Discrimination in the Law and the Administration of Justice in Remote and Isolated Communities

The Honourable Mr. Justice Mark M. DE WEERDT*

* Of the Supreme Court of the Northwest Territories, Yellowknife, Northwest Territories.

I. INTRODUCTION

Today is a very special day for me. It is the fortieth anniversary of my arrival as an immigrant to Canada. When I left Scotland in 1949 to come to Canada, my Scottish friends asked me whatever had possessed me to leave civilization behind to go to such a remote and isolated part of the world as Canada.

As we steamed for days across the Atlantic, then past Newfoundland and the Maritime provinces and for hour upon hour up the great St. Lawrence, pausing at Quebec City and disembarking at Montreal, I could not help but be impressed by the magnificent landscape, the many beautiful small towns and villages, and the gigantic immensity of the country to which I was coming for the first time as a young immigrant.

Travelling by road from Montreal to Toronto that week in early October, the red maple leaves were everywhere, and we passed through many more small, and even quite isolated, towns and villages.

After some months of adjustment in Toronto and Ottawa learning that Canadians were friendly and easy going, not very different from the Scots I had grown up with, I went West. Our friends in Toronto asked me what on earth possessed me to leave civilization behind and journey to the remote and isolated western reaches of this immense sub-continent.

Later, since you perhaps know that I come from Yellowknife in the Northwest Territories, you may already have guessed that my friends in the West asked me whatever possessed me to go North, leaving civilization behind, to live in such a remote and isolated community as Yellowknife.

But that is not the end of it. For years, people in Yellowknife shook their heads in disbelief as we headed out on court circuit to the remote and isolated settlements of the Arctic and sub-Arctic — yes, you guessed it, leaving civilization behind.

Over the years, what with the weather keeping us on the ground for days on end in many of the communities which people elsewhere looked on as remote and isolated, I realised that when I left them to return home I was, in a real sense, leaving civilization behind. I can not help but reflect that what is remote and isolated is, after all, more a matter of perspective — where you are coming from and possibly going to — than anything else. As the author of the book *The Lonely Crowd* observed, people in our large cities today may, in spite of the crowds around them, be lonely and isolated — they too may "have left civilization behind" somewhere.

The people of native heritage in Canada have, at times, been likened to recent immigrants from distant lands, finding new and strange what the Euro-Canadian majority takes for granted as "civilization", but which for our native compatriots is more like "civilization left behind".

Unilingual English or French speakers crossing over on to territory of the other official language in Canada no doubt undergo a somewhat similar experience — though

nothing as difficult or complex as is faced by the unilingual aboriginal language speaker reared wholly in an aboriginal culture.

Our task today will be to examine discrimination due to the impact of language and culture on law and the administration of justice and due to the impact of law and the administration of justice on people of different language groups and cultures, more particularly in remote and isolated communities — wherever those may be.

II. A PROFILE OF THE JUSTICE SYSTEM IN THE NORTHWEST TERRITORIES

What I propose to do in my paper is to try and provide you with a Northerner's perspective — a sort of worm's eye view from within so to speak — within that one third of Canada's landmass which comprises the Northwest Territories (NWT). I will therefore focus my remarks on the situation in the NWT during the period in which I have known it, some 23 out of the last 31 years. If I had to choose a title for my remarks, I would suggest — if only to tease your curiosity — "The NWT, a solution for 3% of Canada's native population?" Or, more briefly: "The NWT — a 3% solution?"

About 25 years ago, when I was on court circuit to Aklavik, a village in the Mackenzie Delta with a sometimes breathtaking if distant view of the magnificent mountains which separate the NWT from Yukon, I met an old native man down by the river bank. As we chatted, I asked him what he felt was the main difference between things as they were then and as they had been when he was a young man. He stood a while, silently gazing at the mountains, before he replied. And then he answered. "Today", he said, "too many bosses". And that was 25 years ago.

When our youngest son was born in 1963 — a little over 26 years ago — my wife Anne shared a room in the Yellowknife hospital with Annie, an Inuit woman from Grise Fjord on Ellesmere Island in the High Arctic who spoke hardly any English. In spite of the language barrier, Anne and Annie got along well together. And so, when Anne came home, Annie came with her.

