

Volume 55, Issue 1 (Winter 2018)

The CJPTA: A Decade of Progress

Guest editors: Janet Walker, Gerard Kennedy, and Sagi Peari

Article 3

Jurisdiction Motions and Access to Justice: An Ontario Tale

Gerard J. Kennedy

Osgoode Hall Law School of York University

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>

 Part of the [Law Commons](#)

Article



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Citation Information

Kennedy, Gerard J. "Jurisdiction Motions and Access to Justice: An Ontario Tale." *Osgoode Hall Law Journal* 55.1 (2018) : 79-140.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol55/iss1/3>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

Jurisdiction Motions and Access to Justice: An Ontario Tale

Abstract

This article investigates the access to justice concerns surrounding jurisdiction motions in Ontario, having analyzed one hundred and forty-seven jurisdiction motions decided in Ontario between 2010 and 2015. The author challenges the previously expressed view that jurisdiction motions are presently being “abused” by defendants and their counsel. He also suggests that trends in jurisdiction motions this decade point to some improvement from an access to justice perspective. Nonetheless, jurisdiction motions are frequently presenting an impediment to access to justice, with uncertainty in the law likely being the primary reason for this. The author considers potential proposals to address the access to justice concerns inherent in jurisdiction motions, concentrating on reconsidering the substantive law of jurisdiction or adopting the Court Jurisdiction and Proceedings Transfer Act.

Cover Page Footnote

The author thanks Janet Walker, Sagi Peari, B. David Kennedy, and an anonymous external reviewer for their comments on drafts of this article and, in the case of Professor Walker, providing the inspiration for it. My doctoral studies would not be possible were it not for the financial support of the Pierre Elliott Trudeau Foundation, the Social Sciences and Humanities Research Council, and the Estate of the late Willard Z. Estey. I am much indebted to them.

Special Issue
The *CJPTA*: A Decade of Progress

Jurisdiction Motions and Access to Justice: An Ontario Tale

GERARD J. KENNEDY*

This article investigates the access to justice concerns surrounding jurisdiction motions in Ontario, having analyzed one hundred and forty-seven jurisdiction motions decided in Ontario between 2010 and 2015. The author challenges the previously expressed view that jurisdiction motions are presently being “abused” by defendants and their counsel. He also suggests that trends in jurisdiction motions this decade point to some improvement from an access to justice perspective. Nonetheless, jurisdiction motions are frequently presenting an impediment to access to justice, with uncertainty in the law likely being the primary reason for this. The author considers potential proposals to address the access to justice concerns inherent in jurisdiction motions, concentrating on reconsidering the substantive law of jurisdiction or adopting the *Court Jurisdiction and Proceedings Transfer Act*.

* Ph.D. Candidate, Osgoode Hall Law School; Pierre Elliott Trudeau Foundation Scholar. The author thanks Janet Walker, Sagi Peari, B. David Kennedy, and an anonymous external reviewer for their comments on drafts of this article and, in the case of Professor Walker, providing the inspiration for it. My doctoral studies would not be possible were it not for the financial support of the Pierre Elliott Trudeau Foundation, the Social Sciences and Humanities Research Council, and the Estate of the late Willard Z. Estey. I am much indebted to them.

I.	THE BACKGROUND LAW	82
	A. The Law of Jurisdiction	82
	B. Access to Justice	84
II.	METHODOLOGY	86
	A. Deciding What to Include	87
	B. Variables	88
	C. Limitations of Methodology.....	90
III.	RESULTS AND ACCESS TO JUSTICE IMPLICATIONS	91
	A. Number of Motions.....	91
	B. Ultimate Success Rates of Motions	92
	C. Appellate Consequences.....	93
	D. Costs Awards.....	96
	E. Delay.....	98
	F. Forum Selection Clauses	100
	G. Are Jurisdiction Motions Being “Abused”?	101
	H. Conclusion on Access to Justice Concerns.....	102
IV.	WAYS FORWARD.....	103
	A. Attornment	103
	B. Leave.....	105
	C. Specialized Decision-Makers.....	105
	D. Revisiting <i>Van Breda</i> —or Adopting the <i>CJPTA</i>	107
	1. Clarifying the Common Law.....	107
	2. The <i>CJPTA</i>	108
	3. Forum of Necessity—the Access to Justice Implications	108
V.	CONCLUSION	111
VI.	APPENDIX A	112
VII.	APPENDIX B – NUMBER OF CASES, RESULTS, AND APPEALS	112
VIII.	APPENDIX C – COSTS	127
IX.	APPENDIX D – DELAY.....	135

THE COURT OF APPEAL for Ontario’s January 2016 decision in *Stuart Budd & Sons Limited v IFS Vehicle Distributors ULC*¹ made headlines in the legal community.² The press was drawn to the rare finding that a motion judge had displayed a

-
- 2016 ONCA 60, 129 OR (3d) 37 [*Stuart Budd CA*].
 - See e.g. Neil Etienne, “Appeal court makes rare finding of bias against judge,” *Law Times* (1 February 2016), online: <www.lawtimesnews.com/author/na/appeal-court-makes-rare-finding-of-bias-against-judge-12436>. The decision was also the subject of commentary by numerous law firm blogs. See e.g. Mark Gelowitz, “Stuart Budd & Sons Limited v. IFS Vehicle Distributors ULC: Supplemental Reasons Pending Appeal Lead to Reasonable Apprehension of Bias” (12 July 2016), *The Conduct of an Appeal* (blog), online: <www.conductofanappeal.com/stuart-budd-sons-limited-v-ifs-vehicle-distributors-ulc-supplemental-reasons-pending-appeal-lead-to-reasonable-apprehension-of-bias>.

reasonable apprehension of bias in his handling of a jurisdiction motion brought by the defendants. Justice Epstein methodically explained how the motion judge's handling of the motion displaced the presumption of judicial integrity.³ It was difficult to quarrel with her conclusion that a reasonable observer, viewing the matter realistically and practically, would feel that the defendants did not receive the fair hearing of the jurisdiction motion to which they were entitled.⁴

What became secondary in most analyses of *Stuart Budd* was the motion judge's expressing the view that jurisdiction motions can impede access to justice, and specifically the need to fairly adjudicate actions in a timely and cost-effective manner.⁵ Even if his impressions of jurisdiction motions are correct, Justice Epstein properly observed that this did not excuse the manner in which he handled the motion. But jurisdiction motions could still be posing an access to justice obstacle. So are jurisdiction motions being abused? What are the access to justice costs—in terms of time and money—of jurisdiction motions in Ontario? Have efforts this decade to improve and clarify the common law of jurisdiction helped?⁶ And has the bar heeded the Supreme Court of Canada's call for a “culture shift” in the conduct of civil litigation?⁷ This article seeks to answer these and related questions.

