
Opening Comments to the Jury Panel—CRIMJI 1.00

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I. GENERAL REMARKS [§1.1]

User Notes: (1) This Instruction is based on British Columbia procedure in which a number of juries are selected from the same panel on a single day. As a result, those who wish to be excused are not dealt with as a group during the opening comments, but only when their names are called as potential jurors. For wording for practice in other jurisdictions, see D. Watt, *Watt's Manual of Criminal Jury Instructions*, 2nd ed. (Carswell, 2015) or the Canadian Judicial Council's *Model Jury Instructions in Criminal Matters*.

(2) Bill C-75 (*An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*), which received Royal Assent on June 21, 2019, modified the jury selection procedure by expanding the power of the judge to stand aside jurors (s. 633), eliminating

peremptory challenges (s. 635(1)), updating the grounds for a challenge of cause (s. 638(1)(b) to (d)), requiring the judge to determine any challenge for cause rather than triers (s. 640(1)), and authorizing the judge to exclude jurors from the courtroom during the challenge for cause process (s. 640(2)). These provisions came into force on September 19, 2019. For a considerable period of time, courts were divided on the question of whether any or all of these new provisions were retrospective. On October 7, 2020, the Supreme Court of Canada allowed a Crown appeal from the bench, with reasons to follow, in *R. v. Chouhan*, 2020 CanLII 75817 (SCC). While those reasons had not been released as of the date that these revisions were completed, in allowing the appeal, the court wrote (at para. 1), “A majority of the Court is of the view that the statutory change is constitutional and purely procedural and therefore has retrospective application”. Accordingly, the opening remarks to the jury panel that follow will no longer incorporate the “old procedure” and will conform exclusively to the “new procedure”.

(3) Counsel have the right to ask the trial judge to stand a prospective juror aside under s. 633, but whether a trial judge who is deciding that issue or who is determining a challenge for cause should invite counsel to make submissions or is obliged to give reasons are issues that remain to be definitively decided.

II. OPENING REMARKS [§1.2]

1. Good morning ladies and gentlemen. It is customary for the presiding judge to make a few opening remarks to the jury panel. All of us involved in the administration of justice are well aware of the inconvenience that jury duty may cause you.
2. One of your responsibilities as citizens of Canada is to participate in the system of justice by acting as jurors from time to time in criminal and civil cases. Both society and the law benefit from your contribution. In return, I hope you will find it an interesting and rewarding experience.

III. JURY SELECTION—NO CHALLENGE FOR CAUSE [§1.3]

A. INTRODUCTION [§1.4]

User Note: Read paragraphs 3 to 15 if jurors will not be challenged for cause.

3. In a few moments, we will begin selecting the twelve jurors who will hear this case. Before we do, however, I would like to explain to you how this process works.
4. The (registrar/clerk) will select your (names/numbers) by lot. If your (name/number) is called, please step forward to the front of the courtroom. The sheriff will tell you where to stand. When approximately twelve or more of you have been called, the (registrar/clerk) will call, one by one, the (names/ numbers) of those who are standing.¹

B. CONTINUATION OF SELECTION PROCESS [§1.5]

User Notes: (1) Read appropriate provisions of paragraph 5 depending on whether an order was made that alternate jurors be empanelled.

(2) Modify the reference to twelve jurors if one or two “additional” jurors, as distinct from “alternate” jurors, are being sworn pursuant to s. 631(2.2). The distinction is that additional jurors remain throughout the trial, while alternate jurors are discharged if 12 jurors are available to serve at the commencement of the trial.

(3) Paragraph 5 is written in a manner that assumes that the sworn and unsworn jurors remain in the courtroom during the selection process. Some judges may prefer to exclude the sworn and unsworn jurors, exercising the common law discretion to order the exclusion of jurors recognized in *R. v. Grant and Vivian*, 2016 ONCA 639, 342 C.C.C. (3d) 514 and subsequent cases, to facilitate the exercise of the stand aside power without risking the tainting of other jurors. In such a case, the panel will have to be grouped, and paragraph 5 will have to be modified.

