CANADIAN DEFENCE LAWYERS

December 15, 2016

Civil Juries Under Ontario Rule 76 Simplified Procedure

Canadian Defence Lawyers is pleased to be granted the opportunity to make submissions on the Ontario Rule 76 Simplified Procedure request for consultations on jury trials.

CDL is a national association of civil defence litigators with members in all Canadian provinces and territories. We speak for a membership of over 1,400 lawyers across Canada (and about half our members are lawyers practicing in Ontario). For the most part, our members' clients are corporations, including but not limited to insurers, self-insured companies and reciprocal defence associations.

Membership Survey by Canadian Defence Lawyers

To provide the most useful information for this consultation, and because of its diverse national membership, Canadian Defence Lawyers conducted an online survey of its entire Ontario membership. The response to this consultation was very enthusiastic. Our comments set out in this report summarize the views of all the respondents.

Members were asked "Should the availability of jury trials in Rule 76 actions be limited in any way? If so, how should the availability of jury trials in Rule 76 actions be limited? Please identify the reasons that speak for or against limiting jury trials under Rule 76." Attached below our report comments are our members' actual substantive responses.

Civil Juries are a Substantive Right in Ontario

Overall, there was overwhelming support from a majority of respondents for the civil jury trial in Ontario at the Simplified Procedure level because:

- the right to trial by jury forms one of the most basic and closely held substantive rights of citizens in common law countries – it is the hallmark of democracy
- jury verdicts are meant to inform the judiciary of the community's views on damages.
- six peers are best suited to determine liability and damages with an unjaundiced eye
- juries act as a peer review of what is acceptable conduct in the community – they are an important calibration for the justice system
- juries' decision making is unadulterated by systemic considerations or efforts to budget public resources

- juries are the only meaningful way in which the public can engage with the justice system – personal interaction with the justice leads to a better informed citizenry
- jury trials constitute a powerful incentive to settlement – very few cases proceed to trial

Erosion of the Right to a Civil Jury Trial in Ontario – Polarization of the Bar

Relatively few simplified procedure cases are tried before a jury (30 in one year, 22 of which were injury cases). And, those cases are generally of shorter duration (under 10 days). This reality has caused some CDL members surveyed to wonder why this is an area of focus amid so many other important issues facing court users of the civil justice system. What is driving this current consultation?

The suggestion that any attempt to restrict civil jury trials under Rule 76 is just "the thin edge of the wedge" in a co-ordinated attack of the civil jury system in the Superior Court is not without merit. CDL is concerned about the polarization of the civil litigation (injury) bar and the need to work together to ensure public confidence in an effective justice system. Instead, an Ontario-based lobby group recently stated:[1]

"Many lawyers extoll the jury as a sacrosanct tool that ensures common sense and community values are represented and applied in our legal system. The problem is that many people's values and common sense are, knowingly or not, touched by racism, sexism, unfair beliefs and other irrational forces."

...

"The recent case of Mandel v Fakhim is another prime example of this trend, to the point where the impartial judge felt he had to comment on the injustices being done by Ontario juries."

Respect by the judiciary for the jury system is paramount to fairness. Recently, an Ontario Superior Court judge commented after a civil jury verdict in a personal injury case:[2]

"While jury trials in civil cases seem to exist in Ontario solely to keep damages awards low in the interest of insurance companies, rather than to facilitate injured parties being judged by their peers, the fact is that the jury system is still the law of the land. This jury has spoken and did so loud and clear."

Unfounded comments from lobbyists and from the bench diminish confidence in our system and contribute to the polarization of the litigation bar - something we should all strive to guard against. Recognizing that at least some of the voices arguing for the abolition of the jury trial in Ontario express an unbalanced view must be taken into account in any discussion of practical solutions to access to justice issues considered by this consultation.

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[1] http://www.fairassociation.ca/2016/11/chronic-pain-cases-beware-of-the-civil-jury-a-review-of-mandel-v-fakhim/

[2] *Mandel v Fakhim* *http://www.canlii.org/en/on/onsc/doc/2016/2016onsc6538/2016onsc6538.html*

Views of CDL's Young Lawyers Division (YLD)

Our association has an active young lawyers membership branch which conducted its own additional consultation. The Young Lawyers Division of the Canadian Defence Lawyers is as a national committee representing young defence lawyers, 10 years of call or under. The YLD Committee's main objective is to foster the development and support of young defence lawyers across Canada. The YLD committee is passionate about providing young defence lawyers with a voice, particularly where changes to legislation, practices and procedure are concerned.

