

1982 BILL 27

Fourth Session, 19th Legislature, 31 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 27

JURY ACT

THE ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 27

BILL 27

1982

JURY ACT

(Assented to , 1982)

TABLE OF CONTENTS

	Section No.
Definitions	1
Application	2
Qualifications of jurors	3
Exclusion from jury service	4
Exemption from jury service	5
Information from municipalities list	6
Selection of jury panel	7
Challenge of jury panel	8
Jury panel	9
Empaneling jury	10
Challenge of jurors	11
Jury in a civil proceeding	12
Impeachment of verdict	13
Viewing of evidence by jury	14
General or special verdict	15
Right to jury in civil proceeding	16
Deposit of money for expenses with clerk	17
Costs to be apportioned between parties	18
Separation of jury	19
Penalty for non-attendance by juror	20
Penalty for refusal to provide information	21
Contempt of court	22
Leave from employment to serve as juror	23
Regulations	24
Consequential amendments	25-27
Coming into force	28

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "clerk" means the clerk of the Court for the judicial district in which the Court is sitting;

- (b) “Court” means the Court of Queen’s Bench;
- (c) “expenses” includes, in relation to the conducting of a trial with a jury,
 - (i) the costs of summoning a jury panel and any costs incidental to the summoning,
 - (ii) the fees and allowances paid to jurors,
 - (iii) costs arising from the order of a judge to view evidence under section 14,
 - (iv) costs for food, refreshments, accommodation and other requirements for a jury;
- (d) “judge” means a judge of the Court;
- (e) “judicial center” means a place prescribed by the regulations as a judicial center;
- (f) “juror” means a person sworn as a juror under section 10(3);
- (g) “jury panel” means those persons summoned pursuant to section 7;
- (h) “jury panel list” means a list prepared under section 7(4);
- (i) “municipality” means a city, town, village, county, municipal district, special area or improvement district;
- (j) “proper officer of a municipality” includes, in addition to the person who has the actual custody or control of the public papers referred to in section 6(a), (b) or (c), the municipal secretary of the municipality;
- (k) “sheriff” means the sheriff of the judicial district in which the Court is sitting, and includes a person delegated by him to carry out any of his duties.

Application **2** Except as otherwise stated or where this Act is inconsistent with the *Criminal Code* (Canada) or with any other statute of Canada respecting criminal procedure, this Act applies to civil and criminal proceedings tried by a jury in Alberta.

Qualifications of jurors **3** Every person who is

- (a) resident in Alberta,
- (b) a Canadian citizen, and
- (c) 18 years of age or older,

is qualified to serve as a juror.

Exclusion from
jury service

- 4** The following persons are excluded from serving as jurors:
- (a) members of the Privy Council, the Senate and the House of Commons of Canada;
 - (b) members of the Legislative Assembly of Alberta and the Executive Council;
 - (c) members of a county council elected under the *County Act*, members of a council elected under the *Municipal Election Act* and trustees elected under the *School Election Act*;
 - (d) judges of the Provincial Court, justices of the Court of Appeal and Court of Queen's Bench and justices of the peace, whether retired or not;
 - (e) barristers and solicitors, whether or not they are practising, and students-at-law;
 - (f) medical examiners under the *Fatality Inquiries Act*;
 - (g) officers and employees of the Legislative Assembly of Alberta;
 - (h) persons who have been convicted of a criminal offence for which a sentence of imprisonment exceeding 12 months could have been imposed;
 - (i) witnesses summoned to attend before the Legislative Assembly or a committee of the Legislative Assembly during the periods referred to in section 42 of the *Legislative Assembly Act*;
 - (j) persons confined in an institution;
 - (k) persons engaged in the administration of justice, including
 - (i) members and employees of any police force,
 - (ii) probation officers,
 - (iii) employees of the Department of the Attorney General or the Department of the Solicitor General of Alberta, and
 - (iv) employees of the Department of Justice of Canada or the Department of the Solicitor General of Canada.

