

**OVER A SHADOWED THRESHOLD:
SUPREME COURT OF BRITISH COLUMBIA
LITIGATION ACTIVITY 1992–2022**

DONALD J. NETOLITZKY*

The Supreme Court of British Columbia between 2002 to 2022 published “Annual Reports” that include information and statistics from 1992 to 2022 concerning Court litigation and activities. Compiled Annual Report data and calculations permit the first long-duration survey of different litigation type volumes, specific process activities, and the frequency at which court and judicial resources could not support scheduled proceedings in a provincial superior court of inherent jurisdiction. The resulting observations in this article are strong support for further and expanded quantitative investigation and evaluation of Canadian courts and their operation. While the overall volume of new Supreme Court of British Columbia activity is generally stable, extended timeline data reveals long-duration shifts in the frequency of certain litigation types, and a general decrease in trial volume, with the largest decreases being in criminal subject litigation. However, the volume of “long chambers” interlocutory processes has remained stable.

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* Donald J Netolitzky (PhD Microbiology, University of Alberta, 1995; LLB, University of Alberta, 2005; LLM, University of Alberta, 2020; KC, Alberta, 2022) is the former and now retired Complex Litigant Management Counsel for the Alberta Court of King’s Bench. The views expressed in this publication are those of the author, and not those of any member of the Court of King’s Bench, or the Court itself.



I. INTRODUCTION

We know surprisingly little about what Canadian courts do in a measured, quantitative sense.¹ There are many explanations for that, including that:

1. Courts “look forward,” rather than focus on their longer-term record;²
2. Legal academics often focus on key cases and those cases’ principles, logic, and integration within the broader structure of law, rather than the in-court implementation and operation of these rules;
3. Court activity data is often difficult to access, for example, only located in physical courthouse records, as data stored in antiquated and obscure information systems, or within cryptic or inconsistent docket records; and
4. Legal agents — legal academics, lawyers, and judges — are sometimes more comfortable with ideas than data, data analysis, and statistics.

This article extracts data from “Annual Reports” published by the Supreme Court of British Columbia between 2002 and 2022³ to explore the operations of that Court in a longer-term context. These Annual Reports provide the most extended identified record of any Canadian superior inherent jurisdiction court’s activity⁴ and therefore provide a “baseline” example reference for activities in courts of this type.⁵ As will be discussed further below, the court operations data component of these documents is more an ancillary aspect of the Annual Reports than anything else. The Annual Reports’ content does not support that the Supreme Court of British Columbia is collecting statistics in a broad systematic manner to understand and evaluate its operations. Instead, most of the quantitative information published has a very narrow purpose: to document the effects of an inadequate judicial complement, and how that leads to court proceedings being “bumped” and delayed.

¹ See e.g. Kevin LaRoche, M Laurentius Marais & David Salter, “The Length of Civil Trials and Time to Judgment in Canada: A Case for Time-Limited Trials” (2021) 99:2 Can Bar Rev 286 at 289–90; Jon Khan, “If I Had More Time, Would I Have Written a Shorter and Faster Decision? An Empirical Examination of the Evolution of Trial Court Decisions” (2022) 45:2 Dal LJ 427 at 429–34; *Moffitt v TD Canada Trust*, 2023 ONCA 349 at para 57; Michael Lesage, “How Well is Chief Justice Morawetz Overseeing Ontario Superior Court Operations?” (29 June 2023), online (blog): [perma.cc/3GXZ-8C95]; Lisa Moore, “Measuring Matters” (17 August 2023), online (blog): [perma.cc/66GZ-UL5B]; Donald J Netolitzky, “The Long Unwind: British Columbia Court of Appeal Litigation Activity 1995–2022” 57:2 UBC L Rev [forthcoming in 2024] [Netolitzky, “Unwind”].

² Netolitzky, *ibid.*

³ The Courts of British Columbia, “Annual Reports,” online: [perma.cc/9NC4-AKPB].

⁴ Deliberate Legal Design, “Addressing Canada’s Legal Data Deficit: Court Data,” online: [perma.cc/R55E-EDGJ].

⁵ This study does not compare in detail the data collected here with other longitudinal reports on Canadian and United States courts due to the different operational, legal, and functional contexts of the involved courts, and the historical nature of certain studies. For other longitudinal reports on Canadian courts, see e.g. Donald J Netolitzky, “Flatlined: Self-Represented Litigant Activity at the Supreme Court of Canada 1997–2021” (2023) 111 SCLR (2d) 233 [Netolitzky, “Flatlined”]. For other longitudinal reports on US courts, see e.g. John A Stookey, “Trials and Tribulations: Crises, Litigation, and Legal Change” (1990) 24:2 Law & Soc’y Rev 497; Patrick Peel, “Renewing the Longitudinal Study of Trial Courts” (2017) 38:3 Justice System J 290; Stephen Daniels, “Ladders and Bushes: The Problem of Caseloads and Studying Court Activities Over Time” (1984) 9:4 Am Bar Foundation Research J 751; Carlisle E Moody Jr & Thomas B Marvell, “Appellate and Trial Court Caseload Growth: A Pooled Time-Series–Cross-Section Analysis” (1987) 3:2 J Quantitative Criminology 143.

That said, the Supreme Court of British Columbia Annual Reports do permit some investigation of important policy subjects, for example: (1) long-term patterns in the input volume of various litigation types into the Court; and (2) the effect of an alternative or replacement dispute resolution process on Court activity.

One particularly interesting opportunity is the Supreme Court of British Columbia Annual Reports permit closer evaluation of the conceptual foundation of the important 2014 Supreme Court of Canada *Hryniak v. Mauldin*⁶ decision: that very little litigation initiated in Canadian courts proceeds to a full trial. That proposition is the underlying basis for a “culture shift” that emphasizes measured and proportional responses to disputes, rather than a focus on resolution via a full trial.⁷ Justice Karakatsanis states that unless government actors or funding are available, “[t]he full trial has become largely illusory.”⁸ But is that actually true in Canadian provincial superior courts? And, if that is correct, how so?

The Supreme Court of British Columbia Annual Reports permit a closer dissection of that question by evaluating the ratios of new input Supreme Court of British Columbia litigation and reported numbers of full trial proceedings that are scheduled and heard. To be explicit, the data in this analysis will only provide an approximate and general understanding of the manner in which litigation terminates pretrial because what the Annual Reports do is provide annual “snapshots” of activity, rather than trace through how individual proceedings evolve and end.

For example, when the 2012 Supreme Court of British Columbia *Annual Report* states that 236 family subject disputes reached a full trial in that year, those actions were very likely initiated in earlier years, and almost certainly in multiple different earlier years.⁹ That means a one-to-one correspondence between different years and types of Annual Report data does not exist. However, a less focused investigation is still useful because of the substantial number of proceedings documented by the Supreme Court of British Columbia Annual Reports, the extended timeline provided by the Annual Reports, and the stability of certain variables over time.

This article will first describe the Supreme Court of British Columbia Annual Reports and the data they document, then explore patterns in that information. The patterns identified have policy, funding, and resource allocation implications, but will also be of particular interest to the judiciary, court workers, and court administrators, who at present have no published comparator data to evaluate long- and short-term trends in litigation before provincial superior courts of inherent jurisdiction.

⁶ 2014 SCC 7 [*Hryniak*].

⁷ The Supreme Court of Canada has subsequently returned to and re-emphasized the “culture shift” motif in both the civil and criminal law context: see e.g. *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 18; *R v Jordan*, 2016 SCC 27 at paras 44–45 [*Jordan*]; *R v Cody*, 2017 SCC 31 at paras 37–39. However, recently in *R v Haevischer*, 2023 SCC 11 at paras 66–73, the Supreme Court of Canada substantially minimized or rejected trial court management of hopeless or “frivolous” criminal proceeding applications, for a more limited but ill-defined “manifestly frivolous” threshold.

⁸ *Hryniak*, *supra* note 6 at para 24.

⁹ Supreme Court of British Columbia, *Annual Report* (Vancouver: BCSC, 2012) at 64–65, online: [perma.cc/3J3C-MEKL] [2012 Annual Report].

II. SUPREME COURT OF BRITISH COLUMBIA ANNUAL REPORTS

The Supreme Court of British Columbia Annual Reports are not primarily intended to report measured activities at the Court. Instead, much of the information contained in the Annual Reports describes the Court, its personnel, and the Court's operations. For example, the 2010 Annual Report¹⁰ is a 54-page document that:

- Lists all justices and masters of the Court, justices' and masters' appointment dates and status, new judicial appointments, and significant retirements;
- Identifies court staff and their positions;
- Outlines the Court's jurisdiction and lists its Registries;
- Includes some commentary on the Court's policies, for example, approaches to self-represented litigants, but without any related statistical information;
- Contains in-text statements of the changes in the volume of litigation activity from the previous year;
- Briefly reports on the membership and latest year's activity of Court committees; and
- Attaches an appendix with a collection of graphs and tables of Court statistics.

In short, Supreme Court of British Columbia Annual Reports are primarily a short-term operation and status reporting tool, not a mechanism for strategic planning. The kinds of numeric and statistical information presented vary throughout the 21 archived Annual Reports. Some is general information, such as the volume of newly initiated Court proceedings and their types, and the number of trials held in various judicial districts in the past year. However, most quantified reported information relates to a change in Court operations, or a perceived issue or stressor.

For example, the 2002 to 2005 Annual Reports include data on the quarterly volumes of chambers hearings scheduled and heard in the Vancouver and New Westminster Judicial Districts, highlighting the points at which new Court rules came into effect.¹¹ That data was never again reported. In 2015, the Annual Report first reported on the relative volume of paper documents versus electronic "e-filed" materials received by the Court between 2008

¹⁰ Supreme Court of British Columbia, *Annual Report* (Victoria: BCSC, 2010), online: [perma.cc/9785-QTPT] [2010 Annual Report].

