

# Has the Jury system outlived its utility and practicality?

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# Quick Review of juries and jury processes

# What is a jury?

- 6 or 12 citizens who give an impartial verdict on a civil or criminal case
- Determine the guilt or lack thereof in a crime, known as the “trier of the facts”
- Indictable offences require a jury in the trial
- Summary offences do not require a jury, but the accused has the right to request for one



# What are the requirements to be a juror?

## You must:

1. Be a Canadian Citizen
2. Be **18** years or older
3. Reside in the province
4. Speak, read, and understand English or French

## You can't:

1. Belong to certain professions(e.g. doctors, lawyers, police officers)
2. Have certain criminal convictions
3. Have attended court for jury duty in the last 3 years

# Jury Challenges

## Peremptory Challenges

- Both sides can strike a limited number of jurors from the jury without giving a reason pursuant to s. 634 of the Code
  - a juror may be challenged whether or not the juror has been challenged for cause pursuant to s. 638

## Challenges for Cause

- Unlimited challenges pursuant to s.638, which bars jurors who:
  - Are demonstrably biased towards a side
  - Are a past convict
  - Are an alien
  - Are physically unable to be a juror

# Peremptory Challenges

Pursuant to s. 634 (2) of the Code:

Number of Challenges	Offence
20	High Treason or 1 <sup>st</sup> degree murder
12	Offences with a max penalty greater than 5 years
4	All Jury eligible offences with a penalty of 5 years or less

# How might peremptory strikes affect juror selection?





# Benefits of the Jury System



# How has the jury system aided in the fair administration of justice?

- Offer different perspectives during trials
- Counter bias from judges and other legal personnel who have legal experience and have likely heard countless similar cases beforehand



- Ensure the integrity of the decision-making process by requiring a unanimous decision
- Potential that the jury will act as a better trier of the facts than the judge

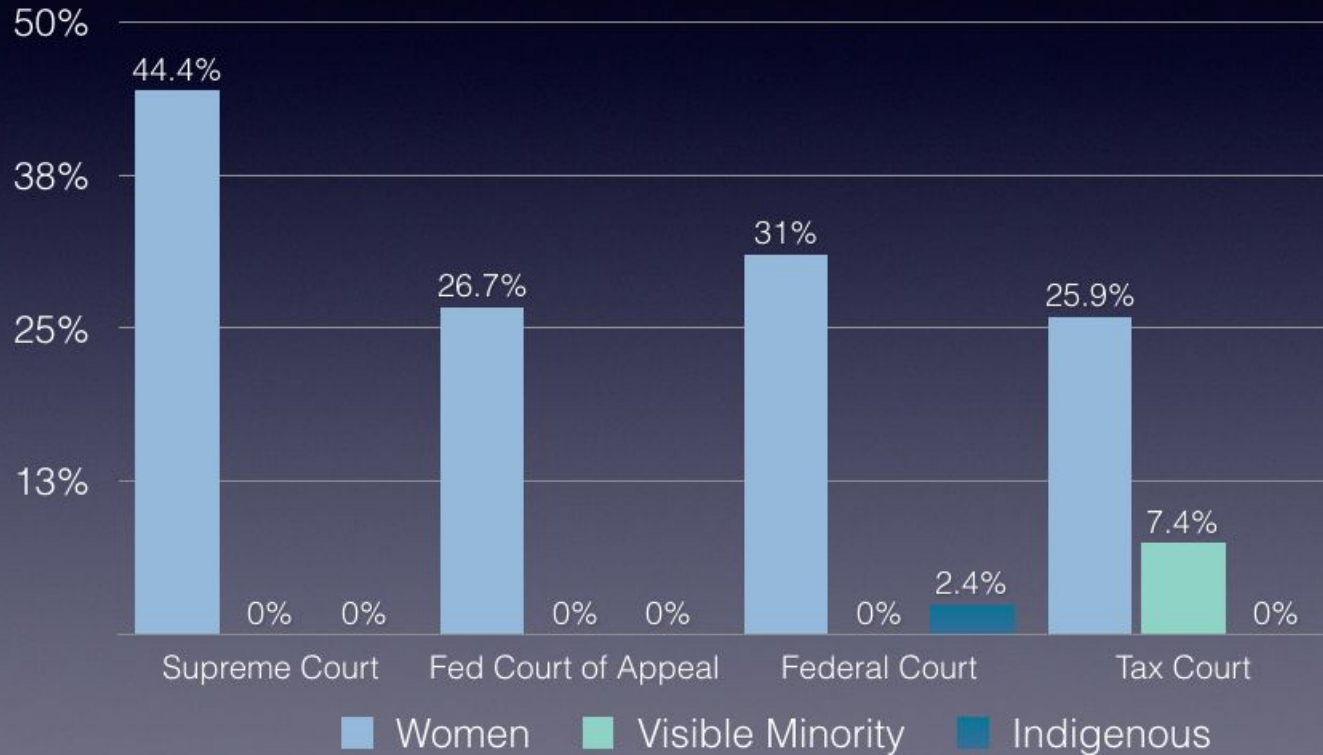


- Used for the purposes of democratic participation by citizens as a jury of peers
- Includes the conscience of society in the legal process