Exemption from
jury service

- 5(1)** The following persons may be exempted from serving as jurors:
- (a) a person whose conscience or religious vows preclude him from serving on a jury;
 - (b) a person who has served on a jury within the 2 years preceding his summons to serve on a jury;
 - (c) a person for whom service on a jury will cause severe hardship in respect of his health or livelihood or in respect of any legal or moral obligations he may have to others;

(d) a person who does not reside within a reasonable distance of the place where the proceedings are to be tried;

(e) a person who suffers from a physical, mental or other infirmity that is incompatible with the discharge of the duties of a juror;

(f) a person who is unable to understand, speak or read the language in which the trial is to be conducted;

(g) a person whose service on a jury would be contrary to the public interest by reason of that person's performance of urgent and essential services of public importance that cannot reasonably be rescheduled or performed by another during that person's absence;

(h) a person 65 years of age or over.

(2) Upon application in the prescribed manner, if a sheriff is satisfied that a person is eligible for exemption under subsection (1), he shall exempt the person from jury service.

(3) If the sheriff refuses to exempt a person, that person may either

(a) on application, prior to the date on which the person has been summoned to attend for the selection of the jury, appeal to any judge, or

(b) at the time of the selection of the jury, appeal to the judge that is presiding at the jury selection.

(4) In the case of an appeal pursuant to subsection (3)(a), the clerk shall inform the sheriff if a person has been exempted from serving as a juror.

Information from municipalities

6 On the request of a sheriff, the proper officer of each municipality situated within or partly within the judicial district shall provide any information that may be of assistance to the sheriff respecting the selection of persons as jurors including

(a) the list of electors,

(b) the assessment rolls, and

(c) any other public papers

under the actual custody or control of the proper officer.

Selection of jury panel

7(1) When a jury is required, the clerk shall immediately direct the sheriff to summon a sufficient number of persons from which the jury is to be selected.

(2) The persons to be summoned shall be selected at random in accordance with the regulations.

(3) The sheriff shall deliver a summons in the prescribed form to each person selected, either personally or by leaving it with an adult

member of that person's household, within a reasonable time before the day on which the person is to attend.

(4) The sheriff shall prepare a list of the names, addresses and occupations of the persons that have been summoned and shall deliver a copy of the list to the clerk.

(5) On payment of the fee prescribed by the regulations, a party to a proceeding may receive a copy of the list referred to in subsection (4).

Challenge of jury panel

8(1) A party may challenge the selection of the jury panel on the ground that the sheriff

- (a) exercised partiality, or
- (b) wilfully misconducted or was fraudulent,

with respect to the selection or summoning of the jury panel.

(2) The judge may require that a challenge under subsection (1) be made in writing.

(3) When a challenge is made under subsection (1), the judge shall determine whether or not the ground of challenge is true, and if he is satisfied that it is true, he shall direct a new jury panel to be summoned.

Jury panel

9 At the time of the selection of the jury, the judge may

- (a) conduct any inquiries that he considers necessary regarding the qualification or exclusion of any person on the jury panel,
- (b) direct the discharge from the jury panel of any person who he is satisfied is not qualified or is excluded, and
- (c) on the application or appeal of any person for an exemption, grant the exemption on being satisfied that the person who has applied is eligible for an exemption.

Empaneling jury

10(1) When

- (a) the jury panel is not challenged, or
- (b) the jury panel is challenged but the judge does not direct a new jury panel to be returned,

the clerk shall, in open court, select at random one at a time, from the remaining names on the jury panel list, a sufficient number to provide a full jury after allowing for challenges.

(2) After each name is selected, a party to the proceeding may in accordance with section 11 challenge the selection.

(3) The clerk shall swear each member of the jury in the order in which their names were drawn.

(4) If the number of persons on the jury panel who are in attendance is insufficient or is so reduced by exemptions, exclusions, challenges or persons being found not qualified as to be insufficient to select a full jury, additional persons shall be summoned immediately to be included on the jury panel.

(5) If it is considered necessary by the sheriff, persons may be summoned under subsection (4) by word of mouth.

(6) If at any time it appears to the judge that the persons forming the jury panel will not be required, he may discharge any or all the persons he considers unnecessary.

Challenge
of jurors

11(1) In a civil proceeding a party to the proceedings has the right to challenge 3 persons peremptorily.