¹¹ Supreme Court of British Columbia, *Annual Report 2002* (Vancouver: BCSC, 2002) at 13, online: [perma.cc/68FE-Y8PY]; Supreme Court of British Columbia, *Annual Report 2003* (Victoria: BCSC, 2003) at 15, online: [perma.cc/SSP4-LDJA]; Supreme Court of British Columbia, *Annual Report 2004* (Vancouver: BCSC, 2004) at 15–16, online: [perma.cc/95PM-JLE9]; Supreme Court of British Columbia, *Annual Report 2005* (Vancouver: BCSC, 2005) at 20–21, online: [perma.cc/CL7D-QV7G] [2005 Annual Report].

to 2015.¹² Information on the frequency of e-filing continued until 2021,¹³ then in 2022 no filing volume values were reported.¹⁴

Overall, most Supreme Court of British Columbia statistics information relates to the issue of “bumping.” Bumping reports start in 2005 and continue through to the present. The 2013 Annual Report defines a “bumped” hearing: “A matter is considered bumped if it is not commenced or rescheduled within one week of the originally scheduled hearing date because of inadequate judicial resources whether that is courtrooms or available judges.”¹⁵ The 2013 Annual Report indicates the Court prioritizes family law subject proceedings over other civil matters when allocating judicial resources.¹⁶

The first extended commentary on bumped processes is located in the 2006 Annual Report, where the Court observes the bumping issue is negligible, and complains about “Backlog Fiction.”¹⁷ “There persists a belief that our court is struggling under a backlog of cases that is preventing litigants from having their cases in a timely way. It just isn’t so.”¹⁸ Information published in the Annual Report is “to dispel the myth of the ‘backlog fiction.’”¹⁹

Thus, the bumping phenomenon at the Supreme Court of British Columbia is different from the often-discussed issue that litigants are unable to have matters scheduled and heard in a timely manner because global inadequate trial court resources mean all court proceedings are delayed.²⁰ This is what the Court called “backlog.” Bumping instead occurs where court and judicial resources are inadequate *at the point of trial itself*.

Discussions of bumping rates re-emerge regularly in the Annual Reports.

1. In the 2008 Annual Report bumping nearly doubled, “largely because of judges not being available. This is attributable in part to the number of vacancies on the Court.”²¹ Subsequent Annual Reports indicate this problem is now better

¹² Supreme Court of British Columbia, *Annual Report 2015* (Victoria: BCSC, 2015) at 7, online: [perma.cc/3QFA-MM5J] [2015 Annual Report].

¹³ Supreme Court of British Columbia, *Annual Report 2016* (Victoria: BCSC, 2016) at 60, online: [perma.cc/27KY-RXW3] [2016 Annual Report]; Supreme Court of British Columbia, *Annual Report 2017* (Victoria: BCSC, 2017) at 69, online: [perma.cc/YQ4Z-RWA5] [2017 Annual Report]; Supreme Court of British Columbia, *Annual Report 2018* (Victoria: BCSC, 2018) at 71, online: [perma.cc/AF73-FWCA]; Supreme Court of British Columbia, *Annual Report 2019* (Victoria: BCSC, 2019) at 67, online: [perma.cc/A6BC-6W3T] [2019 Annual Report]; Supreme Court of British Columbia, *2020 Annual Report* (Victoria: BCSC, 2020) at 67, online: [perma.cc/WR86-E64Y] [2020 Annual Report]; Supreme Court of British Columbia, *2021 Annual Report* (Victoria: BCSC, 2021) at 8, online: [perma.cc/3AQR-H66X] [2021 Annual Report].

¹⁴ Supreme Court of British Columbia, *2022 Annual Report* (Victoria: BCSC, 2022), online: [perma.cc/3H5X-MM6P] [2022 Annual Report].

¹⁵ Supreme Court of British Columbia, *Annual Report* (Victoria: BCSC, 2013) at 19, online: [perma.cc/R7VV-5Y9D].

¹⁶ *Ibid* at 20.

¹⁷ Supreme Court of British Columbia, *2006 Annual Report* (Vancouver: BCSC, 2006) at 16–17, online (pdf): [perma.cc/3SES-J44L] [2006 Annual Report].

¹⁸ *Ibid* at 16.

¹⁹ *Ibid* at 17.

²⁰ See e.g. Suzanne Chiodo, “Sorry, I Don’t Make the Rules: Taking Seriously Chief Justice Morawetz’s Call to Overhaul the Rules of Civil Procedure” (7 October 2022), online (blog): [perma.cc/9Z2B-XH6K]; Noel Semple, “The Legal Ethics of Delay” (20 October 2023), online (blog): [perma.cc/GFE5-DUGL]; Lesage, *supra* note 1.

²¹ Supreme Court of British Columbia, *2008 Annual Report* (Vancouver: BCSC, 2008) at 17, online: [perma.cc/74GP-6WUM].

controlled.²² Then this complaint reappears in the 2012 Annual Report,²³ and by 2017 the Court attributes bumped processes to judicial vacancies, that are:

[H]ugely disruptive to the litigants and to their counsel. Bumping matters increases the cost of litigation when work undertaken to prepare for a trial or a long chambers application has to be redone and witnesses and experts who have traveled and taken time off of work must reappear at a later date. It is very difficult for Supreme Court Scheduling staff to be put in the position of telling litigants that their trials cannot proceed as scheduled because the Court does not have enough judges to hear all of the matters scheduled.²⁴

2. The 2011 Annual Report attributes high frequencies of bumping in Vancouver to judicial time instead being committed to case planning and trial management conferences.²⁵
3. The Court subsequently attempted to mitigate bumping by reducing the number of hearings booked,²⁶ and engaging different booking practices for certain litigation types.²⁷
4. The frequency of bumping continued to escalate and reached new levels in the late 2010s, particularly in the Vancouver and New Westminster Judicial Districts,²⁸ due to a critical shortage of justices.²⁹

The analysis that follows will collect and review the long-duration pattern of bumping. However, that information is only one focus of this article. The Supreme Court of British Columbia bumping-related data also provides year-by-year information on the scheduling and hearing of that Court's proceedings, which permitted the construction of long-duration Court activity profiles, and a better appreciation of how legal matters proceed and evolve before the Court.

²² Supreme Court of British Columbia, *Annual Report 2009* (Victoria: BCSC, 2009) at 22–23, online: [perma.cc/M2PW-MFN8]; 2010 Annual Report, *supra* note 10 at 24.

²³ 2012 Annual Report, *supra* note 9 at 22–23.

²⁴ 2017 Annual Report, *supra* note 13 at 6.

²⁵ Supreme Court of British Columbia, *Annual Report* (Victoria: BCSC, 2011) at 26, online: [perma.cc/3WVR-4GX5].

²⁶ Supreme Court of British Columbia, *Annual Report* (Victoria: BCSC, 2014) at 2–3, online: [perma.cc/8LG5-XFKY]; 2015 Annual Report, *supra* note 12 at 3.

²⁷ 2016 Annual Report, *supra* note 13 at 2–3; 2017 Annual Report, *supra* note 13 at 3–4.

²⁸ 2019 Annual Report, *supra* note 13 at 3–4.

²⁹ 2021 Annual Report, *supra* note 13 at 4–6.

III. METHODOLOGY

The methodology applied to conduct this investigation was straightforward:

1. The 2002 to 2022 Supreme Court of British Columbia Annual Reports were downloaded and reviewed;
2. Litigation activity information and other variables were extracted from the body, figures, and tables in the Annual Reports and tabulated; and
3. Various calculations were applied to derive additional data and then collated with the specific numeric data located in the 2000 to 2022 Annual Reports.

One factor that greatly eased this investigation is that even when data in the Annual Reports was presented using graphs, those graphs were in some manner labelled or accompanied by specific numeric values for all data points.

As a general practice, the language and categories used in the Annual Reports to label and designate data have been preserved. The text of the Annual Reports does not necessarily explain or define these categories, which are for the most part readily understood. For example, the word “probate” has a well-defined standard meaning in law. Generally, this article does not further define or clarify data beyond what is found in the Annual Reports, and presumes terms like “trial” follow their commonly understood meaning in the court process context.

An unanticipated issue that emerged while accumulating data for this article is that certain Supreme Court of British Columbia statistics that one would anticipate should be fixed and constant would, instead, vary over time between Annual Reports. For example, each Annual Report has a figure that indicates the volume of criminal, family law subject, and civil non-family law subject matters initiated per year, usually for the most recent ten years.³⁰ What was detected was that volumes of these filing categories were reported differently, in different Annual Reports. The usual pattern is values would undergo minor year-to-year variations and then stabilize. The Annual Reports themselves provide some explanation of what is happening: “Historical numbers are updated to current information. Data may change due to data settling and corrections.”³¹

On other occasions, the Annual Reports provide more detailed explanations of why datapoint values have changed. For example, the 2015 Annual Report explains that double-counting occurred when a proceeding was transferred between judicial districts.³² Another correction related to reporting of criminal proceedings with multiple defendants.³³

This article has accounted for this shifting data phenomenon by using whichever values were found in the most recent Annual Report that reported on a particular year. For example,

³⁰ See e.g. Figure 1; 2020 Annual Report, *supra* note 13 at 57.

³¹ *Ibid.*

³² 2015 Annual Report, *supra* note 12 at 57–58.

