Sam Hargreaves
416-238-7446
shargreaves@litigate.com

December 1, 2021

High Time for Shorter Trials

The bench and bar have long recognized that lengthy trials decrease access to justice. That is no surprise: trials are expensive, long trials more so, and lawyers generally think that the longer the trial, the longer it takes to receive a decision.

The Supreme Court has said that “protracted trials” can cause Canadians “to give up on justice,” and Justice Osborne’s Report on Civil Justice Reform recommends that pre-trial judges “be vested with the authority to impose time limits” on trials. But time-limited trials are controversial. Critics assert that time-limited trials trade efficiency for accuracy.

Something critical is missing in this debate: data. Even rudimentary information regarding the number and length of trials and reserve periods (the time between the end of a trial and a decision) is largely unavailable, let alone data regarding how the length of trials or reserve periods affects access to justice. We do not know how many trials occur in Canada every year, or how long they are.

To fill that gap, we recently collaborated with litigator Kevin LaRoche and statistician Laurentius Marais on a new data project – the largest to-date survey of the frequency, length and reserve periods of Canadian civil trials, published last month in the Canadian Bar Review.

The article surveys all Ontario Superior Court of Justice and Supreme Court of British Columbia judgments published on CanLII from January 2014 to June 2019, and all judgments of the Federal Court of Canada published in the Canadian Patent Report from January 2009 to May 2019. The project’s scope excludes family law and civil jury trials.

Major findings include:

- The average trial length was seven days in Ontario, eight days in British Columbia, and 13 days in the Federal Court.
- The median trial length was five days in Ontario, six days in British Columbia, and ten days in the Federal Court.
- The average reserve period was 98 days in Ontario, 127 days in British Columbia, and 163 days in the Federal Court.

- The median reserve period was 67 days in Ontario, 99 days in British Columbia, and 126 days in Federal court.

A detailed explanation of the project's methodology and statistical analysis is included in the article. Analysis confirms that:

- Most trials are clustered around the median trial length. Limiting the time of trials within that cluster is at least as important as limiting the time of super-long trials.
- Reduction of the average trial time by 10% is the rough equivalent of adding at least 23 judges to the bench of the Ontario Superior Court and 11 judges in British Columbia.
- A statistically significant association exists between the length of trials and reserve periods. The longer the trial, the longer it takes to get a decision. Reducing trial time would not only save money, but get litigants to a decision more quickly.

The data says that a relatively modest reduction in the length of Canadian civil trials would materially increase access to justice, leading to more trials heard annually, at less cost to litigants, and with faster decisions.

Of course, an across-the-board cut to the number of days devoted to every trial is out of line with our justice system's approach of striving to ensure each litigant receives justice. Orders limiting trial length should be made on a case-by-case basis. Check back here for Part II of this series: implementing shorter trials in the Canadian justice system.

Lenczner Slaght is committed to making data-driven decision-making a key part of our litigation strategy. We advocate for and advise clients based not just on our judgment and analysis of applicable case law, but also based on research and empirical data, where it is available. Learn about Lenczner Slaght's Data-Driven Decisions program here.