

ARBITRATION OR LITIGATION

In 2017-18 the Ontario Ministry of the Attorney General was allocated 3.25% of the Province's total expenditures of \$149.6 billion. It should come as no surprise that a significant shortage of financial resources continues to produce delays in construction of new, or enlarged court facilities, such as the yet unbuilt courthouse in Toronto across from 361 University Avenue, and the filling of judicial vacancies.

Ontario currently has 52 superior trial courts that handle both criminal and civil matters. As of September, 2018, approximately 20 judicial vacancies remained unfilled placing continuing pressure upon sitting judges to expedite criminal trials in light of recent Supreme Court of Canada decisions that require trial courts to stay criminal prosecutions that are taking too long.

For residents of Ontario who are currently in litigation or who are considering litigation, the shortage of Superior Court trial judges especially in the Greater Toronto area may be the greatest impediment to early and efficient resolution of their disputes. And this shortage of judges results in unintended consequences for civil litigants, one of which is the reassignment of trial judges from civil actions to criminal prosecutions.

For example, cases in the Superior Court of Justice are not permitted to proceed to trial without being pre-tried by a judge of that court. Pre-trial dates are often scheduled to occur just weeks before trial. The purposes of these pre-trials is review of the parties evidence and their positions, encouragement of settlement offers, and making procedural orders to avoid last minute controversies. Not infrequently, pre-trial conference dates arranged by trial lawyers with court administration many months in advance are adjourned on short notice by court staff due to reassignment of judges to criminal matters. Even worse, civil action trial dates can be delayed when judges are reassigned to criminal trials.

Given the procedural delays that are a feature of the civil litigation system, and the shortage of judges, many cases that wind their way through the superior court take

between three and five years to reach trial. And this time frame does not necessarily involve the most complex matters.

In the meantime, the disputes remain unresolved. And where the parties have either personal and/or commercial relationships that are caught up in their lawsuits, these relationships also suffer.

For parties who seek quicker resolution of their disputes, private arbitration may provide the answer. The advantages of arbitration span the gamut from choice of arbitrators with knowledge of the subject matter; the right to craft an arbitration agreement with the guidance of an arbitrator containing agreed procedures that reduce delay and remove the temptation for one side or the other to use motion courts to lever an opponent. More importantly, arbitrators have the same powers to decide disputes as do judges.

An added feature often found in arbitration agreements is the lack of any right of appeal. Eliminating appeals results in finality once arbitrator's awards are made. But even more importantly, the time frame from start to finish of complex arbitrations can be kept to as little as one year provided that the parties have negotiated a procedurally efficient, tight arbitration agreement.

Just as important, is the parties' negotiation with the arbitrator's guidance of a realistic procedural time table that moves the arbitration forward. Reaching a timely conclusion affords parties an opportunity to end conflict and reduce legal expense. And in those cases where the continuation of personal or commercial relationships is especially important, the psychological benefits of seeing conflict end are an added bonus.

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