

The 2019/2020 Year in Access to Justice on ABlawg

By: Drew Yewchuk

Event Commented On: [Access to Justice Week 2020](#)

The Canadian Bar Association's annual Access to Justice Week in Alberta runs from October 26-31, 2020. The schedule of events is [here](#).

This post considers some of the major access to justice issues that have been featured on ABlawg in the past year. I start with a final follow up on the four challenges for access to justice I identified in the [2017/2018 post](#), and I then comment on other recent developments.

(1) Have Courts and Prosecutors Successfully Ended the Culture of Delay for Criminal Trials That the Supreme Court Addressed in *Jordan*?

Work on ending the culture of complacency towards delay in criminal cases continued. The Supreme Court issued two major clarifications to the *Jordan* framework. In *R v KJM*, [2019 SCC 55 \(CanLII\)](#). The Court found the ceilings set in *Jordan* also applied to minors, but that courts should take into account the age of the offender in considering the overall reasonableness of the time the matter took to get to trial. In *R v KGK*, [2020 SCC 7 \(CanLII\)](#), the Supreme Court clarified that the *Jordan* ceilings apply from the date of the charge “to the end of the evidence and argument at trial, and no further. They do not include verdict deliberation time” (*KGK* at para 3).

Alberta's progress on the delay issue was not that encouraging, as lead-time to trial for serious and violent matters did not go down (see the [Justice and Solicitor General 2019-2020 Annual Report](#), at 28-30). However, COVID-19 makes it difficult to judge how effective steps taken would have been. COVID-19 is an “exceptional event” justifying delay under the *Jordan* framework, and it has caused a new wave of court delays and difficulties for the judicial system (see, for instance *R v Ali Ismail*, [2020 BCPC 144 \(CanLII\)](#) at paras 135-154). Until the delays and difficulties occasioned by COVID-19 are straightened out, it will be hard to judge the impacts of *Jordan*. Other reforms to the criminal justice system [are also being considered](#).

(2) Will Legislative or Judicial Action be Taken to Provide Worthwhile Legal Remedies to Victims of Domestic Violence?

Unfortunately, progress in this area has also been set back by COVID-19. Professor Jennifer Koshan wrote two posts ([here](#) and [here](#)) on the legal system's attempts to manage the domestic violence problems associated with COVID-19 and social isolation.

Alberta did not pass any major reforms in this area. Alberta did pass Bill 17, *the Disclosure to Protect Against Domestic Violence (Clare's Law) Act*, but the usefulness and effectiveness of the law [remains uncertain](#).

The [Single Mothers' Alliance of BC Society test case](#), an important challenge to BC's legal aid funding scheme for women leaving abusive relationships, is still going ahead. It is set to be heard starting in September 2021. Realistically, a decision will not come out until 2022.

(3) Will Family Law Statutes be Changed to Speed and Simplify Familial Separations?

This issue improved in the 2018/2019 year with the [passage of Bill 28](#) that clarified property division rules for common-law partners, and has been quiet since.

(4) Can the Courts Develop Procedures to Accurately and Efficiently Distinguish Attempts to Abuse Legal Processes from Earnest but Unusual or Misguided Attempts to Make Use of Those Processes?

On the *habeus corpus* front, the Alberta Court of Appeal decision in *Wilcox v Alberta*, [2020 ABCA 104 \(CanLII\)](#) reversed the Alberta Court of Queen's Bench decisions narrowing the range of *habeus corpus* arguments the Court would hear. Professor Jonnette Watson Hamilton described the decision and the background to it in detail [here](#), and she notes

the Court of Appeal judgment is an endorsement of the work of the small group of Alberta lawyers who take on unpopular prisoners' rights cases, and their association, the Alberta Prison Justice Society. Despite the castigation they encountered in the Court of Queen's Bench, they knew they were right in their understanding of the law and they carried on and were vindicated.

Although the outcome was positive, this progress only reversed recent changes made by the Court of Queen's bench, and this progress required a committed group of lawyers to overcome significant resistance and difficulties.

On the larger issue of vexatious litigants, the legal issues may be starting to settle due to new clarity from the Court of appeal (see *Makis v Alberta Health Services*, [2020 ABCA 168 \(CanLII\)](#); *Jonsson v Lymer*, [2020 ABCA 167 \(CanLII\)](#) and *Vuong Van Tai Holdings v Alberta (Minister of Justice and Solicitor General)*, [2020 ABCA 169 \(CanLII\)](#)). However, the larger issue of how to manage limited judicial resources and handle the large number of self-represented litigants in Canadian courts will continue to be a tension point.

Other Developments in Access to Justice

The impacts of COVID-19 have shaped 2020, both generally and on the access to justice front. Beyond the impacts described above, COVID-19 brought a tangle of legal problems for [tenants being evicted during the pandemic](#), problems related to the [clarity of emergency regulatory law making](#), and problems related to the [clarity of criminal laws relating to COVID-19](#).

One victory for access to justice in Alberta was the successful challenge to the *Mental Health Act*, [RSA 2000, c M-13](#) that resulted in *JH v Alberta (Minister of Justice and Solicitor General)*, [2020 ABCA 317 \(CanLII\)](#). This decision protects the rights and dignity of individuals caught up in Alberta's mental health system. Reforms to the *Mental Health Act* responding to the decision will be forthcoming in 2021.

A major development of the past year was the reinvigoration of the Black Lives Matter movement and calls for racial justice in policing. The Supreme Court did decide two racial profiling cases in the past year, and Meryl Friedland wrote on those decisions [here](#). However, major changes have not yet been made to Canada's system for policing and sentencing racial minorities. Professor Asad Kiyani's suggestions to the Edmonton City Council for improving policing provide guidance on the needed reforms ([part 1](#) and [part 2](#)). At the moment, Alberta seems to have moved towards a more intense and invasive system of policing with [Bill 1, the Critical Infrastructure Defence Act](#). The many problems with Bill 1 were the subject of two posts ([here](#) and [here](#)). Even within the legal profession, there have been struggles over modest initiatives to address racism (see Joshua Sealy-Harrington's post on [the Law Society of Ontario's Report on Challenges Facing Racialized Licensees](#)). The major access to justice issue to watch in 2020/2021 is whether serious attempts to address racism in Canada's justice system are made, or if the calls for reform are brushed off.

Did Canada make progress on access to justice in the past year? The answer generally seems to be "no." That is partially attributable to the wave of problems caused by COVID-19. What progress was made on access to justice in 2019/2020 was the work of small groups of committed individuals. If you would like better news in 2020/2021's blog, I encourage you to find a way to get engaged.

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