³³ *Ibid.*

the volumes of 2018 new filings were obtained from the 2022 Annual Report. This process was conducted by a sequential review of each Annual Report, from oldest to newest, entering and updating data. Typically, the year-to-year variations observed were minor, comprising less than 1 percent of the values.³⁴ After several years, values “crystallized” and no further variations occurred. This pattern of data drift means that while the most recent years’ statistics used in this article will plausibly change in future Annual Reports, those changes will probably be minor.

This study uses certain statistical conventions to express data. “*N*” indicates the number of a total population; “*n*” indicates the number of individuals or examples in a larger population who possess a characteristic. For example, “77 percent, *n* = 17” indicates that in a total population of 22 (*N*), 77 percent of the population, or 17 individuals (*n*), share a common characteristic.

Mean, or average, indicates the arithmetic mean: the sum of numerical values in a data set divided by *N*. Standard deviation (SD) measures the amount of variation or dispersion of a set of values. A low standard deviation indicates that values tend to be close to the mean, while a higher standard deviation indicates that the values are spread over a wider range.

IV. RESULTS

A. NEW SUPREME COURT OF BRITISH COLUMBIA ACTIONS

The Annual Reports document the number of new matters initiated in the Court each year between 1992 to 2022: 2,148,706 actions in total. Annual Reports’ new action categories progressed through three stages:

- 1992 to 2001: criminal matters,³⁵ family law subject matters, and civil non-family law subject matters;
- 2002 to 2010: civil non-family subject matters were divided into four categories: probate, adoption, bankruptcy, and other non-family civil matters; and
- 2011 to 2022: two further civil litigation category types were added, foreclosures and motor vehicle litigation, further reducing the non-family subject other civil matter category.

³⁴ The notable exception is the substantial 30 percent increase in criminal filings reported in the 2015 Annual Report (*ibid* at 58).

³⁵ Criminal matters appear to include proceedings under the *Youth Criminal Justice Act*, SC 2002, c 1: 2019 Annual Report, *supra* note 13 at 6.

Figure 1 illustrates the pattern of new litigation volume for criminal, family law, and civil non-family law subject actions for the longest timeline, 1992 to 2022.

**FIGURE 1:
NUMBER AND TYPE OF NEWLY INITIATED
SUPREME COURT OF BRITISH COLUMBIA PROCEEDINGS 1992–2022**

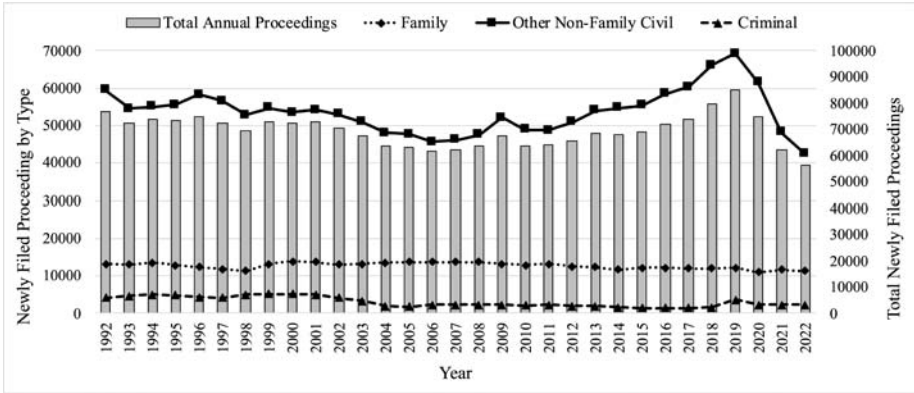


Figure 1: Annual volume of all and three newly filed Supreme Court of British Columbia proceeding types from 1992 to 2022 (total annual proceedings: $N = 2,151,498$; family: $N = 393,869$; other non-family civil: $N = 1,664,223$; criminal: $N = 93,406$). The left Y-axis and line graphs indicate the annual number of matters in a category. The right Y-axis and vertical bars indicate the total number of Supreme Court of British Columbia proceedings initiated in the year.

While these categories exhibit a certain degree of variation, linear regression analysis of these litigation-type volumes shows little net change over the 31-year period, except for criminal proceedings, which exhibited a marked long-term decrease between 1992 and 2022:

- Total new proceedings: 5.42 percent decrease ($y = -129.09x + 71469$, $N = 2,151,498$).
- Criminal new proceedings: 71.6 percent decrease ($y = -116.41x + 4875.7$, $N = 93,406$).
- Family law subject new proceedings: 10.8 percent decrease ($y = -48.34x + 13479$, $N = 393,869$).
- Non-family law subject new civil proceedings: 2.0 percent increase ($y = 35.662x + 53114$, $N = 1,664,223$).

Figure 2 illustrates the higher resolution³⁶ reported input civil and criminal litigation volumes from 2002 to 2022.

**FIGURE 2:
NUMBER AND TYPE OF NEWLY INITIATED
SUPREME COURT OF BRITISH COLUMBIA PROCEEDINGS 2002–2022**

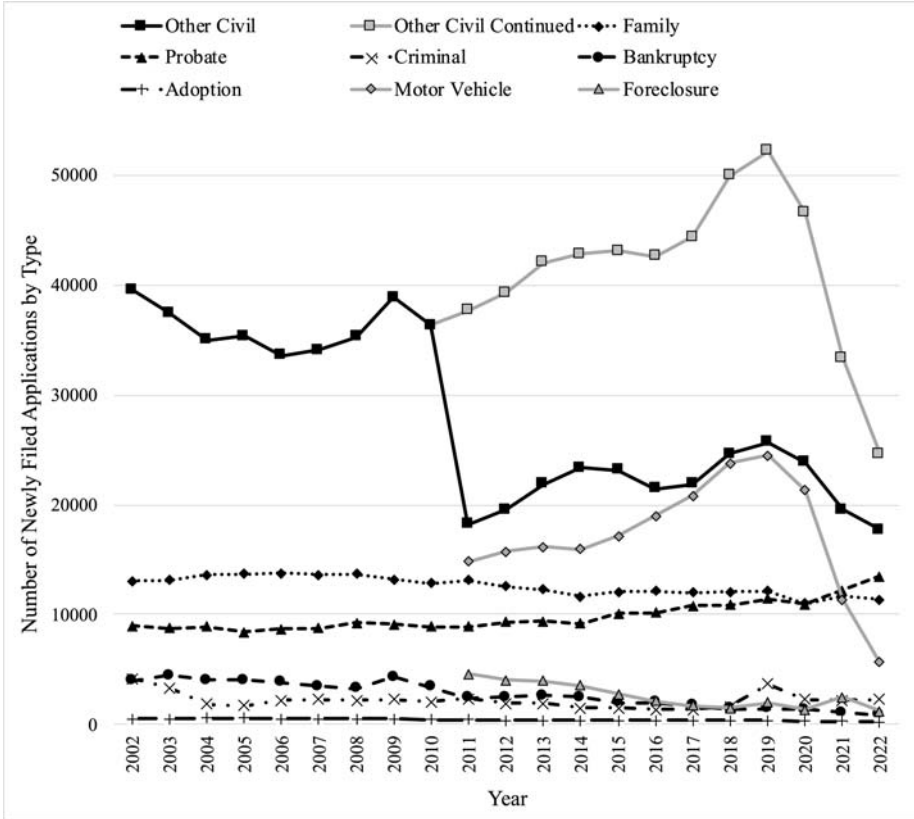


Figure 2: Annual volume of categories of newly filed Supreme Court of British Columbia proceeding types for 2002 to 2022. Certain categories of proceedings continue through the entire 21-year period on an apparently consistent basis: family ($N = 264,871$), probate ($N = 206,695$), bankruptcy ($N = 56,572$), criminal ($N = 40,919$), and adoption ($N = 8,936$). Starting in 2011, the Supreme Court of British Columbia Annual Reports separated new filings from two additional categories, motor vehicle ($N = 206,211$) and foreclosure ($N = 31,313$), which are indicated by gray-shaded lines. Separate reporting of motor vehicle and foreclosure matters accounts for the other civil category undergoing a marked decrease between 2010 and 2011. The gray-shaded other civil continued line illustrates the volume of other civil matters following the pre-2010 definition by “adding back” the motor vehicle and foreclosure categories.

³⁶ Here “resolution” is being used in the scientific sense: the capacity to distinguish and “resolve” between subpopulations or objects: Donald J Netolitzky & Richard Warman, “As the Water Grinds the Stone: Comparison of Represented and Self-Represented Appellant Populations in the Federal Court of Appeal” (2021) 37:1 Windsor YB Access Just 206 at 253.

Figure 2 shows that most of the plotted litigation types have been stable, or have undergone gradual and largely stepwise linear progressions:

- Family law subject proceedings: 17.2 percent decrease ($y = -119.56x + 13928$, $N = 264,871$).
- Probate proceedings: 48.5 percent increase ($y = 188.45x + 7769.7$, $N = 206,695$).
- Bankruptcy proceedings: 76.9 percent decrease ($y = -179.38x + 4667.1$, $N = 56,572$).
- Foreclosure proceedings (only 2011 to 2022): 83 percent decrease ($y = -284.84x + 7024.4$, $N = 31,313$).
- Adoption proceedings: 49.8 percent decrease ($y = -14.588x + 586$, $N = 8,936$).

The two exceptions are new criminal proceedings, which have decreased and then more recently increased, and motor vehicle litigation that first increased between 2011 and 2019 by 65 percent ($n = 24,521$), then plunged in the following years to under one-quarter of the 2019 peak (23 percent, $n = 5,633$). As will subsequently be discussed, these remarkable and rapid transitions in motor vehicle litigation volume are very likely a consequence of the British Columbia Civil Resolution Tribunal (BCCRT) acquiring jurisdiction over certain motor vehicle dispute claims.³⁷

The plotted activity data in Figure 1 and Figure 2 also reveal how litigation volume in a particular subject domain may shift disproportionately in relation to other litigation subjects. The recent changes in overall Supreme Court of British Columbia litigation volume are primarily the consequence of variations in motor vehicle litigation from 2011 to 2022. The upward spike to 2019, then subsequent decline, is predominately a consequence of variations in motor vehicle litigation volume.

