



CONSULTATION PAPER

Proposed amendments to the Juries in Civil Causes Act 1951

This Consultation Paper contains proposals to update the Juries in Civil Causes Act 1951 to meet the evolving needs of trials by jury in Bermuda

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1. INTRODUCTION

This Consultation Paper (“**CP**”) outlines the Bermuda Government’s Law Reform project to amend the Juries in Civil Causes Act 1951 (“**Act**”). The proposals contained in this CP have been brought forward by The Hon. Mr. Justice Larry Mussenden, Chief Justice of the Supreme Court of Bermuda, and Ms. Nicole Smith, Senior Crown-Counsel.

The primary objective of these proposals is to update Bermuda’s approach to civil trials that are heard before a jury. Updating laws in this manner will allow for civil juries to have similar flexibility as criminal juries and reflect international best practice.

The proposals address the following areas:

1. Amendments to allow for two alternate jurors in civil trials;
2. Amendments to allow for peremptory challenges and the order of such in civil trials;
3. Amendments addressing the procedure for a judge’s summation on liability and assessment of damages and a jury’s deliberations in connection with the same; and
4. Amendments to review the requirement that the parties give written consent to continue a trial in the event of the death or discharge of a juror in civil trials.

Attached to this CP is an illustrative draft of the proposed amendments to the Act.

The Bermuda Government invites feedback from stakeholders on the proposed amendments. Comments should be sent to lawreform@gov.bm no later than 31 December 2025.

2. TWO ALTERNATE JURORS IN CIVIL TRIALS

PROPOSAL 1

This proposal would amend section 3 of the Act to allow for two alternate jurors. Having two alternate jurors in civil trials offers strong procedural resilience. It protects against trial disruption, promotes fairness and finality, and ensures that the time and effort invested by parties, witnesses, and the court are not lost due to unforeseen juror attrition. It is especially valuable in small jurisdictions and complex trials, and aligns with international best practice.

3. PEREMPTORY CHALLENGES AND THE ORDER OF SUCH IN CIVIL TRIALS

PROPOSAL 2

Proposal 2 is to amend section 4 of the Act allowing for peremptory challenges like in criminal trials as provided for in the Criminal Code 1907. Peremptory challenges allow parties to remove a limited number of potential jurors without giving a reason. While commonly associated with criminal trials, extending this tool to civil trials can offer several important benefits including:

- a) Promoting perceived fairness and confidence in the process;
- b) Helping remove subtle or unprovable bias; and
- c) Balancing power between parties.

PROPOSAL 3

This proposal is to amend section 4 of the Act to structure the order of peremptory challenges like in criminal trials as provided for in the Criminal Code 1907. England and Wales abolished peremptory challenges in 1988 (Criminal Justice Act 1988) due to concerns about misuse, but Canada (prior to Bill C-75 in 2019 – An Act to amend the

Criminal Code, the Youth Criminal Justice Act and other Acts) allowed structured peremptory challenges in both criminal and some civil jury trials. In the United States, most states still allow peremptory challenges in civil trials, typically with fewer allowed than in criminal cases, and clearly defined order of use.

Allowing peremptory challenges in civil trials, and defining the order of their use, can enhance fairness, legitimacy, and balance in jury selection—especially in sensitive or high-stakes disputes. While safeguards should be in place to prevent discriminatory use (e.g., following *Batson*-style rules – *Batson v Kentucky* (1988)), the tool remains a valuable component of a robust jury trial system.

4. REVIEW OF THE REQUIREMENT THAT THE PARTIES GIVE WRITTEN CONSENT TO CONTINUE A TRIAL IN THE EVENT OF THE DEATH OR DISCHARGE OF A JUROR IN CIVIL TRIALS

PROPOSAL 4

Currently, section 7 of the Act stipulates that on the death or discharge of a juror, the trial may continue upon the written consent of the parties. If the parties do not consent or more than one juror dies or is discharged, then the jury shall be discharged and the trial starts afresh with a new jury. Proposal 4 is to amend section 4 of the Act to repeal the written consent of the parties and require that the decision to continue be for the Judge. Granting discretion to the judge offers several important advantages over the party consent model such as:

- a) Preventing tactical obstruction or delay;
- b) Preserving judicial economy;
- c) Ensuring impartial and objective assessment;
- d) Aligning with the principle of proportionality; and
- e) Aligning with international best practice.

In jurisdictions like Australia, New Zealand, and some U.S. states, civil procedure rules empower the judge to continue with a reduced jury without requiring party consent, provided the trial can still be fair.

Allowing a judge to determine whether a civil trial continues after the loss of a juror—rather than requiring unanimous party consent—upholds the principles of fairness, efficiency, and judicial independence, while reducing the risk of strategic misuse and unnecessary mistrials.

5. PROCEDURE FOR A JUDGE’S SUMMATION ON LIABILITY AND ASSESSMENT OF DAMAGES AND A JURY’S DELIBERATIONS IN CONNECTION WITH THE SAME

PROPOSAL 5

At present, section 8 of the Act states that a verdict should be unanimous if the jury returns within one hour. This proposal is to amend section 8 of the Act to state that should the judge sum up on liability and assessment of damages and send the jury out once to consider liability and then, if it is proved, the jury then goes on (without further summation or direction) to assess damages and determine the amount of damages.

Stipulating that jurors in civil trials should receive a single summation covering both liability and damages—and proceed to deliberate on both in sequence without interruption—enhances efficiency, coherence, and fairness, while minimising disruption, cost, and confusion. It upholds the integrity of the jury’s fact-finding role and aligns with best practices in modern civil procedure.

PROPOSAL 6

Proposal 6 is an alternative to Proposal 5. These amendments propose to that should the judge sum up on liability first and then have the jury consider liability returning a verdict

on liability only. If no liability established then the jury is discharged. However, if liability is established then the Judge sums up on the assessment of damages part and the jury goes back out to determine damages.

Using a staged summation and deliberation process in civil jury trials—where liability is addressed and decided first before moving on to damages—can significantly improve juror clarity, procedural fairness, and trial efficiency, especially in legally or emotionally complex cases. It provides a more structured framework for justice, allowing each phase of the trial to be assessed on its own merits.

6. CONCLUSION AND NEXT STEPS

In conclusion, the proposed amendments to the Act represent a significant step forward in modernising Bermuda’s approach to civil trials by jury. Updating the Act as proposed above will bring the practice for civil trials by jury more in line with criminal jury trials and international best practice. Doing so will add clarity and consistency to jury trials across the board.

The Bermuda Government welcomes feedback on the proposals set out in this Consultation Paper. Please submit comments by 31 December 2025 to lawreform@gov.bm.