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The Law’s Delay: How to Fast Track Your Lawsuit

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“Who would bear the whips and scorns of time?” Hamlet famously asked. Anyone who has ever gone through a prolonged legal battle may well have difficulty answering this question.

Lawsuits are by their nature, lengthy processes often fraught with unforeseen obstacles. The “laws delay” was one of the grievances in Hamlet’s famous soliloquy. Back in the Bard’s time, as in ours, the wheels of justice turn slowly. This is partly unavoidable and necessary.

Lawsuits involve the careful collection and weighing of facts and evidence as well as the construction of argument. The outcome affects the rights of those involved profoundly. In most instances, for justice to be served properly, it is best not to rush things.

That being said, there is growing recognition that justice is not always best served by bringing matters all the way to a trial. Recent decisions in Alberta reflect a changing of attitudes towards the use of expedited processes to resolve lawsuits. The preferred vehicle of doing so is called a “Summary Judgment” and “Summary Dismissal”.

In a Summary Judgment (or Summary Dismissal), a party may be granted judgment without a trial if they can establish that there is no defence to the claim. Summary Dismissal is the opposite side of the same coin. A party may be granted Summary Dismissal if the can establish that there is no merit to a claim.

The problem with these two processes is that they became very notoriously difficult to obtain. All the opposing side had to do was raise a “triable issue” and the matter would move forward. The strategy to defending one of these could be best described as “throw everything against the wall and see if something sticks”. So long as something did, both sides would be out legal fees and time, and be no closer to ending the lawsuit.

These tactics appear to be changing. In 2014, the Alberta Court of Appeal in Windsor v. Canadian Pacific Railway Ltd., 2014 ABCA 108, recognized the burden that legal expenses place on society by stating that access to justice was the greatest threat to the rule of law in Canada. Simply put, litigation is expensive and many claim that it simply is not worth the cost of going all the way to trial. Consequently, the court went on to state that Summary Judgment may be granted if the court can determine the key facts and it is a proportionate, more expeditious, and less expensive means to achieve a just result.

For many litigators, this is a welcome decision. It recognizes that justice is often better served by exercising a degree to pragmatism, aiming to reduce time and expense.

More recently, the Court of Appeal added to the discussion in 776826 Alberta Ltd. v Ostrowercha, 2015 ABCA 49. Building on the Windsor decision, the court made it clear that the “throw everything” approach was no longer going to fly. Instead, the court made it clear that unless there was a large discrepancy between each side’s version of the facts, the court will not require a full trial.

With this sea of change, there are greater prospects for parties who find themselves in subject to dubious claims, or claims for which the law and facts are strongly in their favour, to short circuit the usual court processes and resolve the lawsuit quickly.

If you find yourself in such a position, you may wish to speak with your lawyer regarding a Summary Judgment or Summary Dismissal application. For further information please contact the author, David Cumming at 403.225.6402 or any member of our Commercial Litigation Group.