir conféré à un registrateur, greffier, shérif, huissier, liquidateur des dépens, arbitre de la Cour des petites créances ou auditeur officiel en vertu d'une loi, d'un règlement ou d'une règle de pratique peut être exercé par la personne ou la catégorie de personnes à qui le sous-procureur général ou son délégué a attribué la fonction ou le pouvoir. 2006, chap. 21, annexe A, art. 14.

Destruction de documents

74. Conformément aux directives du sous-procureur général, les documents et autres éléments d'information qui ne sont plus nécessaires dans un greffe ne sont pas conservés, sous réserve de l'approbation :

a) du juge en chef de l'Ontario, pour ce qui est de la Cour d'appel;

b) du juge en chef de la Cour supérieure de justice, pour ce qui est de la Cour supérieure de justice;

c) du juge en chef de la Cour de justice de l'Ontario, pour ce qui est de la Cour de justice de l'Ontario. 2006, chap. 21, annexe A, art. 14.

Régions

79.1 (1) À des fins administratives relatives à l'administration de la justice dans la province,

under subsection (2). 2006, c. 21, Sched. A, s. 14.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purposes of this Act. 2006, c. 21, Sched. A, s. 14.

l'Ontario est divisée en régions qui sont prescrites en vertu du paragraphe (2). 2006, chap. 21, annexe A, art. 14.

Règlements

(2) Le lieutenant-gouverneur en conseil peut prescrire par règlement des régions aux fins de la présente loi. 2006, chap. 21, annexe A, art. 14.

F. *Criminal Code*, R.S.C. 1985, c. C-46

JURIES

Qualification of jurors

626. (1) A person who is qualified as a juror according to, and summoned as a juror in accordance with, the laws of a province is qualified to serve as a juror in criminal proceedings in that province.

No disqualification based on sex

(2) Notwithstanding any law of a province referred to in subsection (1), no person may be disqualified, exempted or excused from serving as a juror in criminal proceedings on the grounds of his or her sex.

Challenging the Array

628. [Repealed, R.S., 1985, c. 27 (1st Supp.), s. 129]

Challenging the jury panel

629. (1) The accused or the prosecutor may challenge the jury panel only on the ground of partiality, fraud or wilful misconduct on the part of the sheriff or other officer by whom the panel was returned.

JURYS

Aptitude et assignation des jurés

626. (1) Sont aptes aux fonctions de juré dans des procédures criminelles engagées dans une province les personnes qui remplissent les conditions déterminées par la loi provinciale applicable et sont assignées en conformité avec celle-ci.

Égalité des sexes

(2) Par dérogation aux lois provinciales visées au paragraphe (1), l'appartenance à l'un ou l'autre sexe ne constitue ni une cause d'incapacité d'exercice, ni une cause de dispense, des fonctions de juré dans des procédures criminelles.

Récusation du tableau des jurés

628. [Abrogé, L.R. (1985), ch. 27 (1er suppl.), art. 129]

Récusation du tableau

629. (1) Le poursuivant ou l'accusé ne peut demander la récusation du tableau des jurés que pour l'un des motifs suivants : partialité, fraude ou inconduite délibérée du shérif ou des autres fonctionnaires qui ont constitué le tableau.

In writing

(2) A challenge under subsection (1) shall be in writing and shall state that the person who returned the panel was partial or fraudulent or that he wilfully misconducted himself, as the case may be.

Par écrit

(2) Une récusation faite sous le régime du paragraphe (1) se fait par écrit et déclare que celui qui a rapporté la liste a été partial, a agi frauduleusement ou s'est mal conduit volontairement, selon le cas.

Form

(3) A challenge under this section may be in Form 40.

Formule

(3) Une récusation prévue par le présent article peut être rédigée selon la formule 40.

Trying ground of challenge

630. Where a challenge is made under section 629, the judge shall determine whether the alleged ground of challenge is true or not, and where he is satisfied that the alleged ground of challenge is true, he shall direct a new panel to be returned.

Vérification des motifs de récusation

630. Lorsqu'une récusation est faite selon l'article 629, le juge détermine si le motif de récusation allégué est fondé ou non, et lorsqu'il est convaincu que le motif allégué est fondé, il ordonne la présentation d'une nouvelle liste de jurés.

EMPANELLING JURY

Names of jurors on cards

631. (1) The name of each juror on a panel of jurors that has been returned, his number on the panel and his address shall be written on a separate card, and all the cards shall, as far as possible, be of equal size.

FORMATION DE LA LISTE DU JURY

Inscription sur des cartes

631. (1) Le nom de chaque juré figurant au tableau, son numéro au tableau et son adresse sont inscrits sur une carte; les cartes sont de format identique.

To be placed in box

(2) The sheriff or other officer who returns the panel shall deliver the cards referred to in subsection (1) to the clerk of the court who shall cause them to be placed together in a box to be provided for the purpose and to be thoroughly shaken together.

Déposées dans une boîte

(2) Le shérif ou autre fonctionnaire qui rapporte la liste remet les cartes mentionnées au paragraphe (1) au greffier du tribunal, et ce dernier les fait placer dans une boîte fournie à cette fin et mêler complètement ensemble.

Alternate jurors

(2.1) If the judge considers it advisable in the interests of justice to have one or two alternate jurors, the judge shall so order before the clerk of

Jurés suppléants

(2.1) S'il estime indiqué, dans l'intérêt de la justice, qu'il y ait un ou deux jurés suppléants, le juge l'ordonne avant que le greffier procède au

the court draws out the cards under subsection (3) or (3.1).

Additional jurors

(2.2) If the judge considers it advisable in the interests of justice, he or she may order that 13 or 14 jurors, instead of 12, be sworn in accordance with this Part before the clerk of the court draws out the cards under subsection (3) or (3.1).

Cards to be drawn by clerk of court

(3) If the array of jurors is not challenged or the array of jurors is challenged but the judge does not direct a new panel to be returned, the clerk of the court shall, in open court, draw out one after another the cards referred to in subsection (1), call out the number on each card as it is drawn and confirm with the person who responds that he or she is the person whose name appears on the card drawn, until the number of persons who have answered is, in the opinion of the judge, sufficient to provide a full jury and any alternate jurors ordered by the judge after allowing for orders to excuse, challenges and directions to stand by.

Exception

(3.1) The court, or a judge of the court, before which the jury trial is to be held may, if the court or judge is satisfied that it is necessary for the proper administration of justice, order the clerk of the court to call out the name and the number on each card.

Juror and other persons to be sworn

(4) The clerk of the court shall swear each member of the jury, and any alternate jurors, in the order in which his or her card was drawn and shall swear any other person providing technical, personal, interpretative or other support services to

tirage en vertu des paragraphes (3) ou (3.1).

Jurés supplémentaires

(2.2) S'il estime indiqué, dans l'intérêt de la justice, que treize ou quatorze jurés plutôt que douze soient assermentés en conformité avec la présente partie, le juge l'ordonne avant que le greffier ne procède au tirage en application des paragraphes (3) ou (3.1).

Tirage par le greffier du tribunal

(3) Si le tableau des jurés n'est pas récusé, ou s'il l'est mais que le juge n'ordonne pas la présentation d'une nouvelle liste, le greffier du tribunal tire, en pleine audience, l'une après l'autre les cartes mentionnées au paragraphe (1), appelle au fur et à mesure le numéro inscrit sur chacune d'elles et confirme auprès de la personne répondant à l'appel qu'elle est bien celle dont le nom figure sur la carte, jusqu'à ce que le nombre de personnes ayant répondu soit, de l'avis du juge, suffisant pour constituer un jury complet et disposer du nombre de jurés suppléants éventuellement ordonné par le juge, après qu'il a été pourvu aux dispenses, aux récusations et aux mises à l'écart.

Procédure exceptionnelle

(3.1) Le tribunal ou le juge du tribunal devant qui doit se tenir le procès avec jury peut, s'il estime que cela servirait la bonne administration de la justice, ordonner que le nom inscrit sur la carte soit également appelé par le greffier.

Chaque juré est assermenté

(4) Le greffier du tribunal assermente chaque membre du jury et, le cas échéant, chaque juré suppléant, suivant l'ordre dans lequel les cartes des jurés ont été tirées ainsi que toute personne qui fournit une aide technique, personnelle ou autre, ou des services d'interprétation, aux membres du

a juror with a physical disability.

jury ayant une déficience physique.

Drawing additional cards if necessary

(5) If the number of persons who answer under subsection (3) or (3.1) is not sufficient to provide a full jury and the number of alternate jurors ordered by the judge, the clerk of the court shall proceed in accordance with subsections (3), (3.1) and (4) until 12 jurors — or 13 or 14 jurors, as the case may be, if the judge makes an order under subsection (2.2) — and any alternate jurors are sworn.

Tirage d'autres cartes au besoin

(5) Lorsque le nombre de ceux qui ont répondu à l'appel en conformité avec les paragraphes (3) ou (3.1) ne suffit pas pour constituer un jury complet et disposer du nombre de jurés suppléants éventuellement ordonné par le juge, le greffier du tribunal procède en conformité avec les paragraphes (3), (3.1) et (4) jusqu'à ce que douze jurés — ou, si le juge rend l'ordonnance visée au paragraphe (2.2), treize ou quatorze jurés, selon le cas, — et les jurés suppléants, s'il en est, soient assermentés.

