

## **PROVIDING CERTAINTY FOR BUSINESS THROUGH A TIMELY ADMINISTRATION OF JUSTICE (2014)**

The ability to access the justice system to resolve issues in a timely and cost-effective manner is a foundation upon which our society is based. An effective justice system supports the ability for business to thrive by enabling an expeditious resolution of legal matters that interrupt the lives of business owners and their employees. Yet in British Columbia, reduced public spending on the court system and on certain aspects of the justice system has caused delays in the courts for all.

Small businesses in British Columbia rely on an efficient and fair legal system to resolve business disputes that arise from time to time. As the lifeblood of the B.C. economy, small business accounts for 98% of all B.C. businesses and 56% of all private sector employment. Small business is vital to the economic success and prosperity of British Columbia.

Today, it typically takes about 9.5 months from the time a reply in a civil claim (the type of claim most businesses are involved in) is filed in the Provincial Court until a half-day trial can take place. The Provincial Court's objective, as set by the Chief Judge, is six months between the filing of the reply and the trial.

These delays don't just add costs to the justice system, but also add costs to companies doing business in B.C. Whether it's collecting a debt, settling a shareholders dispute, or a potential hiring decision delayed because court time isn't available, the fact is 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.

Three main factors contribute to these delays: inadequate staffing by the Court Services Branch; an inadequate number of Provincial Court Judges; and an increase in the number of self-represented litigants in the court system, each of which is described further below:

### **Court Services Branch**

The Court Services Branch provides administration, as well as prisoner escort and court security support, to the Court of Appeal, Supreme Court of B.C. and Provincial Court. In a speech in late 2011, then Chief Justice Bauman of the Supreme Court noted that the court had courtrooms that could not proceed because a clerk was not available or because of a shortage of sheriffs to provide security.

### **Provincial Court Judges**

The BC Government is responsible for appointing judges to the Provincial Court of British Columbia. Provincial court judges decide civil disputes, including business disputes, for amounts under \$25,000, as well as the vast majority of criminal and family law disputes in B.C.

In December 2005, there were 143.65 full-time equivalent judges on the provincial court. As of October 31, 2013, there were 127.15, a reduction of about 16 judges.

The decline in the number of Provincial Court judges since 2005 has caused, at various times over the last seven years, an increase in the length of time needed to resolve business disputes and an increase in the number of criminal law charges stayed, i.e. thrown out, because of delays

in getting to trial. For instance, in both September 2010 and March 2012, the Provincial Court reported that the average time to trial for a two-day civil claim was approximately 15 months, whereas the Court's objective is an average of eight months.

The BC Government has committed to developing an appropriate methodology for determining the appropriate fixed "judicial complement", i.e. the number of provincial court judges needed in the province, by March 2014. The publication and adherence to this methodology will put B.C. in the same position as the federal government, which for many years has applied a fixed complement for the appointment of B.C. Supreme Court and Court of Appeal judges.

The use of a fixed judicial complement will assist in allowing the judicial system to deal with the delays and backlogs of civil claims and eliminate the current ongoing debate of whether or not more judges are required. The provincial government should move immediately to appoint the necessary number of judges once the methodology and complement are published.

### **Self-Represented Litigants**

A further source of delays and backlogs in the court system is the increase in people who do not have the assistance of a lawyer. Cases without lawyers generally take much greater court time. The increase in the number of self-represented litigants over the last 20 years is directly correlated to the decrease in legal aid. British Columbia's per capita expenditure for legal aid is 10<sup>th</sup> out of the 13 provinces and territories in Canada and has severely limited legal assistance for those who cannot pay for a lawyer.

In the B.C. Provincial Court, since legal aid is not available for most family law cases, 90 to 95 percent of family law cases involve a person who is unrepresented by legal counsel. The Legal Services Society, who administers legal aid, estimates that over the past four years, 43% of the people who have applied for family legal aid have been denied assistance (approximately 4000 per year). This does not include the thousands of individuals who do not apply for legal aid, knowing already that they do not qualify.

Judge Robert Hamilton recently commented on a family law trial over which he presided, noting that if legal aid had been available to the parties:

*"...that trial, I am sure, would have been completed in six days. Instead it's going to take 22. Sixteen days of court time have been taken away from a lineup that goes...miles down the road... people waiting for court time to get their case before the court. **And it really is not only a tragedy for those three parents, but for the system and all the people waiting to get access to the system.**" (emphasis added)*

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 the family law dispute goes much longer than necessary. 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.

Businesses also suffer from lost employee time when their own employees cannot get their family law matters resolved quickly because of delays due to self-represented litigants.

### **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.

Enhancing the Court Service Branch, maintaining an appropriate level of Provincial Court judges and providing adequate funding to legal aid 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. adopt a methodology for appointing a fixed number of Provincial Court Judges as soon as possible and commit to appointing the required number of judges by no later than January 1, 2015;
2. commit to increased, long term, stable funding for the Court Services Branch;
3. commit to increased long term stable funding for the Legal Services Society and increase legal aid funding in British Columbia to the national per capita average, as resources allow; and
4. reach the provincial court's objective of no more than six months between the filing of a reply and a trial date.

Submitted by Canadian Bar Association - BC Branch