(2) In addition to any challenges that may be made under subsection (1), a party is entitled to any number of challenges for cause on the following grounds:

(a) the name of the person does not appear on the jury panel list, but no misnomer or misdescription is a ground for challenge if it appears to the judge that the description given on the jury panel list sufficiently designates the person referred to;

(b) the person is not qualified for or is excluded from serving as a juror;

(c) the person has an interest in the proceeding or is not indifferent as between any parties to the proceeding who are adverse in interest;

(d) the person is a potential witness in the proceeding;

(e) the person suffers from a physical, mental or other infirmity that is incompatible with the discharge of the duties of a juror;

(f) the person is unable to understand, speak or read the language in which the trial is to be conducted.

(3) No challenge for cause shall be allowed on a ground not mentioned in subsection (2).

(4) The judge may require that a challenge under subsection (2) be made in writing.

(5) When a challenge is made under subsection (2),

(a) the judge shall determine whether or not the ground of challenge is true and, if he is satisfied that the ground of challenge is true, he shall discharge the person, and

(b) the party making the challenge or any other party to the action may call the person as a witness and adduce any evidence that the judge considers relevant respecting the issue of whether or not the challenge is true.

Jury in a civil proceeding

- 12(1)** In a civil proceeding a jury shall consist of 6 jurors.
- (2) Any 5 of the jury may return a verdict or answer a question submitted to the jury by the judge, and the verdict or answer given by 5 jurors has the same effect as a verdict or answer given by 6 jurors.
- (3) If in the course of a trial the judge is satisfied that a juror should not, because of illness or other reasonable cause, continue to act, the judge may discharge that juror.
- (4) If, in the course of a trial, 1 juror dies or is discharged pursuant to subsection (3), the judge may direct the trial to proceed without the juror, and the verdict of the remaining jurors is valid if unanimous.

Impeachment of verdict

13 Failure to observe any 1 or more provisions of this Act is not grounds for impeaching a verdict in a civil proceeding unless a substantial miscarriage of justice results.

Viewing of evidence by jury

- 14(1)** If it appears to the judge that in order to better understand the evidence the jurors who are to try the issues should view the place or the property in question, he may, before they give their verdict, order that the jurors be given that view.
- (2) A judge may make an order under subsection (1) whether the place or the property to be viewed is within or outside the judicial district in which the trial is taking place.
- (3) The order shall contain
- (a) directions to the sheriff as to the manner in which, and the persons by whom, the place or the property in question is to be shown to the jurors,
 - (b) directions or terms respecting costs, and
 - (c) any other directions or terms that under the circumstances the judge considers necessary.

General or special verdict

- 15(1)** In the absence of a direction to the contrary by the judge, a jury may give a general or special verdict, but shall only give a special verdict if the judge so directs and shall not give a general verdict if directed by the judge not to do so.
- (2) A judge may, instead of directing the jury to give either a general or special verdict, direct the jury to answer any question of fact placed before them, and if so directed the jury shall answer the question of fact, and the question and reply to it constitute a special verdict.
- (3) A judgment may be directed to be entered on the answer to a question mentioned in subsection (2).
- (4) This section does not apply to an action for defamation.

Right to jury in civil proceeding

16(1) Subject to subsection (2), on application by a party to the proceeding, the following shall be tried by a jury:

- (a) an action for defamation, false imprisonment, malicious prosecution, seduction or breach of promise for marriage,
- (b) an action founded on any tort or contract in which the amount claimed exceeds \$10 000, or
- (c) an action for the recovery of property the value of which exceeds \$10 000.

(2) If on a motion for directions or on a subsequent application it appears that the trial might involve

- (a) a prolonged examination of documents or accounts, or
- (b) a scientific or long investigation,

that in the opinion of a judge cannot conveniently be made by a jury, the judge may, notwithstanding that the proceeding has been directed to be tried by a jury, direct that the proceeding be tried without a jury.

(3) In this section, “proceeding” includes a counterclaim.

Deposit of money
for expenses
with clerk

17(1) When a judge orders that a proceeding be tried by a jury, the party at whose request the order is made shall, unless otherwise ordered, deposit with the clerk within 10 days of the order being made a sum of money that the clerk considers sufficient to pay the expenses of conducting the trial by a jury, and if the sum is insufficient, the party shall on demand by the clerk pay any further sum that the clerk requires.

