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The 2018/2019 Year in Access to Justice Issues on ABlawg

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The Canadian Bar Association's Access to Justice Week in Alberta runs from September 28-October 5, 2019. This annual event is meant to highlight the ongoing inequality in access to legal services and legal dispute resolution mechanisms in Canada. Many Canadians are unable to protect their rights and interests in our legal system. This means those on the lower economic rungs are subject to the law but rarely protected by it – a black mark on the rule of law in Canada.

This is a summary of ABlawg posts dealing with access to justice issues from September 2018 to September 2019. These posts covered important issues on access to justice issues, and I start by following up on the four indicator issues discussed in my post from last year.

(1) Can Courts and Prosecutors End the Systemic Delays for Criminal Trials?

R v Jordan, 2016 SCC 27, changed the test for undue delay under section 11(b) of the *Charter*. I have written extensively on the case and the changes it has wrought, most recently here. The Supreme Court has heard two cases (appeals from *R v KGK*, 2019 MBCA 9 and *R v KJM*, 2018 ABCA 278) and the decisions that come from those cases will have further ramifications for the justice system. The issue of whether the systemic delays of the criminal justice system will be brought under control remains unanswered.

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

Victims of domestic violence have long had difficulty accessing legal remedies sufficient to protect their rights and their personal safety. Jennifer Koshan continued to provide updates on the law and domestic violence, including a post she co-authored with Irene Oh and Kristin McDonald mapping out Alberta's relevant laws relating to domestic violence here.

Not covered on ABlawg, but noteworthy on this issue, is the litigation in *Single Mothers' Alliance of BC Society v British Columbia*, 2019 BCSC 1427 which represents a bold attack on part of the access to justice problem facing victims of domestic violence. The applicants successfully resisted applications to strike their constitutional challenge to British Columbia's legislative scheme for family law legal aid, a key piece of their argument being that the very limited availability of legal aid for single mothers increased their risk of "physical or mental health risks from family violence or abuse" (at para 23).

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

There was some good news on this front. Building on Alberta Law Reform Institute recommendations, Alberta passed Bill 28, which put laws in place for the division of property for common-law couples, allowed courts to order child support for disabled adult children of unmarried parents, and repealed an obsolete family law statute. Laura Buckingham described the changes in detail here.

Combining indicator issues (2) and (3) – Jennifer Koshan, Janet Mosher, and Wanda Wiegers co-authored two posts (the first focusing on Saskatchewan, and the second focusing on Alberta) on the problem of dispute resolution mechanisms being required by law without considerations for cases of domestic violence, and no requirements for judges, mediators, or arbitrators to be trained to screen for domestic violence. This may speed and simplify some family law issues, but potentially by endangering victims of domestic violence. This does illustrate a complexity of addressing access to justice issues through administrative process changes: initiatives intended to control the expense and length of dispute resolution often reduce procedural protections and systematically disadvantage less resourced parties. It is a challenge to increase efficiency in the legal system without reducing procedural fairness.

(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?

This issue expanded into the area of *habeas corpus* over the past year. Due to a lack of lawyers assisting with prison *habeas corpus* applications, and an apparent move by a number of individuals in prison providing *habeas corpus* advice with a lack of legal knowledge, the Alberta courts introduced procedures to weed out vexatious and groundless applications in advance. The issue came to a head with the court of appeal overturning the dismissal of a *habeas corpus* in *R v Shoemaker*, 2019 ABCA 266. Amy Matychuk described the case and the legal situation of *habeas corpus* applications in Alberta here.

Further developments on this issue are on their way. Related to the concern that Alberta courts have overreacted in their efforts to control vexatious litigants employing Organized Pseudolegal Commercial Arguments (OPCA), the Court of Appeal granted leave to appeal from three different vexatious litigant orders made by the Court of Queen's Bench, and those cases are expected to consider the lawfulness of the approach developed by the Court of Queen's Bench, and provide a direction forwards. Jonnette Watson Hamilton reviewed the issues at stake and the cases being appealed here.

Conclusion

There is a growing amount of attention given to the issue of access to justice, and well thought out recommendations for administrative, procedural, and technology-based approaches have been put forward. I will offer a more general thought: the problem of access to justice is a facet of economic inequality, and attempts to address the problems of access to justice without addressing economic inequality will have limited success.

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