Colten Boushie verdict more proof legal system plagued by systemic racism

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Alvin Baptiste, Colten Boushie's uncle, stands with Colten's mother Debbie Baptiste and brother Jace Boushie as demonstrators gather outside of the courthouse in North Battleford, Sask., on Saturday. (MATT SMITH / THE CANADIAN PRESS)

By **ALVIN FIDDLER** Opinion
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The acquittal of Gerald Stanley in the death of Colten Boushie has re-exposed systemic racism in the justice system — from the day Colten was shot; to the actions of the police; the peremptory challenges during jury selection; and the verdict delivered last week.

The legal system failed Colten. Our hearts are with his family and friends.

The continuum of these issues was highlighted by the 2013 report by former Supreme Court Justice Frank Iacobucci in his 2013 review*First Nations Representation on Ontario Juries*. The jury was the focus of his mandate, but he could not ignore the systemic issues he uncovered, declaring the justice system as being in a state of "crisis."

Despite Iacobucci's findings, the Supreme Court of Canada ruled in R. v. Kokopenace (2015) that the Government of Ontario made "reasonable efforts" to compile a jury roll that included First Nations, and that they chose not to participate. This essentially let Ontario off the hook for a problem it helped create. A finding we still take issue with.

The fact is, many Indigenous peoples have never had the opportunity to serve on a jury. We uncovered this during legal proceedings for the 2008 inquest into the deaths of two young men from Kashechewan First Nation. It was revealed that no member of Kashechewan had ever been on an Ontario jury roll. Not because they didn't want to — they were never given the opportunity.

First Nation exclusion from Ontario jury rolls has been a factor in many legal cases and has delayed many inquests, including the joint inquest into the deaths of seven First Nation youth who died under similar circumstances in Thunder Bay since 2000.

Ontario recognized this issue and appointed a special committee in 2013 to review and enhance First Nation representation on juries, as recommended in Iacobucci's report.

Over three years, the Debwewin Jury Review Implementation Committee, which I co-chaired, met with First Nation citizens, leaders, elders, and justice workers across the province so First Nation people are better represented in the jury system and the justice system more generally.

We pursued the jury roll issue all the way to the Supreme Court because it gets to the very root of the problem: the justice system is a one-way street for First Nations. First Nation people are incarcerated at some of the highest rates in the country but, in many cases, have little chance of being tried by a jury of their peers.

For years Ontario relied on outdated band lists provided by the federal government to compile lists of potential jurors. When those lists became unavailable, Ontario was entirely dependent on First Nations for lists of on-reserve residents but made almost no effort to get them.

We proved in court that from 2000 to 2008 the province kept First Nations in the dark about not having access to current band population information.

Ontario decided that the best database from which to draw names for jury rolls is the Municipal Property Assessment Corporation (MPAC), but First Nations are not on the MPAC lists because this list only applies to municipalities. Knowing this, Ontario still chose MPAC as the preferred database.

To compensate for this obvious flaw, Section 6(8) of the Juries Act defines an alternative method to include on-reserve citizens. The province may draw names of First Nation citizens from "any record available."

The problem is that accurate lists of on-reserve residents are not just readily available. In addition, the former Ministry of Indian and Northern Affairs Canada enforced heavy-handed privacy rules about sharing band lists, so the ability of our communities to hand over lists of on-reserve members is not straightforward.

The only way we have made progress is to work around a system stacked against us. It took a Nishnawbe Aski Nation-led team to secure a volunteer jury list of 500 First Nation people living on-reserve in two judicial districts (Thunder Bay and Kenora).

Notably, this allowed the Seven Youth Inquest to proceed in Thunder Bay in 2015. This was another of Iacobucci's innovative recommendations and there are several more that must be implemented.

Other areas of the justice system will require this same level of innovation and courage by Canadian legislators to make transformative change.

For example, the Debwewin committee consulted multiple legal and academic experts on the use of peremptory challenges, all of whom concluded this practice is archaic and unnecessary; despite some enthusiastic apologists at Crown Law Office—Criminal, this practice is used to discriminate against race and needs to be abolished.

We must not tolerate a justice system so fundamentally flawed. The courts are unable to define the solution — the politicians, legislators, and policy-makers must put pen to paper and start redrafting the rules. Their inaction will not diminish our resolve for justice.

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