

INTO THE FUTURE: THE AGENDA FOR CIVIL JUSTICE REFORM

KEEPING LITIGATION COSTS IN CHECK-PROCEDURES FOR DEALING WITH SMALLER CLAIMS. SIMPLIFIED PROCEDURES, SUMMARY TRIAL, SUMMARY JUDGMENT & SMALL CLAIMS COURT

CIVIL COURT PRACTICE IN ALBERTA

(Submitted by Judge Sandra Hunt McDonald,
Provincial Court of Alberta, Civil)

INTRODUCTION

The Systems of Civil Justice National Task Force was created by the Canadian Bar Association early in 1995 to inquire into the state of the civil justice system on a national basis and to develop strategies and mechanisms to facilitate modernization of the justice system so that it is better able to meet the current and future needs of Canadians. One of the weaknesses identified was the need to make the civil justice system more cost-efficient. This “Into the Future” Conference provides an opportunity to re-examine Canada’s civil justice systems on a national basis since the 1996 publication of the CBA’s Systems of Civil Justice Final Task Force Report.

PROVINCIAL COURT OF ALBERTA

The Provincial Court of Alberta is a statutorily enacted Court intended to be an expeditious and inexpensive forum to access civil justice. Although the Court must apply established legal principles, it is not bound by the laws of evidence applicable to judicial proceedings and may admit any oral or written evidence that it, in its discretion, considers proper, whether admissible in other judicial proceedings or not, subject to claims of privilege under the law of evidence or any other evidence which is inadmissible by any other act. Accordingly, the procedural issues put before it are often determined according to principles of fairness or equity and not necessarily according to the strict rules of evidence as used in other courts. Litigants may be unrepresented, represented by agents, or by lawyers.

There are no formal Rules of Court governing the Court’s procedure. The Act sets out most of the procedural requirements. Where the Act or regulations do not provide for specific practice or procedure, the Court may apply or modify the Alberta Rules of Court

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(Queen's Bench Rules) as needed. Accordingly, the use of this authority is discretionary.

The monetary jurisdiction of the Court is \$25,000.00 in debt and damages. Previous to the increase to the \$25,000.00 limit on November 1, 2002, the limit had been \$7500.00. The cost for a litigant to file a claim in the Court was increased from \$25.00 to \$100.00 just prior to the increase. Effective November 1st, 2002, the filing fee was set at \$100.00 for claims up to \$7500.00 and \$200.00 for claims in excess of that amount. In addition, it was provided that the Clerk may waive the filing fee in whole or in part in accordance with guidelines established by the Minister of Justice in appropriate cases (i.e. financial hardship). There have been very few waivers for filing fees that have been issued.

The Court has simplified information provided to litigants, has developed new forms commencing Residential Tenancies Act claims in as plain language as possible in accordance with statutory requirements, and is in the process of developing a more user-friendly computer access website to provide information to assist litigants.

With the increase in monetary jurisdiction from \$7500.00 to \$25,000.00, the strain on our Court was not felt initially. But, after approximately one year the effect has been noticeable in that parties are more often legally represented. Accordingly, the Trial time per case has increased. Also, our booking dates from Pre-Trial Conference or Mediation to Trial time has extended substantially.

In addition, all matters in Calgary and Edmonton in which a claim or counterclaim exceeds \$10,000.00 are set down for a Pre-Trial Conferences. These Pre-Trial Conferences are presided over by a Judge from the Court, with the primary hope of being able to effect a settlement prior to going forward to Trial.

A) PRE-TRIAL CONFERENCE

_____ In 1996, the Court established a system of Pre-Trial Conferences in both Edmonton and Calgary, which are now being utilized in other locations throughout the Province. Pre-Trial Conferences are meetings of a judge and both parties together with their counsel or agent.

The Pre-Trial Conference is an evaluative or rights-based settlement conference conducted by a judge. Usually a question of law is involved. Ten conferences are scheduled each day, usually for a 30 minute period. The judge attempts to resolve the matter without further Court proceedings. Settlements are written up by the Pre-Trial Judge and executed by the parties. Failing settlement, the Judge attempts to define issues, issue pre-trial orders such as document production, independent medical reports,

agreed facts, admissions, amendments to pleadings and orders for further and better particulars, as necessary, to ensure each party understands what has to be proven at trial and to hopefully be better prepared for trial. Procedure has remained, as far as possible, summary in nature. Accordingly, Examinations for Discovery, although not prohibited, are generally discouraged. Any settlement discussions at Mediations or Pre-Trial Conferences are privileged.

With current resources, it is impossible to conduct a Pre-Trial Conference for all claims filed and defended. Currently, approximately one-third of all cases are Mediated, one-third are Pre-Trialed, and one-third proceed directly to Trial. Both Mediation and Pre-Trial Conferences have had a direct impact on the Court's ability to reduce its backlog.

Statistics are attached indicating success rate of settlement at Pre-Trial Conferences. Initially, the settlement rate was higher, but after the increase in financial jurisdiction, the rate of settlement has gone down as the conferences often end up as a case management endeavor.

B) MEDIATION

Initially mediation services were available to litigants totally on a voluntary basis by third parties operating in the same premises as the Court.

After 1998, Mediation evolved into a Court-ordered process set up by Alberta Justice in partnership with community organizations. Mediation is an interest-based process conducted by trained mediators, and a co-mediation format is utilized. Mediators do not give advice, opinions, or offer solutions but provide a non adversarial and respectful forum for resolving problems.