In Part I, I set the stage for the analysis by: (a) reviewing the uncertain state of the common law of jurisdiction and *forum non conveniens* in Canada in general and Ontario in particular; and (b) explaining how jurisdiction motions can facilitate or hinder access to justice. In Part II, I explain my methodology for analyzing all jurisdiction motions decided in Ontario from January 1, 2010 through December 31, 2015, keeping track of the number of motions brought,

3. See e.g. *Stuart Budd* CA, *supra* note 1 at paras 53ff.

4. See *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at 394-95, 68 DLR (3d) 716. Applying the well-known test for reasonable apprehension of bias from Justice de Grandpré's decision, among other things, the motion judge: (1) did not permit oral argument from the defendants on key issues, instead deciding the motion halfway through the allotted time; (2) wrongly described some of the defendants' submissions as “concessions”; (3) was needlessly discourteous towards the defendants' counsel; (4) identified what he described as a “fatal flaw” in the plaintiffs' materials, and chose to address this issue by giving the plaintiffs an unrequested adjournment to correct said flaw; (5) described the motion as an “abuse of process” on his own initiative; and (6) released supplementary reasons months after dismissing the motion in a way that suggested he was responding to arguments in the notice of appeal. For more detail, see Gelowitz, *supra* note 2.

5. *Stuart Budd & Sons Limited v IFS Vehicle Distributors ULC*, 2015 ONSC 519 at para 94, 66 CPC (7th) 316 [*Stuart Budd* SCJ].

6. *Club Resorts v Van Breda*, 2012 SCC 17, [2012] 1 SCR 572 [*Van Breda*]. Commentary on this is provided further below.

7. *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*].

their success rates, the costs associated with them, the amount of time it took to resolve them, and whether they involved a contractual choice of forum clause. In Part III, I analyze the access to justice issues raised by jurisdiction motions. I express doubt that the data can fairly suggest that jurisdiction motions are being “abused” by defendants and their counsel in any more than a few, isolated cases. However, I agree that, despite some apparent improvements over the course of this decade, jurisdiction motions frequently present an access to justice obstacle. Uncertainty in the law seems to be the primary reason for this. In Part IV, I consider potential proposals to address the access to justice concerns arising from jurisdiction motions.

I. THE BACKGROUND LAW

A. THE LAW OF JURISDICTION

Generally, an Ontario court will exercise jurisdiction over matters only when the parties agree that it should do so, when the defendant is a local person, or when the matter has strong connections to Ontario. To exercise jurisdiction more broadly would offend against the principles of comity, under which one court respects the authority of other courts to enjoy a similar scope of authority.⁸ In cases with connections to more than one forum, a balancing of interests is necessary to determine when jurisdiction may be found, respecting interests of international law and comity, as well as the respective private interests of the plaintiff and the defendant.⁹

This balancing act has bedevilled Canadian courts since the Supreme Court of Canada’s unanimous 1990 decision, *Morguard Investments Ltd v De Savoye*,¹⁰ in which it was held that, in addition to the traditional grounds of the parties’ consent and the defendant’s base in the forum, jurisdiction could be founded on a “real and substantial connection” with that province or territory.¹¹ While *Morguard* was generally considered to have comprehensively and fairly considered the interests at stake in jurisdiction motions, it was criticized for not clearly stating how they were to be applied, especially given that *Morguard* only

8. Janet Walker, *Castel & Walker: Canadian Conflicts of Laws*, 6th ed (Toronto: LexisNexis, 2012) at 1-1, 1-5.

9. *Morguard Investments Ltd v De Savoye*, [1990] 3 SCR 1077 at 1095-1103, 76 DLR (4th) 256, La Forest J [*Morguard*].

10. *Ibid.*

11. *Ibid* at 1108.

addressed intra-Canadian jurisdiction battles.¹² It is against this backdrop that the Uniform Law Conference of Canada developed the *Court Jurisdiction and Proceedings Transfer Act* (“*CJPTA*”).¹³ The *CJPTA* is a prospective uniform statute to ensure that all common law Canadian provinces and territories have consistent rules on jurisdiction motions. Only Saskatchewan,¹⁴ British Columbia,¹⁵ and Nova Scotia¹⁶ have enacted and brought into force the *CJPTA*.

In its 2002 decision *Muscutt v Courcelles*, the Court of Appeal for Ontario sought to give guidance on the application of the “real and substantial connection” test. Justice Sharpe identified eight non-determinative factors that a court should consider in determining whether a “real and substantial connection” is established.¹⁷ *Muscutt* was applied with some regularity outside of Ontario.¹⁸ While Justice Sharpe’s emphasis on flexibility for the purpose of maintaining fairness was doubtlessly well motivated, certainty did not follow. Tanya Monestier critically wrote that “under *Muscutt* ... litigants engaged in jurisdictional battles as though this were the first time that a case like this had ever been heard.”¹⁹

In *Club Resorts Ltd v Van Breda*, the Supreme Court of Canada again revisited the law of jurisdiction.²⁰ Justice LeBel attempted to establish a predictable framework for establishing a “real and substantial connection” by identifying four rebuttable presumptive connecting factors for tort cases. Justice LeBel held that the existence of any one of these factors would result in the court assuming jurisdiction.²¹ He acknowledged that the law of jurisdiction should balance fairness to the parties against the need to have clear rules that would allow parties to govern their affairs with certainty and predictability. He unapologetically