Ban on publication, limitation to access or use of information

(6) On application by the prosecutor or on its own motion, the court or judge before which a jury trial is to be held may, if the court or judge is satisfied that such an order is necessary for the proper administration of justice, make an order

(a) directing that the identity of a juror or any information that could disclose their identity shall not be published in any document or broadcast or transmitted in any way; or

(b) limiting access to or the use of that information.

Demande de non-publication ou de restriction à l'accès ou l'usage de renseignements

(6) Sur demande du poursuivant ou de sa propre initiative, le tribunal ou le juge du tribunal devant qui doit se tenir le procès avec jury peut, s'il est convaincu que la bonne administration de la justice l'exige :

a) interdire de publier ou de diffuser de quelque façon que ce soit l'identité d'un juré ou des renseignements qui permettraient de la découvrir;

b) limiter l'accès à ces renseignements ou l'usage qui peut en être fait.

FORMAL DEFECTS IN JURY PROCESS

Judgment not to be stayed on certain grounds

670. Judgment shall not be stayed or reversed after verdict on an indictment

VICES DE FORME DANS LA CONVOCATION DES JURÉS

Il n'est pas sursis au jugement pour certains motifs

670. Aucun jugement ne peut être suspendu ou infirmé après verdict rendu sur un acte

(a) by reason of any irregularity in the summoning or empanelling of the jury; or

(b) for the reason that a person who served on the jury was not returned as a juror by a sheriff or other officer.

d'accusation :

a) soit en raison d'une irrégularité dans l'assignation ou la constitution du jury;

b) soit parce qu'une personne qui a servi parmi le jury n'a pas été mise au nombre des jurés désignés par un shérif ou un autre fonctionnaire.

Directions respecting jury or jurors directory

671. No omission to observe the directions contained in any Act with respect to the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists or the drafting of panels from the jury lists is a ground for impeaching or quashing a verdict rendered in criminal proceedings.

Les prescriptions quant au jury ou jurés sont directrices

671. Aucune inobservation des prescriptions contenues dans une loi en ce qui regarde les qualités requises, le choix, le ballottage ou la répartition des jurés, la préparation du registre des jurés, le choix des listes des jurys ou l'appel du corps des jurés d'après ces listes, ne constitue un motif suffisant pour attaquer ou annuler un verdict rendu dans des procédures pénales.

G. *Indian Act,* R.S.C. 1985, c. I-5

DEFINITIONS

2. (1) In this Act,

"band" means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

DÉFINITIONS

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« bande » Groupe d'Indiens, selon le cas :

a) à l'usage et au profit communs desquels des terres appartenant à Sa Majesté ont été mises de côté avant ou après le 4 septembre 1951;

b) à l'usage et au profit communs

(c) declared by the Governor in Council to be a band for the purposes of this Act;

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"council of the band" means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

"elector" means a person who

(a) is registered on a Band List,

(b) is of the full age of eighteen years, and

(c) is not disqualified from voting at band elections;

"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

"Indian Register" means the register of persons that is maintained under section 5;

"member of a band" means a person whose name

desquels, Sa Majesté détient des sommes d'argent;

c) que le gouverneur en conseil a déclaré être une bande pour l'application de la présente loi.

« liste de bande » Liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère.

« conseil de la bande »

a) Dans le cas d'une bande à laquelle s'applique l'article 74, le conseil constitué conformément à cet article;

b) dans le cas d'une bande à laquelle l'article 74 n'est pas applicable, le conseil choisi selon la coutume de la bande ou, en l'absence d'un conseil, le chef de la bande choisi selon la coutume de celle-ci.

« électeur » Personne qui remplit les conditions suivantes :

a) être inscrit sur une liste de bande;

b) avoir dix-huit ans;

c) ne pas avoir perdu son droit de vote aux élections de la bande.

« Indien » Personne qui, conformément à la présente loi, est inscrite à titre d'Indien ou a droit de l'être.

« registre des Indiens » Le registre de personnes tenu en vertu de l'article 5.

appears on a Band List or who is entitled to have his name appear on a Band List;

« membre d'une bande » Personne dont le nom apparaît sur une liste de bande ou qui a droit à ce que son nom y figure.

"registered" means registered as an Indian in the Indian Register;

« inscrit » Inscrit comme Indien dans le registre des Indiens.

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department;

« registraire » Le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère.

"reserve"

(a) means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band, and

(b) except in subsection 18(2), sections 20 to 25, 28, 36 to 38, 42, 44, 46, 48 to 51, 58 to 60 and the regulations made under any of those provisions, includes designated lands;

« réserve » Parcelle de terrain dont Sa Majesté est propriétaire et qu'elle a mise de côté à l'usage et au profit d'une bande; y sont assimilées les terres désignées, sauf pour l'application du paragraphe 18(2), des articles 20 à 25, 28, 36 à 38, 42, 44, 46, 48 à 51, 58 et 60, ou des règlements pris sous leur régime.

Definition of "band"

(2) The expression "band", with reference to a reserve or surrendered lands, means the band for whose use and benefit the reserve or the surrendered lands were set apart.

Définition de « bande »

(2) En ce qui concerne une réserve ou des terres cédées, « bande » désigne la bande à l'usage et au profit de laquelle la réserve ou les terres cédées ont été mises de côté.

Exercise of powers conferred on band or council

(3) Unless the context otherwise requires or this Act otherwise provides,

Exercice des pouvoirs conférés à une bande ou un conseil

(3) Sauf indication contraire du contexte ou disposition expresse de la présente loi :

(a) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and

a) un pouvoir conféré à une bande est censé ne pas être exercé, à moins de l'être en vertu du consentement donné par une majorité des électeurs de la bande;

(b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

b) un pouvoir conféré au conseil d'une bande est censé ne pas être exercé à moins de l'être en vertu du consentement donné par une majorité des conseillers de la bande présents à une réunion du conseil dûment convoquée.

DEFINITION AND REGISTRATION OF INDIANS

DÉFINITION ET ENREGISTREMENT DES INDIENS

Indian Register

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

Registre des Indiens

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant le droit d'être inscrite comme Indien en vertu de la présente loi.

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.

Registre existant

(2) Les noms figurant au registre des Indiens le 16 avril 1985 constituent le registre des Indiens au 17 avril 1985.

Deletions and additions

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

Additions et retranchements

(3) Le registraire peut ajouter au registre des Indiens, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans ce registre.

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

Date du changement

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché.

Application for registration

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

Demande

(5) Il n'est pas requis que le nom d'une personne qui a le droit d'être inscrite soit consigné dans le registre des Indiens, à moins qu'une demande à cet effet soit présentée au registraire.

Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(i) is a person whose mother's name was, as a result of the mother's marriage, omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under paragraph 12(1)(b) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(ii) is a person whose other parent is not entitled to be registered or, if no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred prior to

Personnes ayant droit à l'inscription

6. (1) Sous réserve de l'article 7, toute personne a le droit d'être inscrite dans les cas suivants :

a) elle était inscrite ou avait le droit de l'être le 16 avril 1985;

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi;

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

(i) le nom de sa mère a été, en raison du mariage de celle-ci, omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu de l'alinéa 12(1)b) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions,

(ii) son autre parent n'a pas le droit d'être inscrit ou, s'il est décédé, soit n'avait pas ce droit à la date de son décès, soit n'était pas un Indien à cette date dans le cas d'un décès survenu avant le 4 septembre 1951,

September 4, 1951,

(iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985, was born prior to that date, and

(iii) elle est née à la date du mariage visé au sous-alinéa (i) ou après cette date et, à moins que ses parents se soient mariés avant le 17 avril 1985, est née avant cette dernière date,

(iv) had or adopted a child, on or after September 4, 1951, with a person who was not entitled to be registered on the day on which the child was born or adopted;

(iv) elle a eu ou a adopté, le 4 septembre 1951 ou après cette date, un enfant avec une personne qui, lors de la naissance ou de l'adoption, n'avait pas le droit d'être inscrite;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

d) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(i) soit en vertu de l'article 13, dans sa version antérieure au 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(ii) soit en vertu de l'article 111, dans sa version antérieure au 1er juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article;

(f) that person is a person both of whose parents

f) ses parents ont tous deux le droit d'être inscrits en vertu du présent article ou, s'ils sont décédés,

are or, if no longer living, were at the time of death entitled to be registered under this section.

Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a);

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision; and

(c) a person described in paragraph (1)(c.1) and who was no longer living on the day on which that paragraph comes into force is deemed to be entitled to be registered under that paragraph.

BAND LISTS

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

avaient ce droit à la date de leur décès.

Idem

(2) Sous réserve de l'article 7, une personne a le droit d'être inscrite si l'un de ses parents a le droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès.

Présomption

(3) Pour l'application de l'alinéa (1)f) et du paragraphe (2) :

a) la personne qui est décédée avant le 17 avril 1985 mais qui avait le droit d'être inscrite à la date de son décès est réputée avoir le droit d'être inscrite en vertu de l'alinéa (1)a);

b) la personne visée aux alinéas (1)c), d), e) ou f) ou au paragraphe (2) et qui est décédée avant le 17 avril 1985 est réputée avoir le droit d'être inscrite en vertu de ces dispositions;

c) la personne visée à l'alinéa (1)c.1) et qui est décédée avant l'entrée en vigueur de cet alinéa est réputée avoir le droit d'être inscrite en vertu de celui-ci.