5. At that point, I will decide if any of the persons who have been called forward should not serve on this jury for any reason. If as a result it turns out that we have less than twelve jurors (*if applicable*) and (one/two) alternate jurors), we will continue with the same process until twelve of you are seated in the jury box (*if applicable*) and (one/two) alternate jurors) have been named.

C. JUROR HAVING PERSONAL INTEREST IN THE MATTER TO BE TRIED [§1.6]

User Notes: (1) Paragraphs 6, 7, and 12 relate to the discretionary grounds for excusing jurors in s. 632 of the *Criminal Code*.² Potential jurors who answer affirmatively to paragraphs 6, 7, or 12 can be excused immediately, but should not be stood aside until their names have been drawn by the clerk. See note (11), *infra*. Paragraphs 8 to 11 relate to other grounds for excusing jurors or standing jurors by.

(2) In some jurisdictions, potential jurors who would be excluded for obvious bias are excused (as opposed to stood aside) from the panel before the selection process commences, a practice that appears to be contemplated in *R. v. Douglas*, 2002 CanLII 38799 (ON CA), (2002), 170 C.C.C. (3d) 126, 12 C.R. (6th) 374 (Ont. C.A.). In British Columbia, the practice is not to excuse until the panellist's name has been called. In addition, in some provinces, the sheriff is permitted to excuse members from the panel before the selection date pursuant to a provincial *Juries Act*.

6. If you have any personal interest in the matter to be tried please let me know its nature when the (registrar/clerk) calls your name the second time. In this regard, the indictment sets out the following essential details:
 - (1) Name of accused: *[name of accused]*.
 - (2) Name of (complainant): *[name of complainant]*.
 - (3) Nature of crime: *[nature of crime]*.
 - (4) Place of crime: *[place of crime]*.

D. JUROR HAVING A RELATIONSHIP WITH THE JUDGE, PROSECUTOR, ACCUSED, COUNSEL FOR THE ACCUSED, OR A PROSPECTIVE WITNESS [§1.7]

7. Similarly, if you have had any previous association or personal relationship with me as the judge, or *[crown counsel]* as the prosecutor, or *[the accused]*, or *[name of counsel]*, counsel for *[the accused]*, or any prospective witness, you should again let me know its nature when the (registrar/clerk) calls your name the second time. So that you will know the names of the prospective Crown witnesses, I will now call upon (Mr./Ms.) *[crown counsel]* to read the names of the witnesses (he/she) intends to call as part of the case for the prosecution. (Mr./Ms.) *[crown counsel]*, will you please read to the jury panel the names of the witnesses you intend to call as part of your case.
8. In addition, you must be a Canadian citizen to serve on a jury.
9. You must also be able to hear the proceedings. If you have any trouble hearing, please let me know if and when your name is called.
10. This trial will be conducted in the (English/French) language. Please let me know if you have difficulty understanding or reading (English/French).

11. This trial is expected to last *[days/weeks/months]*. We generally sit five days a week. If you have any health concerns that would interfere with your ability to sit as a juror, please advise me when your name is called for the second time. No one wishes to embarrass you, so you may pass me a note detailing the problem, if you wish. This note should be shared with counsel.

E. JUROR MAY EXPERIENCE PERSONAL HARDSHIP [§ 1.8]

12. Finally, if your service on the jury will cause you personal hardship, or you have any other reason why you should be excused from serving on this jury, please let me know when the (registrar/clerk) calls your name for the second time.

F. ADJOURNMENT AFTER SELECTION COMPLETE [§ 1.9]

13. Once we finish selecting the jury, there will be a short adjournment, that is, a break. For those of you who are selected as jurors, this will be an opportunity to contact your families and employers to tell them that you were selected. Counsel tell me that they expect the trial to last about *[number]* days.

