

Rules of the Supreme Court, 1986

PRACTICE NOTE

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The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published consistent with rule 4.04 of the *Rules of the Supreme Court, 1986*.

JURY TRIALS (CRIMINAL): CHALLENGE FOR CAUSE PROCEDURE

Background:

Crown and defence counsel appear increasingly to apply to this court under section 638(1)(b) of the *Criminal Code of Canada* and invoke the challenge for cause process contained in Part XX of the *Code* with respect to each member of the panel of prospective jurors who have been summoned for jury duty.

In a number of cases, such requests have been made on the eve of jury selection in a given trial.

This presents certain practical difficulties to the court, crown and defence counsel, the accused and the Office of the High Sheriff, in that it may not always be possible, even where the court is inclined to grant an order under section 638, for the High Sheriff to summon a sufficient number of panels of potential jurors to accommodate such requests.

Practically speaking, it takes three weeks for the High Sheriff to summon a sufficient number of panels of potential jurors for such matters.

Unless otherwise directed by an order of this court, the High Sheriff will only summon additional panels of jurors when the High Sheriff has been informed that a challenge for cause order has been granted.

While the High Sheriff will do whatever is reasonably necessary to accommodate the requests of counsel and the court's direction in such cases, when applications for challenge for cause occur inside the three-week period, the High Sheriff will likely be deprived of the opportunity to summon the necessary number of persons to accommodate such a request.

In some cases, this could result in an unnecessary delay of proceedings, especially where the facts giving rise to the challenge for cause requests are known in advance.
Practice Note:

1. When challenge for cause situations are contemplated, counsel should give informal notice of this possibility to the court and the Office of the High Sheriff at the first possible opportunity and follow up with a formal application to court, so that the matter can be dealt with in a timely manner.
2. Except in unusual or exceptional circumstances, no application to use the challenge for cause procedure will be entertained less than four weeks before a scheduled trial date without at the same time giving serious consideration to possible postponement of the trial.
3. The High Sheriff will not summon additional panels of jurors to accommodate a challenge for cause procedure until a formal order has been granted.
4. On the arraignment of an accused, crown and defence counsel should be prepared to speak to the issue of whether challenge for cause is likely to be made and
 - a) if such a procedure is then contemplated, to be made subject to a time schedule for the bringing of such an application; or
 - b) if such a procedure is not then contemplated, be expected not to resile from that position unless good cause is subsequently shown.

5. The issue of whether there should be challenge for cause may be re-visited by the judge conducting the pre-trial conference and if challenge for cause is then contemplated, the judge may
 - a) order that an application be made forthwith or on a specified date to determine whether the procedure should be adopted; or
 - b) if crown and defence counsel consent, consult with the High Sheriff and make an order permitting challenge for cause and requiring the High Sheriff to summon such additional jury panels as may be necessary to accommodate such a procedure.

6. In considering whether an order should be made permitting challenge for cause, the pre-trial conference judge will consider whether the scheduled trial date can continue to be met and whether there is sufficient time for the High Sheriff to summon sufficient additional jury panels to accommodate such a procedure, and, if not, consider whether it is appropriate to postpone the commencement of the trial or to insist that the trial proceed on the scheduled date and deny the application for challenge for cause.

AUTHORIZED BY:

J. Derek Green
Chief Justice of the Supreme Court
of Newfoundland and Labrador, Trial Division

Barry R. Sparkes, B.C.L.
Registrar of the Supreme Court
Secretary, Rules Committee