

NOTES ON VLRC CONSULTATION PAPER ON JURY EMPANELMENT FROM COMMON LAW BAR ASSOCIATION

Overall the CLBA is of the view that the current system of jury empanelment in civil cases works well and there is no obvious case for any substantial reform.

Peremptory challenges

In response to the discussion paper the CLBA notes the following:

1. The peremptory challenge process gives a sense of some control over the exclusion of jurors who might be more likely to favour one party over another regardless of the evidence. In that sense the challenge process serves the purpose of ensuring that justice is seen to be done as well as actually being done. The process is necessarily impressionistic given the very limited information available. Nonetheless it provides a level of comfort to the parties that persons with a possible predisposition in favour or against a particular person or type of person will be less likely to be empanelled.
2. The availability of 3 challenges per party might be seen as somewhat unfair to plaintiffs if there are several defendants as the challenges will be likely to give greater representation to those jurors thought likely to favour a defendant position;
3. In terms of embarrassment from the selection process involving a “parade” the CLBA notes that in a civil jury context while counsel need to turn to look there is a fair distance between counsel and the jurors which moderates any personal impact. It might be thought less intrusive, however, if counsel are permitted to face the pool throughout the selection process to moderate any juror discomfort based on a feeling that he or she is being scrutinized unduly.

Calling the panel by name or number

4. While there may be a perception of risk to personal safety on the part of jurors in criminal cases involving serious violence, this perception is very unlikely to arise in a civil case. Noting that the judge has power to empanel by reference to numbers in a particular situation, the argument for using numbers to provide additional anonymity for jurors is not compelling in the civil context.
5. To continue to provide a sense that persons with possible predispositions might be excluded by peremptory challenge at least the current information is desirable.
6. Prospective jurors should be required to provide a meaningful description of their occupation or former occupation. Generic descriptions such as “public servant”, “Academic” or “retired,” should be avoided as do not assist the parties in making an informed decision with respect to a peremptory challenge.

7. The current system strikes the right balance between providing useful information for the challenge process and allowing a judge to determine in a particular case that less information should be provided.

Additional Jurors

8. The current Juries Act permits a civil jury to be allowed to continue to verdict with only 5 jurors should the judge so allow if one juror is discharged. The CLBA is of the view that this provides sufficient flexibility in civil cases.