

R. v. Williams (1998) (SCC)

Victor Williams, an Aboriginal, was charged with robbery. He elected a jury trial at which he pleaded not guilty. His defence was one of mistaken identity but the jury convicted him. On appeal, Williams argued that his rights under the *Charter*, particularly, s.7, s. 11(d) and s. 15(1) had been violated because he was denied the right to challenge potential jurors for cause to determine whether they held a racial bias against Aboriginals which might impair their impartiality.

Section 638 of the *Criminal Code* states that “an accused is entitled to any number of challenges on the ground that ... a juror is not indifferent between the Queen and the accused.”

Section 638 gives the trial judge discretion to permit challenges on the basis of racist attitudes and provides that the judge should allow such challenges where there is a realistic potential of juror bias. The trial judge did not permit Williams to ask potential jurors questions as to their racial bias against Aboriginals.

Williams argued that in British Columbia there is widespread bias against Aboriginals and this would influence jurors in deciding whether the accused is guilty of the crime charged. It may also cause a juror to reject or put less weight on the evidence put forward by the accused, or resolve doubts about the Crown's case more readily because it represents the “white” majority against a minority-member accused.

The SCC analyzed the mindset which underlies racial prejudice and the stereotyping which underlies it. It noted that “to suggest that all persons who possess racial prejudices will erase those prejudices from the mind when serving as jurors is to underestimate the insidious nature of racial prejudice and the stereotyping that underlies it.” The SCC held that “racial prejudice interfering with jurors’ impartiality is a form of discrimination,” and by doing so, elevates the denial of the right to question potential jurors about systemic racism to a violation of the accused s. 15 *Charter* rights.

The court concluded where “widespread prejudice against people of the accused’s race is demonstrated at a national or provincial level, it will often be reasonable to infer that such prejudice is replicated at the community level.”