

CANADA IN PROBE OF NATIVE JUSTICE

Mr. Justice Morrow Seeks Legal Equality For Canadian Natives

"Policemen are human, lawyers are human, justices at any court level are human, or should be, the victims of crime are human, and the persons who commit the crimes or who break the laws are human," thus declared the Honorable Mr. Justice W. G. Morrow. "So too, the people who make the laws are human."

William George Morrow of Edmonton, Alberta and Yellowknife, Northwest Territories, is the Judge of the Territorial Court of the Northwest Territories in Canada.

The Committee of the Privy Council of Canada on the recommendation of the Minister of Justice appointed Mr. Justice Morrow Commissioner on July 4, 1967, to look into the allegations

made by the Hay River newspaper, Tapwe, edited by Donald Taylor.

Morrow began his investigations into the charges made by the newspaper on August 15, 1967 in Hay River. He completed his work last month on February 5, 1968.

Donald Taylor had made the following allegations in his newspaper in the months of March, April and May, 1967. Morrow's report listed them as follows:

"(a) Court proceedings in Hay River are not open to members of the public;

"(b) Steps have been taken to hamper members of the press in efforts to inform the public about proceedings in the courts in Hay River; and,

"(c) All individuals do not receive equal treatment in the courts in Hay River."

Hay River, N.W.T., originally an Indian settlement with 355 Indians and 1190 Metis, or non-treaty Indians, has now a population of 2,575 people about 1,500 of which are Whites.

In recent years, Hay River has experienced a rapid and turbulent growth resulting from development of minerals nearby and the town has developed into a transportation hub for the area.

Hay River is "booming" and experiencing steady buildup of necessary agencies, railroad, motor vehicle

(Continued on page 6)

Seeks Legal Equality for Canadian Natives...

(Continued from Page 1)

traffic, river and lake barges, and air service.

Along with the feverish activity, the town began to have legal difficulties concerning its citizens most of which are Indians. These led to allegations published by the newspaper, Tapwe.

"Man is a political animal," Morrow continued in his report to the Canadian government, "so in this sense and with no further apology, as Commissioner I shall attempt to express a few thoughts and make some recommendations under this heading.

"It should first be made very clear that I am not trying to in any way say that I have all the answers or that I am right in every respect.

"But it is hoped that what I say here may help to point the way for further and better efforts at finding a solution or cure..."

He said that if solutions are not found quickly, next ten years will see a complete generation "of as yet unsophisticated young Indians and Eskimos, now eagerly attending government schools, pass through the courts of the Territories. This result surely must be avoided at all costs."

In his writings in the Tapwe, Donald Taylor inferred that the Royal Canadian Mounted Police were showing preferential tendencies toward certain Justices of the Peace who the RCMP consider would more likely to convict and give tough fines and sentences.

Hay River had three Justices of the Peace, Norman McCowan, a school principal; Donald Stewart, mayor of Hay River now Territorial Councillor; and Rudolph Steiner, a local contractor.

Of the three justices, Rudolph Steiner carried great many of the case loads and the Hay River citizens thought he was in "cahoots with the police."

In Hay River, as elsewhere in the Northwest Territories Justices of the Peace are paid a percentage of the money realized from fines.

"This system is barbaric and hardly needs this Commissioner's remarks that it is to be totally condemned," said Morrow in his recommendations.

Although Morrow praised Steiner for his exceptional workload, he subsequently recommended that Steiner not

be retained as the Hay River Justice of the Peace.

He also recommended that workloads be rotated among the Justice of the Peace courts; that regular times and regular days be designated for court sessions, which was not done in Hay River; that courts be conducted open to the public and away from police detachments.

The editor of Tapwe indicated in his writings that the Indians may have been discriminated against and suggested that Indians and Metis usually go to jail while whites did not. Mr. Justice Morrow made the following observations:

"For the present moment I will only observe that the Editor's suggestion recited in the paragraph above may be quite valid and could be the result of all or perhaps many things that are to be found in the Hay River area, and alas, in all other parts of the Northwest Territories, in greater or lesser degree.