The following are the most popular opinions as voiced by the Young Lawyers Division regarding the possible legislative changes to Rule 76 that would limit the availability of jury trials:

- The elimination of jury trials for simplified procedure matters will likely have an adverse effect on the ability of young lawyers to obtain trial experience before a jury, particularly since small claims court matters are heard before a judge alone. It would not foster the education and training of young lawyers, as practical experience in the court room is invaluable. Should jury trials be eliminated, there is a great risk that young lawyers will not be as experienced as in the past and will lack the training received by their forefathers.
- There is some concern that the proposed changes would result in a possible increase in Simplified Procedure matters as Plaintiffs may want to take advantage of a judge alone trial under the Simplified Procedure Rules, in cases where a jury trial would most likely not be favourable to the Plaintiff.
- There is a broad concern that if jury trials are eliminated, then this will result in the depreciation of a fair assessment of matters at trial and will send the wrong message to young lawyers that the presence of jury members under the Rules of Simplified Procedure is an inconvenience. There is also a concern over a risk of a degradation of the judicial system in Ontario.

Specific Issues Affecting Jury Trials – General Observations by Canadian Defence Lawyers

Canadian Defence Lawyers offers to following comments on some specific issues pertaining to civil juries in general.

Length of trial: We are without empirical data on the length of trials. Anecdotal evidence that some jury cases seem to take longer than judge-alone cases is inadequate to form a basis for discussion of abolishing parties' long-standing rights to try by jury. To the contrary, trial by jury promotes succinctness in presentation of evidence and in argument. It demands strict compliance with the rules of evidence and procedure as contrasted with a judge-alone trial where often the evidence is admitted but "subject to weight." Most litigators are agreeable to trial management by the trial judge to implement mutually convenient scheduling and even time limits on testimony and

parties' argument. These timelines are effectively managed by the trial judge and are unique to each case. Paperless trials, agreement on evidence and joint document briefs, time limits and other in-trial procedure measures are infrequently used by trial judges and lawyers and should be encouraged as the most efficient and effective way to shorten trials.

Juror experience: We are without empirical data on the experience of jurors. The court's process adequately controls the reasonableness of excuses to serve jury duty. There is no reliable evidence that citizens object to serving on juries – despite the unsubstantiated comment that serving on a jury is a "substantial inconvenience." To the contrary: many jurors feel grateful for the chance to be involved in the civil justice system and come away from their interaction with the courts with a greater appreciation of our values of fairness and balance in the justice system. The Ministry of the Attorney General's own video for jury duty expresses the importance of serving on a jury. https://www.youtube.com/watch?v=NPs-Dj-LapY&list=PLxmz9ERQlsZvBLthqmJmqjEBfpi9MmdTm&index=7 More public education on the benefits to our society of serving on a jury might be undertaken.

Jury duty for minor damages cases: The quantum of damages awarded in some cases seems minor – even to jurors. But to the parties, the amounts are not minor. As one CDL member put it: *"Every matter is important to the litigants no matter what the dollar amount."* It is misguided to label $100,000 as a minor case – such amounts are minor to very few people in Ontario. However, it is reasonable to question "whether the civil jury duty should be engaged where the issue is whether the defendant should pay the plaintiff $12,000."[3] Some of our members did support changing the jury system under Rule 76, mostly on the basis that damages quantum of $100,000 or less are not deserving of the jury trial experience. The cost-effectiveness of juries for very small damages recovery cases is a problem we all acknowledge – but there are already Rules to resolve it. The answer lies in the enforcement of cost consequences against plaintiffs who commence their actions in the wrong court. We have three jurisdictional options in Ontario for various damages values – for a reason:

1. Small Claims Court is where cases of damages less than $25,000 are to be adjudicated.
2. Simplified Procedure in Superior Court is where cases of damages less than $100,000 are to be adjudicated.
3. Superior Court's regular procedure is for cases worth $100,000 or more.

Judges have been reluctant to use the cost sanctions built into our procedure to encourage lawyers and litigants to bring their cases at the appropriate level of court. If the rules were enforced, the courts would see an increase in the right size case being brought in the right court, which would make a big difference to the costs incurred by the parties and the system. More cases would enter the Small Claims Court which would relieve the burden on the Superior Court.

