**BOUSHIE/STANLEY**

Kerry Auriat was spot on, last Saturday, when he wrote that the case against Gerald Stanley in Saskatchewan leaves unanswered questions. He wrote, “We don’t know the truth.” When we don’t know the truth, perhaps we ought not to make up our minds based on snippets of information provided by the media, whether perceived to be biased or otherwise.

Mr. Auriat’s article did not indicate his mind was made up; neither is mine.

The jury of twelve “good men (and women) and true” heard all the evidence presented and made a decision. As Mr. Auriat observed, there will always be disappointment on one side or the other, or sometimes both. The tragedy of this profoundly sad affair makes this observation obvious and understandable.

Under existing rules of evidence and jury selection, the latter of which the federal government says it wants to change, the jury in Saskatchewan comprised men and women who were not Indigenous.

But if there was confusion or doubt respecting the evidence, would anyone seriously suggest an Indigenous jury would ignore the doubt and convict, simply because the deceased was Indigenous and the accused white? Is that what a “fair” verdict means? And if that happened, would justice be served?

Under Canadian law, jury decisions must be unanimous. If we believe the Stanley verdict was racist, then we must conclude that all twelve members of the jury - Saskatchewan citizens, men and women - were racists. And we must condemn them.

But do we believe that?

To find that the verdict was flawed, one would have to review whether the long-established rule of proof beyond a reasonable doubt was observed. Surely, no fair-minded Canadian wants to water down this test of evidence in criminal matters. Anyone who would advocate a more cursory test ought to think carefully before condemning possibly innocent accused persons to long prison terms. “The accused is ‘most likely guilty’” is not enough. If the government wants to dilute the current test, let the government say so.

Mr. Auriat referred to contradictions in the evidence. Contradictions can result in doubt. Jurors are instructed to weigh evidence and ask themselves, “Beyond a reasonable doubt, who is to be believed?” Under our system, if doubt remains, the doubt is to be resolved in favour of the accused.

That is the law. Determining this is the jury’s job, not ours.

The handling of the Stanley case by the Crown prosecution and police has been criticized. It will not surprise anyone if an appeal or some other type of inquiry is launched.

If the verdict was unjust, our system has checks and balances. This is why we have courts of appeal. But at the end of it all, if the verdict stands, there will still be those who will complain about racism in the justice system.

None of the above should have readers concluding the writer thinks the system is just fine, thank you very much. I have long felt the jury system needs to be overhauled. But how? Sometimes I think it should be scrapped altogether. Times have changed. Too many of today’s jurors watch too much television and take “beyond a reasonable doubt” to mean beyond even fanciful doubt. Judges are trained to recognize the difference and to be impartial, and they should handle criminal trials on their own.

Additionally, the unanimity rule does not protect Crown or defence from the risk that a single juror could ultimately hang the jury or persuade the remaining jurors to alter decisions in one direction or another. Another danger is that a single juror could be bribed, blackmailed or threatened in some way.

Having said all that, I don’t know if Canadians are ready to do away with juries altogether. And like Mr. Auriat, I don’t know of an equitable way, when selecting juries, to include or exclude people of any identifiable race. Setting racial quotas, for example, sounds to me like apartheid South Africa. Canada is a multiracial country: where would this end?

But I do know that manipulating the process to stack the deck in favour of persons of any race would not be supported by any responsible person. It would be the purest form of reverse racism.

Finally, after making comments sympathetic to only one side in the Saskatchewan case and promising to change jury selection rules, our federal government has been accused of behaving inappropriately.

One of the greatest strengths of our system of government is the independence of our courts from executive or legislative power. This fundamental democratic principle of the separation of powers hardly bears repeating, but our government has made the deliberate choice of meddling where it doesn’t belong, and putting the politics of race ahead of the independent administration of justice.

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