Yellowknife at that time was a small mining town of perhaps 4,000 people mostly living in small single-family dwellings, with only a few small commercial buildings of one or two stories and The Gold Range Hotel, a three-storey edifice. But, for our Inuit friend Annie, on looking out of the living room window of our small house onto the other small houses on our street, Yellowknife was the equivalent of Manhattan or Mexico City. She stood a while, in wonder, repeating to herself the only English words I recall her using: "Too much, too-oo much."

Since that time, things have not been standing still in the NWT. To give you some idea of the scope of the changes we have seen, let me tell you that on our arrival at Yellowknife after ten hours of flying — with half a dozen stops — from Edmonton in 1958, there was no road connecting Yellowknife to the rest of Canada. Nor was there any telephone link to anywhere outside Yellowknife. Telegrams, in an emergency, might be transmitted by

the Canadian Army signals corps on its radio equipment. There was no public radio other than our own homegrown amateur local station. And, of course, television was unheard of. There was no Government of the NWT, other than a Department of the federal government and a small group of (appointed, and partly elected) advisers known as The Council of the NWT. We had starvation, in the Keewatin, in 1957; and tuberculosis had ravaged many of the small communities, decimating their populations in those years.

All that has changed. And perhaps some of the significance of the changes which have occurred over the past 25 years can be grasped most readily when I tell you that after a very severe windstorm not so long ago at Grise Fjord — the home of our Inuit friend Annie — the first thing the people there wanted restored, without any further delay, was the TV satellite receiver dish, because the people of Grise Fjord did not want to miss the next instalment of "Dallas".

As for the old gentleman who felt that we had "too many bosses" 25 years ago, he would no doubt be shaking his head in even greater bewilderment today. But there is a saving grace to be noted: many of the bosses, in today's NWT, are themselves native people.

As you may know, Mr. Daniel Norris was recently appointed a new Commissioner of the NWT. He is the equivalent in the NWT of a provincial Lieutenant-Governor, though in fact and law he is actually a federal public servant of deputy minister rank. Mr. Norris is a native from the Mackenzie Delta, a Metis. And he is not our first native Commissioner. Earlier, another Metis, Charles Camsell, was for many years Commissioner of the NWT.

The new commissioner is an experienced lifelong northerner, an ex-member of the public service of the NWT, formerly (and for many years) the regional director of the Government of the NWT in the Delta. Mr. Norris is greatly respected by all for his integrity, humanity, ability and experience.

The Deputy Commissioner of the NWT today is also a lifelong northern native, an Inuk from Baffin Island, Mrs. Ann Hanson, who is likewise greatly respected.

Our Executive Council, the Territorial equivalent of a provincial cabinet, is comprised of eight ministers, of whom the majority of five are northern natives and all of whom are elected members of our fully elected Legislative Assembly, of which a majority is likewise composed of northern native members.

These facts, in themselves, serve to clearly distinguish the NWT from Yukon and the provinces. But there is more.

The Government of the NWT is today our largest employer, with 4,500 members in the NWT public service. Remember, that Government was non-existent 25 years ago. Today, one in three of the employees in the public service of the NWT is a native person. And one in five of the managerial and professional ranks of the public service is a native person. There is no other jurisdiction in Canada with a comparable profile of natives in government employment.

Three out of five of our overall population are native persons. Approximately one out of those three is a Dene or Metis, and of the other two most are Inuit (with a further small fraction of Metis). More precisely, using rounded figures, of our total population of 52,000 in the NWT, 9,000 are Dene (or "Indian"), 4,000 are Metis (or "mixed-blood") and 19,000 are Inuit (or "Eskimo"), for a subtotal of 32,000 native northerners, with the remainder of 20,000 being non-natives (or "others").

If you accept the figure of one million for those in Canada's population who have a line of descent from aboriginal ancestors, as presently estimated according to the Canadian Bar Association report cited by Chief Judge Lilles, then the 32,000 natives of the NWT are only a very tiny percentage — about 3% — of that total of one million. But the significance of that tiny 3% deserves to be noticed, comprising (as it does) a commanding majority of the population of that one third of Canada's land area which makes up the NWT.