12. Stephen GA Pitel has explained this history. See Stephen GA Pitel, “Six of One, Half a Dozen of the Other? Jurisdiction in Common Law Canada” (2018) 55:1 Osgoode Hall LJ 63 [Pitel, “Six of One”]. See also Joost Blom & Elizabeth Edinger, “The Chimera of the Real and Substantial Connection Test” (2005) 38:2 UBC L Rev 373.
13. Uniform Law Conference of Canada, “Civil Section Minutes and Resolutions 1994” (Meeting held at Uniform Law Conference of Canada, Charlottetown, Prince Edward Island, 7 August 1994) at 48, online: <www.ulcc.ca/en/annual-meetings/444-1994-charlottetown-pe/civil-section-minutes-and-resolutions-1994/2040-civil-section-minutes-and-resolutions-1994>.
14. *The Court Jurisdiction and Proceedings Transfer Act*, SS 1997, c C-41.1.
15. *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.
16. *Court Jurisdiction and Proceedings Transfer Act*, SNS 2003 (2nd Sess), c 2.
17. *Muscutt v Courcelles* (2002), 60 OR (3d) 20 at paras 75-109, 213 DLR (4th) 577 (CA).
18. See e.g. Pitel, *supra* note 12, n 66.
19. Tanya J Monestier, “(Still) A ‘Real and Substantial’ Mess: The Law of Jurisdiction in Canada” (2013) 36:2 Fordham Intl LJ 396 at 411-12.
20. *Van Breda*, *supra* note 6.
21. *Ibid* at paras 80ff.

stated that he was seeking to establish a framework that would increase order and predictability.²²

Van Breda was generally considered an improvement over *Morguard* and *Muscutt*.²³ But *Van Breda* has nonetheless been subject to criticism itself, partially on the ground that it is still too uncertain and amorphous,²⁴ but also because it inappropriately restricted the ability to bring a civil action in common law Canada.²⁵ It is into this situation that I analyze jurisdiction motions brought in Ontario this decade.

Related to the doctrine of jurisdiction is *forum non conveniens*. This doctrine allows a court to stay an action despite jurisdiction, recognizing that another forum is clearly preferable for adjudication of the dispute.²⁶ In my analysis of jurisdiction motions brought in Ontario this decade, almost all defendants who bring a motion alleging that Ontario does not have jurisdiction over a case will also allege, in the alternative, that Ontario is *forum non conveniens*. There are only a few cases where jurisdiction was found but Ontario was nonetheless held to be *forum non conveniens*.²⁷

B. ACCESS TO JUSTICE

Precisely what the phrase “access to justice” encompasses varies in the circumstances. At its most holistic, it includes normative questions about what values constitute “justice” and ensuring that the substantive law encompasses such values.²⁸ At the very least, it means that civil litigation should have three

22. *Ibid* at paras 82, 92.

23. See e.g. Monestier, *supra* note 19 at 411-12; Joost Blom, “New Ground Rules for Jurisdictional Disputes: The *Van Breda* Quartet” (2012) 53:1 Can Bus LJ 1 at 18, 26-30.

24. See e.g. Monestier, *supra* note 19 at 413.

25. See e.g. Blom, *supra* note 23 at 18; Hovsep Afarian et al, “The SCC Clarifies the ‘Real and Substantial Connection’ Test” (23 April 2012), *McCarthy Tétrault LLP* (blog), online: <www.mccarthy.ca/article_detail.aspx?id=5845>.

26. *Van Breda*, *supra* note 6 at paras 109-112.

27. See e.g. *Sullivan v Four Seasons Hotels Limited*, 2013 ONSC 4622, 116 OR (3d) 365 [*Sullivan*]; *Kozicz v Preece*, 2013 ONSC 2823, 228 ACWS (3d) 689 [*Preece*]; *Endress+Hauser Canada v Aikman*, 2014 ONSC 3067, 240 ACWS (3d) 855; *Solloway v Klondex Mines Ltd*, 2014 ONSC 391, 237 ACWS (3d) 92, aff’d 2014 ONCA 672, 244 ACWS (3d) 833; *Currie v Farr’s Coach Lines Ltd*, 2015 ONSC 2352, 253 ACWS (3d) 330; *Silveira v FY International Auditing & Consulting Corp*, 2015 ONSC 338, 248 ACWS (3d) 324 [*Silveira*]; *Bouzari v Babremani*, 2015 ONCA 275, 126 OR (3d) 223 [*Bouzari*], rev’g 2013 ONSC 6337, 253 ACWS (3d) 936; *Consbec v Walker*, 2011 ONSC 2944, 202 ACWS (3d) 61 [*Consbec*] (the defendants in *Consbec* conceded there was jurisdiction).

28. See e.g. Trevor CW Farrow, “What Is Access to Justice?” (2014) 51:3 Osgoode Hall LJ 957 at 970-72 [Farrow, “What is Access to Justice”].

characteristics: first, minimal financial costs; second, timeliness; and third, simplicity.²⁹ Based on these values, and the value of proportionality, which recognizes that steps taken in litigation are to be proportionate to what can realistically be gained from taking said steps,³⁰ Ontario amended its *Rules of Civil Procedure* effective January 1, 2010.³¹

The Supreme Court of Canada emphasized these virtues of proportionality and simplicity, as well as the desire to mitigate delay and financial costs, in its seminal decision *Hryniak v Mauldin*, Justice Karakatsanis, for a unanimous Court, called for a “culture shift” to ensure that cases are decided on their merits in a manner that is fair, speedy, and with minimal financial cost.³² *Hryniak* concerned summary judgment. But appellate courts³³ and notable commentators³⁴ have repeatedly emphasized that the spirit of *Hryniak* is applicable outside this narrow context. There is no reason this should not apply to jurisdiction motions. The motion judge explicitly cited *Hryniak* in *Stuart Budd*.

Jurisdiction motions manifestly have the potential to distort access to justice. By their nature, they do not address the merits of a dispute. Brought at the beginning of a lawsuit, they can also delay resolution of an action. Affidavits, including expert evidence, will likely be necessary to prove the existence of a connection to a forum, or that another forum is obviously more convenient.³⁵

29. See *e.g. ibid* at 978-79; Roderick A Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Julia Bass, WA Bogart & Frederick H Zemans, eds, *Access to Justice for a New Century – The Way Forward* (Toronto: Law Society of Upper Canada, 2005) 19 at 68-73; *Hryniak*, *supra* note 7 at paras 29-33; Trevor CW Farrow, “Proportionality: A Cultural Revolution” (2012) 1 J Civil Litigation & Practice 151 [Farrow, “Proportionality”] (underlying all of these, as well as an important principle in its own right, is proportionality).