[3] Ministry of the Attorney General of Ontario website, Civil Justice Review Project, Justice C. Osborne, 2007

Insurers and civil juries: The MAG website contains this statement: *"I recognize the unfortunately reality that insurers in most negligence actions require their counsel to deliver a jury notice. I refer to this as unfortunate because one clear aim of the strategy is to increase the risk to which the plaintiff is exposed, manifestly on the basis that the insurer can absorb the risk better than almost all plaintiffs."*[4] To the contrary, the reasons parties serve jury notices are varied. Each party has the right, if so advised, to litigate before a jury instead of a judge alone. It is a reality that in most civil litigation in Ontario, defendants are often insured. Defendants' rights and role in litigation ought not to be diminished by that fact and the existence of an insurance policy behind a lawsuit is not relevant to the determination of the issues between the parties (unless it the case involves an action on the insurance contact itself). The reason a party elects to have an action tried by a jury is not required to be disclosed and is a matter of solicitor-client privilege. There can be many reasons why a party might feel he or she will achieve a fairer trial or a better result with a jury than with judge-alone. But more importantly, the very reality that there is a perception of better justice for one party or another with a jury instead of a judge answers the question of whether there ought to be any restriction on the right to access a jury trial if so advised. The reality of a pending jury trial, to the benefit of all court users, forces parties and their counsel to view less than meritorious cases with a critical eye before consuming court resources and juror's time.

Practical Consequences of Changing Rule 76

Practical possible consequences of restricting civil juries under Rule 76 include:

- the risk of an increase in meritless claims because of the perceived likelihood that defendants will settle instead of having to face trial with judge alone
- a diminution in the discouraging effect that a pending trial with a civil jury has on parties with unmeritorious positions
- a reduction in opportunity for new lawyers to gain experience in trying cases before a jury before acting as first chair/lead counsel in the Superior Court
- judges trying cases alone may become more divorced from the attitudes and perspectives of the public

[4] Ministry of the Attorney General of Ontario website, Civil Justice Review Project, Justice C. Osborne, 2007

Conclusion

There is no evidence to suggest that civil jury trials under Rule 76's Simplified Procedure are unduly burdensome on court resources, the parties or the jurors themselves.

Without it, no discussion is warranted about whether a deprivation of citizens' substantive right to trial by jury.

Juries are important to our civil justice system and offer a unique means of public engagement.

There may be some voices rallying against a parties' right to a trial by jury, but they are in the minority.

Respect for our justice system is something for which we must all, as court users, continue to strive.

Canadian Defence Lawyers welcomes the opportunity to continue to be involved in these consultations.

CDL 2016 Survey Respondents: In favour of continuing Jury Trials under Rule 76 Simplified Procedure:

- There is no justice without civil juries.
- Jury trials should not be limited. It has been a longstanding and fundamental right of a litigant to have the option of his or her case (as plaintiff or defendant) assessed by a jury of his or her peers. Six members of the community are, in most cases, best suited to determine the issues in dispute and assess damages with an unjaundiced eye, approaching the lawsuit without being influenced by having previously sat on similar cases.
- Except in the instances set out in the Rules and, there should be no further limitation on a party's right to trial by a jury of his peers. The right *Courts of Justice Act* to trial by jury forms one of the most basic and closely held rights of citizens in common law democracies. Jury verdicts are meant to inform the judiciary of the community's views on non-pecuniary damages and the value of this function cannot be understated. Further erosion of and incursion into a party's right to trial by jury should not be instituted.
- The availability of jury trials in Rule 76 actions should NOT be limited in any way.
- It is a principle of fundamental justice to have the right to an impartial jury trial. It's a substantive right of a party to have their civil action heard by a jury of peers is codified in section 108(1) of the *Courts of Justice Act*. Section 108(1) provides that in actions before the Superior Court of Justice a party may request that a jury determine the issues of fact to be tried and/or the damages to be assessed. The Magna Carta states that: "no free man shall be captured and or imprisoned or disseized of his freehold, and or of his liberties, or of his free customs, or be outlawed, or exiled, or in any way destroyed, nor will we proceed against him by force or proceed against him by arms but by the lawful judgment of his peers, and or by the law of the land."
- Juries play a fundamental role in the resolution of lawsuits in Ontario. They provide a literal "peer review" of what is acceptable conduct and what is appropriate in assessing damages. They are not, like judges, approaching such litigation from the perspective of settlement and/or control of judicial resources. They are the alive to what makes sense and is reasonable in setting standards of conduct with respect to both liability and damages. It is inevitable that the current monetary jurisdiction of Rule 76 trials will increase. And even more civil cases will be left to the judiciary alone. Not a good thing. High volume plaintiff law firms, particularly in personal injury litigation, will not be deterred from issuing even more specious claims knowing that insurers will pay rather than be left in the hands of a judge alone.
- A trial by jury is a substantive right in this province, and $100,000 is not "too small" where most people in this province come from. A simplified rules case should not take as long to try as a case in Superior Court, which militates against any arguments of "inconvenience" to jury members.
- There should be no limits on a rule 76 jury trial, at least none that differ from the limits on a case that might worth something over $100,000. Parties should have the right to have their acts or omissions judged by their peers whether the case is a dispute over $50,000 or $500,000.
- Few simplified cases are tried with a jury. The inconvenience to the public is therefore limited. The right to deliver a jury notice may encourage settlement. Some cases are particularly suited to jury trials particularly were credibility is a key component. The parties to an action should not be deprived of the option of having a jury decide the dispute between them just because the amount in dispute is $100,000 or less. Forty years ago juries heard Small Claims Court cases regularly. This was the training ground of some of the best jury lawyers that Ontario has produced.
- Jury trials should not be limited in any way. Juries are critical, and often the only way to get a common sense judgment. Judges will bend over backwards to ensure plaintiffs recover, whereas juries will make hard decisions if they have to.
- It is a substantial right. Sometimes it is not the amount but the principle. On another note how will our young advocates get experience?