B. LOW PROPORTIONAL TRIAL FREQUENCY

As previously explained, the Annual Reports are not intended to document how litigation proceeds through to trial, or, more correctly, how that process does not typically occur. Starting in 2005, the Annual Reports began to report what volume of Vancouver Judicial District trials and “long chambers” hearings were scheduled, heard, and bumped, in total providing data for 1995 to 2022.³⁸ The Annual Reports define “long chambers” appearances to mean “chambers applications with time estimates in excess of 2 hours.”³⁹ In certain other jurisdictions, these hearings have other names, such as the “special chambers” appearances

³⁷ British Columbia Civil Resolution Tribunal, “Vehicle Accidents,” online: [perma.cc/72B4-ZBNV perma.cc/P2E5-A533]. For discussion of the design and operation of this dispute resolution body, see also Shannon Salter & Darin Thompson, “Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal” (2016/2017) 3 McGill J Dispute Resolution 113; Shannon Salter, “Online Dispute Resolution and Justice System Integration: British Columbia’s Civil Resolution Tribunal” (2017) 34:1 Windsor YB Access Just 112.

³⁸ 2005 Annual Report, *supra* note 11 (includes data from 1995 to 2005).

³⁹ *Ibid* at 18.

in the Alberta Court of King’s Bench. A critical feature of these longer chambers hearings is that these proceedings are scheduled in advance, rather than the short-duration “come as you are” format for ordinary chambers appearances.

Comparable data is never published for other parts of British Columbia, though the Annual Reports include much more detailed information on the overall frequency of “bumped” trial hearings in each Supreme Court of British Columbia judicial district starting in 2006.⁴⁰

For the purposes of this investigation, two types of information derived from the Vancouver Judicial District data will be examined in detail:

1. The patterns of scheduled trials and long chambers applications; and
2. The proportion of those trials and applications that proceeded (including where bumped).

On average 6,302 (SD = 979, $N = 170,145$) trials were scheduled each year in the Vancouver Judicial District between 1995 and 2021.⁴¹ The annual average volume of long chambers hearings scheduled between 1995 and 2022 was considerably less: 1,992 (SD = 634, $N = 55,781$).

Figure 3 illustrates the number of trials and long chambers hearings scheduled in the Vancouver Judicial District from 1995 to 2022.

FIGURE 3:
VOLUME OF TRIAL AND LONG CHAMBERS APPEARANCES
SCHEDULED IN THE SUPREME COURT OF BRITISH COLUMBIA
VANCOUVER JUDICIAL DISTRICT FROM 1995–2022

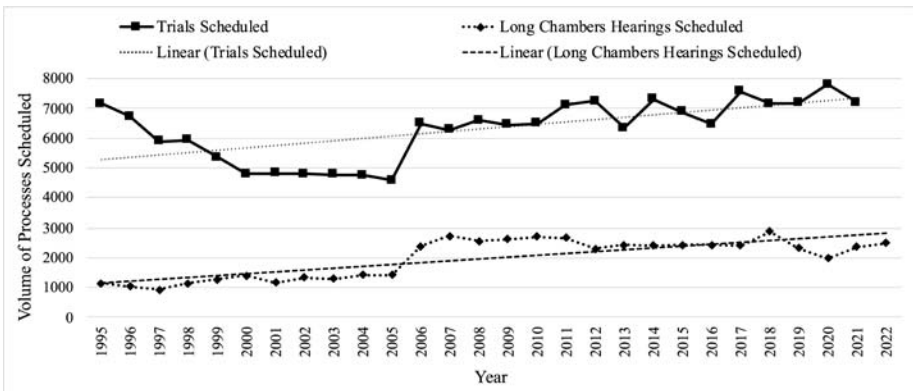


Figure 3: Annual volume of trials ($N = 170,145$) and long chambers hearings ($N = 55,781$) scheduled in the Vancouver Judicial District from 1995 to 2022. No data point is plotted for the volume of trials scheduled in 2022 because the 2022 Annual Report repeated the 2021 Annual Report’s trials scheduled data. Linear regressions: trials scheduled, $y = 78.302x + 5205.4$; long chambers scheduled, $y = 62.449x + 1086.7$.

⁴⁰ 2006 Annual Report, *supra* note 17 at 39, 41.

⁴¹ 2022 Annual Report, *supra* note 14 at 17–18 (2022 has no associated data because the 2022 Annual Report only repeats 2021 data for this variable).

While Figure 3 includes linear regression plots that indicate net increases in both proceeding volumes (trials scheduled: 40.6 percent; long chambers: 155.2 percent), the plotted volumes more likely indicate a two-phased process, where trials scheduled gradually decreased between 1995 and 2005 (46 percent), then scheduled trial volumes surged in 2006 to the 1995 level, and have subsequently been largely stable. What supports that some kind of transition occurred in 2005 and 2006 is that the number of scheduled long chambers hearings also underwent a sizable increase between those years (66.5 percent), and, subsequently, the volume of scheduled long chambers hearings has also remained largely stable. The 2006 Annual Report notes this shift in scheduled Vancouver Judicial District proceedings but provides no explanation.⁴²

Annual Report data for the Vancouver Judicial District shows only a small fraction of scheduled trials proceed to a hearing: 7.81 percent, $N = 170,145$.⁴³ However, a much higher portion of long chambers hearings do proceed: 46.6 percent, $N = 55,781$. These values indicate the number of occasions where litigants did proceed with the hearing in question, and were calculated as the sum of proceedings heard and bumped. Figure 4 illustrates the annual proportion of scheduled trials and long chambers processes that actually proceeded, or would have proceeded if the matter had not been bumped.

**FIGURE 4:
PROPORTION OF TRIALS AND LONG CHAMBERS PROCESSES THAT
PROCEEDED IN THE SUPREME COURT OF BRITISH COLUMBIA
VANCOUVER JUDICIAL DISTRICT FROM 1995–2022**

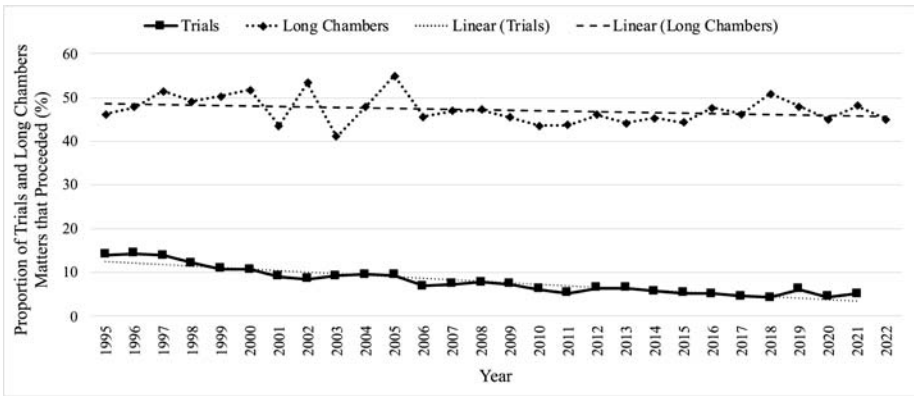


Figure 4: Annual proportion of trials ($N = 170,145$) and long chambers hearings ($N = 55,781$) scheduled in the Vancouver Judicial District from 1995 to 2022 that proceeded to a hearing. No data point is plotted for the proportion of trials scheduled in 2022 because the 2022 Annual Report repeated the 2021 Annual Report’s trials scheduled data. Linear regressions: trials, $y = -0.3584x + 13.052$; long chambers, $y = -0.07x + 47.896$.

Figure 4 illustrates that the proportion of scheduled long chambers hearings that proceed is essentially unchanged over the 28-year period, with a net decrease of only 3.95 percent ($y = -0.07x + 47.896$, $N = 55,781$). In contrast, the frequency at which scheduled trial hearings

⁴² 2006 Annual Report, *supra* note 17 at 16.

⁴³ This value is for 1995 to 2021 only, as the 2022 Annual Report, *supra* note 14, fails to provide a number of trials scheduled value.

proceeded has undergone a steady linear decline of 71.4 percent ($y = -0.3584x + 13.052$, $N = 170,145$) during the same period.

In total, between 1995 and 2022, 13,651 scheduled trials proceeded to a hearing, which is a little more than one-half (52.5 percent) the number of long chambers hearings: 26,019. As illustrated by Figure 3 and Figure 4, the ratio of actual Vancouver Judicial District processes has reversed between 1995 (1.91 trials to long chambers hearings) and 2022 (3.1 long chambers to trial hearings).

Unfortunately, the Annual Reports do not report the proportions of new litigation initiated in the different judicial districts. This article, therefore, cannot provide the exact ratios of newly filed matters in the Vancouver Judicial District to: (1) the number of scheduled trials and long chambers appearances; or (2) the actual number of hearings and long chambers processes that proceeded, or that would have proceeded if a judge was available.

However, the ratio of new filings to trial hearings can be calculated for the entire Supreme Court of British Columbia. Starting in 2006, the Annual Reports include statistics on the number of trials heard and bumped in each judicial district.⁴⁴ In 2007, that data was further resolved to distinguish between: (1) criminal trials; (2) family law subject trials; and (3) other non-family law civil subject trials.⁴⁵ The ratio of new filings to trials can be calculated using the total number of new Court filings of the relevant type and volume of trials heard:

- Criminal proceedings for 2006 to 2022: one trial per 4.96 newly filed criminal matters, or 20.2 percent ($N = 29,833$).
- Family law subject proceedings for 2007 to 2022: one trial per 60 newly filed family law subject proceedings, or 1.67 percent ($N = 211,710$).
- Other non-family law civil subject proceedings for 2007 to 2022: one trial per 110 newly filed non-family law subject civil proceedings, or 0.91 percent ($N = 848,693$).