30. See *e.g.* Farrow, “Proportionality,” *supra* note 29.

31. RRO 1990, Reg 194 [*Rules*].

32. *Hryniak*, *supra* note 7 at paras 2, 23.

33. See *Iannarella v Corbett*, 2015 ONCA 110 at para 53, 124 OR (3d) 523 (for an example concerning discovery). See also *Canadian Natural Resources Limited v ShawCor Ltd*, 2014 ABCA 289 at para 5, 376 DLR (4th) 581 (for judgments concerning the intersection between discovery and claims of privilege).

34. See *e.g.* Stephen GA Pitel & Matthew B Lerner, “Resolving Questions of Law: A Modern Approach to Rule 21” (2014) 43:3 Adv Q 344 at 344-46.

35. Such evidence is usually necessary on a jurisdiction motion. As Justice LeBel notes, jurisdiction motion decisions:

must be made on the basis of the pleadings, the affidavits of the parties and the documents in the record before the judge, which might include expert reports or opinions about the state of foreign law and the organization of and procedure in foreign courts.

See *Van Breda*, *supra* note 6 at para 72.

Drafting such affidavits, conducting cross-examinations on them, preparing motion materials, and the scheduling and hearing of the motion are all likely to have serious cost consequences.

This is not to suggest that there is not a place for jurisdiction motions. If Ontario genuinely does not have jurisdiction over a case, it should not decide the case for reasons of international comity and fairness to the parties. This fairness is especially apparent if the proceedings have been commenced in breach of a forum selection clause,³⁶ or if the plaintiff has chosen the forum in order to benefit unfairly from some legal or practical advantage. It could also be the case because the courts of another jurisdiction will be able to resolve the case in a more effective and efficient—and thus more access to justice friendly—manner. And if the jurisdiction motion removes a case from Ontario’s court system early in the process, others will have the opportunity to use court resources that the case would have occupied. This will manifestly improve access to justice for everyone with the possible exception of the plaintiff. The benefits of successful jurisdiction motions are also not to be understated—they have the potential to dispose of a case (although not on its merits) or at least send it to a forum that can adjudicate in the fairest fashion. For all of these reasons, jurisdiction motions can promote proportionality.

But given the criticism of the law of jurisdiction, it is worth concretizing what are the access to justice implications of jurisdiction motions. If the law is unclear, it is easy to imagine how a tactical motion could be brought, in an effort to “wear out” the plaintiff, causing significant delay and expense. Such a motion would be antithetical to the spirit of *Hryniak* and appears to have been the motion judge’s concern in *Stuart Budd*. It is also worth considering the costs of *successful* jurisdiction motions to defendants—if the uncertain state of the law of jurisdiction means a defendant needs to wage an expensive jurisdiction motion to be appropriately relieved of defending the claim in Ontario.

II. METHODOLOGY

Throughout September and October 2016, I searched the databases of QuickLaw and Westlaw for jurisdiction motions decided in Ontario from January 1, 2010 through December 31, 2015. The search terms used are listed in Appendix A.

36. See *e.g.* *ZI Pompey Industrie v ECU-Line NV*, 2003 SCC 27 at para 20, [2003] 1 SCR 450, Bastarache J [*Zi Pompey*]. See also Geneviève Saumier & Jeffrey Bagg, “Forum Selection Clauses before Canadian Courts: A Tale of Two (or Three?) Solitudes” (2013) 46:2 UBC L Rev 439.

I checked my results in January 2017, though I did not add 2016 motions, as the appellate process for such motions is not yet complete. I included all cases where there was adversarial argument over whether the Ontario Superior Court of Justice (including the Small Claims Court branch) had jurisdiction over the action, or whether the Ontario Superior Court of Justice was *forum non conveniens*.

A. DECIDING WHAT TO INCLUDE

I did not include family law decisions given the widespread acknowledgement that jurisdiction rules in the family law context raise fundamentally different considerations than those raised in the civil and commercial context.³⁷ Moreover, the different procedural rules between family law and civil litigation makes comparisons between the two an inexact science at best.³⁸

I also did not include any cases where a plaintiff or applicant was merely seeking to enforce a foreign judgment. Though enforcement is another quintessential aspect of private international law, it is widely acknowledged that this issue raises different considerations than whether a court has jurisdiction to adjudicate the merits of the dispute.³⁹

I similarly did not include cases where the parties did not make submissions on jurisdiction but the court felt obliged to satisfy itself of its jurisdiction,⁴⁰ where no jurisdiction was found due to failure to comply with the *Proceedings Against the Crown Act* (which are not conflicts of laws cases in any event),⁴¹ where there was a dispute over service *ex juris* but not jurisdiction,⁴² and where jurisdiction issues were not resolved because another issue arose preventing that.⁴³ My rationale

37. See *e.g.* Martha Bailey, “Judicial Jurisdiction Rules for Family Law Matters” (Paper delivered at The CJPTA: A Decade of Progress, Toronto, Ontario, 21 October 2016) [unpublished].

38. Family law cases are not governed by the *Rules of Civil Procedure* but by the *Family Law Rules*. See *Family Law Rules*, O Reg 114/99.

39. See *Chevron Corp v Yaiguaje*, 2015 SCC 42, [2015] 3 SCR 69 [*Chevron*]. Enforcement of private international law was discussed by Justice Gascon in *Chevron*. This is also discussed in commentary on *Chevron*. See *e.g.* Sarah Whitmore & Vitali Berditchevski, “Jurisdiction to Enforce Foreign Judgments in Canada Clarified by Supreme Court of Canada” (2016) 31:2 BFLR 411.

40. See *e.g.* *Residual IP: Estate of Dominic Grillo*, 2015 ONSC 1352, 125 OR (3d) 707; *Electro Sonic Inc (Re)*, 2014 ONSC 942, 14 CBR (6th) 256.

