

Representative Juries: An Access to Justice Issue

Angela Goodman – JD Candidate (2020)

ABSTRACT

An accused has the right to be tried by an impartial, fair and representative jury. However, jury roll selection and barriers that prevent individuals from participating in jury duty undermine this right. The selection process and barriers that prevent individuals from participating in jury duty disproportionality effect minorities and marginalized groups which ultimately leads to unrepresentative juries.

Parliaments response to this issue, Bill C75, fails to address the underlying issues of unrepresentative juries. This response, particularly the abolishment of peremptory challenges, may even create more issues regarding representative juries.

An in-depth look at the underlying issues and possible remedies.

RIGHT TO A REPRESENTATIVE JURY

- Section 11 (d) and (f) of the *Charter of Rights and Freedoms* implies that the accused has a right to a fair, impartial and representative jury. Section 11 (d) upholds the presumption of innocence and 11(f) is the accused's right to be tried by jury
- In *R v Kokopenace* the Supreme Court of Canada affirmed that provinces must takes steps to ensure that a jury is representative. A representative jury is necessary to meet the requirement of section 11(d) and (f) of the charter
- The accused has the right to a representative jury but does not have the right to have a particular number of members of a certain race or ethnicity.

R v STANLEY

The Stanley trial is not the only trial in which there has been issues surrounding an unrepresentative jury but it is the case that sparked the proposition of Bill C-75.

Issues regarding the jury included:

- Low response rate to jury duty – 750 people were summoned for jury duty but only 178 prospective jurors attended.
- The two-step blind selection process was not followed – jury roll was selected after only one round of blind selections were made
- Peremptory challenges were used to challenge those who appeared to be visibly Indigenous

BILL C-75

- *Bill C-75: An Act amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts.*
- Bill C- 75, particularly clauses 269 – 273, was made in response to the *Stanley* trial.
- The Bill sought to address issues of unrepresentative juries
- The largest change made by Bill C75 was the abolishment of peremptory challenges. However, the removal of peremptory challenges does not address the actual issues the lead to unrepresentative juries and may even be unconstitutional.



The removal of peremptory challenges may even create more issues than it seeks to solve. The removal of peremptory challenges may:

- Strain and further congest are already overloaded court system
- Deprive minorities and marginalized individuals of a valuable tool for mitigating the potential of a biased verdict

Bill C75 fails to address issues of representation on juries because it ignores the initial issues that cause unrepresentative juries.

WHAT ARE THE ISSUES

- Issues that lead to unrepresentative juries are rooted in the selection of the jury roll and the barriers that prevent people from participating in jury duty.
- If we continue to ignore the initial issues that prevent people from participating in jury duty, then we will never solve the issues of unrepresentative juries.
- We need to enforce the proper protocol for selecting the jury roll and we need to remove barriers that hinder a person's ability to participate in jury duty

ACCESS TO JUSTICE ISSUE

This is an access to justice issues because improper processes and barriers to participating in jury duty disproportionality effect marginalized groups.

These issues include:

- The **selection process of the jury roll**. The *Jury Act* requires this to be a two-step process, but it appears this process is not always followed
- **Selecting jury roll from health cards** ignores the fact that not everyone has registered with SK health.
- Jury duty summons are **sent by mail to a fixed address**. People from marginalized groups tend to be more transient and often do not have a long-term fixed address
- The **large geographic jurisdictions** of judicial centers from which names are randomly selected – The Battlefords judicial jurisdiction covers 20% Saskatchewan making it difficult for people to participate in jury duty
- **Transportation** to courthouses for individuals who do not have personal modes of transportation can be a barrier. Particularly for people located outside of the city where public transportation is not an option.
- **Not allowing individuals with criminal records** to participate in jury duty. Indigenous people and other visible minorities are overrepresented in the criminal justice system and are therefore disproportionately affected by this stipulation
- Inability to take time off of work for **socio-economic reasons** to participate in jury duty.
- **Distrust of the justice system**. Many marginalized people do not trust, support or want to participate in the Canadian justice system

These issues prevent people affected by these barriers from participating in the justice system. Ultimately, denying them access to justice.



REMEDIES



Without remedying improper jury roll selection and barriers that prevent people from attending jury duty unrepresentative juries will continue to be an issue in the Canadian justice system.

Not all issues are easily remedied but speaking about issues and understanding barriers that prevent people from participating in the judicial system fosters discussion that leads to solutions.

In an attempt to inspire creative and important discussions I have listed some thought-provoking ideas in which some barriers could be addressed:

- Stricter enforcement of the jury roll selection process
- Clinics to that encourage and help individuals register for a health card.
- Alternative ways of delivering summons for jury duty
- Making it clear that the court covers expenses
- Allowing individuals with criminal records the ability to serve on the jury
- Developing and building trust with people who have adverse feeling towards the justice system – this is a prevalent and ongoing issue within the justice system as whole. There currently is not an answer to this barrier but it is important to talk about and draw attention to this issue.

REFERENCES & ACKNOWLEDGEMENTS

- *R v Kokopenace*, 2015 SCC 28.
- *R v Stanley*, 2018 SKQB 27.
- *R v Irons*, 2012 SKQB 342.
- *The Jury Act, 1998*, SS 1998, c 1-42.
- *First Nations Representation on Ontario Juries: Report of the Independent Review conducted by The Honourable Frank Iacobucci* (Toronto: Ontario Ministry of the Attorney General, 2013).
- Kent Roach, *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case*, (Montreal
- Department of Justice, "Legislative Background – An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts (Bill C-75)" (date modified 31 June 2018), online: [Government of Canada Department of Justice <www.justice.gc.ca/eng/rp-pr/csj-sjc/isp-sjp/c75/p3.html>](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/isp-sjp/c75/p3.html)
- Michael A. Johnston, *Bill C-75 & Jury Selection: Recommendations on Jury Selection and for Greater Representativeness* (Ottawa: Shore Davis Johnston, Barristers-at-Law) at page 7