Figure 5 illustrates year-to-year volumes of these three different trial category hearings.

⁴⁴ 2006 Annual Report, *supra* note 17 at 41.

⁴⁵ Supreme Court of British Columbia, *2007 Annual Report* (Vancouver: BCSC, 2007) at 39, online: [perma.cc/A4NY-UQKQ].

**FIGURE 5:
NUMBER OF SUPREME COURT OF BRITISH COLUMBIA
TRIALS BY TYPE 2007–2022**

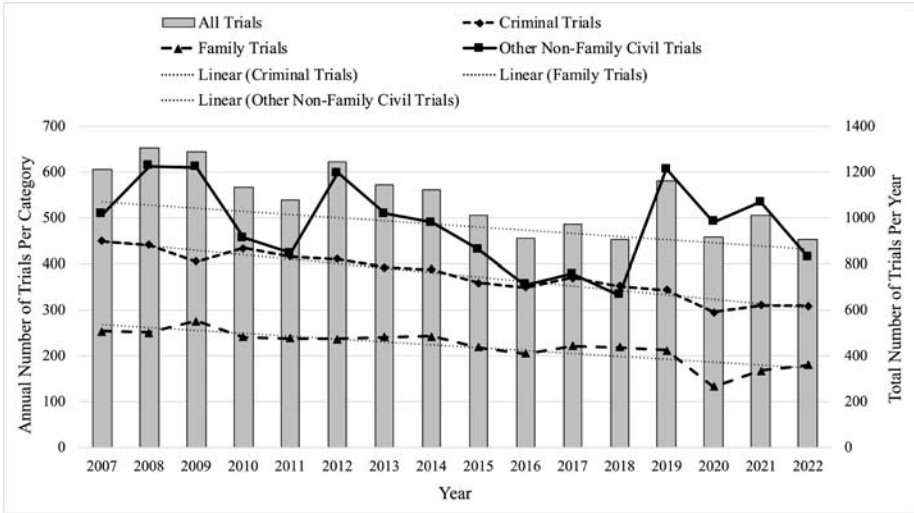


Figure 5: Annual volume of four categories: total trials ($N = 17,290$); criminal trials ($N = 6,018$); family law subject trials ($N = 3,532$); and, non-family law subject civil trials ($N = 7,740$). The left Y-axis and line graphs indicate the annual number of trials in a category. The right Y-axis and vertical bars indicate the total number of Supreme Court of British Columbia trials in the year. See text below for linear regressions.

Notably, the criminal trial and family law subject trial volumes show a steady and consistent overall decrease, while the other non-family civil trial volumes exhibit much more substantial year-to-year variation.

Linear regression calculations of the decrease in trial types volumes show that criminal trials have undergone the most substantial decrease between 2007 and 2022:

- All trials: 27 percent decrease ($y = -22.974x + 1275.9, N = 17,290$);
- Criminal trials: 35 percent decrease ($y = -6.4176x + 275.3, N = 6,018$);
- Family law subject trials: 7.94 percent decrease ($y = -9.7235x + 458.78, N = 3,532$); and
- Non-family law subject civil trials: 18.9 percent decrease ($y = -6.8324x + 541.83, N = 7,740$).

Interestingly, the most sizeable deviation from the calculated linear regression plots for criminal and family matters in Figure 5 was in 2020, where the volume of trials was unusually low. That coincides with the COVID-19 pandemic. At this point, this observation is simply a correlation and does not indicate cause and effect.

C. TRIAL AND LONG CHAMBERS “BUMPING”

The Annual Reports provide precise year-specific information on the rates at which certain processes are bumped. Combining that information provides these overall bumping frequencies:

- Vancouver Judicial District trials (1995 to 2022): 7.31 percent, $SD = 5.74$, $N = 13,651$;
- Vancouver Judicial District long chambers hearings (1995 to 2022): 8.45 percent, $SD = 5.9$, $N = 26,082$;
- All Supreme Court of British Columbia trials (2005 to 2022): 6.57 percent, $SD = 4.05$, $N = 18,599$;
- All Supreme Court of British Columbia long chambers hearings (2005 to 2022): 6.5 percent, $SD = 3.44$, $N = 31,840$; and
- Supreme Court of British Columbia trials (2007 to 2022):
 - Criminal trials: 0.14 percent, $SD = 0.23$, $N = 6,386$;
 - Family law subject trials: 6.91 percent, $SD = 3.79$, $N = 3,532$; and
 - Other non-family law subject civil trials: 11.74 percent, $SD = 7.61$, $N = 8,521$.

The overall frequency that trials and long chambers proceedings were bumped is similar both for the Vancouver Judicial District and the Supreme Court of British Columbia as a whole. Post-2007 statistics published in the Annual Reports clearly validate the Court’s stated objective of prioritizing criminal and family matters over other civil proceedings when the Court encounters facility and judicial resource limits.

Figure 6 illustrates the year-to-year variation in bumping of trials and long chambers hearings at the Vancouver Judicial District from 1995 to 2022, which is by far the longest historical record of the bumping issue for the Supreme Court of British Columbia.

**FIGURE 6:
PROPORTION OF TRIALS AND LONG CHAMBERS PROCESSES
IN THE SUPREME COURT OF BRITISH COLUMBIA
VANCOUVER JUDICIAL DISTRICT THAT WERE BUMPED FROM 1995–2022**

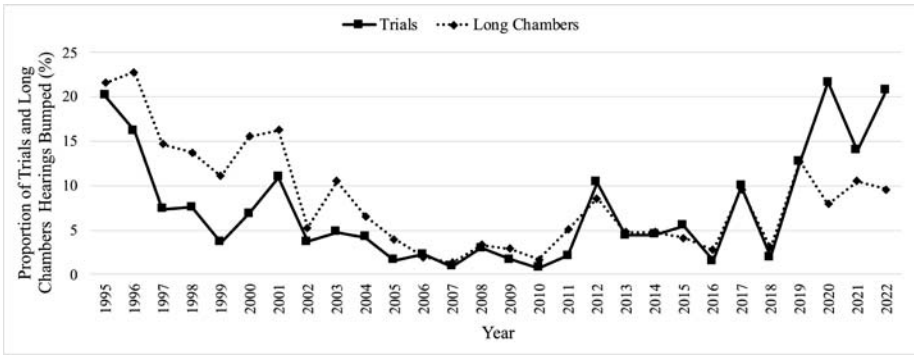


Figure 6: Annual proportion of trials ($N = 13,651$) and long chambers hearings ($N = 26,019$) scheduled in the Vancouver Judicial District from 1995 to 2022 that were bumped.

The Vancouver Judicial District record shows strong year-to-year variations, but the proportion of trials and long chambers hearings bumped generally shifted in parallel. Both these types of proceedings experienced bumping in a similar manner.

Figure 7 compares the annual Court-wide incidence of bumped trials for criminal proceedings, family law subject proceedings, and non-family law subject civil proceedings.

**FIGURE 7:
PROPORTION OF DIFFERENT TRIAL TYPES IN THE
SUPREME COURT OF BRITISH COLUMBIA
THAT WERE BUMPED FROM 2007–2022**

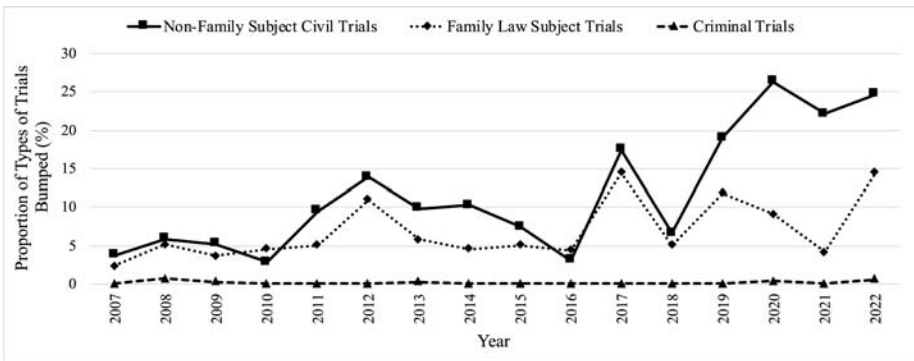


Figure 7: Annual proportion of Supreme Court of British Columbia family law subject ($N = 3,532$), criminal ($N = 6,386$), and non-family subject civil ($N = 8,521$) trials that were bumped from 2007 to 2022.

Figure 7 clearly reflects the Supreme Court of British Columbia’s practice of triaging trials by type when court resources are inadequate. Practically no criminal trials were bumped, and, instead, bumped civil trial proceedings were more frequent for non-family than family subject civil trials. The frequency of bumped non-family subject civil trials from 2020

to 2022 is alarming, 24.3 percent ($N = 1,437$), two and a half times the frequency (9.4 percent, $N = 479$) for family law subject trials in the same period.

The Annual Reports link bumping to inadequate judicial complement. The number of full-time justices authorized by legislation⁴⁶ was 88 between 2002 and 2012, then increased to 92 in 2013, with a further increase to 95 in 2022. An additional 14 to 22 supernumerary justices served with the Court between 2002 and 2022. Figure 8 illustrates the correlation of trial and long chambers bumping, province-wide, with the Supreme Court of British Columbia judicial complement, between 2005 and 2022.