41. *Babington-Browne v Canada (Attorney General)*, 2015 ONSC 6102, 258 ACWS (3d) 811.

42. *Bui Buy Thinh et al v Tran Quoc Chinh et al*, 2015 ONSC 3406, 11 ETR (4th) 177. This is a distinct issue from whether a court has jurisdiction, which is an issue of local procedural law. See *e.g.* Pitel, “Six of One,” *supra* note 12.

43. *Moneris Solutions Corp v Groupe Germain Inc*, 2014 ONSC 6102, 34 BLR (5th) 161.

for excluding these cases in my analysis is simple: My goal is to isolate the types of incidents seen in *Van Breda* and *Stuart Budd*—i.e., adversarial disputes over whether the court had jurisdiction to hear a matter, and the resulting increased expense in determining whether the plaintiff should be given access to the courts or the defendant relieved from the obligation to defend in the forum.

I did, however, include cases where a party made submissions either that Ontario did not have jurisdiction, that it was *forum non conveniens*, or both, regardless of whether a formal notice of motion was served and filed.⁴⁴ The failure of the defendant to bring a formal motion would appear to be a “technicality”—such cases raise the concerns I am seeking to analyze. I also included cases where it was argued *either* that Ontario did not have jurisdiction or that it was *forum non conveniens*—both arguments are almost always raised together, and *Van Breda* and *Stuart Budd* exemplify both issues.

B. VARIABLES

As noted above, the precise meaning of the phrase “access to justice” can be broad or narrow depending on the circumstances.⁴⁵ Within the context of adversarial litigation—which is constitutionally destined to remain part of Canada’s justice system⁴⁶—it mandates, at the very least, that civil litigation maximize simplicity and speed, and minimize financial cost, in the resolution of civil actions on their merits.⁴⁷ As such, I sought to analyze how jurisdiction motions “cost” parties, in terms of time and money, and how they complicated parties’ private dealings. After isolating the cases using the aforementioned criteria, I analyzed the following: how many motions have been brought; how many motions were successful; whether the motions involved a forum selection or choice of law clause, and how those cases are decided; whether the cases were appealed, and what the results of those appeals were; what the costs awards associated with the

44. See e.g. *Toronto (City) v Tseng*, 2011 ONSC 4594, 87 MPLR (4th) 220 [*Tseng*]; *Umutoni c Safari*, 2012 CSON 6962, 232 ACWS (3d) 370; *Re Ghana Gold Corp*, 2013 ONSC 3284, 3 CBR (6th) 220 [*Ghana Gold*]; *Bearsfield Developments Inc v McNabb*, 2013 ONSC 7063, 234 ACWS (3d) 913.

45. See e.g. Macdonald, *supra* note 29.

46. *Ibid* at 32; Paul Vayda, “Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada’s *Trial Lawyers* Decision” (2015) 36 Windsor Rev Legal Soc Issues 207 at 211-12. This article analyzed the decision of the Supreme Court of Canada in *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 SCR 31. In that case, the Court held that access to the courts is, at least in some circumstances, a constitutional right.

47. See e.g. Farrow, “What is Access to Justice,” *supra* note 28 at 978.

foregoing were; and whether the case was a (putative) class proceeding. I explain how all of these factors are relevant below.

Two actions, *David S Laflamme Construction Inc v Canada (Attorney General)*⁴⁸ and *Moisan v Antonio Sanita Land Development Ltd*,⁴⁹ had jurisdiction motions brought and argued only to have the cases dismissed on other grounds. I accordingly include them in terms of “number of cases brought” and for the purposes of calculating average delays and costs awards, as they shed light on these issues. But they shed no light on success rates or appeal rates, so I include only 145 cases in my analysis on those points.

In order to learn how long it took these cases to proceed through the court system, I emailed counsel on each case in an attempt to learn when the originating document was served. I would first email the plaintiff’s lawyer(s), but, if this was not possible, the defendant’s lawyer(s). However, in the following situations I directed email to the defendant’s lawyer(s): the plaintiff was a self-represented litigant;⁵⁰ the jurisdiction motion was brought in relation to a third-party claim commenced by the defendant;⁵¹ or I was unable to contact the plaintiff’s lawyer because he or she could not be found,⁵² he or she had been suspended by the Law Society of Upper Canada,⁵³ or he or she had died.⁵⁴

I sought to learn the date of service, as opposed to issuance, of the originating document, given that any delay between issuance and service cannot fairly be attributed to the jurisdiction motion. Lawyers on 73 cases (one short of half) responded, 65 with the requested information—the other eight indicated they

48. 2014 ONSC 1379, 31 CLR (4th) 285 [*Laflamme*].

49. 2010 ONSC 3339, 191 ACWS (3d) 433.

50. See e.g. *Canadian Imperial Bank of Commerce v Glasford*, 2015 ONSC 197, 248 ACWS (3d) 65, aff’d 2015 ONCA 523, 255 ACWS (3d) 879, leave to appeal to SCC refused, 36670 (7 April 2016) [*Glasford*].

51. See e.g. *CP Ships Ltd v Icecorp Logistics Inc*, 2015 ONSC 6243, 260 ACWS (3d) 62 [*CP Ships*].

52. See e.g. *West Van Inc v Daisley*, 2013 ONSC 1988, 228 ACWS (3d) 417, aff’d 2014 ONCA 232, 119 OR (3d) 481, leave to appeal to SCC refused, 35906 (4 September 2014) [*West Van*].

53. See e.g. *1756670 Ontario Inc v Roxboro Excavation Inc*, 2011 ONSC 7289, 210 ACWS (3d) 587.

54. See e.g. *Zhang v Hua Hai Li Steel Pipe Co*, 2012 ONSC 4379, 218 ACWS (3d) 821. This was actually an instance where I could not locate the plaintiff’s lawyer, and the defendant’s lawyer had died.

did not have (easy) access to the information.⁵⁵ Many of the lawyers added comments about the nature of the proceeding. While I am reluctant to draw normative lessons from these anecdotal comments, I do integrate some of them below when they complement what the data already appear to show.

