

Ontario courts 'only open to the rich,' judge warns

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The Globe and Mail

Published Tuesday, Jul. 02 2013, 9:13 PM EDT

Last updated Tuesday, Jul. 02 2013, 9:23 PM EDT

An Ontario judge has turned a routine decision into a scathing critique of the province's justice system, warning its courts are increasingly "only open to the rich."

Ontario Superior Court Justice D.M. Brown made his pointed commentary in a ruling last week on a preliminary matter in a lawsuit York University launched against former assistant vice-president Michael Markicevic, accusing him of masterminding a \$1.2-million fraud. The case is a year and a half old, accruing hundreds of thousands of dollars in legal costs, with no trial date in sight.

Justice Brown called the case a prime example of a national problem that has exasperated some of the country's most senior judges, including Supreme Court of Canada chief justice Beverley McLachlin: More and more civil defendants, especially those of limited means, face the prospect of legal fees exhausting their financial resources before they even reach a trial.

"Such a state of affairs reflects an unacceptable failure on the part of our civil justice system," Justice Brown wrote in his June 25 decision.

At the root of the problem is a belief that "trials are bad" and "mediation will solve all problems," which took hold in recent decades and sapped the will to move cases swiftly to trial, Justice Brown said.

"One cannot overstate the oppressive effect on judicial morale of the endless waves of cases which seem to be going nowhere in a civil justice system that is sinking," he wrote. "Why try to be creative when the system, with a life of its own, grinds relentlessly on and downward?"

Ontario's woes are common in other provinces, especially in larger cities. "It's definitely a national problem," said Melina Buckley, a Vancouver lawyer who chairs the Canadian Bar Association's committee on access to justice.

Canada scores poorly on access to civil justice, ranking ninth out of 16 North American and Western European nations and 13th among the world's high-income countries, just ahead of Estonia, according to the World Justice Project's Rule of Law Index for 2012-13.

Lengthy legal cases become untenable as defendants remortgage their homes and deplete their savings to pay mounting costs. Lawyers for Mr. Markicevic, his daughter and her mother (who are co-defendants) bill between \$250 and \$850 per hour, meaning a 10-day trial with preparation time could cost them \$425,000.

Speculating that the defendants' final legal bills might top \$800,000, Justice Brown worries they could run out of money before a trial wraps up.

"If we have reached the point where \$800,000 cannot buy you a defence to a \$1.2-million fraud claim, then we may as well throw up our collective hands and concede that our public courts have failed and are now only open to the rich," he writes.

<http://www.theglobeandmail.com/globe-debate/editorials/high-priced-justice/article16193371/>

Access to justice in Canada ‘abysmal’: CBA Report

Access to justice in Canada is being described as “abysmal” in a new report from the Canadian Bar Association, which calls for change by 2030.



FRED CHARTRAND / THE CANADIAN PRESS

Supreme Court of Canada Chief Justice Beverley McLachlin said access to justice is a growing problem for many Canadians.

By: Jennifer Graham The Canadian Press, Published on Sun Aug 18 2013

SASKATOON—Access to justice in Canada is being described as “abysmal” in a new report from the Canadian Bar Association, which also calls for much more than “quick fix” solutions.

The summary report, released Sunday at the association’s conference in Saskatoon, says there is profoundly unequal access to justice in Canada.

“Inaccessible justice costs us all, but visits its harshest consequences on the poorest people in our communities,” says the report.

Report author Melina Buckley says one of the biggest concerns is the growing number of people who represent themselves in civil cases.

Buckley says many people earn just enough money so they don’t qualify for legal aid, but they also don’t make enough to pay for a lawyer. Those people often find themselves on their own in court, she says.

The problem is especially pronounced in family law cases.

“They describe that as just being a terrible experience,” said Buckley in an interview.

“They find the whole process leading up to it is hugely stressful, has all kind of side effects in terms of their abilities to continue parenting their kids because they’re stressed. Sometimes they lose their jobs or have to go part-time, all kinds of health and other situations. They tend to get alienated from friends and families because they become so obsessed by it.