**FIGURE 8:
CORRELATION OF BRITISH COLUMBIA PROCEEDINGS BUMPED
WITH THE SUPREME COURT OF BRITISH COLUMBIA
JUDICIAL COMPLEMENT IN 2005–2022**

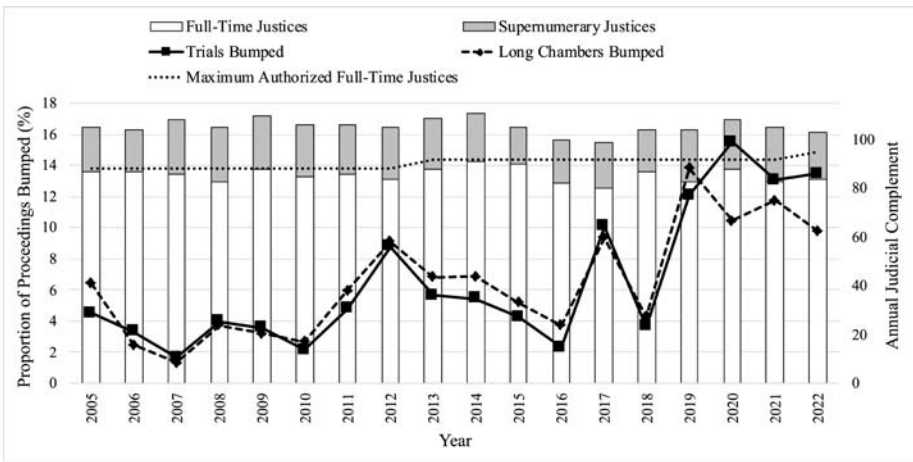


Figure 8: Annual proportion of Supreme Court of British Columbia trial ($N = 19,871$) and long chambers hearings ($N = 34,093$) bumped from 2007 to 2022, and Supreme Court of British Columbia annual judicial complement. The left Y-axis and line graphs indicate the frequency that proceedings in a category were bumped. The right Y-axis and vertical bars indicate the annual Supreme Court of British Columbia judicial complement. The dotted line indicates the maximum number of full-time Supreme Court of British Columbia justices authorized by legislation in a given year.

Figure 8 suggests some correlation between bumping frequency and judicial complement, particularly the number of full-time justices.

V. ANALYSIS AND DISCUSSION

This article appears to be the first long-duration profile of activities in a Canadian provincial superior court of inherent jurisdiction. Thus, this investigation of data extracted from the Annual Reports is a valuable opportunity to evaluate and quantify litigation that occurs at this court level. However, the degree to which these observations are also applicable to other analogous provincial courts is unclear, since jurisdictions, court legislation, and provincial policy probably vary in relevant ways, province to province. For

⁴⁶ *Supreme Court Act*, RSBC 1996, c 443, s 2(2).

example, with criminal prosecution data, Crown prosecutors in certain provinces may have different policy approaches to certain offences. The dual administrative jurisdiction for provincial superior courts of inherent jurisdiction is a further complicating factor — judicial appointments are controlled by one jurisdiction (federal), but court facilities, staff, and funding are set by a different level of government (provincial).⁴⁷

The data extracted and extrapolated from the Annual Reports should be viewed with some caution. As previously noted, a year-to-year comparison of different data types, like the number of new filings versus the number of trials heard in a given year, is factually a comparison of two separate streams of litigation activity, viewed at different points in their life cycle.

This study approaches this disjunction in data in two ways. One is to group court activities over a longer time frame, for example, all filings of a specific type. A factor that supports this approach is that many data types tracked in this study were stable, or followed an apparently linear progression. The second is to only express certain data as ratios, with the warning that the implications of short-term changes in values have less relevance than longer-term patterns.

In other words, this article is a preliminary study, best suited to understanding general patterns. A precise and detailed study of Supreme Court of British Columbia file and docket records would provide a more reliable and higher resolution understanding of how the Court operates. Nevertheless, this article is offered as a starting foundation for further investigation, and provides a “baseline” comparator for long- and short-term patterns of court activity in Canadian inherent jurisdiction trial courts.

A. SUPREME COURT OF BRITISH COLUMBIA LITIGATION INPUTS

Figure 1 and Figure 2 provide interesting insights into the volume of litigation entering the Supreme Court of British Columbia. The more global view provided in Figure 1 appears to indicate a Court whose workload is generally stable, which is in sharp contrast to the pattern emerging from Canadian appellate courts, where over the past 25 years input litigation has undergone a steady decrease, if not collapse.⁴⁸

However, a higher resolution view of Supreme Court of British Columbia input litigation shows both stable and variable litigation domains. The fact that Canadian provincial superior courts have some legislatively imposed “housekeeping” functions explains certain observed patterns. For example, all British Columbia divorce matters must be resolved at the province’s Supreme Court, and, unsurprisingly, the volume of family subject litigation has remained much the same throughout the 31-year period reported. The large majority of those

⁴⁷ This division of authority results from *The Constitution Act, 1867* (UK), 30 & 31 Vict, c 3 allocating appointment and payment of judges to the Governor General (s 96) and Canada (s 100), respectively, while “Administration of Justice” is allocated to provinces, “including the Constitution, Maintenance, and Organization of Provincial Courts” (s 92(14)). See also *Di Iorio v Warden of the Montreal Jail*, 1976 CanLII 1 at 163 (SCC).

⁴⁸ Netolitzky, “Unwind,” *supra* note 1 at IV(B)(1), V(A); Netolitzky, “Flatlined,” *supra* note 5.

filings are uncontested “desk divorces” (77 percent in 2010 and 2011).⁴⁹ More realistically, these desk divorces can be classified as a formal paperwork step, rather than litigation, at least as legal workers usually imagine “a lawsuit.”

The volume pattern for probate filings is similar. Again, the Supreme Court of British Columbia must review every probated will. The input volume of probate litigation is simply a function of the provincial population. Between 2002 and 2022, the volume of will probate filings increased by 48.5 percent (see Figure 2). During that period the population of British Columbia increased by 31.5 percent.⁵⁰ The higher volume increase in probate filings beyond population growth is plausibly related to Canada’s aging population demographics.

Interestingly, the two categories of Supreme Court of British Columbia proceedings that result from economic stress both decreased substantially during the sample period: bankruptcy proceedings from 2002 to 2022 decreased 76.9 percent and foreclosure proceedings from 2011 to 2022 decreased 83 percent. These were largely progressive stepwise decreases (see Figure 2). A deeper evaluation of the cause of these decreases is beyond the scope of this investigation, but one hypothesis is the unusually low interest rates in Canada during this period permitted financially stressed individuals and institutions to “borrow their way out,” and avoid these litigation outcomes. If correct, then the next several years may see a marked increase in filings of these types.

Drawing any conclusions or implications from the reported variations of new criminal proceedings entering the Supreme Court of British Columbia is premature. There are too many variables in play to infer any pattern(s) or to draw policy implications. For example, the volume of these filings could reflect anything from:

1. The nature and frequency of the alleged crimes varying at different points between 1992 and 2022;
2. Evolving policy choices by the Crown on whether to pursue hybrid criminal proceedings as summary conviction offences in the Provincial Court of British Columbia, versus via indictment to the Supreme Court of British Columbia;
3. The frequency at which accused persons elect a jury trial, thus requiring that the prosecution is conducted before the Supreme Court of British Columbia; and
4. The frequency of early resolution of criminal proceedings by guilty pleas or alternative penalty arrangements.

What is noteworthy and unique to Supreme Court of British Columbia criminal proceedings is the much higher — around 20-fold greater — ratio that these proceedings end up as a trial, versus civil Supreme Court of British Columbia proceedings. While the inferred

⁴⁹ Statistics Canada, “Contested Divorce Cases by Time Since Initiation, Selected Provinces and Territories, 2010/2011,” online: [perma.cc/P846-SE2G].

⁵⁰ In the last quarter of 2002, $N = 4,108,351$, and in the last quarter of 2022, $N = 5,403,528$: Statistics Canada, *Population Estimates, Quarterly*, Table No 17-10-0009-01 (Ottawa: Statistics Canada, 2023), online: [perma.cc/CKC6-D9Q6].

frequency of criminal trial proceedings might appear to be low (20 percent of new Supreme Court of British Columbia criminal filings), that ratio also very likely is influenced by multiple factors, including:

1. The adversarial nature of these proceedings;
2. The high personal impact of negative outcomes on accused persons' liberty and other interests;
3. The probably low frequency of accused self-represented litigants, given government-funded legal aid, favouring co-operative approaches to litigation outcomes, such as guilty pleas, dropped charges, and alternative penalty arrangements; and
4. The high threshold obligations on Crown prosecutors to only conduct meritorious prosecutions.⁵¹

Viewed in this context, the fact that only one in five Supreme Court of British Columbia prosecutions results in a trial is not necessarily a measure of prosecution failure, so much as suggestive of a high degree of co-operation between Crown prosecutors and defence counsel in avoiding trial. A closer understanding of these variables could be achieved by a population study of Supreme Court of British Columbia criminal proceedings that determined how often charges are stayed, charges are dropped, and prosecutions terminated with a guilty plea and joint sentence recommendation.

The unusually high frequency at which criminal prosecutions at the Supreme Court of British Columbia lead to actual trials is a strong reason why the Court should carefully monitor criminal filing volumes, since a comparatively small change in this variable will, in following years, have a much greater and disproportionate impact on courtroom space and judicial resources. This filing volume to resource relationship is particularly significant since *Jordan*⁵² has imposed timelines for provincial superior courts to advance criminal matters prior to a specific *Canadian Charter of Rights and Freedoms* section 11(b)⁵³ deadline.