The character of that tiny 3% likewise deserves attention. It is predominantly of Inuit stock. Almost two out of every three of our NWT natives are Inuit. This alone distinguishes us from Yukon, with its relatively small native minority of Indian (rather than Inuit) heritage. And it distinguishes the NWT from all the provinces, even allowing for Quebec and Newfoundland, each of which has a tiny minority Inuit population but nothing approaching the size or dominant proportion of our NWT population. So, although our NWT native population is only a tiny 3% of the total native population of Canada — it is evident that this 3% is in many respects unique and singularly significant to Canada as a whole.

Not only does that 3% comprise a majority of the population of the NWT, but it is represented, in a democratically elected legislature, by a majority of that legislature and, furthermore, by a majority of the Executive of the Government answering to that legislature — and, as well, by the Chief Executives of that Government, the Commissioner and the Deputy Commissioner of the NWT. Please remember, we have only had less than a quarter century to come this far. We are all too well aware that we still have a long way to go.

You will appreciate, of course, that I am able in the limited time available to do no more than sketch a few bold outlines with a very broad brush. I have therefore not cited any figures, for example, for municipal legislators, executives or employees. In the great majority of the many smaller, remoter and more isolated communities, native people comprise not only by far the majority of the population and of the elected municipal legislators and executives, but also the overwhelmingly great majority of the municipal employees.

Bearing in mind that the NWT is not a province, you may of course very well ask how much control over their own lives is possible for the NWT native population, acting through the territorial government and the local municipal governments as well as through, or in conjunction with, the federal government and the private sector.

One of the key aspects of the NWT's territorial status is the absence of a normal federal-provincial division of legislative, executive and administrative powers. Federal legislation can, and sometimes does, displace territorial legislation on a given subject. Even so, the Government of the NWT has for many years had sole responsibility for schools in the NWT. Recently, following an earlier lead at Yellowknife, the Government of the NWT has devolved many of its powers in this connection to local authorities, on a municipal or regional basis. The same is true of municipal affairs. It is worth mentioning that all but two of the

municipalities in the NWT now own and operate their own airports. Public housing is another area in which the NWT Government has been most active. Language policy and cultural affairs are additional important areas of territorial government concern in the NWT. The list is long, including hospitals and nursing stations — and health generally — as well as certain aspects of the administration of justice, industrial safety, economic development and so on.

The annual budget of the Government of the NWT is close to the billion dollar mark today, so we are not talking merely of token responsibility.

We in the NWT are unique in still another respect: we have no general human rights legislation at the territorial level. A *Human Rights Code* was carefully drafted and was presented in our Legislative Assembly a few years ago, but it was tabled and has not since been proceeded with. We do have a *Labour Standards Act* and a *Fair Practices Act*, but unlike Yukon and the provinces we have no general human rights legislation apart from the federal *Canadian Human Rights Act* and, of course, the *Canadian Charter of Rights and Freedoms.*

Nonetheless, I like to think that we are not insensitive to human rights issues. When, as a lawyer, I incorporated in 1969 what was then called "The Indian Brotherhood of the Northwest Territories", I questioned the choice of that name; and I am pleased to note that it was subsequently altered to "The Dene Nation", a self-defining name not based on *Indian Act* status and a name which avoids gender bias. Interestingly, when the *Human Rights Code* was rejected, the principal opponents were not small business people, though they probably played a part, but the native organizations, which seemed to regard the promotion of individual human rights as inimical to group rights and, possibly, to traditional values, status and practices.

While touching on traditional values, status and practices, I should tell you that our courts have, over the years, recognized native customary marriage and, while that seems to no longer require judicial attention, in the Supreme Court of the NWT, we regularly deal with applications for judicial orders recognizing native custom child adoptions. At the same time, over the years, our courts have rejected the legitimacy of the old customary homicidal "blood feud" and the old customary infanticide and euthanasia, as well as claims based on custom that wife-beating is permissible by way of spousal correction. This is not intended as an exhaustive list of native tradition issues, but it may serve to illustrate their potential scope. Other interesting questions have arisen in connection with the banishment of offenders, counselling rather than imprisonment of offenders, traditional methods and practices of hunting and fishing, the division of intestate estates of aboriginal persons, and the extent to which community action breaching a private contract may be condoned, if at all.