LISTES DE BANDE

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre.

Band Lists maintained in Department

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

Liste de bande tenue au ministère

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire.

Existing Band Lists

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

Listes existantes

(2) Les noms figurant à la liste d'une bande le 16 avril 1985 constituent la liste de cette bande au 17 avril 1985.

Deletions and additions

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

Additions et retranchements

(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.

Date of change

(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.

Date du changement

(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.

Application for entry

(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

Demande

(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné, à moins qu'une demande à cet effet soit présentée au registraire.

Band control of membership

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

Pouvoir de décision

10. (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.

Membership rules

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

Exception relating to consent

(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years**.**

Acquired rights

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

Idem

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

Règles d'appartenance

(2) La bande peut, avec l'autorisation de la majorité de ses électeurs :

a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs;

b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.

Statut administratif sur l'autorisation requise

(3) Lorsque le conseil d'une bande prend, en vertu de l'alinéa 81(1)p.4), un règlement administratif mettant en vigueur le présent paragraphe à l'égard de la bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande âgés d'au moins dix-huit ans.

Droits acquis

(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce que son nom soit consigné dans la liste de bande avant leur établissement du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.

Idem

(5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.

Notice to the Minister

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

Avis au ministre

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance.

Notice to band and copy of Band List

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

Transmission de la liste

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

Date d'entrée en vigueur des règles d'appartenance

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au ministre a été donné en vertu du paragraphe (6); les additions ou retranchements effectués par le registraire à l'égard de la liste de la bande après cette date ne sont valides que s'ils sont effectués conformément à ces règles.

Band to maintain Band List

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and,

Transfert de responsabilité

(9) À compter de la réception de l'avis prévu à l'alinéa (7)b), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le

subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

Deletions and additions

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

Membership rules for Departmental Band List

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

ministère, à compter de cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Additions et retranchements

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

Date du changement

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

Règles d'appartenance pour une liste tenue au ministère

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit le 16 avril 1985;

b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)b) comme membre de cette bande;

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

d) elle est née après le 16 avril 1985 et a le droit d'être inscrite en vertu de l'alinéa 6(1)f) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Additional membership rules for Departmental Band List

(2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

Règles d'appartenance supplémentaires pour les listes tenues au ministère

(2) À compter du jour qui suit de deux ans la date de sanction de la loi intitulée Loi modifiant la Loi sur les Indiens, déposée à la Chambre des communes le 28 février 1985, ou de la date antérieure choisie en vertu de l'article 13.1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière dans l'un ou l'autre des cas suivants :

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

a) elle a le droit d'être inscrite en vertu des alinéas 6(1)d) ou e) et elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas;

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

b) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)f) ou du paragraphe 6(2) et un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès.

Deeming provision

(3) For the purposes of paragraph (1)(d) and subsection (2),

Présomption

(3) Pour l'application de l'alinéa (1)d) et du paragraphe (2) :

(a) a person whose name was omitted or

a) la personne dont le nom a été omis ou

deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered; and

retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné;

(b) a person described in paragraph (2)(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.

b) la personne visée à l'alinéa (2)b) est réputée avoir droit à ce que son nom soit consigné dans la même liste de bande que celle dans laquelle le parent visé au même paragraphe a ou avait, ou est réputé avoir, en vertu du présent article, droit à ce que son nom y soit consigné.

Additional membership rule — paragraph 6(1)(c.1)

(3.1) A person is entitled to have the person's name entered in a Band List maintained in the Department for a band if the person is entitled to be registered under paragraph 6(1)(c.1) and the person's mother ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.1)(i).

Règle d'appartenance supplémentaire — alinéa 6(1)c.1)

(3.1) Toute personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour celle-ci au ministère si elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c.1) et si sa mère a cessé d'être un membre de la bande en raison des circonstances prévues au sous-alinéa 6(1)c.1)(i).

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which that person has the closest family ties, as the case may be.

Fusion ou division de bandes

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits.

ELECTIONS OF CHIEFS AND BAND COUNCILS

Elected councils

74. (1) Whenever he deems it advisable for the good government of a band, the Minister may declare by order that after a day to be named therein the council of the band, consisting of a chief and councillors, shall be selected by elections to be held in accordance with this Act.

Composition of council

(2) Unless otherwise ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief, and one councillor for every one hundred members of the band, but the number of councillors shall not be less than two nor more than twelve and no band shall have more than one chief.

Regulations

(3) The Governor in Council may, for the purposes of giving effect to subsection (1), make orders or regulations to provide

(a) that the chief of a band shall be elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the elected councillors of the band from among themselves,

but the chief so elected shall remain a councillor; and

(b) that the councillors of a band shall be

ÉLECTION DES CHEFS ET DES CONSEILS DE BANDE

Conseils élus

74. (1) Lorsqu'il le juge utile à la bonne administration d'une bande, le ministre peut déclarer par arrêté qu'à compter d'un jour qu'il désigne le conseil d'une bande, comprenant un chef et des conseillers, sera constitué au moyen d'élections tenues selon la présente loi.

Composition du conseil

(2) Sauf si le ministre en ordonne autrement, le conseil d'une bande ayant fait l'objet d'un arrêté prévu par le paragraphe (1) se compose d'un chef, ainsi que d'un conseiller par cent membres de la bande, mais le nombre des conseillers ne peut être inférieur à deux ni supérieur à douze. Une bande ne peut avoir plus d'un chef.

Règlements

(3) Pour l'application du paragraphe (1), le gouverneur en conseil peut prendre des décrets ou règlements prévoyant :

a) que le chef d'une bande doit être élu :

(i) soit à la majorité des votes des électeurs de la bande,

(ii) soit à la majorité des votes des conseillers élus de la bande désignant un d'entre eux,

le chef ainsi élu devant cependant demeurer conseiller;

b) que les conseillers d'une bande doivent

elected by

(i) a majority of the votes of the electors of the band, or

(ii) a majority of the votes of the electors of the band in the electoral section in which the candidate resides and that he proposes to represent on the council of the band.

être élus :

(i) soit à la majorité des votes des électeurs de la bande,

(ii) soit à la majorité des votes des électeurs de la bande demeurant dans la section électorale que le candidat habite et qu'il projette de représenter au conseil de la bande.

Electoral sections

(4) A reserve shall for voting purposes consist of one electoral section, except that where the majority of the electors of a band who were present and voted at a referendum or a special meeting held and called for the purpose in accordance with the regulations have decided that the reserve should for voting purposes be divided into electoral sections and the Minister so recommends, the Governor in Council may make orders or regulations to provide for the division of the reserve for voting purposes into not more than six electoral sections containing as nearly as may be an equal number of Indians eligible to vote and to provide for the manner in which electoral sections so established are to be distinguished or identified.

Sections électorales

(4) Aux fins de votation, une réserve se compose d'une section électorale; toutefois, lorsque la majorité des électeurs d'une bande qui étaient présents et ont voté lors d'un référendum ou à une assemblée spéciale tenue et convoquée à cette fin en conformité avec les règlements, a décidé que la réserve devrait, aux fins de votation, être divisée en sections électorales et que le ministre le recommande, le gouverneur en conseil peut prendre des décrets ou règlements stipulant qu'aux fins de votation la réserve doit être divisée en six sections électorales au plus, contenant autant que possible un nombre égal d'Indiens habilités à voter et décrétant comment les sections électorales ainsi établies doivent se distinguer ou s'identifier.

Eligibility of voters for chief

77. (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

Qualités exigées des électeurs au poste de chef

77. (1) Un membre d'une bande, qui a au moins dix-huit ans et réside ordinairement sur la réserve, a qualité pour voter en faveur d'une personne présentée comme candidat au poste de chef de la bande et, lorsque la réserve, aux fins d'élection, ne comprend qu'une section électorale, pour voter en faveur de personnes présentées aux postes de conseillers.

H. *Juries Act*, R.S.O. 1990, c. J.3

DEFINITIONS

1. In this Act,

"county" includes a district; ("comté")

"Director of Assessment" means the employee of the Municipal Property Assessment Corporation who is appointed by the Corporation to be the Director of Assessment under this Act; ("directeur de l'évaluation")

"regulations" means the regulations made under this Act. ("règlements") R.S.O. 1990, c. J.3, s. 1; 1997, c. 43, Sched. G, s. 22; 2001, c. 8, s. 206.

ELIGIBILITY

Eligible jurors

2. Subject to sections 3 and 4, every person who,

(a) resides in Ontario;

(b) is a Canadian citizen; and

(c) in the year preceding the year for which the jury is selected had attained the age of eighteen years or more,

is eligible and liable to serve as a juror on juries in the Superior Court of Justice in the county in which he or she resides.

DÉFINITIONS

1. Les définitions qui suivent s'appliquent à la présente loi.

«comté» S'entend en outre d'un district. («county»)

«directeur de l'évaluation» L'employé de la Société d'évaluation foncière des municipalités que celle-ci nomme directeur de l'évaluation en application de la présente loi. («Director of Assessment»)

«règlements» Les règlements pris en application de la présente loi. («regulations») L.R.O. 1990, chap. J.3, art. 1; 1997, chap. 43, annexe G, art. 22; 2001, chap. 8, art. 206.