C. LIMITATIONS OF METHODOLOGY

I recognize that QuickLaw and Westlaw do not report every case decided in Ontario, though they report the vast majority between them.⁵⁶ As such, they are frequently used in quantitative analyses of case law.⁵⁷ Moreover, QuickLaw and Westlaw do not reflect motions or appeals that were threatened, or even commenced, but were resolved. I came across two such cases: one, where parties from a withdrawn motion could not agree on costs,⁵⁸ and a second, where a jurisdictional dispute was essentially rendered moot by certain defendants being placed into receivership.⁵⁹ It would be very difficult if not impossible to quantify occurrences such as these.

Costs awards do not reflect all costs incurred (indeed, typically about half of the actual costs).⁶⁰ Some cases also awarded little or no costs for reasons such as

-
55. *Sun Life Assurance Co of Canada v Yellow Pages Group Inc*, 2010 ONSC 2780, 190 ACWS (3d) 95; *Moore v Vancouver Fraser Port Authority*, 2011 ONSC 3692, 204 ACWS (3d) 278; *Dempsey v Staples*, 2011 ONSC 1709, 12 MVR (6th) 30 [*Dempsey*]; *Sullivan*, *supra* note 27; *Elfarnawani v International Olympic Committee*, 2011 ONSC 6784, 20 CPC (7th) 412; *Cannon v Funds for Canada Foundation*, 2010 ONSC 4517, 192 ACWS (3d) 50 [*Cannon*]; *Di Stefano v Energy Automated Systems Inc*, 2010 ONSC 493, 68 BLR (4th) 209 [*Di Stefano*]; *Lazer-Tech v Dejerrey*, 2010 ONSC 1662, 186 ACWS (3d) 384.
56. *Ibrahim v Robinson*, 2015 ONCA 21, 124 OR (3d) 106 [*Ibrahim*]. This was an appeal of an unreported trial decision.
57. See *e.g.* Craig Jones & Micah B Rankin, “Justice as a Rounding Error? Evidence of Subconscious Bias in Second-Degree Murder Sentences in Canada” (2014) 52:1 Osgoode Hall LJ 109 at 121, n 58.
58. See *e.g.* *Normerica Inc v Echo Global Logistics Inc*, 2011 ONSC 6827, 210 ACWS (3d) 46 [*Normerica*] (where the motion was withdrawn but the parties could not resolve costs). See also *Tseng*, *supra* note 44 (Christopher Henderson, lawyer for the plaintiff, informs me that the defendant brought but withdrew an appeal).
59. See *Fraser v 4358376 Canada Inc (cob as Itravel 2000 and Travelzest PLC)*, 2014 ONCA 553, 376 DLR (4th) 295.
60. See *e.g.* P Scott Horne, “The Privatization of Justice in Québec’s *Draft Bill to Enact the New Code of Civil Procedure*: A Critical Evaluation” (2013) 18 Appeal 55 at 61 citing *Riddell v Conservative Party of Canada*, 158 ACWS (3d) 555, [2007] OJ No 2577 (QL) (Sup Ct) at para 38.

the motion's mixed success,⁶¹ the case having raised a novel point of law,⁶² or the party's agreement.⁶³ Moreover, not all cases have reported costs orders, usually due to an encouragement from the judge or master to settle the issue of costs. As such, extrapolation from an imperfect (if sizable) sample size is necessary. Regarding delay, I am also extrapolating results from an imperfect if sizable sample size, as I was only able to quantify delay based on a sample of about 44 per cent of cases.

There are inherent limitations to a quantitative analysis of case law. Most notably, such an analysis sheds minimal if any light on the normative values underlying the current state of the law of jurisdiction,⁶⁴ or the significance of the expense or delay on particular litigants. It can, however, provide some indication about what the literal costs of jurisdiction motions are, and whether the decisions in *Van Breda* and *Hryniak* have had any effect on this. This information should prove inherently valuable to policymakers and judges so that they are aware of some factors that need to be considered in developing the law of jurisdiction.

III. RESULTS AND ACCESS TO JUSTICE IMPLICATIONS

A. NUMBER OF MOTIONS

I analyzed 147 jurisdiction motions decided in Ontario between 2010 and 2015—33 in 2010, 23 in 2011, 26 in 2012, 25 in 2013, 18 in 2014, and 22 in 2015. This leads to both an average and a median of 24 cases per year. All cases are listed in Appendix B, sorted by year that the motion was decided. I treat every case as part of the “year” in which the motion was decided, even if the appeal was decided subsequently.

There was a general downward trend in decisions per year. Perhaps this can be attributed to a particularly high number of cases in 2010, a time period in which the Court of Appeal for Ontario was struggling with *Van Breda*, and before the Supreme Court of Canada had weighed in on this issue. It could also be an indication that the spirit of *Hryniak* and the 2010 amendments to the *Rules* are being heeded by members of the bar, who may have become more reluctant to bring inappropriate interlocutory motions. More likely, this appears to reflect a

61. See *e.g.* *Sullivan*, *supra* note 27.

62. See *e.g.* *ibid*; *Frank v Farlie, Turner & Co, LLC*, 2012 ONSC 6715, 225 ACWS (3d) 44 [*Frank*].

63. See *e.g.* *Shah v LG Chem, Ltd*, 2015 ONSC 2628, 125 OR (3d) 773 [*Shah*].

64. See *e.g.* Joshua B Fischman, “Reuniting ‘Ought’ and ‘Is’ in Empirical Legal Scholarship” (2013) 162:1 U Pa Law Rev 117.

small, but genuine, decrease in the number of jurisdiction motions brought in the aftermath of *Van Breda*. This would appear to be a positive development, suggesting that the Supreme Court of Canada's goal in *Van Breda* to ensure order and predictability has been somewhat achieved. A related explanation would be that parties are "not even trying" to bring cases that could have perhaps passed the amorphous *Muscutt* framework, but do not fall within one of *Van Breda*'s presumptive connecting factors. This is also a positive development in terms of saving parties time and expense. But the trade-off would be denying plaintiffs' ability to use the Ontario courts when it would be appropriate for them to do so. In other words, if the law is under-inclusive, it may create an insurmountable hurdle for plaintiffs, with the result being a chilling effect on cases being brought.⁶⁵ This "balancing of predictability and substantive fairness" is a common theme in conflicts of laws, as evidenced by the commentary in the aftermath of *Van Breda*.