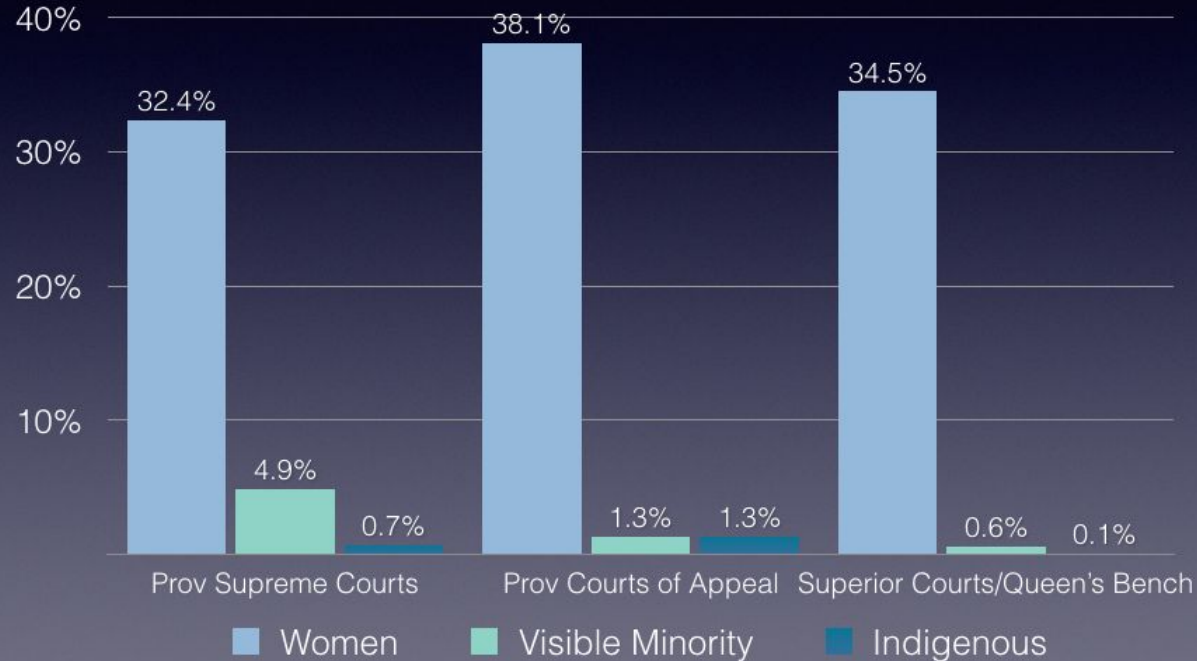


# Diversity in the higher echelons of the legal system

# Diversity of Judges in Federal Courts



# Diversity of Judges in Ontario Provincial Courts



# Is the jury system outdated?

The attitudes and moral values of Canada continue to shift significantly since its establishment, yet the jury system fails to adapt accordingly. The jury system must be altered or eliminated as needed.



# Flaws in the Jury System

# How might the Jury System obstruct justice?

1. Lack of representation in juries
  - a. implicit and explicit bias
2. Disinterest in participation of the legal system
  - a. improper trying of facts
  - b. erroneous verdict
3. Lack of juror compensation
  - a. lack of low-income representation

# Juror Compensation

Ontario	
Day 1-10	No pay
Day 11-49	\$40/day
Day 50+	\$100/day

- $\$40/8 = \$5/\text{hour}$
- $\$100/8 = \$12.5/\text{hour}$

Quebec	
Day 1-56	\$103 per day/half-day
Day 57+	\$160 per day/half-day
Reimbursements	All relevant expenses

- $\$103/8 = \$12.88/\text{hour}$
- $\$160/8 = \$20/\text{hour}$



# Case Study: R. v. Stanley

Read the handout with the class and discuss the legal questions raised by this case



# Critical Thinking Questions

- 1) What are the sub-legal issues?
- 2) Should the legal system weigh proportional representation on the jury over complete randomness?
- 3) What should be done about peremptory challenges?
  - a) Were they to be gone, would this have positive effects on representation on juries?
  - b) Even if they have positive outcomes, are the adverse effects on reducing implicit bias justified in the face of having better represented juries?
  - c) Should incidents such as this constitute an abuse of process?

# R. v. Kokopenace

“There is no right to a jury roll of a particular composition, nor to one that proportionately represents all the diverse groups in Canadian society.”

“The representative function of the jury is assured by the use of a fair and random selection process, based on broadly inclusive source lists, that does not deliberately or substantially exclude a subset of the community.”

- Justice Rothstein, 2015

# R. v. Spence

“It was up to the defence to show an “air of reality” to the assertion that the complainant’s East Indian origin has the realistic potential of aggravating jurors’ prejudice against the black accused.”

- Justice Binnie, 2005

# Improvements for the Jury System

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1. Relieve the financial strain of jurors
  - a. Provide greater compensation for lost time
2. Increase representation
  - a. stricter guidelines for juror challenges
  - b. requirements for accurate representation of community (“jury of peers”)
3. Pre-trial jury training reform
4. Allow for more accessible legal info (less “legalese”)