Recently, our *Jury Act* was amended to make it possible for unilingual aboriginal language speakers to serve on juries in the NWT. Our superior court, sitting as we do on jury trials throughout the NWT, has for decades sworn in English-speaking native jurors, often in quite small, remote and isolated settlements. On many occasions the jury (formerly of six and now of 12) has been composed entirely of natives. In this amendment of the *Jury Act*, the laudable intention is to make it possible for members of the older age-group of native northerners who speak and understand little, if any, English to contribute their unique wisdom and special experience to our jury verdicts. In practical terms, however, it appears to be too

early to say that this amendment can properly be given its desired effect, since so much will depend on the availability, skill, and understanding of legal matters, on the part of native-language interpreters.

Of course, most of our criminal (and territorial) offence proceedings are decided by courts sitting without a jury. More than half of our justices of the peace are native northerners resident in the many small communities scattered across the NWT. And more than half of all those cases are, I believe, disposed of by those J.P.s. Where the accused wishes, therefore, the proceedings can at times be conducted in his or her mother tongue rather than in English or French. So far, no appeal or request for judicial review has ever arisen in such a case.

In addition, increasing numbers of native northerners are being recruited actively by the R.C.M.P. Probation officers, social workers and the custodial staff in our prisons are today more and more of northern native heritage. We have for some years, moreover, had networks of native courtworkers linked to legal aid and public defence lawyers and organizations, as well as a public legal education and information network, active across the NWT. Most recently, as a result of the *Jury Act* amendment, a court interpreter training program (believed to be unique in North America and perhaps the world) has been inaugurated for native language interpreters. And, in many of our communities, we have for some years now had fine option programs which have no doubt helped to reduce the number of persons imprisoned in the NWT for non-payment of a fine.

Today, we also have three resident native lawyers, out of a total of almost a hundred resident members of our bar. But such is the demand for their services, and such their opportunities for fulfilling work outside our courtrooms, that we rarely see them in court. For example, one was Leader of the Government and Chair of the Executive Council for a period and held a number of portfolios as a territorial minister until recently, and continues to serve as a member of the Legislative Assembly. Another is a very successful solicitor in private practice, a senior partner in a large law firm at Yellowknife, active in native organizations and in the negotiation of aboriginal claims. The third is a young lawyer working on constitutional law questions for the Government of the NWT.

And it may be of interest to know that while the most populous constituency by far in the territorial elections for our Legislative Assembly is at Yellowknife, having an overwhelming majority of non-native voters, it is today represented by a northern native person.

I have recited the foregoing at some length in order to show that the NWT is not simply to be lumped in "holus-bolus" with Yukon and the provinces in considering the situation of native Canadians. Our native population in the NWT is not a depressed minority of our overall NWT population — nor is it out of touch with world events or with other parts of the NWT and Canada. It is not unacquainted with the levers of political power, either municipally or territorially. And it is not unwilling to assert itself in federal politics. Not only do we have a native northerner in the Senate — our sole representative there — but at the last federal election we sent native northerners to the House of Commons from both our NWT federal constituencies.

Unfortunately, many Canadians confuse Yukon and the NWT, as they tend to confuse Whitehorse and Yellowknife, taking refuge in talk about "the North" as if everything

north of a line a hundred miles from the American border was part of a single great and uniformly frozen hinterland inhabited by a single small and uniformly frozen population of similar northerners or similar natives. And, at other times, they lump the NWT together with the provinces as if we had no separate identity or character. For example, at page 12 of the Canadian Bar Association report "Aboriginal Rights in Canada: An Agenda for Action", it is said that over 70% of all inmates of women's prisons in the Northwest Territories, Manitoba and Saskatchewan are natives. As we know, over 60% of the total population of the NWT is native. The disparity which the report seeks to suggest is therefore not nearly as marked, in the NWT, as it may well be in Manitoba and Saskatchewan, where the native populations are probably well under 10% of the total.

Furthermore, we have had no women's prisons, as such, in the NWT for some years. Apart from anything else, this suggests that the report is based on outdated data. I also checked about a week or so ago, and found there was a total of 8 women in our NWT prisons. Indeed, we have never had more than 13 women inmates at any one time in our NWT prisons, in living memory. With such small numbers, I believe you will readily agree that one individual more or less could make up the difference between 60% and 70% or more in the female inmate population. And the addition of one person to such a small total is not statistically significant for purposes of comparison with, or inclusion in, figures for much larger inmate populations.