QUALITÉS REQUISES

Personnes habiles à être jurés

2. Sous réserve des articles 3 et 4, toute personne est habile à être membre d'un jury de la Cour supérieure de justice dans le comté où elle réside et peut être tenue de l'être si elle remplit les conditions suivantes :

a) elle réside en Ontario;

b) elle a la citoyenneté canadienne;

c) elle était âgée d'au moins dix-huit ans ou a atteint cet âge au cours de l'année précédant celle pour laquelle le jury est choisi. L.R.O. 1990, chap. J.3, art. 2; 2006, chap. 19, annexe C, par. 1 (1).

PREPARATION OF JURY ROLLS

Duty of sheriff

Number of jurors on roll

5. (1) The sheriff for a county shall on or before the 15th day of September in each year determine for the ensuing year for the county,

(a) the number of jurors that will be required for each sittings of the Superior Court of Justice;

(b) the number of persons that will be required for selection from the jury roll for the purposes of any other Act; and

(c) the aggregate number of persons that will be so required.

Number of jurors in districts

(2) In a territorial district, after determining the number of persons that will be required for service during the ensuing year, the sheriff shall fix the total number of persons that shall be selected from municipalities, and the total number that shall be selected from territory without municipal organization. R.S.O. 1990, c. J.3, s. 5 (2).

Transmission of resolutions

(3) The sheriff shall forthwith upon making the determination under subsection (1) certify and transmit,

(a) to the Director of Assessment,

(i) a copy of the determination

PRÉPARATION DE LA LISTE DES JURÉS

Obligation du shérif

Nombre de personnes sur la liste

5. (1) Au plus tard le 15 septembre de chaque année, le shérif d'un comté détermine à l'égard du comté pour l'année suivante :

a) le nombre de jurés nécessaires pour chaque session de la Cour supérieure de justice;

b) le nombre de personnes nécessaires pour effectuer une sélection à partir de la liste des jurés pour l'application d'une autre loi;

c) le nombre total de personnes nécessaires. L.R.O. 1990, chap. J.3, par. 5 (1); 2006, chap. 19, annexe C, par. 1 (1).

District territorial

(2) Dans le cas d'un district territorial, après avoir déterminé le nombre de personnes nécessaires pour former les jurys au cours de l'année suivante, le shérif fixe le nombre de personnes à sélectionner dans une municipalité et le nombre à sélectionner dans un territoire non érigé en municipalité. L.R.O. 1990, chap. J.3, par. 5 (2).

Transmission des résultats

(3) Après avoir fixé les nombres prévus au paragraphe (1), le shérif certifie et transmet sans délai :

a) au directeur de l'évaluation :

(i) une copie de la déclaration

declaring the aggregate number of persons required for the jury roll in the county in the ensuing year, and

(ii) a statement of the numbers of jury service notices to be mailed to persons in the county; and

(b) to the local registrar of the Superior Court of Justice, a copy of the determination for the number of jurors under clause (1) (a). R.S.O. 1990, c. J.3, s. 5 (3); 2006, c. 19, Sched. C, s. 1 (1).

dans laquelle il indique le nombre total de personnes à inscrire sur la liste des jurés pour l'année suivante,

(ii) une déclaration qui indique le nombre d'avis de sélection de juré à envoyer par la poste à des personnes du comté;

b) au greffier local de la Cour supérieure de justice, une copie de la déclaration portant sur le nombre de personnes prévu conformément à l'alinéa (1) a). L.R.O. 1990, chap. J.3, par. 5 (3); 2006, chap. 19, annexe C, par. 1 (1).

Jury service notices

6. (1) The Director of Assessment shall in each year on or before the 31st day of October cause a jury service notice, together with a return to the jury service notice in the form prescribed by the regulations and a prepaid return envelope addressed to the sheriff for the county, to be mailed by first class mail to the number of persons in each county specified in the sheriff's statement, and selected in the manner provided for in this section. R.S.O. 1990, c. J.3, s. 6 (1).

Selection of persons notified

(2) The persons to whom jury service notices are mailed under this section shall be selected by the Director of Assessment at random from persons who, from information obtained at the most recent enumeration of the inhabitants of the county under section 15 of the Assessment Act,

(a) at the time of the enumeration, resided in

the county and were Canadian citizens;

Avis de sélection de juré

6. (1) Au plus tard le 31 octobre de chaque année, le directeur de l'évaluation fait envoyer, par courrier de première classe, un avis de sélection de juré accompagné d'une formule de rapport rédigée selon la formule prescrite par les règlements et d'une enveloppe affranchie adressée au shérif du comté, au nombre de personnes de chaque comté précisé dans la déclaration du shérif et sélectionnées de la manière que prévoit le présent article. L.R.O. 1990, chap. J.3, par. 6 (1).

Sélection des personnes avisées

(2) Le directeur de l'évaluation sélectionne au hasard les personnes à qui sont envoyés, aux termes du présent article, les avis de sélection de juré, parmi les personnes qui, selon le dernier recensement des habitants du comté effectué en vertu de l'article 15 de la Loi sur l'évaluation foncière, remplissent les conditions suivantes :

a) au moment du recensement elles avaient la citoyenneté canadienne et résidaient dans le comté;

and

(b) in the year preceding the year for which the jury is selected, are of or will attain the age of eighteen years or more,

and the number of persons selected from each municipality in the county shall bear approximately the same proportion to the total number selected for the county as the total number of persons eligible for selection in the municipality bears to the total number eligible for selection in the county, as determined by the enumeration. R.S.O. 1990, c. J.3, s. 6 (2).

Application of subs. (2) to municipalities in districts

(3) In a territorial district for the purposes of subsection (2), all the municipalities in the district shall together be treated in the same manner as a county from which the number of jurors required is the number fixed under subsection 5(2) to be selected from municipalities. R.S.O. 1990, c. J.3, s. 6 (3).

Address for mailing

(4) The jury service notice to a person under this section shall be mailed to the person at the address shown in the most recent enumeration of the inhabitants of the county under section 15 of the Assessment Act. R.S.O. 1990, c. J.3, s. 6 (4).

Return to jury service notice

(5) Every person to whom a jury service notice is mailed in accordance with this section shall accurately and truthfully complete the return and shall mail it to the sheriff for the county within five days after receipt thereof. R.S.O. 1990, c. J.3, s. 6 (5).

b) elles étaient âgées d'au moins dix-huit ans ou ont atteint cet âge au cours de l'année précédant celle pour laquelle le jury est choisi.

Le rapport entre le nombre de personnes sélectionnées dans chaque municipalité du comté et le nombre de personnes sélectionnées dans le comté est approximativement égal au rapport entre le nombre de personnes habiles à être jurés dans la municipalité et le nombre de personnes habiles à l'être dans le comté, d'après les données du recensement. L.R.O. 1990, chap. J.3, par. 6 (2).

Application du par. (2) aux municipalités d'un district

(3) Pour l'application du paragraphe (2), toutes les municipalités d'un district territorial sont globalement considérées comme un comté pour lequel le nombre de jurés nécessaire est celui fixé pour les municipalités aux termes du paragraphe 5 (2). L.R.O. 1990, chap. J.3, par. 6 (3).

Adresse postale

(4) L'avis de sélection de juré prévu au présent article porte l'adresse du destinataire telle qu'elle apparaît au dernier recensement des habitants du comté effectué en vertu de l'article 15 de la Loi sur l'évaluation foncière. L.R.O. 1990, chap. J.3, par. 6 (4).

Rapport de l'avis de sélection

(5) Toute personne à qui est envoyé un avis de sélection de juré remplit la formule de rapport qui y est jointe de façon exacte et véridique et l'envoie par la poste au shérif de la localité dans les cinq jours de sa réception. L.R.O. 1990, chap. J.3, par. 6 (5).

When service deemed made

(6) For the purposes of subsection (5), the notice shall be deemed to have been received on the third day after the day of mailing unless the person to whom the notice is mailed establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control did not receive the notice or order, or did not receive the notice or order until a later date. R.S.O. 1990, c. J.3, s. 6 (6).

Date de réception

(6) Pour l'application du paragraphe (5), l'avis est réputé reçu le troisième jour suivant sa mise à la poste à moins que le destinataire ne démontre qu'en toute bonne foi, par suite de son absence, d'un accident ou d'une maladie, ou pour autre motif indépendant de sa volonté, il n'a pas reçu l'avis ou l'ordonnance ou ne l'a reçu qu'à une date ultérieure. L.R.O. 1990, chap. J.3, par. 6 (6).

List of notices given

(7) The Director of Assessment shall furnish to the sheriff for the county a list of persons in the county arranged alphabetically to whom jury service notices were mailed under this section forthwith after such mailing and the list received by the sheriff purporting to be certified by the Director of Assessment is, without proof of the office or signature of the Director of Assessment, receivable in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the mailing of jury service notices to the persons shown on the list. R.S.O. 1990, c. J.3, s. 6 (7).

Liste des avis envoyés

(7) Le directeur de l'évaluation fournit au shérif du comté, sans délai après l'envoi des avis de sélection de juré, une liste alphabétique des destinataires de ces avis. La liste ainsi reçue et qui se présente comme étant certifiée par le directeur de l'évaluation est recevable dans le cadre d'une instance, en l'absence de preuve contraire, comme preuve de l'envoi des avis de sélection aux personnes inscrites sur la liste, sans qu'il soit nécessaire de prouver la qualité ou l'authenticité de la signature du directeur. L.R.O. 1990, chap. J.3, par. 6 (7).

Indian reserves

(8) 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. R.S.O. 1990, c. J.3, s. 6 (8).

