

PROVIDING CERTAINTY FOR BUSINESS THROUGH THE TIMELY ADMINISTRATION OF JUSTICE

Issue

A justice system which resolves disputes in a timely and cost-effective manner is a foundation upon which our civil society is based. When legal disputes are allowed to interrupt lives and business longer than necessary, we all bear the cost. To thrive, business in British Columbia needs a justice system that delivers predictably expeditious resolution of legal matters in accordance with law.

While the pandemic displaced discussion on how things work in BC’s justice system, 2023-2025 must see a return to innovation and progress on this issue.

Background

Businesses in British Columbia wait too long to get justice in our courts. For claims brought in Provincial court – the court of first resort for business disputes under \$35,000 – the wait to get to a trial from when

Figure 9 - Locations with the Longest Delays to Small Claims Trials

<2 Day Trial		2-4 Day Trial		5+ Day Trial	
5 Months Max		6 Months Max		8 Months Max	
Kamloops	8	Port Coquitlam	10	Kelowna	10
Penticton	8	Kelowna	10	Kamloops	10
Richmond	7	Kamloops	9	Duncan	10
North Vancouver	7	Penticton	9	New Westminster	9
Chilliwack	7	Duncan	9	Chilliwack	9
Prince George	7	Victoria	8	Western Comm.	9
Western Comm.	6	North Vancouver	8		
Duncan	6	Chilliwack	8		
Courtenay	6	Prince George	8		
Dawson Creek	6	Western Comm.	8		
Provincial	6.1		6.4		6.6

the defendant files its reply is shown in the table below.¹

Worse, scheduled trials and chambers applications have for years been regularly “bumped” due to overscheduling.² Overall, provincial weighted times to trial remained steady (0% difference) between September 2021 and September 2022. Top areas that improved:

- Youth Criminal trials(decreased in time to trial by 11%)
- Small Claims Settlement Conference (decreased in time to trial by 8%) Top categories that saw an increase in Time to Trial:
- Medium Small Claims (2-4 days) trials(increased by 14%, from 5.6months to 6.4months)
- Long Small Claims (over 5 days) trials (increased by 8%, from 6.1 months to 6.6 months)

¹

[https://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20Update%20\(as%20at%20September%2030%202022\).pdf](https://www.provincialcourt.bc.ca/downloads/pdf/Time%20to%20Trial%20Update%20(as%20at%20September%2030%202022).pdf)

² https://www.bccourts.ca/supreme_court/about_the_supreme_court/annual_reports/2021_SC_Annual_Report.pdf

- Medium Adult Criminal (2-4 days) trials(increased by 8%, from 7.2 months to 7.8 months)

Overall, results varied from 1.4 months below the Provincial Court standard to 1.7 months over the standard, with most measures being over the standard in September 2022.³

This is not a new problem. As the British Columbia Supreme Court’s 2021 Annual Report⁴ observes:

“Following trends from 2019, bumping rates remained higher than historical averages for long chambers applications and trials in 2021. A matter is considered “bumped” if its hearing is delayed and cannot be rescheduled within a week of the original date because judicial resources are not available. Bumping causes additional expense and inconvenience to litigants as a result of wasted preparation time and travel costs for witnesses and experts. As we have reported for a number of years now, the main cause of bumping at the Supreme Court is the shortage of judges. We do not have enough judges to meet the demand for hearings and trials. For long chambers, bumping rates were higher in 2021 compared to 2020 province-wide, but lower than rates for 2019. Trials saw a decrease in bumping rates for 2021 compared to the previous year, though the percentage of bumped trials in Vancouver remained higher in 2021 than it was in 2019. More than 80 per cent of the bumped trials in 2021 were in the Lower Mainland.”

The costs of a trial being “bumped” are significant; businesses pay their lawyers to prepare for the same case two or more times and witnesses travelling from far distances are told to go home and come back months later. The costs to business from these delays can easily be thousands of dollars.

When businesses cannot get access to the justice system in a timely manner, investment decisions are delayed and frustration builds. Businesses that can resolve their disputes quickly and efficiently can spend their time and resources on growing and creating jobs in British Columbia. The undeniable fact is that reducing court backlogs will help business resolve many civil cases thus getting owners and operators back to growing their business and creating jobs for British Columbians.

Two key factors that contribute to delays in our court system are self-represented litigants that overburden our court system; and chronic offenders suffering from untreated or undertreated mental illness and/or drug addiction. To their credit, the provincial government, the courts and others have made a credible commitment to improving efficiency in our justice system. However, these laudable efforts to improve British Columbia’s justice system would be enhanced by addressing these two important sources of court delays.

