

News

Skipping jury call can mean jail on the East Coast

DONALEE MOULTON

While the guilty verdict handed down in the Dennis Oland murder trial captured widespread headlines, for 33 prospective jurors in New Brunswick the impact hit much closer to home: they were summoned to court to explain why they did not show up for jury duty.

New Brunswick Court of Queen's Bench Justice John Walsh excused 15 of the prospective jurors brought before him finding they had a "reasonable excuse" as required under the province's *Jury Act*. The others were fined \$300 each for their inexcusable absence.

Justice Walsh is not alone in his impatience with no-show prospective jurors. Three years ago a clearly frustrated Nova Scotia Chief Justice of the Supreme Court Joseph Kennedy sent sheriffs after 95 prospective jurors who failed to turn up in court as required—40 per cent of those called for the trial in question. "Ask them to bring their toothbrushes," Justice Kennedy told the sheriffs as they headed out

In an effort to ensure there are enough jurors for trial, judges in Newfoundland and Nova Scotia have also sent sheriffs to local



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Joseph Kennedy
Nova Scotia chief justice

malls to issue an instant summons to individuals to appear for jury duty.

"In some [cases], individuals

have been incarcerated," said Margaret MacInnis, executive director of the executive office of the Nova Scotia Judiciary in Halifax.

Finding jurors can be a time-consuming battle for the courts. Luke Joyce, a spokesman for the Newfoundland and Labrador Department of Justice and Public Safety, noted that six weeks before any jury selection day, the Sheriff's Office issues approximately 400 to 600 jury summonses for each trial, depending on the nature of the case and the severity of the charges.

In Nova Scotia, by the time a trial begins, it is not unusual for about half of the people who have originally been summoned for jury duty to be excused by the jury co-ordinator, noted Luke Craggs, a criminal lawyer in Halifax. "In my experience, it is common to see 20 to 40 per cent of the people who have not been excused by the jury co-ordinator not show up for jury selection."

The reasons for no-shows are varied and often unacceptable. "For the most part, it seems that people either don't read the jury summons carefully enough or they simply forget about it," said Michael King, a criminal lawyer with Simmonds+Partners

Defence in St. John's.

In the case of the Oland trial in Fredericton, which summoned approximately 5,000 people for potential jury duty, Justice Walsh excused one woman who had a health emergency and the documentation to support her claim. He was less forgiving of the individual who contended she didn't bother to show up because she was convinced the accused was guilty.

Compensation is a significant issue. Newfoundland and Labrador may be the only jurisdiction in Canada that legally requires employers to continue paying the salary of individuals called for jury duty. In Nova Scotia, jurors are paid \$40 a day. In B.C., jurors are given \$20 a day for the first 10 days of a trial, while Ontario, which does not track absenteeism, pays jurors nothing for the first 10 days.

Chief Justice Kennedy has expressed concern that the issue may be broader than any one individual. As he sent sheriffs out to round up prospective jurors who failed to make an appearance for the aggravated assault trial of Patrick Carl Shea, he stated, "We haven't been asked to do that much. When we are asked, we don't vote; we don't

show up for jury duty. We are a flabby, sad generation."

No-shows present numerous problems for more than the court. "There is a question of fairness to other citizens," said MacInnis.

The accused, the Crown and the system may also be adversely affected. The biggest impact is having a smaller pool of people to try criminal trials, said Craggs. "It probably also narrows the demographic of people who end up on juries, which is of concern because the ideal jury brings together 12 people of diverse backgrounds to give their individual input on the question of guilt or innocence."

Hauling no-shows into court, issuing fines and ultimately incarcerating individuals (as happened in St. John's when several prospective jurors were jailed for six hours after failing to turn up for jury duty in a high-profile case) may send an important message to an apathetic or ill-informed public. "Creating awareness is very important," said King. "A large portion of society doesn't become involved with the justice system. Individuals therefore don't give it much thought during their busy day-to-day lives."

New rules from securities administrators extend takeover bid period to 105 days

JEFF BUCKSTEIN

The Canadian Securities Administrators (CSA) have announced fundamental amendments to the Canadian takeover bid regime. A key change will triple the minimum deposit period, or the period that target boards have to respond to the bid, from 35 days to 105 days, subject to certain exceptions that could shorten it.

"If the idea is increased flexibility for the board, and increased opportunity for other people to come forward, absolutely it will do that," said Aaron Atkinson, a partner with Fasken Martineau in Toronto. "Our concern on the flip side is 105 days is still a substantial amount of time for a hostile bidder to have their bid out."

Walied Soliman, a Toronto-based partner with Norton Rose Fulbright, said that overall, he believes the CSA has done a great service to mergers and acquisitions in Canada, including those that involve attempted hostile takeovers, by providing issuers and acquirers with certainty around the process.

"I believe that is a very positive step for the capital markets."

However, he warned there may also be additional dangers facing



Soliman

takeover targets now that the bid period has been extended for an additional 70 days.

"In the current regime, you have an off ramp after 35 days. In the new regime, you have no off ramp for a full 105 days. And that, I think, makes it a lot more difficult for them. What I think acquirers are going to start asking their lawyers and bankers is, 'what are my alternatives?'"

"And the alternatives are going to be 'let's use some bully M&A tactics.' For example, let's do a bear-hug letter, but not just a bear-hug letter that says 'here board is a value per share that is at a premium. It will be 'here's a value at a

premium with four of your seven largest shareholders supporting it. Make the change, or this group will change you as board members,'" he added. Soliman predicted that Canada will see proxy battles much like in the United States, that are driven solely by the desire to complete an M&A transaction.

"The new regime will enhance the ability of the security holders to make voluntary, informed and coordinated tender decisions while providing boards with additional time and discretion when responding to a takeover bid," said Louis Morisset, chair of the CSA.

Morisset is also the CEO of the Quebec regulator, the Autorité des marchés financiers.

The minimum deposit period will also be subject to an extension of at least 10 days after the minimum tender requirement and all other conditions have been met.

The CSA also announced that "in a fundamental change, the new takeover bid regime will require that all non-exempt takeover bids meet a minimum tender requirement of more than 50 per cent of the outstanding securities that are subject to the bid (excluding securities owned by the bidder itself or its joint actors)."

The CSA's original proposal was to extend the minimum period that target boards have to respond from 35 up to 120 days. These revised amendments, which will come into force on May 9, reduce that period by 15 days.

The Ontario Securities Commission explained in a document describing these amendments that "we have determined to adjust the minimum deposit period to 105 days in light of our consideration of the potential impact of the 120 day requirement on an offeror's ability to utilize compulsory acquisition provisions under business corporation statutes in Canada."

The document further explains that such provisions are generally

only available where the take-over bid is accepted by holders of at least 90 per cent of the shares of the class subject to the bid within 120 days after the date of the bid.

"In light of the foregoing, we have adjusted the minimum deposit period to 105 days. We believe that a minimum deposit period of 105 days will generally allow sufficient time for an offeror to conclude its bid and satisfy the subsequent 10 day extension requirement before the 120th day from the date of its bid, while taking into account the potential impact that holidays in various Canadian jurisdictions may have on the offeror's ability to receive acceptances," the OSC added.

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