Réserve indienne

(8) Pour dresser une liste de jurés pour un comté ou un district où se trouve une réserve indienne, le shérif sélectionne le nom des habitants de la réserve habiles à être membres d'un jury comme si la réserve était une municipalité et, à cette fin, il peut obtenir le nom des habitants de la réserve en consultant tout registre disponible. L.R.O. 1990, chap. J.3, par. 6 (8).

Sheriff to prepare jury roll

7. The sheriff shall in each year prepare a roll called the jury roll in the form prescribed by the regulations. R.S.O. 1990, c. J.3, s. 7.

Préparation par le shérif de la liste des jurés

7. Le shérif dresse chaque année une liste appelée liste des jurés qu'il rédige selon la formule prescrite par les règlements. L.R.O. 1990, chap. J.3, art. 7.

Entry of names in jury roll

8. (1) The sheriff shall open the returns to jury service notices received by the sheriff and shall cause the name, address and occupation of each person making such a return, who is shown by the return to be eligible for jury service, to be entered in the jury roll alphabetically arranged and numbered consecutively. R.S.O. 1990, c. J.3, s. 8 (1); 1994, c. 27, s. 48 (4).

English, French and bilingual jurors

(2) The jury roll prepared under subsection (1) shall be divided into three parts, as follows:

1. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand English.

2. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand French.

3. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand both English and French. 1994, c. 27, s. 48 (5).

Omission of names

(3) The sheriff may, with the written approval of a judge of the Superior Court of Justice, omit the name from the roll where it appears such person will be unable to attend for jury duty. R.S.O. 1990, c. J.3, s. 8 (3); 2006, c. 19, Sched. C, s. 1 (1).

Supplementary names

(4) The sheriff may request the Director of

Inscription sur la liste des jurés

8. (1) Après examen des formules de rapport reçues, le shérif fait inscrire sur la liste des jurés le nom, l'adresse et la profession de chaque personne qui lui fait parvenir un rapport indiquant qu'elle est habile à être membre d'un jury. Les inscriptions sont faites par ordre alphabétique et numérotées consécutivement. L.R.O. 1990, chap. J.3, par. 8 (1); 1994, chap. 27, par. 48 (4).

Liste des jurés francophones, anglophones et bilingues

(2) La liste des jurés dressée aux termes du paragraphe (1) est divisée en trois parties comme suit :

1. Une partie où figure le nom des personnes qui, d'après les rapports, parlent, lisent et comprennent l'anglais.

2. Une partie où figure le nom des personnes qui, d'après les rapports, parlent, lisent et comprennent le français.

3. Une partie où figure le nom des personnes qui, d'après les rapports, parlent, lisent et comprennent le français et l'anglais. 1994, chap. 27, par. 48 (5).

Noms omis

(3) Avec l'approbation écrite d'un juge de la Cour supérieure de justice, le shérif peut, s'il appert qu'une personne ne pourra se présenter pour être membre d'un jury, omettre cette personne de la liste des jurés. L.R.O. 1990, chap. J.3, par. 8 (3); 2006, chap. 19, annexe C, par. 1 (1).

Noms supplémentaires

(4) Le shérif peut demander au directeur de

Assessment to mail such number of additional jury service notices and forms of returns to jury service notice as in the opinion of the sheriff are required. R.S.O. 1990, c. J.3, s. 8 (4).

l'évaluation de mettre à la poste le nombre d'avis supplémentaires de sélection de juré et de formules de rapport que le shérif juge nécessaire. L.R.O. 1990, chap. J.3, par. 8 (4).

Supplying of supplementary names

(5) Upon receipt of a request from the sheriff under subsection (4), the Director of Assessment shall forthwith carry out such request and for such purpose section 6 applies with necessary modifications with respect to the additional jury service notices requested by the sheriff to be mailed. R.S.O. 1990, c. J.3, s. 8 (5).

Idem

(5) Dès qu'il reçoit une demande présentée par le shérif aux termes du paragraphe (4), le directeur de l'évaluation donne suite à la demande et, à cette fin, l'article 6 s'applique, avec les adaptations nécessaires, aux avis supplémentaires de sélection dont le shérif a demandé l'envoi. L.R.O. 1990, chap. J.3, par. 8 (5).

Selection from unorganized territory

(6) In a territorial district, the sheriff shall select names of eligible persons who reside in the district outside territory with municipal organization in the numbers fixed under subsection 5(2) and for the purpose may have recourse to the latest polling list prepared and certified for such territory, and to any assessment or collector's roll prepared for school purposes and may obtain names from any other record available. R.S.O. 1990, c. J.3, s. 8 (6).

Sélection dans un territoire non érigé en municipalité

(6) Dans un district territorial, le shérif sélectionne, parmi les personnes habiles à être jurés qui résident dans le territoire non érigé en municipalité, le nombre de personnes fixé aux termes du paragraphe 5 (2). À cette fin, le shérif peut recourir à tout registre disponible et, notamment, à la plus récente liste électorale établie et certifiée pour ce territoire, ainsi qu'au rôle d'évaluation ou de perception dressé aux fins scolaires. L.R.O. 1990, chap. J.3, par. 8 (6).

Certification of roll

9. As soon as the jury roll has been completed but not later than the 31st day of December in each year, the sheriff shall certify the roll to be the proper roll prepared as the law directs and shall deliver notice of the certification to a judge of the Superior Court of Justice, but a judge of the court may extend the time for certification for such reasons as he or she considers sufficient. R.S.O. 1990, c. J.3, s. 9; 2006, c. 19, Sched. C, s. 1 (1).

Rôle certifié

9. Dès l'achèvement de la liste des jurés ou au plus tard le 31 décembre de chaque année, le shérif certifie que la liste a été dressée conformément à la loi et donne avis de la certification à un juge de la Cour supérieure de justice. Un juge de la Cour peut, pour les raisons qu'il estime suffisantes, proroger le délai imparti pour certifier la liste. L.R.O. 1990, chap. J.3, art. 9; 2006, chap. 19, annexe C, par. 1 (1).

JURY PANELS

Issuance of precepts

12. A judge of the Superior Court of Justice may issue precepts in the form prescribed by the regulations to the sheriff for the return of such number of jurors as the sheriff has determined as the number to be drafted and returned or such greater or lesser number as in his or her opinion is required. R.S.O. 1990, c. J.3, s. 12; 2006, c. 19, Sched. C, s. 1 (1).

Two or more sets of jurors

13. (1) Where a judge of the Superior Court of Justice considers it necessary that the jurors to form the panel for a sittings of the Superior Court of Justice be summoned in more than one set, the judge may direct the sheriff to return such number of jurors in such number of sets on such day for each set as he or she thinks fit. R.S.O. 1990, c. J.3, s. 13 (1); 2006, c. 19, Sched. C, s. 1 (1).

Sheriff to divide jurors into sets

(2) The sheriff shall divide such jurors into as many sets as are directed, and shall in the summons to every juror specify at what time his or her attendance will be required. R.S.O. 1990, c. J.3, s. 13 (2).

Each set a separate panel

(3) Each set shall for all purposes be deemed a separate panel. R.S.O. 1990, c. J.3, s. 13 (3).

Additional jurors

Omissions to observe this Act not to vitiate the verdict

44. (1) The omission to observe any of the provisions of this Act respecting the eligibility, selection, balloting and distribution of jurors, the

TABLEAU DES JURÉS

Délivrance des citations

12. Un juge de la Cour supérieure de justice peut délivrer au shérif des citations rédigées selon la formule prescrite par les règlements ordonnant la présentation du nombre de jurés déterminé par le shérif ou tout autre nombre que le juge estime nécessaire. L.R.O. 1990, chap. J.3, art. 12; 2006, chap. 19, annexe C, par. 1 (1).

Deux ou plus de deux groupes de jurés pour la Cour supérieure de justice

13. (1) Si un juge de la Cour supérieure de justice estime nécessaire d'assigner plus d'un groupe de jurés pour la formation d'un tableau lors d'une session de cette Cour, il peut ordonner au shérif de présenter des jurés conformément aux directives que le juge estime opportunes quant à leur nombre, au nombre de groupes et à la date de convocation de chaque groupe. L.R.O. 1990, chap. J.3, par. 13 (1); 2006, chap. 19, annexe C, par. 1 (1).

Division des jurés en groupes par le shérif

(2) Le shérif répartit les jurés dans le nombre de groupes exigé et précise dans l'assignation à chaque juré la date et l'heure à laquelle il est tenu de se présenter. L.R.O. 1990, chap. J.3, par. 13 (2).

Chaque groupe constitue un tableau distinct

(3) Chaque groupe est réputé constituer un tableau distinct et ce, à toutes les fins. L.R.O. 1990, chap. J.3, par. 13 (3).

L'omission de se conformer à la présente loi n'entache pas le verdict de nullité

44. (1) L'inobservation d'une disposition de la présente loi concernant l'habilité, la sélection, le tirage au sort ou la répartition des jurés, la préparation de la liste des jurés ou le tirage au sort

preparation of the jury roll or the drafting of panels from the jury roll is not a ground for impeaching or quashing a verdict or judgment in any action. R.S.O. 1990, c. J.3, s. 44 (1).

du tableau à partir de la liste des jurés, ne constitue pas un motif pour attaquer ou annuler un verdict ou un jugement. L.R.O. 1990, chap. J.3, par. 44 (1).