Self-Represented Litigants and Legal Aid

A major source of delays and backlogs in the court system is the number of litigants who do not have the assistance of a lawyer. Past reports from the BC Supreme Court identified self-represented litigants as a key driver of an increase in “complex proceedings” although the 2021 report, perhaps because COVID-19

³ *Ibid*

⁴ *Ibid*

displaced discussion on how things work with the restrictions on in-person representation, did not cite this issue. Previous reports (2018)⁵ explained the phenomenon as follows:

“Litigants who appear in person because they are unable to afford lawyers usually are not well versed in court procedures. This can have the effect of lengthening hearings. Judges must also be vigilant to ensure that self-represented litigants as much as possible enjoy the same legal rights as those who are represented by counsel.”

Cases where one or both parties are not represented by lawyers very frequently take much more court time than cases where both parties have lawyers.

Since all parties in the court system draw from the same resources and pool of judges, these delays affect us all. Businesses hoping to resolve their own leasehold, contract or other disputes have their trials “bumped” because a family law dispute goes much longer than necessary.

The increase in the number of self-represented litigants over the last 20 years is directly correlated to the massive reduction in provincial funding for legal aid. Between 2002 and 2005 government funding to the Legal Services Society – the provider of legal aid – was cut by 40%, resulting in closure of 85% of the legal aid offices throughout BC; and a 75% reduction of staff. In 2022, the BC Government committed new funding of \$8.2million to expand the legal aid support system⁶ of which \$7.47 million is an increase to Legal Aid BC.

The failure to adequately fund legal aid is especially objectionable in view of the fact that the government continues to charge a 7% sales tax on legal services generating millions directed into general revenue⁷.

Chronic Offenders

A large proportion of offenders in urban centres have a mental illness, a drug addiction, or both, and many are chronic offenders. Incidentally, these same chronic offenders are responsible for a disproportionate share of property crime, which falls heavily on business. The justice system and society at large are challenged to address the risks posed by offenders, while also supporting their health and social needs.

Opened May 6, 2021, the Kelowna Integrated Court⁸ is the result of years of work by groups and individuals in Kelowna seeking to reduce crime and improve public safety by integrating health and social services with the justice system to address the root causes of criminal behaviour.

Like Vancouver’s Downtown Community Court and the Victoria Integrated Court, the Kelowna Integrated Court focuses primarily on offenders struggling with addiction, living with mental health

⁵ https://www.bccourts.ca/supreme-court/about_the_supreme_court/annual_reports/2018_SC_Annual_Report.pdf

⁶ <https://news.gov.bc.ca/releases/2022AG0041-000392#:~:text=Budget%202022%20is%20committing%20%248.19,timely%20legal%20services%20they%20need.>

⁷ <https://renaudlaw.com/how-bcs-tax-on-legal-services-impairs-access-to-justice/>

⁸ <https://www.provincialcourt.bc.ca/about-the-court/specialized-courts#:~:text=About%20Kelowna%20Integrated%20Court&text=Like%20Vancouver's%20Downtown%20Community%20Court,health%20issues%2C%20or%20experiencing%20homelessness.>

issues, or experiencing homelessness. The Kelowna Integrated Court is not a trial court but eligible individuals may have bail hearings or plead guilty and be sentenced there.

This initiative should over time help reduce delays in court time while offering more timely access to justice. However, the initiative must be coordinated with providers of wrap-around care and treatment to have a lasting positive effect.

Many traditional Provincial Court of B.C. cases are delayed because:

- The accused has not applied for legal aid
- The defence counsel has not interviewed the accused, or
- There has not been adequate time to discuss the process or the options with the accused

As a result of these delays, it can take from several months to a year for even the most minor cases to be resolved in a traditional court. Some offenders make many court appearances before their cases are addressed. During that time, many fail to show up for subsequent court dates and eventually end up in jail. By the time the case is resolved, the process has been the punishment and offenders are sentenced to “time served.”

Because the community and/or integrated court has early access to relevant information about the accused, and because there are designated staff resources working together in one location, most community court cases can be resolved within three appearances, minimizing impacts on the victim.

The Provincial government’s support for community court initiatives throughout the Province would improve outcomes for chronic offenders while also enhancing access to justice for British Columbia business.

Conclusion

Civil, criminal and family court cases are all handled by the same court system. Any delay in a criminal or family case slows down all cases especially civil cases involving businesses. Providing adequate funding to legal aid and supporting community court initiatives will go a long way to dealing with the delays and backlog, which in the end will support businesses along with the families and communities that depend on those businesses.

THE CHAMBER RECOMMENDS

That the Provincial Government:

1. Continue efforts to determine and monitor meaningful performance measures for the civil justice system;
2. Provide support to community courts and similar alternatives to traditional adjudication and sentencing models;
3. Allocate 100% of all revenues collected from the tax on legal services to funding legal aid funding in British Columbia; and

4. Continue to work with the courts and other justice sector participants to develop efficiencies within the justice system.

That the Federal Government:

1. Commit to appointing the number of judges required for the Supreme Court of British Columbia to have a full complement of judges no later than January 1, 2024.

Submitted by the Kelowna Chamber of Commerce.