A CASE OF BLACK AND WHITE

The late Peter Rosenthal was both a professor of mathematics and a qualified lawyer, who often served in civil rights cases. He once represented an applicant who made representation to the Ontario Court of Justice concerning a constitutional challenge to a jury panel.

In Canada, permanent residents have many of the rights of citizens except for such things as voting, holding a passport or being selected for jury duty. It is this last that Rosenthal was challenging on the basis of the Canadian Charter of Rights and Freedoms. Since the proportion of citizens that is black is less than the proportion of the permanent residents that is black, the citizenship requirement has a negative impact on the probabilty of choosing black jurors. This was held to be discriminatory within the meaning of the Charter.

The application was opposed by Her Majesty the Queen, in the form of a counsel for the the Attorney-General of Canada. The argument that follows would be a good exercise for students, first to account for the figures that are given and secondly whether they are in accord with the conclusion in the final sentence.

> Furthermore, it is submitted that the citizenship does not result in a pool of jurors in which blacks are differentially excluded to the extent that a representative jury cannot be obtained in Metropolitan Toronto. It is submitted that the difference in proportion as between black citizens and all citizens, and non-black citizens and all non-blacks (65.9% for blacks and 85.6% for non-blacks), is not such that the Applicants will be unable to have a realistic opportunity to have a panel which will include blacks. This becomes clear when one compares the percentage that blacks are of the total Metropolitan Toronto population, 4.1%, with the percentage that black citizens are of the Metropolitan Toronto population who are citizens, 2.7/84.8 or 3.2%. In short, the citizenship requirement for jury duty results in a pool for the array in which 3.2% of the available jurors are black, which is nearly the same proportion that blacks, citizens and non-citizens combined, are in the total population of Metropolitan Toronto, that is 4.1%. In fact, having regard to the difference in size of the black and non-black *non-citizen* groups, 1.4% and 13.8% respectively of the Metropolitan Toronto population, the inclusion of non-citizens in the array would probably result in *fewer* blacks being selected because a greater number of non-blacks would be available in the expected jury pool than blacks.

The application failed. It is not known how an appeal to a higher court fared. How would you decide the case?

Notes. The fraction of the population who are black citizens is $(0.041)(0.659) = 0.027$ and the fraction who are nonblack citizens is $(0.959)(0.856) = 0.821$. The fraction of the total population who are citizens is 0.848.