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Backgrounder

LRC 63—Report on Peremptory Challenges in Civil Jury Trials

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In a civil action before a jury, the plaintiff and defendant may exercise certain powers to determine whether a prospective juror may be included in the jury. Either party may challenge a prospective juror for cause if he or she is not qualified under the *Jury Act*, or is personally interested in the case or otherwise biased. In many cases, however, parties will not have this information and consequently, in addition to challenges for cause, each party may exercise four peremptory challenges. A peremptory challenge is the right of a litigant to exclude, without giving reasons, a person from sitting on the jury. This right provided for by section 18 [now section 20] of the *Jury Act*.

This report examines a number of procedural issues that have arisen in relation to peremptory challenges. For example, if there are two defendants, can they each exercise four peremptory challenges or must they share those challenges? In what order should challenges be exercised, as between plaintiff and defendant, and as between several plaintiffs and several defendants? Is a third party to the action entitled to exercise peremptory challenges? These issues are either not resolved by or not addressed in the *Jury Act*, and, consequently, lead to procedural arguments each time they arise, contributing to delays in the administration of justice. Furthermore, when such issues do arise, they appear to be determined on an ad hoc basis.

The report concludes that reform of section 18 [now section 20] of the *Jury Act* is desirable. Reform should be formulated on the basis that litigants have equal rights to challenge, such rights should be easily determined and, generally, not subject to judicial discretion, and account should be taken of the expense and practical difficulties of summoning a sufficiently large number of citizens. The approach adopted in several other jurisdictions is then summarized.

In the final part of the report, a number of recommendations are put forward covering the number of challengers that litigants should be entitled to, the number of challenges that third parties should have, the order in which such challenges should be exercised, and the use of a pre-trial conference to determine the issue.

Further Developments

See *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3–4 [now *Jury Act*, R.S.B.C. 1996, c. 242, ss. 20–21].