

March 18, 2024

The Honourable Christopher E. Hinkson
Chief Justice of the Supreme Court of British Columbia

Sent via email.

RE: ***Improving Judicial Case Conference (JCC) Availability and Efficiency***

Dear Chief Justice Hinkson:

On behalf of the Canadian Bar Association, BC Branch (“**CBABC**”) and our 7,800 members across British Columbia, I write to offer the Supreme Court of British Columbia our recommendations to enhance the provision and administration of Judicial Case Conferences (“**JCCs**”) across the province.

The development of these recommendations was led by CBABC’s Court Services Committee and Family Law Committee, and informed by a ThoughtExchange [engagement](#) where members shared their views on the JCC process (including availability, delay, and attendance). The Court Services Committee aims to enhance court services across BC, identify gaps and barriers within the courts, and propose appropriate solutions. The Family Law Committee works to improve the law, policies, and practice of family law and children’s law.

We understand the availability of JCCs is connected in part to the lack of judicial resources and judicial complement at the Court. CBABC continues to [advocate](#) on this front and encourage our members to apply to the bench.

Recommendations

To help promote early resolution, reduce conflict, and improve families’ access to justice, CBABC offers three recommendations for your consideration:

1. Offer alternative registry locations and conference length options

CBABC appreciates the Court is working to address the limited availability of JCCs across B.C. registries. However, members continue to emphasize their concern regarding the current lack of JCCs across registries B.C.-wide, including “excessive wait times” that hamper their clients’ ability to move their files towards resolution within a reasonable timeframe. In addition to inconvenience, the delays lead to increased costs for clients, and doubly so if lawyers have to travel. In our survey, members cited an average wait time of 3 to 4 months at their primary registries. For example, [Vancouver](#) is currently setting most JCCs at 3-plus months ahead into June 2024, and [New Westminster](#) 4.5-plus months into mid July 2024. Earlier dates may be available in smaller communities, such as Abbotsford or Chilliwack, but litigants and counsel cannot set a JCC down in another registry without a court order. This is a different approach than that to chambers, which can be set anywhere in the judicial district. We recommend a similar approach be considered moving forward. Given JCCs are a mandatory first step in the family litigation process, it is crucial these meetings be available within, at most, 60 days. Family law matters are otherwise stalled until a JCC is complete.

We also recommend the Supreme Court make the length of these conferences region dependent. Smaller registries might benefit from 60-minute meetings, whereas other judicial districts might benefit from

optional 90-minute meetings that allow lawyers, parties, and judges/associate judges to address more complex matters. While clients can bring forward an application for exemption based on urgency, this process is costly and consequently unfairly impacts those who need financial assistance. Perhaps the Court can also consider whether requiring more criteria for JCC exemptions would enhance fairness and equity. Applications for a JCC exemption can otherwise unnecessarily use up court time and resources. In any event, we recommend allocating more court resources towards increasing the number of JCCs to reduce court congestion and wait times, and to help families obtain the legal supports they need early in the litigation process. This supports potential for settlement.

2. Enable virtual attendance options for all participants

While in-person attendance at JCCs often helps facilitate better client communication and settlement outcomes, our members emphasize that virtual attendance options should also be provided at the outset (and without [application](#)) for parties or lawyers who face travel, mobility, or financial barriers. CBABC has long advocated for British Columbians to be able to [appear virtually](#) in short civil and family law proceedings, as this benefits litigants, lawyers, and associate judges and judges alike. If JCCs were virtual, out-of-town judicial members (whether judges or associate judges) could also more easily preside over matters when needed. This could also reduce rescheduling of JCCs due to, for example, insufficient court time and/or inability to attend by the judge/associate judge due to illness or a personal matter. We understand there was a [notice](#) issued in November that directs, due to winter conditions, associate judges will not be sitting at certain Supreme Court registries between December 1 and January 31 each year. Instead, any urgent matters in associate judges' chambers scheduled for this period will either be heard virtually by an associate judge or by a judge sitting in that location. We recommend this flexibility be extended year-round, and without the cost of an application when both parties have counsel involved and on consent.