"To merely mention a few of these things:

"(1) The poverty or desperation of the Indians or Metis results in such an accused almost always taking or having to serve a jail term rather than pay the fine his white brother may be able to put up.

"(2) The Indian or Metis, not having a job to go to, may not be in as good a position to argue for a fine rather than a sentence—to save his job.

"(3) The unmarried female Indian or Metis may be suspected of raising the fine by prostitution so less likely to be fined—in the belief that a jail term is safer for her.

"(4) Because the Indian or Metis is less able to look after himself when drunk he runs a greater risk of being arrested.

"(5) After arrest the Indian or Metis because of lack of understanding of what court process means, language difficulties, and lack of communication with his people, is more likely to plead guilty and is perhaps less likely to be able to put up a plausible explanation, or in fact to even attempt an explanation, in mitigation of sentence.

"(6) The Indian or Metis may have adopted the philosophy that it is his fate to go to jail..."

Of the 881 cases that went before four Justices of the

Peace in Hay River and area in 1966, 609 cases involved drunkenness.

"...What is even more interesting is that 117 of the 609 involved persons of Indian status," reported Morrow.

"During the same period the total population of persons of Indian status (Treaty Indians) at Hay River was 355. If additional non-liquor cases are added the figures show that out of a total population of 355 Indians there were 201 charges preferred.

"The exhibits show, however, that 101 individual Indians were involved. Even on the basis of 101 individual Indians out of a total of 355 (including women and children) one gets the awesome picture of almost one-third of the Indian population passing through the Justice of the Peace court in one year.

"This must be almost the entire adult population. It is also clear from the exhibits that the number of Indian cases is out of proportion to those involving whites."

LIQUOR

In the section of the report entitled, Indians, Eskimos and the Liquor Problem, Judge Morrow said that liquor offenses were of high proportion among the Indian population at Hay River as well as in other parts of the Canadian North.

"Liquor," he said, "or intoxication is a factor in almost every case that comes before the courts—Indian, Eskimo or White."

Mr. Justice Morrow continued:

"...Let's look at it from another direction. A white man comes before a Justice of the Peace the 'morning after' and has a job to go to. He has a wife and children to feed.

"The presiding justice, being reluctant to cause loss of employment, almost invariably gives a fine.

"But if it is an Indian or Eskimo the picture is different. The presiding justice probably knows full well the man has no work and that the Indian is probably on welfare.

"If he fines the man he may take his wife's welfare cheque to pay it, and so the family suffers more if the man is fined than if he is

incarcerated. Or, as one of the constables testified, if the accused is a native woman she may sell herself to pay the fine.

"It is small wonder therefore that judgment in such cases is often jail without option of a fine. Small wonder, also, that in some quarters there is a feeling of discrimination, even if it is not so..."

In connection with drunkenness, Morrow made the following recommendation:

"That consideration be given to changing the whole attitude towards drunkenness so that it ceases to be treated as a crime."

Northwest Territories being what they are, territories, are not under the jurisdiction of the Canadian government's Attorney General, a member of the cabinet.

Judge Morrow said, hopefully, "No doubt the time will come when the Territories will have developed to the extent and its local Territorial Government will be considered mature enough so that the Federal Government will deem the time opportune to transfer the administration of justice to the North and with it, the office of Attorney General."

As a stopgap measure, Judge Morrow proposed that the Canadian government appoint a Deputy Attorney General to serve the territories. Morrow made the following recommendation:

"That immediate consideration be given to the desirability of setting up a new office in the Department of Justice at Ottawa to be designated: Assistant Deputy Attorney General of the Northwest Territories.

"That the new officer mentioned above be named from one of the lawyers in the Department, and be given his own staff, and be given the full responsibility the new office demands..."

Toward the execution of the 112 page report to the Canadian government, Judge Morrow was assisted by Inspector H. T. Nixon, who made police documents and records available;

David C. McDonald, Commission Counsel; V. N. Morris, clerk of the hearings; Miss Winnifred Clark and Everett Tingley, court reporters; S. A. Dodds, Administrator for the Hay River area; Chief John Lamallice and Councillor Joe McKay.