Editorial ? Sadly, the jury?s verdict will stand

Was there really any difference between all-white juries in the southern U.S. acquitting white killers of black men and the all-white jury in Battleford, Saskatchewan last weekend acquitting the white farmer who killed Colten Boushie, a 22-year-old resident of the Red Pheasant First Nation? We don't think so.

True, Mr. Boushie had no business being on the farm of his killer, Gerald Stanley, and the farmer had every right to order him and his friends to leave the place. However, the fact was that Stanley used a semi-automatic firearm that he had no business owning and admitted that he had accidentally fired the bullet that struck Mr. Bushie in the head.

In the circumstances, most triers of fact might well have found the accused not guilty of second-degree murder, which carries a mandatory life sentence with no hope of parole for between 10 and 25 years, but guilty of manslaughter, accepting the farmer's testimony that he hadn't intended to kill anyone. Such a verdict would have carried no minimum sentence, although some jail time would be expected.

However, this was by no means an ordinary jury. The trial took place in Battleford, a few miles north of the Stanley farm, and not one of the 12 men and women was Indigenous, the defence lawyer having peremptorily challenged all prospective jurors who appeared to be non-white.

Although it's virtually certain the verdict will stand, it's to be hoped that it will lead to a change in the law to eliminate, or at least sharply reduce, the ability of Crown and defence lawyers to make peremptory challenges.

That's likely what Prime Minister Justin Trudeau had in mind when he told a news conference in Los Angeles that he wouldn't comment ?on the process that led us to this point today, but I am going to say we have come to this point as a country far too many times. Indigenous people across this country are angry, they're heartbroken, and I know Indigenous and non-Indigenous Canadians alike know that we have to do better.?

Of course, the peremptory challenge is only one facet of a much bigger problem identified in 2013 by retired Supreme Court of Canada Justice Frank Iacobucci, who examined the lack of Indigenous representation on Ontario juries.

In his report, he found the lack of jury representation is a symptom of bigger justice issues for aboriginal people. ?If the justice system continues to fail First Nations, they will continue to be reticent to participate on juries,? he said in releasing the report.

The report said that during his meetings with First Nations people from 32 communities, ?one point was resoundingly clear: substantive and systemic changes to the criminal justice system are necessary conditions for the participation of First Nations people on juries in Ontario.?

Monday's Globe and Mail had an instructive opinion piece by Toronto lawyer David Butt. Headed ?How the justice system let race taint the Stanley verdict,? the column ended with suggestions as to corrective action.

?There are two ways to fix the problem painfully exposed here. The first is to limit peremptory challenges, or override them if it becomes clear they have created an inappropriately homogeneous jury. The second is to ensure the pool of prospective jurors is so large, and so diverse, that the small number of peremptory challenges allowed cannot possibly prevent a diverse jury.

?Imagine a jury verdict in this case from six Indigenous and six white jurors. Whatever the outcome, conviction or acquittal, people would now be saying it was a tough decision, but it transcended racism, and so deserves our respect and acceptance. That dream is worlds away from where we are now, but it is readily attainable for future cases, and so going forward we should demand nothing less.?

Amen to that.