There is now legislative authority for the Court to refer a matter for mediation. In addition, Mediation Rules have been passed as a regulation under the Provincial Court Act and are contained in the supplement to the Queen's Bench Alberta Rules of Court. In addition, parties can request mediation at the time of filing a claim. All defendant claims are reviewed by the Court's mediation office which selects actions to be mediated. Mediation is compulsory unless an order is obtained from a Judge granting an exemption. Parties are ordered to attend a mediation session in about one-third of all defended claims.

Statistics are attached indicating how successful the mediation program has been - I understand that our program has received the highest resolution rate in Canada. That rate has been consistently between 65%-70%.

The impact of the mediation program is directly seen in reducing trial lead times, and

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reductions in administrative and financial pressures on the system. More importantly, the litigants participating in a system report a win/win from their point of view- they report a sense of closure and satisfaction in participating in a problem solving process in which they define the problem (not always a money issue) and coming up with creative solutions to meet the needs of both parties.

Starting in 1998, an honorarium of \$50.00 per mediation was paid to each mediator when the process became Court ordered. Recently, that honorarium has now been increased to \$75.00. There is no cost to the parties for mediation in the Provincial Court.

The Mediation program has also had an impact on the Pre-Trial Conference process. Whereas previously at Pre-Trial Conferences judges had a mix of cases of varying degrees of difficulty, the matters now set for a Pre-Trial Conference are generally more difficult cases. Accordingly, the settlement rate has dropped. More cases are now being prepared to go forward to Trial. The resulting lack of settlement rate is not seen as a negative- the Court is hopeful that litigants go forward better prepared and organized for trial, thereby resulting in less trial time to be taken at the Trial hearing.

_____ There is a video explaining the Mediation program affiliated with Civil Court on the website of the court at www.albertacourts.ab.ca.

C) VIDEO- “A SUCCESSFUL DAY IN COURT”

_____ Viewing of this video, produced by the Public Legal Education Committee of the Alberta Branch of the Canadian Bar Association is highly recommended. You may view the video online at www.cba-alberta.org. The purpose of this video is to assist lay members of the public to bring or defend civil claims. Topics dealt with are giving oral evidence, how to present documentary evidence, how to present expert evidence and presentation of demonstrative evidence. Members of our Court functioned in an advisory capacity to the committee and helped with the script writing.

COURT OF QUEEN’S BENCH OF ALBERTA

The processes in the Provincial Court of Alberta have been more specifically dealt with rather than Queen’s Bench of Alberta process as I have more familiarity with the Provincial level.

Numerous innovations have taken place in the Court of Queen’s Bench of Alberta in respect of civil justice reform. Queen’s Bench of Alberta now offers Mini Trials to lawyers and litigants in order to expedite settlement of disputes, as well as Judicial Dispute Resolution by mutual agreement of the parties. In addition, there are Case Management

Guidelines encouraging early Pre-Trial Conferences, Summary Trial Procedures, and a Streamlined Procedure for claims less than \$75,000.00. A Mediation Pilot Project is currently in operation in Edmonton and Lethbridge. The procedures are provided for in The Alberta Rules of Court (Queen's Bench Rules) and annexed Practice Notes. These case management techniques are being introduced both at Court of Queen's Bench and Court of Appeal in an effort to move disputes through the system more efficiently and at less cost.

CONCLUSION

The Courts of Alberta have worked hard to implement change and improvement to its system of civil justice. The emphasis has been on accessibility, affordability, effectiveness and timeliness. One of the most potent recommendations of the CBA Task Force ten years ago was that Courts make alternate dispute resolution processes available as early as possible after close of pleadings as part of the Province's civil justice system. All of the initiatives have had varying degrees of success in keeping litigation costs in check.

2005

TYPE OF CLAIM	NUMBER FILED
Damages	791
Debt	4148
Debt and Damages	873
Motor Vehicle	335
Rental Arrears and Damages	70
Rental Damages	4
Rent	37
Replevin	7

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Security Deposit	34
Landlord Applications	1193
Tenant Applications	11
TOTAL	7503

YEARLY STATISTIC TOTALS FOR PRE-TRIAL CONFERENCES

	2000	2001	2002	2003	2004	2005	TOTAL
Number of Matters Set for PTC	870	1013	N/A	692	860	768	4203
Parties Unable to Attend PTC, Trial Set	0	9	N/A	0	0	0	9
Parties Did Not Attend PTC, No Trial Set	0	11	N/A	N/A	N/A	N/A	11

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Settled After Being Set for PTC	63	120	N/A	59	86	93	421
Settled at PTC	342	355	N/A	218	221	179	1315
Settlement Pending at PTC	123	189	N/A	66	71	64	513
Set for Trial	340	351	N/A	349	483	431	1954
% Settled	63%	47%	42%	34%	33%	45%	----

AFTER PRE-TRIAL CONFERENCE

Settlement After PTC and Before Trial	9	1	N/A	10	75	73	168
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SETTLEMENT RATE FOR MEDIATION

2000 - 69%
2001 - 68%
2002 - 61%
2003 - 65%
2004 - 71%
2005 - 66%

SETTLEMENT RATE FOR PRE-TRIALS

2000 - 63%
2001 - 47%
2002 - 42%

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2003 - 34%

2004 - 33%

2005 - 45%

***Jurisdictional amount was increased from \$7500.00 to \$25,000.00 in November of 2002.**