

Judge, jury, me and me | Marcel Strigberger

By **Marcel Strigberger**

Law360 Canada (April 21, 2023, 1:19 PM EDT) -- Lawyers and judges serving as jurors? Unthinkable in Canada.

It recently came to my attention that in the U.S. not only lawyers but even judges are fair game for jury duty.

I started ruminating, and my mind drifted into the following fantasy. What if a judge's number were to come up to serve jury duty for his or her own court? And what if he diligently wore two different hats, like the multirole character Poo-Bah from Gilbert and Sullivan's *The Mikado*? I extended this fantasy further, visualizing what just might go through the mind of this person compartmentalizing totally as each of judge and juror in say a criminal arson trial. What would their respective diary entries look like?



Marcel Strigberger

Monday

Judge: Jury selection is done. The lawyers did a thorough job in vetting the prospective jurors. I pity these jurors. They have to show up here and during these blizzard conditions for a paltry \$50 or so per day. The justice system isn't perfect. But at least I earn a handsome six-figure annual salary.

Juror: Both the defence lawyer and the district attorney were content with me being on the jury.

However, they each grilled me beforehand asking me whether I ever made a fire-related insurance claim. How's that relevant?

I now have to spend days travelling here during this winter blast, earning a measly \$50 bucks per day. That's probably less per hour than a Walmart greeter. Jury duty bah!

Tuesday

Judge: The lawyers each presented their opening statements. They were concise.

The D.A. then called witnesses including the defendant's accountant who testified that the defendant's business had been in the red, and he was refused additional bank loans.

I noticed the defendant was a bit shifty in his seat and judging by his nervous demeanour I would say he did torch his warehouse to access insurance monies.

Juror: Do these attorneys get paid by the word? They rambled on for what seemed like hours.

The prosecution called evidence alleging the defendant needed more money. What does that prove? I'll say the same thing given that the government only pays me that \$50 per diem.

I carefully observed the defendant and though he seemed a bit edgy, he clearly emitted an aura of innocence.

Wednesday

Judge: There were a number of objections by both lawyers to much of the testimony. A couple of times I had to send the jury out of the courtroom to hear argument in their absence on these objections, including the one by defence counsel when a prosecution witness insurance adjuster blurted out that he visited the defendant after the fire and noticed in his garage three jerrycans. I disallowed this testimony and asked the jurors to disregard this comment as it was being stricken from the record.

I trust the jurors found something productive to do while waiting in the jury room.

Juror: These lawyers certainly made a raucous scene today, jumping over one another with objections. The judge really flipped when that insurance guy mentioned those jerrycans, after which he kicked us out of the courtroom. He later said this testimony was stricken from the record and admonished us to forget hearing anything about those jerrycans. Right! Already forgotten. Ha ha!

At least we spent our time-out in the jury room productively, playing Wordle.

Thursday

Judge: All the evidence is in. Both lawyers made their closing arguments to the jury. Once again they were concise and to the point as they tried to persuade the jurors of their positions.

I then gave my charge to the jury telling them in order to find the defendant guilty they must so find guilt beyond a reasonable doubt. I noted that they are the masters of the facts, namely which facts they should accept or reject.

The jury was then sequestered, and they will have to spend their time in the jury room until they reach a unanimous verdict. I do expect the jurors to come up with a quick conviction as to me the guy came across as guilty as sin. However, I did tell the jurors that if the hours extend without a verdict, accommodations would be made for lodging at a hotel. At least I get to sleep in the comfort of my own home.

Juror: These lawyers have little regard for our convenience and intelligence. They just rambled on and on. Don't they know what the seat can't endure, the mind can't absorb?

The judge then ranted on with his charge saying it was up to the jury to decide what facts to accept. Any idiot knows that.

We were then sent off to the jury room but given the hour we were transferred to a hotel for the night. Not fun. Jury duty certainly is not rewarding economically. I asked the hotel staff but they told me that since I was not paying for the room, I was not eligible to receive the hotel's reward points. Ugh!

Friday

Judge: I expected a quick jury verdict but I was surprised totally that the jury returned to the courtroom speedily but with a verdict of not guilty. Didn't they listen to the evidence? What do they do in the jury room, play Wordle?

Juror: My initial hunch about the defendant's innocence of arson was right. We all found him not guilty. As instructed by the judge we did not take into account that evidence stricken from the record about those jerrycans. Anyhow, the defendant likely used the gasoline to fill up his snowblower.

Fortunately here in Canada lawyers are no way eligible for jury duty. However, the fact that the system in the U.S.A. allows even judges to so serve has piqued my interest and I would readily visit a courtroom with a judge on the jury, even if the trial were running during the course of a vigorous blizzard.

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more

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