

The jury trial: our fellow citizens as our partners in the administration of justice

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Times have changed since Alexis de Tocqueville said “The jury, which is a most energetic means to make the people rule, is also the most effective means to teach them to rule.” Some are of the view that civil jury trials should be abolished. The better discourse concerns: (i) judicial economy; and (ii) the purpose of a civil jury trial.

A jury case usually takes more time. The charge, deliberation, and dealing with certain objections in the absence of the jury take up time. However, juries are not a significant contributor to the trend of longer and more expensive trials. Time is wasted by calling witnesses who have nothing probative to say, tendering documents that have no probative value, and asking questions which could not realistically be expected to elicit relevant evidence. With fewer trials, there are fewer experienced trial lawyers. Lawyers fear leaving something out and they do not want to be second guessed. Although all of these things have likely

happened as long as there have been trials, they happen more frequently now. In *Hyrniak v. Mauldin*, the court exhorted the bar to try to find ways to shorten proceedings, and suggested the liberal use of summary judgment motions. None of this has anything much to do with juries.

The civil jury trial has persisted because it has purpose. It would be easy to elaborate the law so it becomes incomprehensible, except to specialists. However, for a free and democratic society, the basic outlines of the law should be comprehensible to its citizens. Wigmore helped the law of evidence by systematizing the *ad hoc* exceptions to the hearsay rule. Our Supreme Court eliminated an unnecessary piece of jargon by clarifying the doctrine of *res ipsa*

loquitur. Keeping the law comprehensible is a good thing, though more intellectually demanding. Jury trials provide us with an incentive to develop the law so that it can be explained to non-specialists. Our laws are supposed to reflect the values of our community. Jury trials provide us with an opportunity to see what Canadians think.

In some recent articles on this issue, some might detect an implied argument to the effect that juries sometimes “get it wrong”. This does sometimes happen. It may be a failing on the part of lawyers whose responsibility it is to put the evidence before them properly. Sometimes the criticism of juries is really a disagreement related to a generally expected result by lawyers. That is really not a valid criticism of a jury, nor does it mean they “got it wrong”. Jury trials are a way to maintain a dialogue among the community at large, the bench and the bar. That dialogue is important in a free and democratic society. There are ways to preserve judicial resources and meaningfully look at a jury result other than cutting off the conversation.



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