(2) If the party making the deposit under subsection (1) obtains a judgment in the proceeding, the sum paid out for expenses shall, unless the judge otherwise orders, be allowed and taxed against the unsuccessful party to the action.

(3) Any surplus money remaining after payment of the expenses shall be returned to the party who made the deposit.

Costs to be
apportioned
between parties

18 If for any civil sittings of the Court a jury is required in more than 1 trial, the expenses of conducting a trial with a jury shall, at the end of the sittings, be apportioned between the parties and be paid as directed by a judge.

Separation of jury

19(1) A judge may, during the course of a trial, allow the jurors to separate.

(2) Where permission to separate cannot be given or is not given, the jury shall be kept under the charge of an officer of the Court as the judge directs, and that officer shall prevent the jurors from communicating with anyone other than himself or another member of the jury without leave of the judge.

(3) Where the jurors separate pursuant to subsection (1), no person shall, before the jury retires to consider its verdict, publish in any

newspaper or broadcast any information regarding any portion of the trial at which the jury is not present.

(4) A person who contravenes subsection (3) is guilty of an offence and is liable to a fine of not more than \$5000 or to imprisonment for not more than 3 months or to both fine and imprisonment.

(5) A person who discloses the contents of any discussions held by a jury on which he has served is guilty of an offence and is liable to a fine of not more than \$1000 or to imprisonment for not more than 1 month or to both fine and imprisonment.

(6) The judge shall direct the sheriff to provide the jurors with suitable and sufficient food, refreshment, accommodations and other requirements while they are together until they have given their verdict.

Penalty for non-attendance by juror

20 A person summoned to serve as a juror, except a person who is not qualified, is excluded or has been exempted, who fails to obey the summons or fails to answer to his name when called by the clerk is guilty of an offence and is liable to a fine of not more than \$1000 or to imprisonment for not more than 1 month or to both fine and imprisonment.

Penalty for refusal to provide information

21 A proper officer of a municipality who contravenes section 6 is guilty of an offence and is liable to a fine of not more than \$1000 or to imprisonment for not more than 1 month or to both fine and imprisonment.

Contempt of court

22(1) It is contempt of court for

- (a) a person interested in a proceeding, or
- (b) a barrister, solicitor, counsel or agent,

before or during the trial or at any time after a person has been summoned to serve as a juror, to knowingly, directly or indirectly, speak to or consult with that person respecting the proceeding or any matter or thing relating to the proceeding.

(2) It is contempt of court for a person, after he has been summoned, to speak to or consult with

- (a) a person interested in a proceeding for which the person has been summoned, or
- (b) a barrister, solicitor, counsel or agent of that person,

respecting the proceeding or any matter or thing relating to the proceeding.

(3) This section does not apply if a person summoned to serve as a juror is not qualified or is excluded and does not serve as a juror in the proceeding, nor to anything that properly takes place in the course of the trial or the conduct of the proceeding.

Leave from employment to serve as juror

23(1) An employer shall allow an employee a sufficient leave of absence from his employment to serve as a juror when that employee is summoned to serve as a juror.

(2) An employer or agent of an employer who, directly or indirectly, threatens to cause or causes actual loss of position or employment of an employee summoned because of his response to the summons or his service as a juror, is guilty of an offence and is liable to a fine of not more than \$5000 or to imprisonment not exceeding 3 months or to both fine and imprisonment.

Regulations

24 The Lieutenant Governor in Council may make regulations

- (a) prescribing judicial centres for the purposes of this Act;
- (b) prescribing the manner of applying for an exemption under section 5;
- (c) respecting the selection of persons to a jury panel;
- (d) prescribing the manner and form in which the names and addresses of persons on a jury panel are to be recorded;
- (e) respecting the selection of persons from the jury panel to provide a jury;
- (f) governing the fees and allowances payable to jurors;
- (g) prescribing forms to be used under this Act.

Amends RSA
1980 cN-6

25 *The Naturopathy Act is amended by repealing section 27.*

Amends RSA
1980 cL-10

26 *The Legislative Assembly Act is amended by repealing section 43.*

Repeals RSA
1980 cJ-2

27 *The Jury Act, chapter J-2 of the Revised Statutes of Alberta 1980, is repealed.*

Coming into force

28 This Act comes into force on Proclamation.