

# Challenges to justice

## Justice for all

Although our courts strive to provide a system that is just and accessible for everyone, sometimes they are unable to do this. There are factors, both within and outside the court system, that sometimes make justice difficult or impossible to achieve.

### The jury system

There are disadvantages to the jury system that can have an effect on the fairness of a trial. Juries are supposed to represent a cross-section of the community. Thus they should contain individuals of different ages, occupations, religions, races, gender and backgrounds. However, this may not always be the case. People can be excused from jury duty if, for example, they live far away from the court, or are pregnant or are over a certain age. Some people are not allowed on a jury—for example, anyone in the legal profession or with a recent criminal conviction. Both parties in a case are allowed to challenge and reject a certain number of jury members. All of these factors can result in a jury that is not a true representation of the community. As well, jurors may hold personal prejudices that are never revealed.

### The adversarial system

The adversarial approach places two parties in opposition to each other, each trying to win the case. Critics argue that it is not a truth-seeking system and is unjust. Retired Justice Russell Fox spent 11 years researching the law in Australia. He stated that lawyers can pollute the truth by actions such as blaming the victim, misrepresentation and false arguments. Justice Fox also said that some rules act to conceal significant evidence from jurors. He concluded that, as a result, more than 50 per cent of offenders escape punishment. As well, the role of the judge in the adversarial system is mostly to clarify information and points of law, and therefore the significant courtroom experience and knowledge that judges have is not fully drawn upon.



**Source 2.4.1** A jury box at the Supreme Court. The jury system does not always ensure that justice is delivered.

### Actual access to justice

The cost of pursuing justice can be very high. Consequently, many people choose not to do so. As only the very rich can afford the best legal representation and only the very poor can access free Legal Aid, the majority of Australians struggle to afford legal representation. Highly paid lawyers are often skilled at using arguments that sound correct but are actually false, and this gives the defendant a better chance of obtaining a verdict of not guilty. Legal Aid, on the other hand, has to apply very stringent **means tests** and restrictions on the services it provides, so many people confront the legal system without any legal representation. People paying for the best legal services can have as much time as needed to discuss their case and the approach to the trial. Those represented by Legal Aid, by contrast, are likely only to meet their representative at trial, and the representative may have had only a few hours to familiarise themselves with the case. Therefore the prospect of a fair trial and a just outcome may be at risk.

### Court system complexity

People often are not aware that, rather than go through the court system, their problems could be solved using other methods, such as **mediation**. Many find the legal system so confusing and complex that they do not seek or find the assistance they require and that they legally are entitled to.

## Bribery

Bribery is the practice of offering or giving another person money or other goods, in exchange for which that person does something corruptly that benefits the person offering the bribe. Bribes have been offered, for example, to police, in exchange for information or to get them to remove evidence from a case; to members of the legal profession, to gain representation; and to judges, in order to influence the outcome of a case or the severity of a sentence. Bribes are sometimes also given to witnesses to persuade them not to provide information or to change the information that they do provide.

## Coercion of witnesses

Witnesses play a very important role in legal proceedings, providing new information in a case and helping to clarify what has happened. Coercion of a witness occurs when another party tries to force the witness (usually with physical force or threats towards them or their family) to lie in court, to withhold information or to refuse to testify. Coercion is often very successful as witnesses can become very scared about what might happen to them or their loved ones.

## Tampering with evidence

Sometimes, people (including police) change, hide or destroy evidence. They also make up evidence. This is called tampering with evidence. Bribery, coercion of witnesses and evidence tampering can all be hard to detect. Clearly, however, such actions can have an impact on any investigation, interfere with the course of justice and influence the outcome of a case.

## Trial by media

Many cases receive extensive coverage in print and digital media, and now through social media, in the lead-up to a trial. Sections of the media will sometimes portray someone as guilty or innocent before the trial has even started. This acts against the principle of presumption of innocence and conflicts with the idea of a fair trial for all. It is difficult for jury members to remain impartial towards someone when the media is providing negative—or overly positive—information about them. They may develop a negative view of the defendant, or develop sympathy for them, which may influence their thoughts during the trial.

## Court delays

Having a court system that is fair, efficient and effective relies on cases being brought before the courts and resolved as quickly as possible. This reduces both the



**Source 2.4.2** Former television star Robert Hughes believed he was unable to get a fair trial in Australia on charges of indecent assault because the media portrayed him as guilty before the trial even started.

cost and the stress of appearing in court. However, delays can occur for a number of reasons.

In both criminal and civil cases, pre-trial procedures can delay the start of a case. Police investigations in criminal cases can be very lengthy, and in a civil case the discovery process (in which the opposing parties look over each other's information and documents) can take months or even years. In addition, courts are receiving increasing numbers of cases without additional resources, so that cases often remain on a 'waiting list' while the courts try to get through the work.

## ACTIVITIES

### Remembering and understanding

- 1 Cite some indicators of diversity within a jury.
- 2 Give two reasons why people might be excused from jury duty.
- 3 List two examples of people who are not allowed to serve on juries.
- 4 Infer what is meant by the term 'personal prejudices'.
- 5 Explain how a juror's personal prejudices may negatively affect the outcome of a trial.

### Applying and analysing

- 6 Distil, as a list of dot points, the factors that can affect people's access to justice in the Australian legal system.

### Evaluating and creating

- 7 Consider the opinions expressed by Justice Russell Fox. Do you agree or disagree with his assessment of the Australian legal system?