Virtual attendance should also be offered at the outset without application in files where there are [family violence](#) safety concerns. Forcing litigants to sit in a small group and speak in front of each other in-person (especially early on in a file) can exacerbate a power imbalance or trauma between parties. Often one party may feel unsafe – but also may not wish to be relieved from the JCC because, compared to in-chambers, it can be a more affordable, efficient, and productive way to resolve certain issues. In cases with family violence issues, clients in mediation settings are offered “shuttle” or distance [mediation](#). Similar consideration should be given to clients in court, especially small forums like JCCs.

3. Mandate advance submission of all required documents, including JCC brief

Simplifying the preparation process for JCCs is foundational to improving participants' experience. We recommend mandating a form akin to a “JCC brief” that outlines any settlements or proposals, and can be provided to the opposing party and the presiding judge/associate judge prior to the conference. This would help streamline and potentially shorten the litigation process, similar to how [trial briefs](#) help facilitate Trial Management Conferences. For example, providing the judge/associate judge with an advance synopsis of the file and each parties' objectives and preferred outcomes allows them to more easily identify the exact issues, which issues are near agreement, and ways to bridge those issues to reach settlement. In drafting, it also helps counsel clarify what the issues are, the party's position, what disclosure is being relied on, and what other disclosure is needed.

We also note that a JCC brief is without prejudice and should not be seen by any other justice than the one attending the JCC. Accordingly, it cannot be filed with the Court as it would then form part of the Court file (which is not without prejudice). Perhaps an alternative mechanism for providing the JCC brief to the registry could be considered (such as emailing it to a specific registry email address solely for the purpose of receipt of JCC briefs).

CBABC also recommends introducing a Family Practice Direction or amendment to the *Supreme Court Family Rules* to mandate delivery of all required documents within a certain timeline – for example, seven days prior to the JCC. Creating an opportunity for judges/associate judges to review the JCC materials beforehand supports them in learning the file and issues to properly advise parties regarding key issues at stake and settlement prospects. That said, we note that subsequent steps would need to be implemented to ensure mandated disclosure is abided by and that the documents reach the presiding judge/associate judge in a timely fashion. This isn't always the case right now. For example, the [*Supreme Court Family Rules*](#) dictate that the Form 8 [Financial Statement](#) must be filed and served at least seven days before the JCC date, but sometimes this rule is not followed, as consequences for not doing so are rare. It is a waste of both court and parties' resources when JCCs cannot proceed as planned because parties or counsel have been lax about filling in the Form 8s. Additionally, sometimes this form is filed via Court Services Online or paper but does not make it into the court file in time, so the judge/associate judge is unable to review it beforehand.

While formal changes are necessary, we are also doing our part to remind our members of the important role JCCs play in family law – and how by supporting efficient and effective use of court time in this way, we can all help achieve the goals of *Supreme Court Family Rule 1-3* and *Family Law Act*, including increasing the likelihood of early resolution and minimizing conflict.

Far too often there is too little forethought given as to how to best attain settlement or move the file forward in a family-focused way. Requiring and guiding pre-conference planning will increase the productivity of a JCC. This in turn benefits the greater judicial system by freeing up court time for other files, enhancing access to justice and supporting earlier resolution of family law matters. We welcome further engagement with the Supreme Court of BC and the Court Services Branch to advance initiatives that support court users' ability to access justice in a safe and equitable manner. By reducing barriers to JCCs including long wait times and cost, the family law system can better serve the needs of clients and lawyers alike.

We are grateful for your attention and look forward to discussing this matter further.

Sincerely,

[original signed]

Scott Morishita
President, 2023-2024
Canadian Bar Association, BC Branch

cc Jennifer Brun, KC - CBABC representative, BC Supreme Court Civil & Family Rules Committee