While we are on the subject of prison statistics, I expect that many people are not aware that these regrettably tend to be statistics of the crudest variety. They are based on what are described as "admissions". Even if we refine the figures to take account only of court-sentenced admissions, leaving aside remands in custody before trial and readmissions on breach of parole, we should realise that a single individual may be sentenced several times in one year to various quite short sentences, so that each time he or she is admitted to prison to serve one of those sentences is an "admission". Another individual, admitted only once in the same year, may have been sentenced to serve a much longer sentence. If the multiple offender is classified as belonging to ethnic group "A", while the other offender is classified as belonging to ethnic group "B", the statistics generated by the records of the two offenders will show four times as many court-sentenced admissions in group "A" as in group "B".

Yet, at the same time, because we have taken the trouble to find out what is really going on, we may have learned that the single admission in group "B" was for a sentence of four years, whereas the four admissions in group "A" were for a total of four months. The disparity on such an analysis, may well be the reverse of what first appeared on a comparison of the crude court-sentenced admissions figures for groups "A" and "B".

In the NWT, both "provincial time" of less than 2 years and "federal time" of 2 years or more can be served in the same institution. Individuals sentenced in the NWT, whether to more or less than 2 years, are in consequence "admitted" by our territorial institutions even though they may then be funnelled into a federal or a provincial or territorial institution. Every effort has been made for many years to keep our northern native inmates within the NWT.

While I am unable to say from sure knowledge that the gross disparities in the figures for natives and non-natives going to prison is due to the greater frequency of shorter

terms of imprisonment imposed on natives as distinct from non-native offenders, I am inclined to believe that this is so, at least to a significant degree, from the many criminal records I have seen, and still see regularly, in the course of my work in court as a lawyer and judge in the NWT.

Most of the short-term sentences are imposed either by the (over a hundred) local justices of the peace in the many small communities — of whom you will remember that more than half are native — or by the travelling judges of the Territorial Court. And most of those sentences, undoubtedly, are imposed on the rapidly growing population of bored and unemployed young native people who frequently find themselves in court in the course of learning (albeit late in life, in terms of the non-native culture) that society places certain limits on one's conduct, even in a country as free as Canada and a society as generous in its tolerance as a small native community.

My impression, therefore (and it can only be an impression until such a time as the necessary data is obtained and is fully examined and properly analysed), is that the statistics for the NWT, which also suggest a heavy imbalance between native and non-native admissions, are skewed by the comparison of "oranges and apples" in terms of the actual lengths of the sentences and their distribution between young natives in the smaller places and non-natives in larger centres whose conduct brings them into court for reasons quite different from the reasons affecting most young native offenders.

I have at hand a table of figures for 1985 through 1988, both inclusive, a total of four years, for NWT inmate admissions, male and female, provided to me by the government of the NWT's Department of Social Services. Of the male "sentenced admissions" in that period, 84.5% were native, or well over the 61.5% one could expect if individual patterns of behaviour and consequent court sentencing patterns were uniform as between natives and non-natives. Of the female sentenced admissions in that period, 90% were native, even more than for the males. This, you will notice, is even higher than the Canadian Bar Association report indicated.

I do not wish to suggest for a moment that the possible skewing of the figures is a cause for any complacency — far from it. However, if I am right about this, it may help us to search out and obtain more precise, more meaningful and more useful information from the prison records, so that we may then know how to respond appropriately on the basis of fuller knowledge of what is actually going on.

The reason that I feel fairly confident that the inmate admissions figures conceal as much as they reveal, in terms of possible discrimination, as between natives and non-natives, is that we have all heard more from the public and particularly from women, in recent years, about the injustices felt by victims, and particularly women victims of male violence. In the NWT we have in the past few years seen petitions circulating at Coppermine, Cambridge Bay, Baker Lake and Rankin Inlet, pleading for less lenient sentencing and pre-trial treatment of violent offenders and especially sex offenders, almost — if not all of them in those communities being male and native. These petitions were signed by hundreds of people in each of these relatively small, remote and isolated Inuit communities. By far the majority of the signatories of those petitions were, from their names and the use in many instances of syllabics, local native people. I believe that we can say with confidence, and should

emphasize, that their concerns arose primarily — if not exclusively — in relation to native male offenders and their native victims, almost always native women.

