

The Right to a Jury of Peers

An Aboriginal man challenged the constitutional validity of certain provisions of Manitoba's Jury Act, claiming that they violated sections 7, 11(d) and 11(f) of the [Canadian Charter of Rights and Freedoms](#). The accused, Mr. Teerhuis-Moar, wanted a jury composed partially of Aboriginal people for his murder trial. He argued that without Aboriginal jury members, the selection was not representative of his peers or the community [1]. However, the Manitoba Court of Queen's Bench dismissed the case and ruled that his Charter rights were not violated.

In preparation for the trial, the jury manager randomly summoned 1,600 people for jury selection based on a list of names provided by the Department of Justice. Of the 1,600 notices originally sent out, 207 of them were returned with no forwarding addresses [2]. The jury manager was unable to identify whether some of the individuals called for jury selection were Aboriginal.

Section 2 of the Jury Act reads "every person has the right to serve as a juror unless they are exempted or disqualified" [3]. Potential jurors may be excluded based on a number of grounds, including: being a non-resident of a province, being a minor, holding certain government positions, being a member of a police force, and having been convicted of certain criminal offenses [4]. In addition, individuals can be exempt from jury duty if they will face undue hardship such as loss of pay, if they will miss long-awaited medical appointments, if they are older than 75 or are self-employed (etc.) [5].

In this case, the Court had to decide if provisions of the Jury Act violated the Charter on 5 grounds.

1. Whether section 8(1) of the Jury Act, which gives the Chief Sheriff discretion to choose the districts from which the potential jurors may be summoned, violated section 7 of the Charter (right to life, liberty and security of the person in accordance with principles of fundamental justice).

The Court found that the discretion given to the Chief Sheriff (who is a provincial employee) does not violate section 7 of the Charter on the basis of an apprehension of bias and partiality. The high level of discretion is an issue of practicality in order for jury districts to be modified with ease [6], given how few people summoned are actually able to serve on a jury.

1. Whether this discretion violates section 11 of the Charter given the demographic makeup of the Winnipeg judicial district.

The accused argued that a number of factors contribute to a jury that is not representative of the larger community as it pertains to Aboriginal accused including: the lower rates of

Aboriginal people living in Winnipeg (7%), as compared to Manitoba more broadly (11.7%); the fact that the Aboriginal population has a lower rate of home ownership and therefore less people respond positively to the summoning process [7]; and the Aboriginal population has a higher rate of criminal convictions than their non-Aboriginal counterparts and therefore, a higher proportion of potential jurors are disqualified pursuant to section 2 of the Jury Act [8].

1. R. v. Church of Scientology et al case held that “the right to a representative jury roll is not absolute in the sense that the accused is entitled to a roll representative of all of the many groups that make up Canadian society. This level of representativeness would be impossible to obtain” [9]. Numerous cases have challenged jury selection on Charter grounds where no Aboriginal people were selected to participate in juries. Ultimately the Court found the jurisprudence to suggest that:
2. Whether the provisions of the Jury Act that disqualify those who have been convicted of offences violates sections 11(d) (the right to be tried by an independent and impartial tribunal) and (f) (benefit of trial by jury) of the Charter.
 1. (1) An accused is entitled to a fundamentally fair trial, but that does not equate to a perfect trial or to “perfect justice” [10];
 2. (2) The right to a fair trial includes a jury that is impartial and representative of the larger community, but that does not include an exact composition that is proportional of the larger community [11], and;
 3. (3) That while participation from all groups, including minority groups is encouraged, “no accused is entitled to a trial by jury selected on the basis of racial considerations which would result in the elimination of the general populations from the jury panel” [12].

The accused argued that the stipulations in the Jury Act, which prohibit people who have been convicted of certain criminal offences from acting as jury members, lead to an under-representation of Aboriginal persons able to serve on a jury panel, given the over-representation of Aboriginal persons who are convicted of criminal offences [13].

However, the Court found that it was not proven that even if a disproportionate number of the jury members were Aboriginal, it would “materially affect the representativeness of the panel” [14]. Therefore, the Court found that section 11 of the Charter was not violated.

1. Whether the failure to follow-up on summonses that have not been responded to violated section 11(f) of the Charter.

The Court found that there was no evidence to show that this would lead to a non-representative jury, but that it may ensure that some groups are over-represented (i.e. those who are not self-employed, those who can excuse themselves from family responsibilities and those whose employment would compensate them) [15]. Speaking for the Court, Justice Monnin noted that, although the applicant did not adduce sufficient evidence to show that this would lead to a biased panel, “it would be time for a review of the Act and jury selection process contained in it, and what steps can be taken to ensure representativeness and ensure that a cross-section of members of our community are available and can serve as jurors” [16].

1. Whether section 29 of the Jury Act, which provides that the names of the jurors’ list shall not be disclosed to counsel until 5 days prior to the jury selection date violates section 11(f) of the Charter.

Finally, the defense argued that the applicant’s right to an impartial jury protected under sections 11(d) and (f) of the Charter, is compromised given that defense counsel does not have access the jurors’ information in order to perform an investigation on behalf of their client in the most vigorous sense. However, the Court looked to *R. v. Find*, where Justice McLachlin (as she then was) said that “the Canadian system, however, starts from the presumption that jurors are capable of setting aside their views and prejudices and acting impartially between the prosecution and the accused upon proper instruction by the trial judge on their duties” [17]. Ultimately, the Court held that simply because the list of names of potential jurors may not be up-to-date until five days prior to the jury selection date does not mean that defense counsel cannot have adequate access; it only means that updating will be required.

Sources:

- [1] *R. v. Teerhuis-Moar*, [2007] M.J. No. 257 at para. 1 [Teerhuis-Moar].
- [2] *Ibid* at para. 8.
- [3] *Ibid* at para. 21.
- [4] *Ibid* at para. 21.
- [5] *Ibid* at para. 28.
- [6] *Ibid* at para. 45.
- [7] *Ibid* at para. 47.
- [8] *Ibid* at para. 51.
- [9] *R. v. Church of Scientology et al* (1997), 33 O.R. (3d) 65 (Ont. C.A.), at para. 146.
- [10] *Teerhuis-Moar*, *supra*, note 1 at para. 77.
- [11] *R. v. Kent* (1986), 40 Man.R. (2d) 160 (C.A.) at para. 46.
- [12] *R. v. Nepoose No. 2* (1991), A.R. 258 at para. 31.
- [13] *Teerhuis-Moar*, *supra*, note 1 at paras. 93, 88.
- [14] *Ibid* at para. 94.
- [15] *Ibid* at para. 103.
- [16] *Ibid* at para. 108.
- [17] *R. v. Find*, 2001 SCC 32, [2001] 1 S.C.R. 863 at para. 26.