- I have tried one or two cases under Rule 76 with a Jury. Given the current limit of $100,000 it is appropriate to have the same rights as the ordinary procedure. Add restrictions on the trial to make it simpler and more expedient, but do not deny the parties the right to have a Jury decide the facts.
- However, the provisions of R.76 need to be more strictly enforced in order to truly decrease the amount of time, money and delay associated with such matters. In addition, placing time limits on the length of R. 76 trials may address concerns re: juror inconvenience.
- The jury system is the hallmark of democracy. The "substantial inconvenience" is an assumption. Where is the empirical data to support this notion? Every single juror I've ever spoken to raves about our system. Most had no appreciation for how important it is and developed new found respect for our system of Justice. Eliminating juries runs a substantial risk of eroding confidence in our judicial system. By suggesting that "small matters" need no jury, implies that "large" matters are more important. This is not true. It also begs the question, since juries are sometimes struck in "large" cases, why not get rid of juries altogether? This would be the end of democratic Justice. There are a host of ways to reduce costs and delays without ridding ourselves of juries. More creative thinking is needed. And, that thinking should come from people who are not judges!
- Jury Trials are an essential component of our civil system. Juries tend to be more realistic than judges in assessing claims.
- Juries do the best job at fairly assessing the merits of an action.
- I don't like to see the right to a jury trial eroded, and I worry that this might be the thin edge of the wedge. Fifteen or twenty years ago I did a jury trial in a simplified procedure matter where the amount in dispute was about $13,000. It was a property damage claim for a vehicle and the insurer defendant took the position that the plaintiff was drunk and incapable of the proper control of the vehicle at the time of the accident, and therefore in violation of the policy. The trial judge was very annoyed when my client would not agree to a judge alone trial, and pointed out the significant inconvenience to the jury over such a paltry sum. He put a lot of pressure on us to agree to a judge alone trial, and he indicated that he had consulted with other judges to see if there was a basis to discharge the jury. There was not. I won the trial and later the trial judge, who had by then read the case law which was highly unfavourable to insurers, said he understood why we had stood by our decision to require a jury based on the case law. We felt it was an easy win with a jury and would have been a hard win with a judge alone. There is no doubt that insurers prefer to have their cases decided by juries rather than judges. For some reason, judges are more sympathetic than juries. Older colleagues have told me that in the 70s and 80s, the reverse was true. Plaintiffs tended to want juries and insurers would prefer judge alone. Jury trials were common in small cases, but trials tended to be much shorter. Juries are an important calibration for the justice system. They allow all of us - judges, lawyers and other players in justice system - the opportunity to see how the public reacts to certain sets of facts. This is instructive and if we lose juries, the justice system will gradually become more and more divorced from the attitudes and perspectives held by the public. All of that said, it is not reasonable to pull six people away from their lives, even if it is only for one or two days, to decide a small case. The cost is too high for the jurors and the jurors' employers, and for the justice system and the litigants. Indeed, the jurors could suffer a greater harm than the litigants are fighting over.
- Trial before a jury promotes succinctness in presentation of evidence and argument. Jury deliberations must be completed at the end of the trial and a verdict entered. This is consistent with Rule 1.04 in that justice is immediate and therefore meets the "most expeditious" criterion. Trial by jury results in meaningful engagement of the public in the justice system. This mode of trial is consistent with the "just" determination on its merits principle in Rule 1.04.
- There is no reason to limit jury trials. The fact that only 30 cases per year proceed to trial by jury is evidence in itself that there is no "substantial inconvenience" of any kind. $100,000 is a significant sum of money to the average person. If limits like this are put in place the average person, unless involved in a significant personal injury trial, will have his/her access to a jury trial erased.
- Availability of jury trials ought not to be curtailed whatsoever. The public have a right to a jury and claims < than $100k are still significant.