“And then quite often they don’t have the kind of outcomes that we would consider just and fair.”

Buckley says that also puts more of a burden on the system.

For example, a case that would normally take three days with a lawyer on each side, tends to instead take 10 days, she says.

There are also more pressures on court staff who must walk a fine line between helping people with something like forms and legal advice that they can't provide.

"They have to say 'Look, I'm sorry, that's legal advice. I can't do that.' And of course the person who has that need doesn't care, they need the answer. And if you can't point them to where they can (get it), it's obviously very frustrating, very high stress for people working within the courts," said Buckley.

Supreme Court of Canada Chief Justice [Beverley McLachlin](#) said access to justice is a growing problem for many Canadians.

Peoples' lives can be ruined if they can't get access to justice, McLachlin said Saturday at the conference.

"We know that there are a lot of needs. People just swallow their pain and their loss and live with it, I guess, in some unsatisfactory way feeling they can't get justice," said McLachlin.

The full report will be released in the fall, but the [59-page summary](#) released Sunday makes several recommendations.

Among other things, the report calls for more federal funding for civil legal aid. Buckley says the federal government can't say how much it contributes to civil legal aid because the amount is included in overall funding to provinces and the decisions on how to spend the money is made at the provincial level.

The report says by 2020, all Canadians living at and below the poverty line should be eligible for full coverage of essential public legal services.

Another goal is to have all law schools in Canada have a student legal clinic to help low-income people by 2020.

All 31 targets are expected to be completed by 2030.

"We think very serious and radical reforms need to be made to the justice system. We think they're all doable. We call it an ambitious, but possible vision, and we think 17 years is about the right amount of time," said Buckley.

Change doesn't fall solely on governments or the bar association. The report also says law schools and other stakeholders must be involved.

Buckley says the creation of an access to justice commissioner could make sure everyone works together.

The report says tinkering with the system won't be enough.

"The civil justice system is too badly broken for a quick fix. People fall between the cracks at an unacceptable cost. Injustice is too deeply woven into the system's very structure for piecemeal reforms to make much of a dent," it says.

High-priced justice

The Globe and Mail

Published Sunday, Jan. 05 2014, 9:00 PM EST

Last updated Sunday, Jan. 05 2014, 10:12 PM EST

A report last month from the Canadian Bar Association describes the state of access to justice in Canada as "abysmal – and getting worse." Why? Let us count the ways.

The bar association estimates that, two decades ago, at least 95 per cent of people appearing in court were represented by a lawyer. Today, "anywhere from 10 to 80 per cent of litigants are unrepresented, depending on the nature of the claim and the level of court." One study estimates that half of all family law litigants have no lawyer. Cases are becoming longer and more expensive, yet the number of people who qualify for legal aid is falling. In Ontario, for example, a single person earning more than \$208 a week is not eligible for legal aid. That's half the minimum wage.

Led by the Chief Justice of the Supreme Court, Beverley McLachlin, judges have long tried to call attention to the problem. Last year, Ontario Superior Court Justice D.M. Brown said that the country's courts were becoming "only open to the rich." He was commenting on a case before him involving an alleged \$1.2-million fraud; the family being sued was well on its way to spending as much as \$800,000 fighting the action. "If we have reached the point where \$800,000 cannot buy you a defense to a \$1.2-million fraud claim, then we may as well throw up our collective hands and concede that our public courts have failed," said Justice Brown.

The bar association estimates that over the next three years, 45 per cent of Canadians will "experience a justiciable event." Over a lifetime, each of us can expect multiple encounters with the justice system, some potentially very costly. In many ways, our legal system is a model, and works extremely well. But cost and complexity are limiting access. If you get your day in court, but at a back-breaking price, or without proper legal advice, is that justice?

<http://www.theglobeandmail.com/globe-debate/editorials/high-priced-justice/article16193371/>