

1-1-1998

The Criminal Jury Trial in Canada, Second Edition

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Recommended Citation

Brent RH Johnston, "The Criminal Jury Trial in Canada, Second Edition" (1998) 7 Dal J Leg Stud 272.

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The Criminal Jury Trial in Canada, Second Edition

Christopher Granger

Toronto: Carswell, 1996, 358 pp.

Reviewed by Brent Johnston[†]

Public participation in the criminal law through the jury trial is a defining feature of the Canadian justice system. The jury trial is widely seen as the means by which Canadian communities retain a direct and participatory role in the process of criminal justice. An appreciation, however, of the precise role of the jury trial in contemporary Canadian society is must proceed from a consideration of the intricate body of governing law.

In *The Criminal Jury Trial in Canada*, Christopher Granger details in a thorough and accessible manner the law relating to the Canadian criminal jury trial. While the work is primarily intended as a reference text, Granger's attention to history and careful synthesis of the law provides a broad understanding of practical and theoretical concerns relating to the jury trial. This book should therefore prove valuable to practitioners and scholars alike.

The referential and practical orientation of the book is apparent from its four part organization. Part one addresses the historical origins and evolution of the jury trial. Part two outlines legal and procedural concerns surrounding obtaining a jury trial. Part three provides a summary of provincial law and procedure dealing with pre-trial jury selection and includes a discussion of the federal law governing the "in court" jury selection. Issues pertaining to the trial itself are dealt with in part four.

The chapters address specific topics and relate logically to the book's general organization. Together, they cover most of the issues a criminal trial lawyer is likely to encounter. For example, Chapter Three sets out the law and procedure for seeking a change of venue and includes a discussion of details such as the appealability of a

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decision and the effect of an application on a co-accused. Chapter seven, on addressing a jury, provides a careful overview of the proper form and content of both opening and closing addresses, and reviews the propriety of remarks by counsel on legal principles, penalties, and an accused's failure to testify.

The judge's charge to the jury is, from a practitioner's perspective, perhaps the most significant stage in a criminal jury trial. Granger outlines clearly in a detailed and systematic fashion the law pertaining to the judge's charge in one chapter. This chapter coherently connects relevant evidentiary rules to specific procedures and sets out how particular issues surrounding the form and substance of the charge are properly dealt with by counsel and the judge. The section is subdivided into numerous components, which makes for easy reference.

Granger weaves historical, constitutional, and judicial insight throughout the book. The impact and relevance of the *Charter* is addressed as it arises in various areas, and often passages from judicial decisions are cited in order to give the reader a direct understanding of the state of the law and the reasoning behind it. Generally, the relevant case law has been thoroughly reviewed and is set out in detailed foot notes.

Of particular interest to practitioners is the model jury instruction checklist that is set out in the Appendix. This inclusion is appropriate, as it complements the author's practical emphasis and neatly summarizes many of the concerns addressed in the chapter dealing with the charge to the jury.

As an in depth discussion of the criminal jury trial, Granger's work is short on critical commentary. For example, it has often been observed that criminal jury instructions in Canada are lengthy and detailed, especially by comparison with American instructions. Judges in complex Canadian criminal cases can spend days charging the jury, and observers often inquire whether the members of the jury are truly capable of understanding and remembering instructions in these circumstances. Since reform in this area is most likely to be generated by the bench and bar, a book aimed largely at practitioners and judges presents a valuable opportunity to raise these types of concerns to an audience capable of effecting change. Granger's text, however, practically ignores these issues altogether.

In addition, this book contains little inter-jurisdictional comparison. Many of the concerns pertaining to the criminal jury trial under Canadian law are also addressed in foreign legal systems. International comparison would provide for effective evaluation of the utility of some Canadian rules and might point the way to areas of reform.

Ultimately, *The Criminal Jury Trial in Canada* is an excellent reference text. Granger's organized, thorough and clear presentation results in a work which is practical and useful, if not particularly probing and reflective.