- The right to a Jury Trial is a substantive one $100,00 is a lot of money to most people Only a small number actually proceed to Trial If not enough Judges, then hire more or have senior litigators sit (although some amendments would be needed).
- Jury trials should continue to be available for Rule 76 Claims given the monetary jurisdiction of $100,000.00. When factoring in deductibles in Ontario for MVA claims, many if not most, motor vehicle accident claims in Ontario, would fall within this range. As such, jury trials should continue to be an option for a defendant in an automobile claim, where arguably the jury is the most important trier of fact.
- Why is this a problem? Thirty trials a year in a province that has over three hundred s.96 judges!!! If you assume each trial is five days then you are talking 150 sitting days per year or roughly two days per judge. What sense does it make to eliminate a historical and fundamental right for a saving of virtually nothing. Appoint one more judges or spend some time on improving the process. At least appoint those that deserve appointing now. The premise that removal of jury trials in these cases will reduce "cost, delay and strain on judicial resources" it a flawed argument. The purported savings are small in comparison to eliminating a fundamental right.
- Jury trials are the right of a party. Trial judges are really too experienced and unwittingly have a bias in that they are aware that there is a deep insurance pocket available to the defendant in most cases and therefore their assessments of damages is far more generous than the average juror would typically award. With a monetary jurisdiction of $100,000, that is sufficient to warrant the availability of a jury trial if one of the parties wants a jury.
- The right should be maintained for any actions other than Small Claims Court, and those prohibited by law. The monetary amount should not drive the availability.
- Every matter is important to litigants no matter what the dollar amount. The right to a jury is a hallmark of Canadian law. You cannot gage what a matter is worth simply by looking at what a plaintiff claims in damages in a Statement of Claim. It could well be that a plaintiff who seeks $1 million in a Statement of Claim only recovers $10,000 in damages at trial while a plaintiff who claims for $100,000 in a Statement of Claim (started under the Simplified Procedure) will recover $50,000 in damages at trial. Given that only 30 cases per year proceeded to trial by jury under Rule 76, it is hard to understand how this causes a strain on judicial resources. I suspect that it is mostly defendants that serve the Jury Notices in motor vehicle accident cases and non-vehicle related personal injury claims. Having a judge rather than a jury determine the issues at trial eliminates a lot of the uncertainties at trial that a jury provides and will most likely result in more plaintiffs proceeding all the way to trial. The Courts will likely have more trials which will strain its judicial resources even further if it eliminates jury trials under Rule 76. The fact that only 30 cases per year proceeded to trial with a jury under Rule 76 suggest that having a jury may well be a significant deterrent for parties to proceed to trial. In essence, eliminating jury trials under Rule 76 will likely have the opposite effect that is contemplated on judicial resources.
- Jury trials under Rule 76 should not be limited in any way. The right of a party to have a trial by his/her peers is paramount to the "inconvenience to jurors". Such trials are not overly lengthy and with only 30 or so tried per year, it hardly can be seen as a drain on the system or jurors. Whether or not the limit is raised, trial by jury should continue to be a right of any party.
- The availability of jury trials under Rule 76 should not be limited in any way.
- The right to trial by jury should not be limited in this way. In my experience the purported additional costs and length of trial associated with jury matters is overstated (if true at all) where competent counsel are involved. If it is felt that the monetary limit of the simplifies rules means that the value is too low to bother with the usual procedural rights then perhaps the small claims limit should be raised.
- A Jury trial under Rule 76 should not be limited. Juries remain essential to the delivery of Justice in Canada. A Jury allows for direct citizen participation in our democracy and goes beyond the 50% voting public involvement. Just as a criminal Jury trial for a theft charge of 10k entitles a criminal defendant to a Jury so too should a civil litigant have the same right. It is not about the size of the claim. Social media can influence public opinion. Personal and direct interaction with a system of Justice leads to a better educated/informed citizenry.