Panel deemed properly selected

(2) Subject to sections 32 and 34, a jury panel returned by the sheriff for the purposes of this Act shall be deemed to be properly selected for the purposes of the service of the jurors in any matter or proceeding. R.S.O. 1990, c. J.3, s. 44 (2).

Tableau réputé régulièrement choisi

(2) Sous réserve des articles 32 et 34, un tableau présenté par le shérif pour l'application de la présente loi est réputé régulièrement choisi aux fins des fonctions des jurés dans toute instance. L.R.O. 1990, chap. J.3, par. 44 (2).

I. *Municipal Act,* 2001, S.O. 2001, c.25

Interpretation

1. (1) In this Act,

Interprétation

1. (1) Les définitions qui suivent s'appliquent à la présente loi.

"unorganized territory" means a geographic area without municipal organization; ("territoire non érigé en municipalité")

«territoire non érigé en municipalité» Partie du territoire de l'Ontario qui n'est pas dotée d'une organisation municipale. («unorganized territory»)

"single-tier municipality" means a municipality, other than an upper-tier municipality, that does not form part of an upper-tier municipality for municipal purposes; ("municipalité à palier unique")

«municipalité à palier unique» Municipalité, à l'exclusion d'une municipalité de palier supérieur, qui ne fait pas partie d'une municipalité de palier supérieur aux fins municipales. («single-tier municipality»)

"upper-tier municipality" means a municipality of which two or more lower-tier municipalities form part for municipal purposes. ("municipalité de palier supérieur")

«municipalité de palier supérieur» Municipalité dont font partie deux municipalités de palier inférieur ou plus aux fins municipales. («upper-tier municipality»)

"municipality" means a geographic area whose inhabitants are incorporated; ("municipalité")

«municipalité» Zone géographique dont les habitants sont constitués en personne morale. («municipality»)

"lower-tier municipality" means a municipality that forms part of an upper-tier municipality for municipal purposes; ("municipalité de palier inférieur")

«municipalité de palier inférieur» Municipalité qui fait partie d'une municipalité de palier supérieur aux fins municipales. («lower-tier municipality»)

Municipality

(2) In this Act, a reference to a municipality is a reference to its geographical area or to the municipal corporation, as the context requires. 2001, c. 25, s. 1 (2).

Municipalité

(2) La mention, dans la présente loi, d'une municipalité désigne la municipalité en tant que territoire ou personne morale, selon le contexte. 2001, chap. 25, par. 1 (2).

General definitions

(5) Unless the context otherwise requires, the terms "county", "local municipality", "lower-tier municipality", "municipality", "regional municipality", "single-tier municipality" and "upper-tier municipality", when used in any other Act or regulation, have the same meanings as in subsection (1). 2002, c. 17, Sched. A, s. 1 (3).

Définitions générales

(5) Sauf si le contexte exige une interprétation différente, les termes «comté», «municipalité», «municipalité à palier unique», «municipalité de palier inférieur», «municipalité de palier supérieur», «municipalité locale» et «municipalité régionale» s'entendent au sens du paragraphe (1) lorsqu'ils sont utilisés dans une autre loi ou dans un règlement. 2002, chap. 17, annexe A, par. 1 (3).

J. *Territorial Division Act,* 2002, S.O. 2002, c.17, Sched E

Geographic division of province

1. (1) Ontario may be divided into such geographic areas and with such names as may be prescribed by regulation. 2002, c. 17, Sched. E, s. 1 (1).

Division géographique de la province

1. (1) L'Ontario peut être divisé en les zones géographiques et selon les noms que prescrivent les règlements. 2002, chap. 17, annexe E, par. 1 (1).

Status, etc., of municipality unaffected

(2) The status, name or boundary of any municipality, except where otherwise provided, is unaffected by this Act, a regulation made under this Act or the repeal of the Territorial Division Act. 2002, c. 17, Sched. E, s. 1 (2).

Statut des municipalités inchangé

(2) Sauf disposition contraire, la présente loi, ses règlements d'application et l'abrogation de la Loi sur la division territoriale n'ont aucune incidence sur les statut, nom ou limites des municipalités. 2002, chap. 17, annexe E, par. 1 (2).

K. O. Reg 180/03 (Territorial Division Act, 2002)

DIVISION OF ONTARIO INTO GEOGRAPHIC AREAS

Division into geographic areas

1. Ontario is divided into the geographic areas named and described in Schedules 1 and 2. O. Reg. 180/03, s. 1.

Schedule 2: GEOGRAPHIC AREAS (TERRITORIAL DISTRICTS)

KENORA	Consisting of the geographic area of the Territorial District of Kenora which consists of,
	(a) the single-tier municipalities of,
	Dryden,
	Ear Falls,
	Ignace,
	Kenora,
	Machin,
	Pickle Lake,
	Red Lake,
	Sioux Lookout,
	Sioux Narrows-Nestor Falls; and
	(b) the geographic townships and the remaining territory set out in clauses (c) and (d) of paragraph 44 of the Schedule to the *Territorial Division Act*, as those clauses read on December 31, 2002, excluding those islands and parts of islands annexed to the Township of Lake of the Woods and described as being in Lake of the Woods in the District of Kenora by a Minister's order dated December 17, 1997 and published in *The Ontario Gazette* on January 10, 1998; and
	(c) the geographic townships of Claxton, Croome and Mathieu.

DIVISION DE L'ONTARIO EN ZONES GÉOGRAPHIQUES

Division en zones géographiques

1. L'Ontario est divisé en les zones géographiques dont le nom figure et qui sont décrites aux annexes 1 et 2. Règl. de l'Ont. 180/03, art. 1.

Annexe 2: ZONES GÉOGRAPHIQUES (DISTRICTS TERRITORIAUX)

KENORA	Zone géographique constituée du district territorial de Kenora, lequel se compose de ce qui suit :
	a) les municipalités à palier unique suivantes :
	Dryden,
	Ear Falls,
	Ignace,
	Kenora,
	Machin,
	Pickle Lake,
	Red Lake,
	Sioux Lookout,
	Sioux Narrows-Nestor Falls;
	b) les cantons géographiques mentionnés et le reste du territoire décrit aux alinéas c) et d) de la disposition 44 de l'annexe de la Loi sur la division territoriale, tels que ces alinéas existaient le 31 décembre 2002, sauf les îles et parties d'îles annexées au canton de Lake of the Woods décrites comme étant situées dans Lake of the Woods, dans le district de Kenora, par arrêté du ministre daté du 17 décembre 1997 et publié dans la Gazette de l'Ontario du 10 janvier 1998;

APPENDIX I - THE FIRST NATIONS LOCATED WITHIN KENORA DISTRICT

First Nation	Reserve or Settlement	Census subdivision[1]	Band membership[12]	Elections[13]
1. Anishinabe of Wauzhushk Onigum	Kenora 38B Agency 30	Kenora 38B	s.11	custom
2. Anishnaabeg of Naongashiing	Agency 30[2] Big Island 31D Big Island 31E Big Island 31F Big Island Mainland 93 Lake of the Woods 31B Lake of the Woods 31C Lake of the Woods 31G Lake of the Woods 31H Naongashing 31A Saug-A-Gaw-Sing 1 Shoal Lake 31J	Big Island Mainland 93[3] Lake of the Woods 31G Saug-A-Gaw-Sing 1[3]	s.10	custom
3. Attawapiskat	Attawapiskat 91 Attawapiskat 91A	Attawapiskat 91A	s.11	custom
4. Bearskin Lake	Bearskin Lake	Bearskin Lake	s.10	custom
5. Cat Lake	Cat Lake 63C	Cat Lake 63C	s.10	custom
6. Deer Lake	Deer Lake	Deer Lake	s.11	custom
7. Eagle Lake	Eagle Lake 27	Eagle Lake 27	s.11	s.74
8. Eabametoong First Nation	Fort Hope 64	Fort Hope 64	s.10	s.74
9. Fort Severn	Fort Seven Indian Settlement Fort Severn 89	Fort Severn 89	s.11	custom
10. Grassy Narrows First Nation	English River 21	English River 21	s.10	s.74
11. Iskatewizaagegan #39 Independent First Nation	Agency 30[2] Shoal Lake 34B2[5] Shoal Lake 39 Shoal Lake 39A (Part)[6]	Shoal Lake 34B2[5] Shoal Lake 39A (Part)[6]	s.11	s.74
12. Kasabonika Lake	Kasabonika Lake	Kasabonika Lake	s.10	custom
13. Kashechewan First Nation[4]	Fort Albany (Part) 67[4]	Fort Albany (Part) 67[4]	s.11	custom
14. Kee-Way-Win	Kee Way Win Indian Settlement Keewaywin	Keewaywin	s.11	custom
15. Kingfisher	Kingfisher 2A Kingfisher 3A Kingfisher Lake 1	Kingfisher Lake 1	s.10	custom
16. Kitchenuhmaykoosib Inninuwug	Kitchenuhmaykoosib Aaki 84	Kitchenuhmaykoosib Aaki 84	s.10	custom
17. Koocheching[10]	None	None	N/A	N/A
18. Lac Seul	Lac Seul 28	Lac Seul 28	s.11	s.74
19. Martin Falls	Marten Falls 65	Marten Falls 65	s.11	s.74