G. ALTERNATE JURORS [§ 1.10]

| User Note: Read this paragraph if you order the empanelment of one or two alternate jurors under the *Criminal Code*, ss. 631(2.1) and 642.1(1).³

14. I will also be selecting (one/two) alternate jurors who will become jurors in this case if any of the first twelve jurors who were selected cannot serve as jurors at the commencement of the trial.
15. (Mr./Madam) (registrar/clerk), please begin selecting the jurors.

IV. JURY SELECTION—CHALLENGE FOR CAUSE [§ 1.11]

A. INTRODUCTION [§ 1.12]

| User Note: Read paragraphs 16 to 32 (as appropriate) if the jurors will be challenged for cause.

16. In a few moments, we will begin selecting the twelve jurors who will hear this case. Before we do, however, I would like to explain to you how this process works.⁴

B. REASONS FOR ALLOWING CHALLENGES FOR CAUSE IN THIS CASE [§ 1.13]

17. In this case, the law allows counsel to challenge the jury panel for cause by inquiring from each of you as to whether or not you are able to judge *[the accused]* impartially due to *[e.g., publicity arising from a previous trial; publicity arising from an improper or prejudicial police press conference; improper media publications; general notoriety of the accused; bias against the accused based upon race, sexual orientation]*.

C. CHALLENGE FOR CAUSE—OUTLINE OF PROCEDURE [§ 1.14]

User Notes: (1) In some provinces, including British Columbia, the trial judge poses the questions to potential jurors, not counsel.

(2) The instruction in paragraph 18 should be modified if the jurors are excluded from the courtroom pursuant to the new s. 640(2) during the challenge for cause process in order to explain the logistics of jurors being taken from and returned to the courtroom.

18. So that you may better understand the nature of the process, I will explain how it works. The (registrar/clerk) will select the names of [e.g., *twelve*] or so potential jurors. Those persons will come forward when their names are called. They will then be asked one by one to take a seat in the witness box. Each one will take his or her turn answering questions under oath or affirmation of [myself/counsel]. At the conclusion of the questioning, I will decide whether the potential juror is qualified to sit on the jury. If I decide a potential juror is qualified, that juror will then be sworn or affirmed by the (registrar/clerk) and will sit as a juror on this case.

D. CHALLENGE FOR CAUSE—NATURE OF QUESTIONS [§ 1.15]

User Note: Some judges provide a fuller explanation about the purpose of the particular challenge for cause permitted in a case beyond what is said in paragraph 19, especially when it relates to racism.

19. Counsel for [e.g., *the accused; the crown*] will be asking you certain questions if your name is called as a potential juror. I will be supervising the procedure. The purpose of the questioning is to obtain evidence from potential jurors so that I may determine whether they are qualified to sit as jurors on this trial. I have approved the question that will be asked. The question will not unduly pry into your privacy. Each juror will be asked the same question. The reason for the challenge is because our system of justice demands that a fair, impartial, and unbiased jury try any person charged with a criminal offence.

User Note: Read paragraph 20 if the trial judge, not counsel, asks the questions.

20. I will be asking you certain questions if you are called as a potential juror. The purpose of the questioning is to obtain evidence so that I may determine whether potential jurors are qualified to sit as jurors on this trial. I have approved the question that will be asked. The question will not unduly pry into your privacy. Each juror will be asked the same question. The reason for the challenge is because our system of justice demands that a fair, impartial, and unbiased jury try any person charged with a criminal offence.

V. JUROR HAVING PERSONAL INTEREST IN THE MATTER TO BE TRIED [§ 1.16]

User Notes: (1) Paragraphs 21 to 26 are written in a manner that assumes that potential jurors who answer affirmatively will not be excused or stood by until their names are drawn by the clerk. However, in some jurisdictions it is common to invite jurors to step forward immediately to explain their situation and excuse them immediately, where appropriate. In those cases, the instructions will need to be modified. In addition, some judges employ a juror questionnaire, particularly in longer cases, to obtain the answers to these questions so that the juror can have the opportunity to articulate their answers clearly and will not need to give embarrassing answers orally when their names are called.