- If it is not worth the trouble to try the case with a jury just because it is $100,000.00, then raise the limit for Small Claims Court. To the litigants, $100,000 is probably a lot of money. There are costs, delays, and strains on judicial resources without a jury, though somewhat less. Every jury case of every kind is a substantial inconvenience to jurors. Presumably a Rule 76 case is shorter and less of an inconvenience than a week's long trial of any kind.
- Jury trials serve society well by providing a reality check on damage awards
- Is it not a constitutional entitlement?
- Although $100,000 is considered by some to be insignificant to warrant a jury trial, we disagree, and offer further that the costs on a $100,000 judgment can often be at least.$100,000 after a 3+ week trial.
- The jury system is a fundamental right in our justice system. Especially in this age of mistrust of the "elites", it is important that parties have the right to have their disputes adjudicated by their fellow citizens, and not a member of the 1%.
- A relevant consideration is whether the monetary limits of Small Claims Court and thus, Simplified Rules, will be increased. It needs to be decided what is the 'right' monetary limit for the inconvenience, or is it just that any amount claimed in simplified rules constitutes insufficient for the inconvenience. Additionally, many cases commenced in Superior Court in the context of MVAs are claims of $1m. Some are actually worth $1m but many are not. How can one go about tying the option of a jury, the notice for which is often served by the Defendant, to the amount claimed when it very often has no relation to the ultimate award? Further to the comment that defendants are typically the party serving jury notices in MVA cases, restricting or precluding the availability under Rule 76 would put great power in the hands of the plaintiff to direct how a case is heard by changing the amount claimed. Notably, after an award is made, the plaintiff would be entitled to change their pleadings and could theoretically claim an amount that precludes or limits a jury, receive an award greater than the claim, and subsequently amend the pleadings to allow for payment of the award made. This is prejudicial to a defendant who has then been precluded from having a jury hear the case. Until these issues are addressed, implementing a blanket rule regarding the availability of the jury under Rule 76 would be premature. At this time, they should not be precluded.
- The right to a trial by jury is a constitutional issue, and should not be taken away lightly.
- Limitations are already provided in the existing rule 76.
- No limit other that what has been established by case law.
- Jury trials should not be limited. The right to an adjudication on the merits by a client's peers is a fundamental right in our system of law. The symptoms that have been identified by the above preamble speak to larger issues in our inefficient civil justice system. The right to a jury should not be sacrificed due to other causes for delay in our system - because those issues will still plague the system.
- The prospect of a jury trial is the greatest incentive to settlement as reflected in the actual number of cases that go to trial, which is 0.3%. This hardly seems like a strain on judicial resources if compared to regular procedure actions. Perhaps the restriction should be in the length of trial, say a maximum number of 7 days and an earlier date if less than 5 days.
- In my view, jury trials are important and a fundamental right to any litigant.
- Jury trials under Rule 76 should not be limited. Instead, more should be done by way of judicial intervention and trial management to ensure that the trial proceeds smoothly and efficiently.
- There are sufficient limitations within Rule 76 without impinging on the right to have an action tried by a jury

CDL 2016 Survey Respondents: In favour of restricting Jury Trials under Rule 76 Simplified Procedure