Isolating the cause of the apparent decline in the number of jurisdiction motions throughout this decade with scientific precision is probably not possible. However, it is also worth noting that the number of jurisdiction motions remains significant. More than twenty jurisdiction motions have been decided each year this decade except in 2014.

B. ULTIMATE SUCCESS RATES OF MOTIONS

On average about half of motions brought were ultimately (*i.e.*, including after an appeal, if there was one) successful—50 per cent in 2010, 57 per cent in 2011, 38 per cent in 2012, 44 per cent in 2013, 53 per cent in 2014, and 64 per cent in 2015. The average of the yearly rates is 51 per cent with the median being 51.5 per cent. The overall average is 51 per cent, representing 74 of 145 decisions. Each case is listed in Appendix B. The relatively higher rates of success in the last two years could be a reflection of *Van Breda*'s aforementioned "closing" of circumstances in which jurisdiction can be found. But the strange dip in success rates immediately post-*Van Breda* (2012 and 2013 were the only years with a less than 50 per cent success rate) could indicate that the variation between years is better explained by a simple variation in the characteristics of the cases. More hopefully, the higher success rates in recent years could be an indication that lawyers post-*Hryniak* are not bringing motions unrelated to the merits of the case that are unlikely to succeed.

65. Brandon Kain, Elder C Marques & Byron Shaw, "Developments in Private International Law: The 2011-2012 Term – The Unfinished Project of the *Van Breda* Trilogy" (2012) 59 SCLR (2d) 277 at 286.

A benefit of high rates of success is that parties are not wasting time and expense on fruitless motions that do not address the merits of a case. Moreover, the parties are quickly redirected to a more appropriate forum. As discussed above, this indicates principles of fairness and proportionality have been heeded. Authors in this area have written before, there is another obvious access to justice concern surrounding jurisdiction motions—namely, if jurisdiction is not found, it may practically end a plaintiff's chance of achieving justice or will otherwise drastically increase her costs.

In any event, the fact is that on average about half of jurisdiction motions have been successful. This suggests that, if brought to a hearing, jurisdiction motions tend to raise a serious issue. That this is happening this frequently—given that in the vast majority of cases, jurisdictional battles do not arise—could be a consequence of the uncertain state of the law of jurisdiction. It could be leading either the plaintiff to believe that they have a reasonable basis that the claim can be tried in Ontario, or leading the defendant to believe that there is a reasonable basis to challenge jurisdiction. Another view would be that, following a new leading Supreme Court of Canada decision such as *Van Breda*, one would expect a brief rise in cases to establish the law. The fact that about two dozen cases a year remain, which is consistent with the number of cases pre-*Van Breda*, suggests uncertainties persist. In any case, it is evident that uncertainty in the law has consequences.

C. APPELLATE CONSEQUENCES

A decision on a jurisdiction motion “finally decides” an Ontario court’s jurisdiction over a matter. Appeals of Superior Court of Justice decisions accordingly proceed, as of right, to the Court of Appeal for Ontario instead of the Divisional Court branch of the Ontario Superior Court of Justice.⁶⁶ An exception exists when the original decision was made by a master—in that case, the appeal proceeds, as of right, to the Divisional Court.⁶⁷ About 30 per cent of jurisdiction motion

66. *Courts of Justice Act*, RSO 1990, c C.43, s 6(1)(b) [CJA]; *MJ Jones Inc v Kingsway General Insurance Co* (2003), 68 OR (3d) 131, 233 DLR (4th) 285 (CA). Justice Sharpe explained why, post-*Morguard*, an appeal from an order dismissing a motion for an order that Ontario has no jurisdiction or, alternatively, is *forum non conveniens*, is a final order for this purpose. Practice had been different pre-*Morguard*.

67. *CJA*, *supra* note 66, s 19(1)(c). The only examples of this in my sample are *Harrowand SL v Dewind Turbines Ltd*, 2014 ONSC 2014, 239 ACWS (3d) 630, Master Dash, rev'd 2014 CarswellOnt 19177 (WL Can) (Div Ct) [*Harrowand*] and *Machado v Catalyst Capital Group Inc*, 2015 ONSC 6313, 27 CCEL (4th) 116, Master Short, aff'd 2016 ONSC 6719, 34 CCEL (4th) 274 (Div Ct) [*Machado*].

decisions were appealed in the 2010–2015 year period—34 per cent in 2010, 26 per cent in 2011, 27 per cent in 2012, 32 per cent in 2013, 13 per cent in 2014, and 41 per cent in 2015. The median and average rates of appeal are therefore 29.5 per cent, though the overall average is 28.83 per cent (44 of 145 decisions). These appeals are also chronicled on a case-by-case basis in Appendix B.

The number of appeals may seem high.⁶⁸ But there are several characteristics of jurisdiction motions that make an appeal particularly likely and, arguably, particularly appropriate: there is an appeal as of right; the facts that form the basis of the jurisdiction motion are frequently not contestable and therefore not within the particular expertise of the motion judge;⁶⁹ the standard of review for the determination of jurisdiction is generally correctness⁷⁰ (though a decision on whether to stay a case on grounds of *forum non conveniens* is discretionary, and thus not easily reviewed);⁷¹ the issues decided by the motion are exceptionally important;⁷² and the uncertainty surrounding the law of jurisdiction (discussed throughout this article) may make an appeal not obviously futile, and thus more attractive.

Of the 44 appeals, 24 were brought by defendants compared to 20 brought by plaintiffs. This represents defendants appealing 24 of 60 originally unsuccessful motions (40 per cent) with plaintiffs appealing 20 of 65 originally successful motions (30.7 per cent). The greater likelihood of the defendants appealing could reveal the likely tendency of defendants on jurisdiction motions

68. The Divisional Court and Court of Appeal for Ontario have 1,503 reported 2016 decisions, between them, based on a January 11, 2017 QuickLaw search. The Superior Court had 4,388, the Small Claims Court has 125, and the Provincial Court had 845. Assuming that the former two courts are entirely separate appeals, while the latter three are entirely separate trials, appellate courts have just over 28 per cent the number of cases, akin to the jurisdiction motion appeal rate. But it seems highly likely the trial courts produce fewer reported decisions, especially of the Small Claims Court, meaning the percentage of appealed cases is lower.