The transformation in motor vehicle litigation between 2011 and 2022 is very interesting for multiple reasons. As Figure 2 illustrates, a single category of court proceedings, motor vehicle tort litigation, was the predominant driver of a 32 percent increase in total new non-family civil proceedings initiated between 2011 and 2019. Similarly, the marked 40 percent decrease in new civil non-family files opened between 2019 and 2022 is largely a consequence of the collapse in the volume of new motor vehicle litigation matters.

The most plausible explanation for this dramatic transformation is that on 1 April 2019, the British Columbia *Civil Resolution Tribunal Act*⁵⁴ was amended so that the BCCRT had jurisdiction to resolve motor vehicle claims that involved a “minor injury” and where the

⁵¹ Recently reviewed in *R v Kahsai*, 2023 SCC 20 at paras 55–56.

⁵² *Jordan*, *supra* note 7.

⁵³ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

⁵⁴ *Civil Resolution Tribunal Act*, SBC 2012, c 25, s 133(1).

claim was not more than \$50,000. Challenges to BCCRT outcomes are then conducted by judicial review at the Supreme Court of British Columbia.⁵⁵ This abrupt shift in litigation volume is discussed in the 2021 Annual Report, where the Annual Report concluded the decrease in Court filings was a consequence of the BCCRT's expanded jurisdiction.⁵⁶ The Annual Report continued to review a then ongoing constitutional challenge to the expanded BCCRT jurisdiction, which was subsequently resolved when the British Columbia Court of Appeal concluded the *Civil Resolution Tribunal Act* amendments were constitutional, and the Supreme Court of Canada denied leave and imposed costs.⁵⁷

As is observed by the British Columbia Court of Appeal, the primary reason for this amendment that expanded the BCCRT's jurisdiction was to maintain the viability of British Columbia's motor vehicle insurance scheme.⁵⁸ However, the transformation illustrated in Figure 2 also has interesting implications for the economics of dispute resolution in British Columbia courts. The most recent BCCRT *Annual Report*⁵⁹ indicates that between 2020 and 2022 only one judicial review was filed with the Supreme Court of British Columbia of a BCCRT motor vehicle injury dispute resolution.⁶⁰ That means that the post-2019 volume of Supreme Court of British Columbia new actions was plausibly reduced by over 35,000 lawsuits, in exchange for one additional Supreme Court of British Columbia judicial review.

What further emphasizes the advantage of this shift in dispute processes is that:

1. BCCRT proceedings conclude in a matter of a few months, with an average of three months;⁶¹
2. Survey results of BCCRT users are highly favourable;⁶² and
3. BCCRT statistics indicate the “cost per dispute”⁶³ to taxpayers is only \$2,164.

The only reason that it is not possible to evaluate the degree to which Supreme Court of British Columbia resolution of these same disputes is an inferior alternative is that there simply are no Supreme Court of British Columbia comparator statistics. These observations are a powerful argument in favour of Canadian jurisdictions evaluating whether tribunals analogous to the BCCRT are not only better forums to resolve some disputes, but also permit provincial superior courts to focus their limited and stressed resources on matters that can only be adjudicated with the full panoply of court procedural processes and safeguards, for example, criminal prosecutions that proceed via indictment.

⁵⁵ *Ibid*, ss 56.6–56.9.

⁵⁶ 2021 Annual Report, *supra* note 13 at 4.

⁵⁷ *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2022 BCCA 163, leave to appeal to SCC refused, 40291.

⁵⁸ *Ibid* at paras 13–23.

⁵⁹ Civil Resolution Tribunal, 2021/2022 *Annual Report* (British Columbia Civil Resolution Tribunal, 2022), online: [perma.cc/EB93-Q8ZD].

⁶⁰ *Ibid* at 31.

⁶¹ *Ibid* at 33, 38.

⁶² *Ibid* at 35.

⁶³ See e.g. *ibid* at 41.

B. PROPORTIONS OF SUPREME COURT OF BRITISH COLUMBIA PROCEEDINGS THAT RESULT IN COURT HEARINGS

Despite limitations in “tracking along” litigation before the Supreme Court of British Columbia, the data in the Annual Reports very clearly illustrates that Justice Karakatsanis’ observation in *Hryniak* that Canadian civil trials are unusual is correct. The data reported in this article provides some appreciation of how Supreme Court of British Columbia disputes proceed to include: (1) long chambers hearings; and (2) full trials.

However, that is a very superficial and “high level” appreciation. The Supreme Court of British Columbia is not reporting on the frequency that *individual* legal proceedings include scheduled long chambers hearings and trials. So, for example, it might be that a higher resolution investigation of Court proceedings would disclose the clustering of long chambers hearings, so that a disproportionate number of these hearings occur in a small number of high-conflict, abusive, or high-activity lawsuits. Hopefully, something similar would not occur with trials, which instead are a “one time only” event to conclude a specific court proceeding.

What can be said with high confidence is that trials truly are atypical events. Between 2006 and 2022, 1,156,564 new actions were initiated in the Supreme Court of British Columbia. In that same period, 18,422 trials were conducted or would have been conducted except for having been bumped due to institutional resource limits. That approaches two orders of magnitude in difference.

Detailed evaluation of the 1995 to 2021 Vancouver Judicial District data is impeded by a missing variable: the Annual Reports do not indicate what proportion of new Supreme Court of British Columbia filings occur in that judicial district. A weak guess at the proportion of Court activity that occurs in the Vancouver Judicial District (36.8 percent) can be obtained from the total number of trials in that judicial district between 2006 and 2022 ($N = 6,781$), versus the total number of Supreme Court of British Columbia trials during that period ($N = 18,422$). If that fraction is also representative of Vancouver Judicial District’s new litigation filings, then the volume of Vancouver Judicial District Supreme Court of British Columbia proceedings can be estimated for 1995 to 2021:

- Total input filings: 534,565;
- Proportion of matters where a trial is scheduled: 31.8 percent ($n = 170,145$);
- Proportion of matters where a scheduled trial is heard: 2.5 percent ($n = 13,290$);
- Ratio of scheduled long chambers hearings to filings: 10.4 percent ($n = 55,781$);
and
- Ratio of long chambers hearings to filings: 4.7 percent ($n = 24,899$).

If reliable and representative of the Court as a whole, this Vancouver Judicial District data shows that most matters initiated in the Supreme Court of British Columbia never go anywhere, but are terminated or abandoned without the Court ever having to conduct a substantive evaluation of these matters *inside a courtroom*. That last distinction is important because certain types of Supreme Court of British Columbia processes must be decided by the Court — such as probate of a will or issuing a divorce — but a large proportion of those Court actions are probably conducted and concluded on a document-only basis as “desk proceedings.”

Nevertheless, this information strongly supports that in-court trial proceedings are an unusual litigation step, and that only a small fraction of the Supreme Court of British Columbia’s scheduled trials ever proceed. The ratio is much higher, almost half, when a long chambers hearing is scheduled. That difference in ratios is helpful to plan and schedule Supreme Court of British Columbia hearings, particularly since the frequency at which long chambers proceedings are conducted is very stable (see Figure 4).

This data broadly supports the model that full trials are an atypical litigation scenario. What is not available from this analysis is any idea of how many and what proportion of Supreme Court of British Columbia proceedings are terminated in other ways, such as being abandoned, settled, stayed, ended by summary judgment, or by striking out. However, what can be said with confidence is criminal matters are far more likely than civil proceedings to continue to a full trial, and family law dispute matters are more likely to proceed to trial than other civil proceedings, 1.67 percent to 0.91 percent, respectively.

These percentage values may substantially understate the frequency of family law matters that move down a litigation path ending in a trial. As discussed above, many Supreme Court of British Columbia family law subject disputes are probably desk proceedings that would never be expected to lead to a court hearing. These family subject litigants had come to a joint agreement, so the Court’s role is to review and confirm that arrangement, not settle any dispute. If correct, then that means, on a proportional basis, that the frequency of family law matters that are “aiming for trial” that reach that end point could be much higher than for Court civil proceedings as a whole.

This data supports that a closer look is warranted as to how different kinds of legal proceedings evolve and develop in a longitudinal temporal manner. Important insights into how the Supreme Court of British Columbia and other provincial superior inherent jurisdiction trial courts operate would certainly be obtained.

C. BUMPING

The Annual Reports illustrate that the Supreme Court of British Columbia is clearly deeply concerned about and engaged with the issue of trial and long chambers appearance bumping when bumping is impeding the Court’s decision-making functions, and also that the public and legal profession misunderstand when bumping is, or is not, a significant issue. Figure 6 and Figure 7 demonstrate both significant long-term and year-to-year variations in the frequency of bumping for trials and long chambers matters. Several inferences flow from that.

First, bumping issues were serious but decreasing at the start of the available record (see Figure 6). Bumping had become much more manageable in the 2000s. However, the issue of bumping subsequently re-emerged in the last six years and is apparently worsening. The Annual Reports indicate the problem is not the Supreme Court of British Columbia judicial complement authorized by legislation, but, instead, the failure of the Attorney General of Canada to make new judicial appointments that fill vacancies.⁶⁴ That has left the Court short-handed and in a deteriorating situation.

A second implication that emerges from Figure 6 and Figure 7 is that post-2010, both the Supreme Court of British Columbia as a whole, and the Vancouver Judicial District, have seen abrupt short-duration increases in bumping. That implies that when bumping was effectively managed, for example in 2016 and 2018, the Court was nevertheless at the very razor's edge of its judicial complement and courtroom capacity. The Annual Reports state when judicial vacancies increased, that had dramatic negative effects on what fraction of civil trial and long chambers matters were actually heard as scheduled. Figure 8 provides some evidence to substantiate that relationship.