- The only way I could see it being limited is if R76 Trials were kept to a maximum length of days for example. Otherwise saying to someone who has a claim worth 125K that you can have a Jury but someone with an equally legitimate claim at 75K cannot seems unjust. The exception is in the Small Claims court and it should remain there.
- The size of the panel should be reduced from 6 to 4, with a majority of 3 required for a verdict on any question. And trials should be limited to a maximum of 7 days in total from jury selection to jury discharge.
- Jury trials in civil cases should be restricted to cases of some monetary significance. The Small Claims Court jurisdiction is woefully inadequate to provide an appropriate threshold for this purpose, although at one time it likely was sufficient. The need for a Simplified Procedure Rule is itself evidence of this. While a party's right to a jury trial should be given some deference, recent rulings from the Supreme Court of Canada regarding delays and their impact on the criminal justice system cannot be ignored on the civil side. We have seen one trial judge outside Toronto make this clear and in a pointed way when refusing a party's request to schedule too much court time for a routine motion. The Civil Defence bar must recognize that access is a privilege and Jury Trials should be reserved as a privilege for those significant cases in the system that merit the substantial inconvenience to the taxpaying public which comprises the jury pool. This same pool is tapped for other types of cases and it is unrealistic, not to mention abusive to the system as a whole to expect smaller value cases to take up the increasingly scarce resources of the courts.
- Rule 76 is supposed to provide expeditious justice based on a streamlined process. The summary trial subrule does not mesh well with a jury. In that a pre-trial judge has discretion to order a matter to proceed by way of summary trial there is a risk of having a trial mechanism that does not work in front of a jury. Does anyone think juries are likely to read affidavit evidence? How would a jury react to a plaintiff being limited to 10 minutes for examination in chief being cross examined for 50 minutes. As much as I might relish that situation, it should not exist.
- The monetary limit of $100,000 is really too small to justify a jury trial, because it costs more to prepare for a jury trial, and given the limit, and proportionality of costs, it would be a waste of time and money for the parties and the lawyers.
- Jury trials should not be allowed in simplified procedures for the following reasons: The use of juries flies in the face of what simplified procedures are meant to achieve. The cost of a jury trial is disproportionate to the value of claims that should proceed by way of simplified procedures. Simplified procedures limit the ability of the parties to provide and seek evidence and jury trials should only be used where full exploration of evidence is available.
- It should be limited as the cost of running a jury trial is prohibitive, and takes too long, which runs contrary to the intent of Rule 76.
- There should not be jury trials for Rule 76 actions.
- Rule 76 only applies when the plaintiff's counsel determines in advance that the claim is going to be less than $100,000. There are very few personal injury cases (when juries are most often used) that fall within that category (22 total cases based on the provide figures from the Rules Committee. Moreover, given that MVA claims with damages less than $100K will be subject to the statutory deductible, these claims are further reduced in quantum. They should not be permitted to go before a jury.
- I tend to agree that with the rising costs of litigation, taking a case to trial that is worth $100,000 or less is too small to justify either the strain on the court system (both judges and juries) and the financial strain on litigants and their counsel. Too few cases go to trial as it is and keeping the jury for a Simplified Rules case makes little sense given that jury trials take longer than bench trials and therefore are more costly to clients. While a potential tactical tool to use on the defence side, at the same time it also becomes a disincentive to defence clients who have to pay more in legal fees because a case is going to trial before a jury. From a lawyer perspective, however, Simplified Rules cases are

excellent training grounds for younger lawyers seeking the experience of arguing a trial. I appreciate that my view would eliminate their ability to get experience before a jury.

- Jury trials should not be permitted. This will result in better access to justice and reduce the length of proceedings. Plaintiffs generally prefer non-jury trials. By precluding juries in Simplified Actions, it will incentivize Plaintiffs to better evaluate damages and thus reduce claims in the ordinary procedure.
- Jury trials tend to take longer than judge alone trials. This partially defeats the purpose of Rule 76 actions i.e. that actions are managed in a timely manner. Further, it is already hard enough to find jurors.
- In the unfortunate event further limitations are imposed and the right to trial by jury diminished, it might make sense to insist the parties mediate the matter before every trial by jury. Limitations on expected value of the claim would defeat the purpose of a trial by jury given that the cases which tend to proceed by judge and jury are often "all or nothing" cases. If the action produces an "all" result, the limit, depending on how it may be applied, could preclude full recovery. Limitations based on likely quantum are also problematic as in many cases, the value of a claim may significantly vary over the course of the litigation process. It is very difficult for parties to assess the value of an all or none claim at the outset.
- I think we should preserve jury trials for cases that are beyond the monetary limit of the simplified rule.
- Jury trials should not be permitted in Rule 76 actions, but the right to a jury trial should be preserved in other cases.
- A jury notice can only be filed with leave of the Court. Motions for leave would be in writing unless the Court directs otherwise.
- I am of the view there should be no jury trials in Simplified Procedure. However, I anticipate if that change is put in place more actions will be commenced under regular procedure.