**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Putting the Inscrutable Under Scrutiny \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Chantal Bellavance** LL.M. in Comparative Law, Non-Thesis Supervisor: Prof Vincent Forray McGill Faculty of Law chantal.bellavance@mail.mcgill.ca

January 31th, 2019

**KEY WORDS:**

Jury, Comparative Law, Reasoned Verdict, Right to a Fair Trial, Global Standards.

**ABSTRACT:**

According to the Supreme Court of Canada, the various rationales underlying the continued vitality of the jury as a decision maker make it a vital component of our system of criminal justice. This being said, the constitutionally protected right of the accused to be judged by jury — in cases of serious criminal charges — is framed in a way which renders any attempts at getting rid of it extremely difficult. The general duty to give reasons for decisions might be thought to apply with particular force to criminal trials, in which a person’s most profound and intimate interests — including their interests in liberty and reputation — all hang in the judicial balance. Yet, the one or two word jury verdict (guilty / not guilty) relegates the natural justice principle of the right to a fair trial — which entails the right to reasons for a decision — to an instrumental background sub- categoric privilege. The Canadian Charter being part of a global constitutional heritage, comparative law, namely through the *global standards* approach, may be used to advance arguments in favour of changes to achieve one’s own domestic legal system’s improvement. As such, the objective of many comparative lawyers has been to achieve harmonisation, if not unification, of laws. The focus on unification of law across nations states provides one answer to the normative question of what law should be.

In 2009, the Strasbourg Court, in its *Taxquet* judgment, questioned the appropriateness, in light of human rights standards, of the unreasoned jury verdicts. While the Court did not indicate unequivocally that the right to a fair trial was guaranteed exclusively through a reasoned judgment, it held, however, that the reasoning provided in court decisions was closely linked to the concern to ensure a fair trial, as it allows the rights of the defence to be preserved. According to the Court, and based on article 6 of the European Convention on Human Rights (ECHR), reasoning is essential to the very quality of justice and provides a safeguard against arbitrariness.

Following the *Taxquet* case, legislators in some member states were led to believe that compliance with the ECHR may be ensured only by putting the obligation on jurors to state the reasons for their decisions. Following a 2010 legislative amendment in Belgium, judge and jurors formulate the judgment together. In Norway the Supreme Court in exceptional cases may instruct the High Courts to indicate the evidence that was decisive for the defendant’s conviction. In 1996 the legislators in Geneva adopted a similar solution: the law requires jurors to give reasons for their responses to the questions addressed to them but allowed them to seek the assistance of the greffier in formulating their reasons. And these are but a few of the examples available, examples to which we should look as inspiration for fair trial protection. There can be restrictions on the components of the rights to fair trial, but the total deprivation is contrary to the Charter. The reasons given for the judgment serve first as a guarantee against arbitrariness which is a precondition of creating and maintaining trust in the administration of justice. The reasons may reveal the deficiencies of the fact finding process or in the application of the law to the facts established which is, in turn, a precondition for the effective exercise of the right to appeal. Many doubts have been raised regarding the value that is to be attached to alternatives for reasoned judgment that could ensure the fairness of the trial. Judicial independence and impartiality are frequently invoked to justify that juries are not under the obligation to give information on the motives of their decisions. It is in the name of said independence and impartiality that no one may require after verdict of the reasons for their decisions. However, we challenge the above mentioned idea and propose that there lies a strong relation of interdependence between independence and accountability. We believe that accountability does not curtail independence but that the two complement each other. Following this, the secrecy of deliberations, which has its value in the proper functioning of the jury, has no effect whatsoever on our claim that reasons for judgments should be stated by jurors. After all, if we consider the jury to be, as it is, a truly adjudicating body, there is no reason why, just like the single judge, it should not, while maintaining its privilege to secrete deliberations, have to state its reasons for conclusions.