First Nation	Reserve or Settlement	Census subdivision[1]	Band membership[12]	Elections[13]
20. McDowell Lake	McDowell Lake Indian Settlement	McDowell Lake Indian Settlement	s.10	custom
21. Mishkeegogamang	Osnaburgh 63A[7] Osnaburgh 63B[7]	Osnaburgh 63A[7] Osnaburgh 63B[7]	s.11	s.74
22. Muskrat Dam Lake	Muskrat Dam Lake	Muskrat Dam Lake	s.11	custom
23. Naotkamegwanning	Agency 30[2] Sabaskong Bay 32C Whitefish Bay 32A Yellow Girl Bay 32B	Whitefish Bay 32A	s.11	s.74
24. Neskantaga First Nation	Neskantaga Lansdowne House Settlement Summer Beaver Settlement[8]	Neskantaga Lansdowne House Settlement Summer Beaver Settlement[8]	s.10	custom
25. Nibinamik First Nation	Summer Beaver Settlement[8]	Summer Beaver Settlement[8]	s.10	custom
26. North Caribou Lake	Weagamow Lake 87	Weagamow Lake 87	s.10	custom
27. North Spirit Lake	North Spirit Lake	North Spirit Lake	s.10	custom
28. Northwest Angle No. 33	Agency 30[2] Northwest Angle 33B Whitefish Bay 33A	Northwest Angle 33B Whitefish Bay 33A	s.11	s.74
29. Northwest Angle No. 37	Agency 30[2] Big Island 37 Lake of the Woods 34 Lake of the Woods 37 Lake of the Woods 37B Northwest Angle 34C Northwest Angle 34C Northwest Angle 37B Northwest Angle 37C Shoal Lake 34B1 Shoal Lake 37A Whitefish Bay 34A	Lake of the Woods 37 Whitefish Bay 34A	s.11	s.74
30. Obashkaandagaang	Agency 30[2] Rat Portage 38A	Rat Portage 38A	s.11	s.74
31. Ochiichagwe'babigo'ining First Nation	Agency 30[2] The Dalles 38C	The Dalles 38C	s.11	custom
32. Ojibways of Onigaming First Nation	Agency 30[2] Assabaska Sabaskong Bay 35C Sabaskong Bay 35D Sabaskong Bay 35F Sabaskong Bay 35H	Sabaskong Bay 35C Sabaskong Bay 35D	s.10	s.74
33. Pikangikum	Pikangikum 14	Pikangikum 14	s.10	custom
34. Poplar Hill	Poplar Hill	Poplar Hill	s.11	custom

First Nation	Reserve or Settlement	Census subdivision[1]	Band membership[12]	Elections[13]
35. Sachigo Lake	Sachigo Lake 1 Sachigo Lake 2 Sachigo Lake 3	Sachigo Lake 1 Sachigo Lake 2	s.11	custom
36. Sandy Lake	Sandy Lake 88	Sandy Lake 88	s.10	custom
37. Shoal Lake No.40	Agency 30[2] Shoal Lake 34B2[5] Shoal Lake 40 (Part)[9]	 Shoal Lake 34B2[5] Shoal Lake 40 (Part)[9]	s.11	s.74
38. Slate Falls Nation	Slate Falls Indian Settlement	Slate Falls Indian Settlement	s.10	custom
39. Wabaseemoong Independent Nations	Agency 30[2] One Man Lake 29 Swan Lake 29 Wabaseemoong	 Wabaseemoong	s.11	s.74
40. Wabauskang First Nation	Wabauskang 21	Wabauskang 21	s.11	custom
41. Wabigoon Lake Ojibway Nation	Wabigoon Lake 27	Wabigoon Lake 27	s.11	s.74
42. Wapekeka	Wapekeka 1 Wapekeka 2	Wapekeka 1 Wapekeka 2	s.10	custom
43. Wawakapewin	Wawakapewin	Wawakapewin	s.11	custom
44. Webequie	Webequie Webiqui Indian Settlement	Webequie	s.10	custom
45. Weenusk	Peawanuck Indian Settlement (Winisk) Winisk 90	Peawanuck Indian Settlement (Winisk)	s.11	custom
46. Wunnumin	Wunnumin 1 Wunnumin 2	Wunnumin 1 Wunnumin 2	s.11	custom
47. Ojibway Nation of Saugeen[11]	Ojibway Nation of Saugeen	Ojibway Nation of Saugeen	s.11	custom

Notes:

[1] Statistics Canada only designates an Indian reserve as a census subdivision if the reserve is populated or potentially populated.

[2] Some non-populated reserves within the Kenora District are associated with more than one First Nation (such as, for example, Agency 30).

[3] Reserves Big Island Mainland 93 and Saug-A-Gaw-Sing 1, both associated with the Anishnaabeg of Naongashiing First Nation, are all located in the Rainy River District. Others of the reserves associated with the Anishnaabeg of Naongashiing First Nation are located in the Kenora District, including Lake of the Woods 31G, which is populated.

[4] Kashechewan First Nation occupies a portion of the Fort Albany 67 reserve, and is located on the north shore of the Albany River. Fort Albany First Nation occupies a different portion of the Fort Albany 67 reserve, located on the south shore of the Albany River. Kashechewan First Nation is located in the Kenora District, while Fort Albany First Nation is located in the Cochrane District.

[5] Reserve Shoal Lake 34B2 is associated with two First Nations, Iskatewizaagegan #39 Independent First Nation and Shoal Lake No. 40 First Nation.

[6] Shoal Lake 39A, one of the reserves associated with Iskatewizaagegan #39 Independent First Nation, is partly located in Manitoba and partly located in Ontario. Statistics Canada divides the reserve into two census subdivisions, one located in Manitoba and the other in Ontario.

[7] Reserve Osnaburgh 63A, associated with Mishkeegogamang First Nation, is located in the Thunder Bay District. Reserve Osnaburgh 63B, which is also associated with Mishkeegogamang First Nation, is located in the Kenora District. Both

Osnaburgh 63A and Osnaburgh 63B are populated.

[8] Summer Beaver Settlement, an Indian Settlement, is associated with both the Neskantaga First Nation and the Nibinimik First Nation. Neskantaga First Nation is also associated with the Neskantaga Reserve; the Nibinimik First Nation is only associated with the Summer Beaver Settlement.

[9] Shoal Lake 40, one of the reserves associated with Shoal Lake No. 40 First Nation, is partly located in Manitoba and partly located in Ontario. Statistics Canada divides the reserve into two census subdivisions, one located in Manitoba and the other in Ontario.

[10] Koocheching First Nation does not appear to be recognized by INAC as a distinct band under the *Indian Act*, and has no reserve.

[11] The Ojibway Nation of Saugeen is located in Thunder Bay District, but has to date been included in the District of Kenora for the purposes of jury notices sent pursuant to s.6(8) of the *Juries Act.*

[12] Refers to the provision of the *Indian Act* applicable to the First Nation in respect of the control of its membership list – either s.10 (band controlled) or s.11 (Department controlled).

[13] Refers to whether the First Nation conducts its elections pursuant to s.74 of the *Indian Act*, or pursuant to a custom electoral code.

References:

The information in this Appendix is drawn from Second Khan Affidavit, Table 2; Loohuizen Affidavit, ¶3, fn 3 and Exhibit 2; and Exhibits 3,4, 5 & 8 to Tallman Cross-Exam.

APPENDIX II – SUMMARY OF EFFORTS MADE TO OBTAIN LISTS OF ON-RESERVE RESIDENTS IN RESPECT OF THE 2008 KENORA JURY ROLL

In respect of 17 First Nations, there is no evidence of any efforts whatsoever made in 2007 to obtain updated lists. For these 17, the only documented efforts consist of single written requests in 2002 and 2006.

	First Nation	List Used for 2008 Roll	Visited/In Person Meeting in 2007	Phone and/or Letter Efforts in 2007	Evidence of Efforts in 2007
1	Attawapiskat	2000 INAC		Y	Loohuizen Affidavit, Exhibit 47.
2	Bearskin Lake	2007	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
3	Cat Lake	2007	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
4	Deer Lake	2000 INAC			
5	Eabametoong (Fort Hope)	2006		Y	Loohuizen Affidavit, Exhibit 47.
6	Eagle Lake (Migisi Sahgaigan)	2000 INAC			
7	Fort Severn	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
8	Grassy Narrows	2000 INAC			
9	Kasabonika Lake	2007	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
10	Kashechewan	No List		Y	Loohuizen Affidavit, Exhibit 47.
11	Keewaywin	2007	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
12	Kingfisher Lake	2000 INAC			
13	Kitchenuhmaykoosib Inninuwug (Big Trout Lake)	2007	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
14	Koochiching (East Sandy Lake)	No List			
15	Lac Seul (Hudson)	2000 INAC			
16	Marten Falls (Ogoki Post)	No List		Y	Loohuizen Affidavit, Exhibit 47.
17	McDowell Lake (Red Lake)	2000 INAC		Y	Loohuizen Affidavit, Exhibit 47.
18	Muskrat Dam	2007	Y	Y	Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.
19	Naotkamegwanning (Whitefish Bay)	2000 INAC	Attempted		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 94.
20	Neskantaga (Lansdowne House)	No List		Y	Loohuizen Affidavit, Exhibit 47.
21	Nibinamik (Summer Beaver)	2000 INAC			
22	North Caribou Lake (Weagamow/Round Lake)	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
23	North Spirit Lake	2000 INAC			
24	Northwest Angle No. 33 (Kenora)	2000 INAC	Attempted	Y	Loohuizen Affidavit, Exhibit 47.
25	Northwest Angle No. 37 (Sioux Narrows)	2000 INAC			
26	Ochiichagwe'babigo'ining (Dalles)	2000 INAC	Y	Y	Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 93.