(2) The words “any other reasonable cause” in s. 633 of the *Criminal Code* include juror partiality.⁵

21. If you have any personal interest in the matter to be tried please let me know its nature when the (registrar/clerk) calls your name the second time. In this regard, the indictment sets out the following essential details:
- (1) Name of accused: *[name of accused]*.
 - (2) Name of (victim/complainant): *[name of (victim/complainant)]*.
 - (3) Nature of crime: *[nature of crime]*.
 - (4) Place of crime: *[place of crime]*.

VI. JUROR HAVING A RELATIONSHIP WITH THE JUDGE, PROSECUTOR, ACCUSED, COUNSEL FOR THE ACCUSED, OR A PROSPECTIVE WITNESS [§1.17]

User Note: Do not call on counsel for the accused to list the names of his or her witnesses. The defence is not obliged to disclose this information to the Crown, nor is the accused obliged to call evidence.

22. Similarly, if you have had any previous association or personal relationship with me as the judge, or *[crown counsel]* as the prosecutor, or *[the accused]*, or *[name of counsel]*, counsel for the accused, or any prospective witness, you should again let me know its nature when the (registrar/clerk) calls your name the second time. So that you will know the names of the prospective Crown witnesses, I will now call upon (Mr./Ms.) *[crown counsel]* to read the names of the witnesses (he/she) intends to call as part of the case for the prosecution. (Mr./Ms.) *[crown counsel]*, will you please read to the jury panel the names of the witnesses you intend to call as part of your case.
23. In addition, you must be a Canadian citizen to serve on a jury.
24. You must also be able to hear the proceedings. If you have any trouble hearing, please let me know if and when your name is called.
25. This trial will be conducted in the (English/French) language. Please let me know if you have difficulty understanding or reading (English/French).
26. This trial is expected to last *[days/weeks/months]*. We generally sit five days a week. If you have any health concerns that would interfere with your ability to sit as a juror, please advise me when your name is called for the second time. No one wishes to embarrass you, so you may pass me a note detailing the problem, if you wish. This note should be shared with counsel.

VII. PRESCREENING—JUDGE EXCUSING JUROR FOR REASONS OF OBVIOUS PARTIALITY [§1.18]

27. For any of the reasons I just stated, I may decide to excuse you from serving on this jury.⁶

VIII. JUROR MAY EXPERIENCE PERSONAL HARDSHIP [§1.19]

28. If your reasons for not serving on the jury involve personal hardship or any other reasonable cause, I may excuse you from jury duty or I may ask you to stand by in the courtroom for possible selection if we are unable to empanel twelve persons from the remainder of the jury panel.⁷

IX. ADJOURNMENT AFTER SELECTION COMPLETE [§ 1.20]

User Note: Read paragraph 29 only if the trial starts right away. For trials that start at a later date, read paragraph 30.

29. Once we finish selecting the jury, there will be a short adjournment, that is, a break. For those of you who are selected as jurors, this will be an opportunity to contact your families and employers to tell them that you were selected. Counsel tell me that they expect the trial to last about *[number]* days.
30. The trial commences on *[date]* and, as I said, is expected to last *[number of days/weeks/months]*. This is an estimate only and the trial could be longer. After the jury is selected, you will go with the sheriff and (he/she) will give you instructions as to what time you are to return on *[day/month/year]*.

X. ALTERNATE JURORS [§ 1.21]

User Note: Read this paragraph if you order the empanelment of one or two alternate jurors under the *Criminal Code*, s. 631(2.1), s. 634(2.1), and s. 642.1(1). See note (5), *infra*.

31. I have made an order that we empanel (one/two) alternate jurors who will become jurors in case any of the first twelve jurors who were selected cannot serve as jurors at the commencement of the trial.

XI. CHALLENGE FOR CAUSE [§ 1.22]**A. CHALLENGE FOR CAUSE—CLERK TO SELECT THE NAMES OF PROSPECTIVE JURORS [§ 1.23]**

32. (Mr./Madam) (registrar/clerk), will you now call the names of the first group of potential jurors.