

Waterloo Region Law Association Members' Responses to the Request for Input from Attorney General Doug Downey's on Proposed Amendments - Civil Jury Trials

"My suggestion is that, for all civil matters, any party wanting a jury trial be required to move for leave to have one before a panel of 3 Divisional or Appeal Court justices so that such leave becomes case specific. In that way, all parties have an opportunity to argue for and against a jury trial in their particular case, and the justices can decide whether one would lead to a more just outcome in light of the particular issues in that case than a non-jury trial." - **Karen A. Scherl**

"I am a defence lawyer and am very against eliminating civil juries (as are most stakeholders in the insurance industry), at least for personal injury cases.

Civil juries are important in personal injury case for the following reasons:

1. Civil juries (i.e. members of the local public) are best positioned to determine how a reasonable person would act in ordinary circumstances.
2. Civil juries are instrumental in assigning fair damages awards without concern for things like statutory deductibles.

In short, I believe civil juries should absolutely not be eliminated in personal injury cases." - **Michael L. Kennedy, Partner, McCague Borlack LLP**

"I have been practicing law for 33 years and have done a few jury trials during that time. I practice a mix of criminal and civil litigation with recent emphasis on the criminal law side.

I strongly believe that the jury process is very important to the justice system. I say so for a few reasons.

First, a jury trial allows for direct public involvement in the justice system. It allows ordinary citizens to experience what happens in Court when they might otherwise have no understanding of what happens in Courts. By being on a jury, individual members of the public can connect with the justice system and appreciate its procedures and reasons for why it does what it does. To abolish civil juries would further alienate the public from the justice system and potentially erode confidence in the justice system. The current Black Lives Matter protests in the United States and throughout the world show that there is significant distrust of law enforcement and, by association, the justice system in general.

Secondly, maintaining the civil jury system will show that the government will give priority to maintenance of the public participation in the justice system on a regular basis and not just when serious issues arise that might call for a public inquiry. As a lawyer who has seen many cases through the years, I believe that there is an undercurrent of an "us versus them" underlying narrative among some individuals who find themselves at the mercy of the justice system. I am mostly speaking of the criminal justice system. Accused persons rarely reflect on how their actions impact victims until when they are about to be sentenced. To further reduce the number of jury trials would only serve to increase the perception among accused individuals that the "state" is against them and that individual victims are not part of the equation.

I know this last comment is more germane to the criminal justice jury system but I believe that both civil and criminal juries are important for maintenance of public confidence in our justice system.

Finally, civil juries of six individuals are not likely to appreciably cause increased risk of the passing of infections. Modifications to the process of how jury members are selected from jury pools might be able to be made to further minimize large gatherings. Technology could assist in allowing for remote access jury selection in a manner that minimizes large gatherings. After jury selection, the process could allow for those selected as actual jury members to attend Court as needed.

These comments are obviously made as a quick response to the request for input by the Attorney General. The comments are not to be understood as an academic dissertation but as observations from someone very concerned with our society and the individual members who give their time and thought to help all of us thrive as a community.” - **Richard Marchak, Barrister & Solicitor**

“I support removing all civil juries. Why are dragging people away from their jobs families ect to do our jobs? After all we went to law school trained and learned how to do this? “ - **Stephen Gehl, Partner, Gehl & Gehl**

“As a member of the Holland Group (a think tank for medical malpractice cases) we are already on this ridiculous notion. ” - **Paul M. Mann, Paul M. Mann Professional Corporation**

“We have received your request for comments relating to the civil jury system and can offer the following comments.

The jury system should be preserved because:

1. While judges are not always from the community the jury always is and is therefore better able to reflect the local views and sensibilities.
2. Juries potentially allow for the possibility of more racial, gender and age diversity in the decision-making process.
3. The jury system protects against decision-making based upon the inherent biases of one individual and spreads it over six individuals.
4. Juries are less likely to be influenced by insurance implications or potential cost consequences.
5. Juries are better judges of credibility, in that they are more prepared to call someone out for attempting to mislead them.
6. Juries provide a more realistic assessment of damages in some cases.
7. The jury system promotes the finality of decision making and reduces the number of appeals in the system because it is very difficult to appeal a jury verdict.
8. Although the elimination of juries might save money for the judicial system justice is not simply about saving money.
9. We should be thinking of ways to improve the jury system not eliminate it.” - **Peter T.M. Haney, Gregory Brimblecombe, Lisa M. Code, Lindsay S. Rodenburg, and Farah Hakim, McCormick, Brimblecombe & Code, LLP**