



July 20, 2020

The Honourable David Eby,  
Attorney General of British Columbia,  
Ministry of Justice  
1001 Douglas Street  
Victoria, BC V8W 2C5

Dear Minister Eby:

RE: Civil Trials and Use of Juries

Thank you for your letter dated July 7, 2020 and for the opportunity to provide input into your proposals on postponing jury trials for civil matters and the use of binding arbitration for motor vehicle actions, as the justice system attempts to manage the backlog of cases that has increased during this Covid-19 pandemic.

Arbitration Proposal

With respect to the issue of plaintiff-elected binding arbitration for motor vehicle actions, we will be seeking further input and feedback from our membership and expect to have a response to you in August. There are a number of specific considerations we have identified and we want to provide a meaningful reply to your proposal.

Jury Postponement Proposal

We note that on July 17, 2020, Chief Justice Hinkson issued COVID-19 Notice 39 to extend the cancellation of civil jury selections and civil jury trials up to and including January 1, 2021.

You write to propose that the government would waive civil jury trials for all matters by emergency order for a one year period, and during that period would engage in a discussion of whether there may be support for the permanent elimination of civil jury trials by legislative amendment in certain substantive law areas such as litigation related to motor vehicle accidents.

As you are no doubt aware, there is no shortage of jurisprudence establishing that a litigant's right to a civil trial by jury is a substantive right that should not be taken away without cogent reasons (see *Cliff v. Dahl*, 2012 BCSC 276, at para. 20; *Sidhu v. Hiebert*, 2020 BCSC 183, at para. 18).

Although jury trials are deeply rooted in our justice system, the CBABC acknowledges a litigant does not have an absolute, constitutional right to a jury trial in a civil action as is the case in a criminal trial. Civil cases relating to certain areas of law must be heard without a jury (see Rule 12-6(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "Rules")). Furthermore, there are circumstances where the court may refuse trial with a jury (see Rule 12-6(5)). While not an absolute "right" (see, e.g., *Waymark v. Barnes* (1995), 3 B.C.L.R. (3d) 354 (C.A) and *Trial Lawyers Association of British Columbia v. British*

*Columbia (Attorney General)*, 2017 BCCA 324), the importance of the availability of a jury trial in civil cases has been echoed in many decisions in our courts.

The CBABC acknowledges the *Rules* were not formulated with a pandemic in mind. They must be looked at in a purposive manner in the present circumstances. CBABC is mindful that the safety of the public during the current state of emergency is of paramount importance. Accordingly, CBABC agrees that a temporary suspension of jury trials for civil matters for a one year period is appropriate. However, this is for the purpose of protecting the public during the need to maintain physical distancing, and not in response to the suggestion that jury trials are significantly more time consuming than trials heard by judge-alone. We disagree with the informal suggestion that "...a court can conduct as many as four non-jury trials in the time of a single jury trial." That is not the experience of our members conducting civil jury trials.

During the next 12 months while the justice system modernizes its processes, CBABC will consider the role of jury trials in a modern justice system. We will engage our members in a discussion of the elimination of jury trials beyond the ongoing pandemic and provide you with our comments.

Thank you for the opportunity to consult about these important developments.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Armstrong', written in a cursive style.

Kenneth Armstrong,  
President

cc. Chief Justice Christopher Hinkson, Supreme Court of British Columbia  
Richard Fyfe, QC, Deputy Attorney General and Chair of the BC Supreme Court Civil & Family Rules Committee