If discrimination between natives and non-natives, systemic or otherwise, is suggested by our present prison statistics, then we must ask why the same statistics show such a heavy imbalance between male and female offenders in both the native and non-native segments of the total population of the NWT. For example, for the four years 1985-1988 (both inclusive) our NWT sentenced admissions were: male 3,073; female 182; or almost 17 males for every female. In the native population alone, the figures are: male 2,599; female 164; or almost 16 males for every female. And in the non-native population, taken alone: male 474; female 18; or almost 26 males for every female.

What is it about our justice system — or our society as a whole — which disadvantages males so greatly in comparison to females? As we can see, the disparity is very marked in the native segment of the NWT population: 16 males admitted to prison for every female admission; and the disparity is even more marked in the non-native segment of the NWT population: 26 males admitted to prison for every female admission. Something is obviously at work besides simple racial or ethnic discrimination.

Unfortunately, until we have better statistics and, more important, a better understanding of what they mean, we might be wise not to jump to too many premature conclusions about the success or failure of the Canadian "justice system" in its various aspects — or about the success or failure of the experiment in joint native and non-native self-government on which we are working in the NWT — "the 3% solution".

Before concluding, I must say that the petitions which I mentioned are not the only indicator that it is not sentencing severity, or undue rigor in law enforcement, which has given rise to the disparity in court-sentenced prison admissions in the NWT — a disparity which we share, if to a lesser degree, with the provinces and Yukon. In the thirty years between 1953 and 1983 there was only one murder conviction entered in the NWT, though many trials on murder charges were held. That one murder conviction was entered in 1963 before the late Mr. Justice Sissons at what was then Frobisher Bay, now Iqaluit. The accused was represented by one of Canada's top criminal defence counsel, the late Arthur Maloney, Q.C., assisted by Clive Bynoe, Q.C. of Toronto. On their advice the Inuit offender entered a plea of guilty to non-capital murder in response to a very strong case of capital murder. But apart from that one instance, all the murder trials resulted in acquittals or verdicts of manslaughter only.

As for manslaughter sentences in the period 1955 to 1976, I have found only one for more than two years less a day in that period where the offender was a native — and that was a five year sentence for the fatal shooting of a police officer. During the same period of twenty years a non-native could expect a more severe sentence, generally, than a native offender. For example, in or about 1964, a non-native man received what (after two appeals to the Supreme Court of Canada) amounted to a total of fourteen years for the manslaughter of a native woman at Yellowknife.

In the past twelve years or so native offenders have received more severe sentences than during the 20 years earlier, partly because of the courts' concern to protect native victims — mostly women — from alcohol-induced violence. Nevertheless the public within the

NWT, both native and non-native, seem to view the sentencing of native offenders as more lenient than that of non-natives, for the same types of offences.

As for imprisonment for non-payment of fines, I can only say that in over ten years as a magistrate and a judge I, personally, do not recollect ever issuing a warrant, or authorising the issuance of a warrant, for the committal of an offender to prison for non-payment of a fine. I cannot say that it never happened, but if it did then it has been such a rare and long-past occurrence that I have no memory of it.

III. CONCLUSION

In conclusion, let me offer some thoughts on the major factor which seems to trigger off violent crime in the NWT — and has done so over the years. I refer to alcohol abuse. It is my belief that the solace provided by alcohol is particularly attractive to people who are disinclined to associate lively social interaction, and sharing good things together, with something harmful. The native cultures place a high value on sharing what one has. Those who do not share, or join in, tend to become outcasts — not true members of the family, the camp, the tribe and so on. And native cultures place a high value on consuming what is offered — it is impolite to refuse. The native pattern of consumption is still often that of hunter-gatherers who eat when there is a kill and drink so long as there is a drop left in the pot or bottle. And so, while alcohol abuse is prevalent in North American society — non-native as well as native — it has been particularly noticeable and particularly harmful in the native segments of our society.

We all know that the early fur traders, or at least some of them, used rum or other "firewater" to barter with the aboriginal inhabitants of this continent. When I came north, bootlegging was a well-known activity and difficult to control. The police had no radios but the taxi-drivers had, so they would out-manoeuvre the police almost every time. The first money wages of the Dogrib people at Fort Rae near Yellowknife were spent on bootleg liquor. Some traders in the small, remote and isolated places sold large metal pots together with raisins, sugar and yeast, from which native people, among others, made home brew, and a powerful brew at that.