The low frequency at which trials proceed (see Figure 4) represents a significant logistical challenge for scheduling Supreme Court of British Columbia trials. Though not stated explicitly in the Annual Reports, logically Court proceeding schedulers are "overbooking" trials so that multiple simultaneous trials are scheduled well beyond courthouse and judicial capacity. Normally the large majority of those scheduled trials do not proceed, which results in a full but manageable trial schedule. The issue, of course, is that to avoid bumping, the patterns of trials collapsing need to be somewhat consistent. If by chance an atypical cluster of overlapping scheduled trials proceeds, then bumping is probably inevitable, even when the Court has capacity somewhere else in its broader schedule. Limited reserve judicial capacity just exacerbates this issue.

The final notable observation in relation to the bumping issue and the Court's procedures is that the data in Figure 7 demonstrates that the Court is successfully operating a triage process that ensures criminal trials almost always proceed in a timely manner and without delay. That makes sense given the different legal interests in play and the obligations imposed on trial courts in *Jordan*.⁶⁵ However, the long-term implications of this downrating and delay of certain civil litigation trials are worrisome.

VI. CONCLUSION

This study provides a substantial initial longitudinal survey of litigation processes at a provincial superior court of inherent jurisdiction. Is what has been documented here about the Supreme Court of British Columbia in any way typical of, or relevant for, other Canadian provincial and territorial courts with the same basic role? We simply have no idea. To this point, there does not appear to be any comparator institution where this kind of long-duration data was collected, analyzed, and published.

⁶⁴ 2017 Annual Report, *supra* note 13 at 6; 2021 Annual Report, *supra* note 13 at 4–5.
⁶⁵ *Jordan*, *supra* note 7.

This informational gap is very strange when one considers the extent and scope of commentary and concern on the status and operation of Canadian courts. Government and private institutions track and evaluate their activities, to test their processes, prepare for future change, and direct institutional improvement. Collection and analysis of benchmark information for dispute resolution mechanisms certainly can be done — the BCCRT’s statistics and performance records illustrate exactly that.⁶⁶ So why are Canadian courts not examining and evaluating themselves?

The contents of the Supreme Court of British Columbia⁶⁷ and British Columbia Court of Appeal⁶⁸ Annual Reports provide some explanation. These documents chiefly focus on the present: who is with the Court and what they are doing, new policies, and commentary about and responses to immediate concerns and crises. On those few occasions when these documents do look backward, their focus is on people, not Court processes and procedures. That pattern makes sense for several reasons.

1. Courts are social communities, to an extent that is little imagined or understood by those who stand on the outside. Court communities are exceptionally insular. It is not just judges who cannot share personal opinions or perspectives. The same is true for judicial staff as a whole. This limitation creates an inward-looking introspective dialogue, among people who have worked in close coordination for years, often in stressful circumstances.⁶⁹
2. Court workers have practically no memory of what they do. The repetitive steps of processing and responding to litigation, a kind of “sausage factory” activity,⁷⁰ means individual lawsuits, applications, and hearings disappear into a blur within weeks, if not days.
3. The long institutional past — and that can mean as little as a few months, even weeks — is irrelevant to persons active and operating inside the court context. Tasks appear, are dealt with almost immediately, and that usually terminates any particular court worker’s role in a legal proceeding.
4. Courts are assigned tasks, first by the legislatures and Parliament, second by decisions of appellate courts, and then ultimately by people walking through courthouse doors armed with paperwork. Courts have no real control over what work is received and must then be addressed. Courts are chiefly passive agencies that respond to outside agents and direction. Courts lack much, if not all,

⁶⁶ British Columbia Civil Resolution Tribunal, “Reports and Publications,” online: [perma.cc/QAS8-JH9M].

⁶⁷ Part II, above.

⁶⁸ Netolitzky, “Unwind,” *supra* note 1 at I, V(A).

⁶⁹ Social sciences investigation of social structure and community characteristics of Canadian courts is difficult to impossible because of judicial privilege and confidentiality. Outsiders do not get to see the inner workings of courts: *Mackeigan v Hickman*, [1989] 2 SCR 796. These observations concerning court communities are based on the author’s direct professional and educator interactions with multiple Canadian courts. These institutions often feel much like extended families or small villages, if one is on “the inside.”

⁷⁰ Netolitzky, “Unwind,” *supra* note 1 at V(A).

substantive control over many of their own policies and procedures, let alone finances.⁷¹

In short, the Annual Reports of these two Courts are actually not intended for anyone to use as analytical tools. The Annual Reports apparently function as a kind of bureaucratic placeholder, a documentary record. Fortuitously, the 2002 to 2022 Annual Reports provided sufficient data that several interesting longer-duration progressions could be investigated, tracked, and evaluated. But that was clearly not the direct function of those Annual Reports. Rather, it just so happened this collection of data could be adapted for long-term analysis.

While Canadian courts may not immediately benefit from an enhanced understanding of the historical function and progression of those institutions, broader and long-term data is potentially very valuable for policymakers and planners. For example, this study demonstrated the volumes of certain kinds of litigation, such as will probates and family dispute proceedings, that are unlikely to undergo marked year-by-year changes. That pattern is helpful for policy and planning purposes.

Similarly, the now-identified long-duration patterns of litigation activity before the Supreme Court of British Columbia can be used to identify and evaluate changes in litigation at that Court, and possibly other Canadian courts. As previously suggested, if the gradual decrease in foreclosure and bankruptcy filings were to reverse for several years, data reported in this study would provide the larger context to conclude that was unlikely to be the product of “random noise,” but instead could represent a significant transition in court litigation inputs.

The remarkable transformation of motor vehicle lawsuit volumes at the Supreme Court of British Columbia in the past decade illustrates that litigation volumes and types can undergo dramatic change. The transfer of motor vehicle litigation to the BCCRT also demonstrates how policy choices can have a pronounced effect on both the operation of courts, but also as an efficient pairing of disputes and resolution mechanisms. A common perception exists today that Canadian courts are stressed. The “bumped hearing” phenomenon discussed here certainly supports that. If so, then one way to help mitigate institutional stress is via carefully constructed alternative non-court dispute resolution mechanisms.

In conclusion, there is so much to be learned about Canadian courts by measuring their operation. No one can predict what may be discovered, because this landscape is all but

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The only Canadian court with substantial direct control of its own processes is the Supreme Court of Canada, whose enacting legislation assigns the authority to set the rules of court to the Supreme Court itself, with the same legal effect as if those rules were enacted by Parliament: *Supreme Court Act*, RSC 1985, c S-26, ss 97(1), 97(3). The limited Canadian court self-administration authority, and resulting tensions, are reviewed in Canadian Judicial Council, *Alternative Models of Court Administration*, Catalogue No JU14-3/2006E-PDF (Ottawa: CJC, 2006), online: [perma.cc/6SME-3XDE]; Canadian Judicial Council, *Comparative Analysis of Key Characteristics of Court Administration Systems*, by Karim Benyekhlef, Clea Iavarone-Turcotte & Nicholas Vermeys, Catalogue No JU14-24/2013E-PDF (Ottawa: CJC, 6 July 2011), online: [perma.cc/2GTB-FNJS]; Derek Green, “The Judicial Role in Court Administration in Canada: Striking the Balance Between Judicial Independence and Effective Court Management” (Remarks delivered at the Conference on Judicial Administration as Part of Judicial Reform, Kyiv, Ukraine, 1 December 2017) [unpublished] online (pdf): [perma.cc/VHJ9-G3UF].

entirely uncharted. Moreso, studies of this kind are readily conducted. Recent publications that measure and describe Canadian court activities by review of court documents and docket records are reportedly well within the scope of a law school student or graduate studies project.⁷² To be fair, one limitation of this investigation methodology is a researcher will “need to go where the data is,” much the same as how sciences, social sciences, and medical investigators often focus their studies on more readily accessed and measured data pools. Some Canadian court activity is not accessible or not measurable in a practical sense.⁷³ What that means is investigators who seek to characterize Canadian court operations and litigation activities are better off first finding data, and then asking, “what can I do with and learn from this information?” That research approach is, admittedly, different from the usual way legal research is oriented — issue first, and quantitative data (if any) second.

When data is already collected in one form or another, such as here with this article, conducting analyses that provide helpful information is a surprisingly simple task. The collection and calculation of the data in this article, and subsequent analyses, took around a week.

Good policy is grounded on good data. Canadian courts would benefit from a closer study of their own processes. Judicial and legislative policy-makers who set court jurisdiction, functions, and procedures should expect and ask for defined and quantified information that better informs policy and planning. Everyone in the legal system will benefit. No one should be comfortable if the policies that govern Canadian court processes and dispute resolution are based simply on guesses and presumptions.

⁷² See e.g. Netolitzky & Warman, *supra* note 36 at 241; Netolitzky, “Flatlined,” *supra* note 5 at para 38; Donald J Netolitzky, “The Grim Parade: Supreme Court of Canada Self-Represented Appellants in 2017” (2021) 59:1 *Alta L Rev* 117 at 167.

⁷³ For example, from the author’s personal experience, detailed process, population, or long-timeline investigation of Alberta Court of King’s Bench litigation activity is either difficult or simply impossible because of the limited and archaic electronic docket system and paper file records of that Court. That limitation applies equally to both internal and external investigators. In contrast, highly detailed docket records are available online for Manitoba superior trial and appeal court proceedings (Manitoba Courts, “Court Registry System,” online: [perma.cc/AGG4-EY4S]), and for certain British Columbia Provincial Court criminal proceedings (British Columbia Ministry of Attorney General, “Court Services Online: Search Traffic/Criminal,” online: [perma.cc/XE6G-VSUL]).