

A Toronto juror's story: 'It was Middle Ages. It really was.'

Monday, January 09, 2012

Tracey Tyler

Legal Affairs Reporter

To some, it looks like a bad version of Wheel of Fortune. But it's part of the jury selection process set out in the Criminal Code.

"The name of each juror . . . and his address shall be written on a separate card," the legislation stipulates.

"The clerk of the court . . . shall cause them to be placed together in a box . . . and to be thoroughly shaken together."

This, in the 21st century, is one of the rituals of picking a jury in Canada. Critics charge antiquated jury processes are costing the GTA economy millions of dollars in lost production, but that there is no financial incentive for the provincial government to fix the system.

Gordon Wolfe, 40, experienced the frustrations first-hand, sitting around for six hours as court staff drew cards to randomly divide members of his jury panel into groups of 25 — "a very simple task that could have been done by a computer in less than a second."

When he was summoned for jury duty in October, Wolfe was philosophical at first. He would miss at least a week of work as principal trombonist with the Toronto Symphony Orchestra, but was prepared to carry out his civic obligation.

"I was thinking it could be a positive experience," he recalls. "But it wasn't."

During five days at the University Avenue courthouse, Wolfe says, he spent just 20 minutes inside a courtroom. The rest of the time was taken up waiting in a drab ground-floor room with between 150 and 500 prospective jurors for a murder trial.

Others who have been there complain of not having wireless Internet service or enough electrical outlets, simple changes that would allow them to remain productive while their lives are suspended.

Wolfe began to question the hidden economic cost of having so many people away from their jobs and employers hiring temporary replacements, as the TSO was forced to do in his case.

The Star looked at the numbers. What it found was that, even by conservative estimates, the price tag could be more than \$41 million a year, most of that borne by employers or individual jurors, who may have no source of income while serving on a jury panel.

Employers are required to give workers time off for jury duty, but do not have to continue paying their wages or salaries, though some do.

Every year, between 100,000 and 150,000 people are summoned for jury service in Ontario.

But there is little chance the government will feel an urgent need to improve the experience because the incentive system "is set up all wrong," said Peter Dungan, an adjunct professor of economics at the Rotman School of Management in Toronto.

“There is very little cost to the province for wasting people’s time,” he said.

In fact, only those selected for a jury are likely to get paid by the government. The province offers no remuneration for the first 10 days of jury service. Between the 11th and 50th day of service, jurors get \$40 a day. The rate is \$100 a day after that.

Even then, jurors must absorb expenses such as child care and parking, which can exceed \$100 a week at the closest lot to the downtown courthouse.

Judges tell friends summoned for jury duty to bring a good book and say there are many reasons for delays.

On long trials, at least half the jury panel is likely to ask to be excused on grounds of hardship, usually because they have medical conditions, sick relatives to care for or they stand to be ruined financially because their employers won’t pay them during the trial.

The prosecution and defence can also challenge and reject jurors, notes Brendan Crawley, a spokesperson for the Ministry of the Attorney General.

That adds to the time needed to pick a jury, but it’s entrenched in the trial process by law, much like shaking cards around in a box and drawing names — a process that grew out of a belief that an accused person will be better equipped to assess prospective jurors in smaller groups.

The judiciary and the ministry say they try to accommodate prospective jurors as much as possible. Work cubicles are a recent addition to the jury lounge at the University Avenue courthouse, along with flat-screen TVs, which broadcast information about jury duty.

There’s been talk of connecting to a 24-hour news channel, but a well-positioned source told the Star the government has balked at the cost of installing cable.

But really, the jury system hasn’t changed much since the 1800s, says Alan Young, a professor at Osgoode Hall Law School.

The one big reform came when accused people acquired the right to defence lawyers, and jurors went from being animated trial participants, openly questioning witnesses, to more passive players.

“Since then, almost nothing has changed in how we summon jurors, how we challenge jurors and what their role is in court,” Young says. “There’s never really been a sense of wanting to modernize it or make it a more efficient process.”

In Wolfe’s case, the TSO brought in another trombonist to cover for him while he was on jury duty, which spilled over into a second week. Wolfe still got paid, but wonders what it would be like for his wife, who would have to bring someone in to run her dental practice if she had to go for jury duty.

After four days at the courthouse, Wolfe was sent home until the following week.

Before leaving, he was asked by court staff to write down his phone number so if a jury was picked in the interim, he could be called and told not to bother coming back.

After returning the following Tuesday and spending another \$20 for parking, he walked into the courthouse only to be told the jury had been filled the day before. Wolfe asked why he didn't get a phone call.

A court employee told him it was "easier" to have jurors come and find out in person, because she would otherwise have to make 150 calls, he said.

"So, instead of one court employee taking two hours of her paid time to call us, 150 people had to take a day off work and come downtown to be told that they were not needed."

But as the ministry tells it, court staff were going out of their way by even offering to call. Crawley said: "It is not normal practice for court staff to contact jurors to advise whether they are required to attend."