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**VIA EMAIL ONLY:** [Amanda.larusso@ontario.ca](mailto:Amanda.larusso@ontario.ca)

ATTORNEY GENERAL

c/o Mr. Downey's Director of Policy and Legal Affairs,  
Ms. Amanda Larusso

Dear Ms. Larusso:

**RE: CIVIL JURIES**

On behalf of my clients, I would like to thank the MAG for considering the future of civil juries in Ontario.

Please find attached an article published by *Law Times* wherein I make the case, along with many others, for the abolishment of juries in motor vehicle cases.

I do believe that there is an important and necessary role for juries in criminal and family cases. I also support maintaining juries in cases involving medical negligence, sexual abuse and nursing home abuse, as I believe that community values needs to be heard in cases relating to those areas. The same considerations do not apply, with respect, to civil cases especially those dealing with motor vehicle accidents.

I understand that you are currently being flooded with lawyers asking that you maintain juries and arguing that juries are a "substantive right." In reply to those arguments, I make the following submissions:

- a. The right to a jury in a civil case is not a "substantive right;" in fact, most Provinces do not have juries for civil matters;
- b. I am willing to bet that the majority of the letters you are receiving are from lawyers and employees working for the insurance industry and they are writing at the request of the IBC;
- c. It is the insurance industry, and not the public, that wants to maintain juries in civil cases. They want to maintain juries because it is the interest of these corporations to do so;
- d. Insurers argued that jurors provide common sense perspective; however, this position is disingenuous. Juries are actually limited in our system because they are not allowed to tell them the whole truth, I note, for example,
  - i. We are not allowed to tell jurors that there is a \$40,000 deductible that is applied to their decision;

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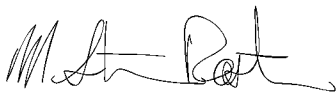
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- ii. We are not allowed to tell jurors that the real defendant is an insurance company, and in fact, they are given in the impression that the defendant may be personally liable for any damages found;
  - iii. Judges and not juries decide if the case meets the “threshold”;
  - iv. Jurors do not know whether the doctors they are hearing from are balanced and neutral as opposed to “hired-guns” whose testimony has been repeatedly rejected by judges;
  - v. We are not allowed to tell jurors about prior negative judicial comment.
- e. Most members of the public do not want to sit for civil jury duty. Most civil jury trials take weeks, if not months. Jurors are the only people in the room who are asked to serve for basically nothing. When juries are selected, dozens (or more) of the potential jurors invariably ask the presiding judge to exclude them from serving for various reasons. Many of the jurors who end up serving are the ones who cannot convince the judge to exclude them. If you told 100 members of the public what is expected of them when sitting for a civil jury, I guarantee you that the vast majority would not want to serve.
- f. Moving to judge alone trials is essential in the current Covid-19 environment. Judge-alone trials are shorter, more efficient, and do not require bringing hundreds of citizens together in a crowded room. It is an access to justice issue;
- g. Abolishing juries in civil cases will result in a much higher percentage of cases settling.

Thank you again for undertaking this initiative and for considering my submissions.

Yours truly,

A handwritten signature in black ink, appearing to read 'M. Steven Rastin', written in a cursive style.

M. Steven Rastin  
MSR/lf

# Ontario Attorney General seeks input on removing juries from civil trials

**A letter from the AG obtained by Law Times asks key stakeholders for input on eliminating juries in civil trials to free up backlogged courts**



Steve Rastin

By  
09 Jun 2020  
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In a letter obtained by *Law Times*, Ontario Attorney General Doug Downey has sought the input of key stakeholders in the legal community about the possibility of removing juries from civil trials to help address additional court backlog resulting from the COVID-19 pandemic.

The letter asks stakeholders for input as to whether civil juries should be eliminated altogether. It also asks if certain cation types should remain subject to a jury, citing the example of matters that “engage community values and a person’s character, such as defamation, false imprisonment, and malicious prosecution.”

“The needs of the justice sector have changed during this outbreak, and the demands on the system will continue to evolve as we begin to see the province reopening in stages,” General Downey’s letter reads. “To address these changes, we will continue to act on the guidance of public health experts, and we will continue to work together to develop new ways of conducting matters.”

While the Ontario Trial Lawyers Association is still considering submissions for the current consultation, the organization authored a June 2 letter to Downey's office stating that "the biggest hurdle for many of the postponed and upcoming trials will be constituting juries." The OTLA proposed a temporary solution in which that jury notices in all cases that will get to trial be suspended until the provincial health restrictions allow for juries to be empanelled.

One past president of OTLA has praised Downey's consultation letter.

"I think it's bold, I think it's appropriate," says Steve Rastin, managing partner at Rastin Trial Lawyers. "I think what the Attorney General is doing is giving some thought to how are we going to deal with the massive backlog that's in the system right now."

Rastin cited a personal injury client of his who had an eight-week jury trial scheduled for June 15. That client has been waiting for years to have his trial heard and, as of now, neither Rastin nor his client know when they might see the inside of a courtroom again. Rastin says that given Ontario chief justice Geoffrey Morawetz's statement that jury trials may not resume until a vaccine is found, the exploratory note from the Attorney General demonstrates a pragmatic response to the massive problem of court backlog

The 10-day consultation, in the wake of COVID-19-related trial delays, has reignited a longstanding debate in Ontario's legal community.

A case in 2016 In  
a plaintiff was awarded just \$3,000 in damages after he sought \$1.2 million. While he supported the jury's decision, the trial judge, Justice Frederick Myers, said that jury trials in civil cases "seem to exist in Ontario solely to keep damages awards low."

In a 2015 blog by the OTLA, lawyer Kris Bonn wrote that past propositions to end jury trials have angered lawyers. But Bonn also argued that there was room for change.

“There will always be a role for juries in personal injury cases,” Bonn wrote. “But as trials become more complex and expensive, to ensure justice for our clients maybe there is a role for more personal injury trials to be heard without a jury. We should at least be looking at the alternative and not automatically reject the notion that for some cases juries are not the best option for our clients.”

Rastin says that any potential abandonment of jury trials in civil suits does come at a cost, namely the voice of the public and common sense in a legal system

. He says, though, that for most members of the public jury duty is an onerous burden, both in the complexity of their work and the fact that jury duty can last for weeks or months without pay.

Rastin says that in family and criminal trials juries are still needed, but for personal injury trials, he expects the courts to run twice as quickly in judge-alone trials.

“We’ve realized is that our jurisdiction has not gone nearly as far down the road to modernization as some other jurisdictions in the world,” Rastin says. “In the United States, they’re doing virtual motions virtual trials, virtual appeals, they have widespread access to court records electronically and things like that.”

Rastin says, as well, that shifting civil trials to judge alone would also introduce a greater likelihood of appeal into the civil litigation system. Because lawyers are prohibited from asking jurors for their reasoning, Rastin says it’s much harder to overturn a jury’s decision. A judge’s reasoning can be appealed in its entirety, allowing greater recourse in a judge alone system.

While the letter represents an exploration into the possibility of removing juries from civil trials by the Ontario Attorney General, Rastin says the move is significant enough to warrant his praise.

“The Attorney General is showing inspired leadership,” Rastin says. “What he’s doing is looking at a fundamental change in our system to help maybe put Ontario back together and back on track in terms of access to justice.”