

# Clifford Kokopenace jury roll case goes to Supreme Court

## Manslaughter conviction for First Nations man was tossed after jury roll concerns raised

By Jody Porter, [CBC News](#) Posted: Oct 06, 2014 5:00 AM ET Last Updated: Oct 06, 2014 12:29 PM ET



Nishnawbe Aski Nation deputy grand chief Alvin Fiddler says there's a link between the under-representation of First Nations people on juries, and their over-representation in jails. (Josh Lynn/CBC)

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A case before the Supreme Court of Canada on Monday will determine how far Ontario must go to include First Nations people in the province's jury rolls.

Ontario is appealing a decision from its top court that quashed a manslaughter conviction for a First Nations man because of under-representation of aboriginal people in its jury process.

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"When you go to a provincial jail like in Kenora, you will see that the majority of those housed in those institutions are First Nations," noted Nishnawbe Aski Nation deputy grand chief Alvin Fiddler, who sees a link between the lack of First Nations people on juries and their over-representation in jails.

The case at the heart of the matter involves Clifford Kokopenace, who was charged in the 2007 death of Taylor Assin during an intoxicated altercation at Grassy Narrows First Nation. His trial took place in Kenora but no one on the jury that convicted Kokopenace lived on reserve at Grassy Narrows or any of the other 46 First Nations in the district.



Lawyers Jonathan Rudin and Katherine Hensel are both interveners in the Kokopenace case before the Supreme Court of Canada on Monday. Rudin says the way Ontario carries out its jury selection "effectively prohibits First Nations people from serving on juries." (Law Society Gazette )

Last June, the Ontario Court of Appeal ordered a new trial for Kokopenace and chastised the province for not doing more to ensure how well-represented native people are on its jury rolls.

"The integrity of the process was fundamentally compromised by the inattention paid by the state to a known and worsening problem, year after year," the court ruled.

## 'A waste of energy'

Fiddler is also the co-chair of Ontario's Juries Review Implementation Committee. It was set up as one of the recommendations of a report, commissioned by the province, by former Supreme Court Justice Frank Iacobucci. His 2013 report outlined the problems with the jury system and laid out steps for addressing them.

That makes the Supreme Court case redundant, as far as Fiddler is concerned, even though Nishnawbe Aski Nation is intervening in the case.

"It's a waste of energy on the part of everybody for us to go there and fight them on this," Fiddler said. "It's been very clear to everyone that these problems exist and they should have been fixed a long time ago."

## Efforts, not results important, Ontario argues

Regardless, lawyers for Ontario will argue at the Supreme Court that the law requires a state only to "make reasonable efforts" to ensure representative jury pools, and that the province has done so.

A state is required "to cast a net broadly and avoid the exclusion of any distinct group," says the factum — a summary of the case which contains details, legal issues and arguments — submitted by Ontario. "Whether this standard has been met will turn on an objective review of all the circumstances, focusing on the efforts made and not the results achieved."



"It's been very clear to everyone that these problems exist and they should have been fixed a long time ago," says Alvin Fiddler as he points to this local First Nations newspaper from 1994, where jury roll problems made the front page. (Jody Porter/CBC)

The municipal enumeration list is used to randomly select names of Ontario residents for potential jury duty but no formal process exists for selecting residents of First Nations reserves in the province. In 2007, only 44 of more than 12,000 reserve residents in the district were included in the jury roll, according to court documents.

## Other trials, inquests delayed

Questions about the adequacy of Ontario's jury system have paralyzed the courts in Northern Ontario, putting off a murder trial in Thunder Bay and delaying inquests into at least 10 deaths.

Jonathan Rudin represents several families of First Nations students from remote communities who have died while attending school in Thunder Bay. [The inquest into their deaths has been delayed indefinitely.](#)

"The coroner has said there will be no inquests in Northern Ontario until this issue gets resolved and that's a huge problem and concern for many of our clients who want to find out what happened to their loved ones" said Rudin, who is also an intervenor in the Supreme Court case through his role with Aboriginal Legal Services Toronto.

"It's also a concern for everyone because one of the purposes of coroner's inquests is to make recommendations to make sure similar deaths don't happen again," Rudin said. "And if the inquests can't happen then obviously that function can't be fulfilled."

The delays may spread beyond Kenora and Thunder Bay districts. Five people going before the courts in Gore Bay, Ont. on Monday are expected to ask for stays in their cases because of the jury roll issue.