It was an offence in those days to make or sell liquor without a special permit. And I believe it still is. But, in addition, it was an offence for an Indian or an Eskimo (as they were then called) to possess any liquor whatsoever. That was under the NWT *Liquor Act*, in a provision which was struck down in 1959 by Mr. Justice Sissons — as being beyond the legislative competence of the NWT Council. As well, it was an offence in those early days for an Indian to be intoxicated off a reserve — and since there were no Indian reserves at that time in the NWT, every case of intoxication of an Indian was potentially a federal prosecution, with gaol as a possible outcome.

Mr. Justice Sissons in 1959 acquitted an Indian in such a case on grounds that led the police to switch away from proceeding as for the federal offence and instead, to deal with native people in the same way as non-native people — under the same law, namely the *Liquor Act*. It was not until 1966 that Ottawa got wise to this and insisted that Indians be charged, as before 1959, under the *Indian Act*. The result, of course, was the famous

Drybones case, in which the late Mr. Justice Morrow of the Supreme Court of the NWT struck down that section of the *Indian Act*, relying on the anti-discrimination clauses of the *Canadian Bill of Rights*. As you know, this landmark decision was upheld by our Court of Appeal and, in 1970, by the Supreme Court of Canada.

I do not, of course, say that our courts were at fault in striking down the discriminatory prohibition which made possession of liquor an offence for an Indian or an Eskimo under the old *Liquor Act*, not at all — or which made it an offence for an Indian to be intoxicated off a reserve, even in his or her own home, as in the *Drybones* case, but the fact is that when the Frobisher Inn bar at Iqaluit on Baffin Island was closed down for a week not long ago the R.C.M.P. immediately noticed a 90% drop in the rate of occurrences calling for their attention.

Communities which have kept liquor out are, in the NWT, generally crime-free. Not all our communities, by any means, either want to keep liquor out or succeed in doing so. But when they do, crime seems largely to disappear. The children born with fetal alcohol syndrome, the battered wives and battered offspring, the terrible injuries we see, the homicides, the immense cost in terms not just of air evacuations, medical services, social services, police services and court services, but especially in terms of human lives, the quality of life, broken homes and ruined prospects, all these seem to be a very heavy price to pay for earlier inept legislation, lack of foresight of these terrible consequences, and the absence of effective public concern and appropriate timely action, the need for which was not foreseen or intended when the legitimate demands of constitutionality and of non-discrimination finally and fully opened the flood-gates of alcohol abuse in the NWT.

Finally, I have had little to say about language issues, and what I have said touched almost exclusively on the aboriginal languages, which in the NWT are: Inuktitut, Inuvialiut, Inuvialuktun, Loucheux or Kutchin, Hare or North Slavey, South Slavey, Dogrib, Chipeweyan and Cree, only some of which have written forms. French-English bilingualism is limited in the NWT. You can have a French language trial, with or without a jury, in a criminal case. We have only had a half-dozen such trials to date, though the *Criminal Code* has allowed for them for over ten years now. French language documents have been filed in criminal appeals, but rarely, and in civil cases counsel are well advised, if relying on French documentation, to provide also an English translation, since not all our judges are bilingual and our francophone colleagues are not versed in the common law which applies generally in the NWT. The francophone segment of the population is concentrated at Iqaluit and Yellowknife; but the French speakers comprise only 5%, at most, of the total NWT population.

To conclude, we in the NWT — in spite of the real progress we have made towards the meaningful and so far largely successful involvement of natives in self-government — nevertheless share with Yukon and the provinces, though in a lesser degree, a record which appears to reveal a gross disparity between native and non-native court-sentenced prison admissions. Because our population is small, and our communities are likewise small, we in the NWT may yet be able to gather data and make a proper analysis which will explain to us the reasons for that situation. Until we do, I doubt that it is wise or constructive to impute, as a cause of that disparity, any sort of institutionalised discrimination by our courts, by the police or even by our legislators. And if there is a solution to the problems presented by that

disparity, and I believe there must be, then I suggest that it may yet be found — with the active input of both native and non-native northerners — among the 3% of Canada's native-heritage population in the NWT.