	First Nation	List Used for 2008 Roll	Visited/In Person Meeting in 2007	Phone and/or Letter Efforts in 2007	Evidence of Efforts in 2007
27	Onigaming (Sabaskong/Nestor Falls)	2000 INAC			
28	Osnaburgh (Mishkeegogamang)	2000 INAC			
29	Pikangikum	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
30	Poplar Hill	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
31	Sachigo Lake	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
32	Sandy Lake	2000 INAC	Y		Loohuizen Affidavit, Paragraph 86.
33	Saugeen (Savant Lake)	2000 INAC			
34	Shoal Lake No. 39 (Iskatewizaagegan)	2000 INAC		Y	Loohuizen Affidavit, Exhibit 47.
35	Shoal Lake No. 40 (Kejick)	2000 INAC		Y	Loohuizen Affidavit, Exhibit 47.
36	Slate Falls (Bamaji)	2000 INAC			
37	Wabaseemoong (Whitedog/Islington)	2000 INAC			
38	Wabauskang	2000 INAC			
39	Wabigoon Lake (Dinorwic/Dryden)	2006			
40	Wapekeka (Angling Lake)	2007	Y		Loohuizen Affidavit, Paragraph 86.
41	Washagamis Bay (Obashkaandagaang/Keewatin)	2000 INAC	Attempted		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 94.
42	Wauzhushk Onigum (Rat Portage)	2000 INAC	Y		Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 93.
43	Wawakapewin (Long Dog)	2000 INAC			
44	Webequie	2007	Y		Loohuizen Affidavit, Paragraph 86.
45	Weenusk (Peawanuk)	2000 INAC		Y	Loohuizen Affidavit, Exhibit 47.
46	Wunnumin Lake	2000 INAC	Y	Y	Loohuizen Affidavit, Exhibit 47. Loohuizen Affidavit, Paragraph 86.

APPENDIX III – DISTORTIONS RESULTING FROM THE APPLICATION OF THE "COUNTY TEST"

Formula comparison based on two hypothetical judicial districts

Both judicial districts have a total population of 100,000.
Both districts send 2000 questionnaires to the off-reserve population.
But, the demographics of the two districts are very different.

Area of residence of population	Hypothet. district A	Hypothet. district B
Off-reserve	70% - 70,000 people	99.5% - 99,500 people
On-reserve	30% - 30,000 people	0.5% - 500 people
Total	100% - 100,000 people	100% - 100,000 people

	CSD's formula, from PDB #563 County test: # off-reserve questionnaires / total district population	True proportionality approach County test: # off-reserve questionnaires / off-reserve population
Hypothet. judicial district A	County test: 2000 / 100,000 = 0.02 → 2% Reserve questionnaires: 30,000 x 0.02 = 600 Total: 2600 jury questionnaires in district 600/2600 = 23.1% of questionnaires sent to on-reserve residents Result: on-reserve population receives less than its proportionate share	County test: 2000 / 70,000 = 0.029 → 2.9% Reserve questionnaires:30,000 x 0.029 = 870 Total: 2870 jury questionnaires in district 870/2870 = 30.3% of questionnaires sent to on-reserve residents Result: on-reserve population receives its proportionate share
Hypothet. judicial district B	County test: 2000 / 100,000 = 0.02 → 2% Reserve questionnaires: 500 x 0.02 = 10 Total: 2010 jury questionnaires in district 10/2010 = 0.4975% of questionnaires sent to on-reserve residents Result: on-reserve population receives its proportionate share	County test: 2000 / 99,500 = 0.0201 → 2.01% Reserve questionnaires: 500 x 0.0201 = 10.05 Total: 2011 jury questionnaires in district 11/2011 = 0.55% sent of questionnaires sent to on-reserve residents Result: on-reserve population receives its proportionate share

Conclusion: For judicial districts with sizeable on-reserve populations, application of CSD's formula yields a disproportionately low number of on-reserve questionnaires.

APPENDIX IV – RESPONDENT'S COMPARISON OF NO-RESPONSE RATES (IN REFERENCE TO APPELLANT'S APPENDIX B)

The "no-response rate" figures presented in Appendix B of the Appellant's factum are used by the Appellant to support a claim that the currency of the lists used for s.6(8) purposes has no connection to the no-response rates. The Appellant erroneously reasons that the on-reserve no-response rate for Simcoe County was similar to that for Kenora District, even though the Simcoe lists were current.

The figures presented in the Appellant's Appendix B do not account for the substantial RPO rate that existed in Kenora District. The RPO rate in Simcoe County, by comparison, was zero. To enable a fair comparison, the true no-response rate for Kenora District must be calculated based on the number of notices that were not RPO (i.e., that may be presumed to have reached the addressee), and not based on the total number of notices that were sent out.

The Appellant's calculations to reach the no-response rate figures are described at page 60 of their factum. These calculations improperly calculated the no-response rate as a percentage of the TOTAL mailings for the relevant group, for both Kenora and Simcoe. The information in the tables set out below provide the proper comparison of the on-reserve no-response rates for Simcoe County and Kenora District. These confirm that the on-reserve no-response rate for Kenora, when calculated as a proportion of the non-RPO notices, was significantly higher than the no-response rate for Simcoe County. There is therefore no support for the Appellant's claim.

Province Wide Return Rates in 2007 and 2008

Year	Off Reserve Mailing	Returned by Post Office	Deceased	**Presumed Delivered**	Returned	**No-Response (of non-RPO)**
2007	460 400	27 409 (6%)	Not noted	**432 991 (94%)**	303 956 (70.2%)	**129 035 (29.8%)**
2008	433 400	24 259 (5.6%)	5114 (1.2%)	**404 027 (93.2%)**	311 704 (77.1%)	**92 323 (22.9%)**

Simcoe County Return Rates in 2007

Year	On Reserve Mailing	Returned by Post Office	Deceased	**Presumed Delivered**	Returned	**No-Response (of non-RPO)**
2007	50	0 (0%)	Not noted	**50 (100%)**	24 (48%)	**26 (52%)**

Kenora District Return Rates in 2008

Year	On Reserve Mailing	Returned by Post Office	Deceased	**Presumed Delivered**	Returned	**No-Response (of non-RPO)**
2008	600	166 (27.7%)	Not noted	**434 (72.3%)**	60	**374 (86.2%)**

APPENDIX V – THE BOUNDARIES OF KENORA DISTRICT

A geographically smaller version of the District of Kenora first came into existence in 1909: Statutes of Ontario, 1908 (8 Edw. VII), c.36; Proclamation, April 27, 1909, Ontario Gazette, v.42, No.18, p.548-549. The Patricia Portion (territory north of the Albany River) became part of Ontario in 1912: *An Act to Extend the Boundaries of the Province of Ontario*, Statutes of Canada, 1912 (2 Geo. V), c.40; *An Act to Express the Consent of the Legislative Assembly of the Province of Ontario*, Statutes of Ontario, 1912 (2 Geo. V), c.3. In the 1927, the District of Patricia was annexed to the Kenora District, and a judicial district with virtually the same boundaries as the current Kenora District – then known as the Provisional Judicial District of Kenora – was created: *Patricia Act*, R.S.O. 1927, c.5.

Since 1927, there have been only two very minor changes to the boundaries of Kenora District: a shift of a few feet in 1950 resulting from an alteration of the Ontario-Manitoba border, and the loss of some territory arising from the 1998 creation of the Township of Lake of the Woods: S.O. 1950, c.48; Minister's Order dated December 17, 1997, Ontario Gazette, Vol. 131-2, p.44-45.

Under successive versions of the *Territorial Division Act*, until 1989, the Territorial District of Kenora was declared to form the Provisional Judicial District of Kenora: see *Territorial Division Act*, R.S.O. 1970, c.458, s.1, 1¶46; *Territorial Division Act*, R.S.O. 1980, c.497, s.1, 1¶44.

In 1989, through amendment to the *Courts of Justice Act*, the creation of regions for judicial purposes became a matter prescribed by regulation, replacing the territorial divisions then established for judicial purposes by legislation. The Northwest Region was created at that time, consisting of the territorial districts of Kenora, Thunder Bay and Rainy River; the boundaries of the Kenora District remained constant: *An Act to Amend the Courts of Justice Act, 1984*, S.O. 1989, c.55, s.3, creating new ss.92a (later numbered s.74 of *Courts of Justice Act*, R.S.O. 1990, c. C.43); O.Reg. 705/89; *Territorial Division Act*, R.S.O. 1990, c. T.5, s.1 and Schedule, ¶44.

In 2002, the *Territorial Divisional Act* was repealed, and the division of Ontario into geographic areas became a matter prescribed by regulation; this change did not affect the boundaries of the Kenora District: *Territorial Division Act, 2002*, S.O. 2002, c.17, Sched E, s.1; O.Reg. 180/03, s.1 and Sched 2, Kenora. In 2006, further amendments to the *Courts of Justice Act* made the judicial regions prescribed by regulation for administrative purposes only: *Access to Justice Act*, S.O. 2006, c.21, Sched A, s.14, creating s.79.1 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 as am.