

ACCESS TO JUSTICE IN BRITISH COLUMBIA

BY JUDY ROST AND HILLARY STEPHENSON

A well kept secret that most lawyers know but few others know until they have their first court case is the extreme backlog at the court house and the large expense of running a case to trial. Often individuals are shocked to discover that it can take two or three years for their case to get to trial. Further, the expense can make smaller claims not worth pursuing. On September 1, 2005, the legislature sought to fix these problems. First, the jurisdiction of the Small Claims Court was expanded from \$10,000 to \$25,000. Second, an expedited litigation rule came into effect in the Supreme Court for claims involving less than \$100,000.

Small Claims Court

Before September 1, 2005, the Small Claims Court had jurisdiction to hear cases where the debt or damages claimed were \$10,000 or less. After September 1, 2005, this jurisdiction increased to claims up to \$25,000. This is good news for people who cannot or chose not to retain the services of a lawyer, but who still want their 'day in court'.

The Small Claims Court is designed in a way so that a party may bring or defend a claim without a lawyer's assistance. The increase in the court's monetary jurisdiction means that more people are now able to have their matter resolved by the court process at a lower cost.

There are also a number of procedures available in the Small Claims Court that assist the parties in resolving their dispute before having to take the time and cost to prepare for trial. The first is a Settlement Conference. The conference provides an opportunity for each party to openly discuss in front of a judge the facts of the case, issues of evidence, and even the merits of the case. For this reason, the Settlement Conference can be a powerful and useful tool, and in many cases can significantly reduce the costs of litigation by either narrowing the issues for trial, or resolving the claim altogether.

The second procedure in place in the Small Claims Court that reduces the potential for a trial and its associated cost is mediation. In a mediation, a mediator assists the parties in finding a way to resolve the dispute. For claims less than \$10,000, mediation is mandatory in Vancouver, Surrey, North Vancouver, Nanaimo, and Victoria. For claims more than \$10,000, either party may initiate mediation. The benefits to mediation are numerous. It can help preserve the relationship between the parties, the session is private and confidential, and there is

more party control over the process and the outcome than if the claim went to trial.

Supreme Court

The court level above the Small Claims Court is the Supreme Court. In the Supreme Court of British Columbia, the new rule that provides for greater access to justice is Rule 68, the "Expedited Litigation Rule". Rule 68 provides for faster and more efficient proceedings in court where the amount of the claim is \$100,000 or less. Currently, Rule 68 is mandatory for claims for \$100,000 or less in Vancouver, Victoria, Prince George, and Nelson.

The guiding principle of Rule 68 is the reduction of the costs of litigation so that the amount spent to go to court is more proportional to the value of the amount in dispute. The cost of litigation is reduced because there are fewer pre-trial procedures to contend with, the parties are limited in the evidence they can call at trial, and the parties are required to exchange comprehensive information at an earlier stage of the proceeding than if the claim were brought under a different rule. Not only do the parties save on the costs of litigation, the parties can also have their dispute resolved faster. The Rule also allows parties to consent to the application of Rule 68 even if the claim exceeds the \$100,000.00 limit.

Opponents of Rule 68 say that this new rule will lead to rough justice but it is an improvement over having a claim which costs more to pursue than the amount in dispute.

Conclusion

Access to justice in British Columbia has improved as a result of the expansion of the small claims jurisdiction and the new rules for claims under \$100,000. These changes will speed the litigation process for those with smaller claims and keep the cost proportionate with the amount in dispute. Although it may be considered rough justice, it is better than no justice at all. ♦

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