



Reply to:  
**Frank G. Csathy**  
Direct Dial:  
(416) 594-4673  
FCsathy@sblegal.ca  
**www.sblegal.ca**

Our File No. n/a

June 15, 2020

**SENT BY EMAIL**

Hon. Doug Downey  
Attorney General  
McMurtry-Scott Building  
720 Bay Street  
11th Floor  
Toronto, ON M7A 2S9

amanda.iarusso@ontario.ca

Dear Mr. Downey:

**Re: Your Reference#: M-2020-6430**

I am a partner with Stieber Berlach LLP, a 30-lawyer firm in Toronto. Our firm works primarily for civil defendants whose defence is being provided for by private insurance. This letter is in response to your letter of June 5, 2020 requesting submissions on the possibility of eliminating or reducing the role of juries in Ontario civil actions. I am writing this letter on behalf of our firm.

It is our strongly held view that civil juries are an integral and important feature of the administration of justice in Ontario and their role should not be diminished. If your government does move ahead with a reduction of the presumptive right to a civil jury, which right has been enjoyed by Ontarians for generations, then any such abridgement should be minimal, and at the very least, still allow for the continued role of juries in personal injury trials.

Our opinion in this matter is based upon our extensive experience actually preparing cases and presenting them to triers of fact in both judge-alone and jury trials. Juries are responsible, capable, and accountable and, for these reasons among others, improve immeasurably the quality of justice for our fellow citizens.

Juries are responsible. A typical juror chosen at random from the community will participate as a trier of fact of a dispute between fellow citizens once in their lifetime. It is our experience that juries are quite conscious of the importance of their function. They are attentive, sober, and fair in their judgments. They take their role as arbiters of disputes between their fellow citizens seriously. In cases where we defend corporations

and individuals in claims arising from personal injury, juries treat the dispute as one between fellow members of society and not as claims against “the system” by injured plaintiffs. With respect, we suggest a judge that hears hundreds of these cases will apply their knowledge of the reality of liability insurance and often act more as a bureaucrat processing a claim than an impartial and neutral arbiter of a dispute between parties.

Juries are capable. Again, it is our experience that jurors are able to process technical and scientific evidence as presented by experts through experienced lawyers. More importantly, when weighing the credibility of witnesses, it is the common sense of the community and the diverse experience of its representatives on juries that is the most critical feature of our jury system. We cannot emphasize enough that juries are representatives of the broader community and there is no truer reflection of our communal values and sense of justice than as expressed through a jury verdict. Judges, by necessity, are chosen from a small subset of the community. Try as they might, a judge alone will never reflect the diversity and communal wisdom of a jury.

Juries are accountable. At the conclusion of a trial one party is always disappointed. A result delivered by a jury has the advantage of legitimacy in that both parties will have been judged by members of their community. Whether they are on the winning or losing side of a jury verdict, our clients have an increased level of confidence in a judgment that is delivered by six members of the community. These judgments are less subject to the whim of an individual and are more likely to reflect a consensus among people who apply their common sense to the issues before them. As a result, the confidence in our system of justice is increased. If civil jury trials are eliminated in Ontario, we firmly believe that public confidence in the administration of justice will suffer.

The current system allows for parties to choose whether or not a jury is appropriate for their cases. There is already a mechanism, therefore, that allows parties to “streamline” cases where for one reason or another it is felt that a jury is not needed for a fair adjudication of the dispute. In our experience, lawyers who are serving their client’s interests in securing the most effective and efficient process do an excellent job of determining which cases are appropriate for a jury notice.

We find that there is an overwhelming preference on the part of both plaintiffs and defendants for juries in cases involving personal injury -- where matters of credibility are first and foremost in ensuring a fair outcome. In fact, in one of the areas where juries are not permitted, municipal liability cases, there is a distinct view among our clients that the unavailability of a jury has a negative impact on fairness and quality of justice, particularly in cases involving personal injury.

In answer to your questions, then, our submission is that the right to a jury trial should not be eliminated or even reduced in the Province of Ontario. If, however, there is to be

Stieber Berlach LLP

June 15, 2020  
Page 3

a curtailing of the right to a jury trial, we would strongly suggest that any such reduction not apply to disputes involving personal injury.

I would be pleased to discuss any of these issues further with you or colleagues.

Yours truly

STIEBER BERLACH LLP

*Frank G. Csathy*

Frank G. Csathy  
FGC:rc