69. Chief Justice Osborn suggests this will frequently be the case. See *Newfoundland and Labrador (Attorney General) v Rothmans Inc.*, 2013 NLTD(G) 180 at para 181, 345 Nfld & PEIR 40.

70. *Black v Breeden*, 2010 ONCA 547 at para 19, 102 OR (3d) 748, Karakatsanis JA [*Black*]. This may not apply insofar as the motion judge made findings of fact that are determinative of the legal issues. See *Trillium Motor World Ltd v General Motors of Canada Ltd*, 2014 ONCA 497 at para 24, 120 OR (3d) 598, Lauwers JA [*Trillium*]. A motion judge's determination on a *forum non conveniens* question, however, is entitled to deference. See *Trillium* at para 88; *Black* at para 77.

71. *Van Breda*, *supra* note 6 at para 112.

72. See Part I(B), above.

to have greater financial resources.⁷³ But it could also reflect *Van Breda* seemingly restricting the ability of common law Canadian courts to assume jurisdiction. Defendants could thus form the opinion that *Van Breda* gave an appeal a greater likelihood of success.

Only ten appellate decisions overturned the motion judge—four in 2010, zero in 2011, two in 2012, three in 2013, one in 2014, and zero in 2015. This leaves an “appeal success rate” of 22.7 per cent. This excludes *Stuart Budd*, as the reason for the first appeal’s success was unrelated to the actual question of jurisdiction, instead concentrating on reasonable apprehension of bias. As discussed in more detail below, the motion ultimately failed.

The successful appeals were equally likely to benefit the plaintiff and the defendant. Five successful appeals benefitted the plaintiff—three in 2010, and two in 2012. Five successful appeals also benefitted the defendant—one in 2010, three in 2013 (one of which was the allowing of a cross-appeal after the plaintiff appealed a motion that was originally only partially successful),⁷⁴ and one in 2014. Given that one defendant victory was the result of a cross-appeal, the rates of success were better for the plaintiffs on their own appeals—4 of 24 (16.7 per cent) for defendants, compared to 5 of 20 (25 per cent) for plaintiffs. The difference correlates with the comparative number of appeals brought by plaintiffs and defendants. The decrease in number of successful appeals over the years could indicate that the law of jurisdiction is becoming more settled post-*Van Breda*. That the more recent successful appeals have benefitted the defendants could also reflect the “closing” of jurisdiction post-*Van Breda*. But the numbers are small enough that we could instead be witnessing statistical anomalies on a year-by-year basis.

73. See e.g. Vaughan Black, “Conditional *Forum Non Conveniens* in Canadian Courts” (2013) 39:1 Queen’s LJ 41 at 71.

74. *Prince v ACE Aviation Holdings Inc*, 2014 ONCA 285, 120 OR (3d) 140, leave to appeal to SCC refused, 35935 (23 October 2014) [*Prince*].

There were 13 unsuccessful applications for leave to appeal to the Supreme Court of Canada.⁷⁵ One leave application was granted but the appeal was not heard until November 2017.⁷⁶ The only other time the Court granted leave to hear a case, the appeal was dismissed.⁷⁷ Supreme Court experience thus has no real influence on the “success rates” of appeals, though it is worth observing that over a third of the losing parties on appeal (15 of 44) thought it was at least worthwhile seeking leave.

What should be made of these appellate tendencies and success rates from an access to justice perspective? The relatively high rates of appeal are not encouraging as they lead to significant costs and delay. Having said that, the relatively low success rates—success rates that are decreasing in recent years—could be evidence that *Van Breda* has gone some way to clarifying the law of jurisdiction.⁷⁸ We may just be at the beginning, therefore, of seeing whether *Van Breda* is achieving its goal in providing clarity to the law of jurisdiction. Whether *Hryniak* has had any influence is doubtful—the overall rates of appeal do not seem to be changing and appeals in recent years have, if anything, been less successful.

D. COSTS AWARDS

Seventy-five of the 147 jurisdiction motions I analyzed had corresponding costs orders. They are listed in Appendix C. In five additional cases, no costs were awarded.⁷⁹ I did not include these five cases in calculating numbers of costs

75. *Ibid*; *Forsythe v Westfall*, [2015] SCCA No 460, 2016 CarswellOnt 3759 (WL Can); *Glasford*, *supra* note 50; *Kaynes v BP, plc*, [2014] SCCA No 452, 2015 CarswellOnt 4021 (WL Can); *West Van*, *supra* note 52; *Ontario v Rothmans Inc*, [2013] SCCA No 327, 335 OAC 398 (note); *Central Sun Mining Inc v Vector Engineering Inc*, [2013] SCCA No 475, 472 NR 399 (note); *Aldo Group Inc v Moneris Solutions Corp*, [2014] SCCA No 31, 474 NR 389 (note) [*Aldo Group*]; *Amtim Capital Inc v Appliance Recycling Centers of America*, [2014] SCCA No 96, 2014 CarswellOnt 7501 (WL Can); *Abdula v Canadian Solar Inc*, [2012] SCCA No 246, 445 NR 397 (note); *Bond v Brookfield Asset Management Inc*, [2012] SCCA No 278, 2012 CarswellOnt 14301 (WL Can); *Expedition Helicopters Inc v Honeywell Inc*, [2010] SCCA No 258, 280 OAC 399 (note); *Tucows.com Co v Lojas Renner SA*, [2011] SCCA No 450, 436 NR 386 (note). Supreme Court of Canada leave applications are not included in the charts in Appendix B except for *Trillium*, *supra* note 70, given that they were all refused except for *Trillium*.

76. *Haaretz.com v Goldbar*, [2016] SCCA No 388, 2017 CarswellOnt 3569 (WL Can).

77. *Trillium*, *supra* note 70.

78. See *e.g.* *Kain, Marques & Shawl*, *supra* note 65. This discusses “clarification” as the principal goal of *Van Breda* but recognized time would be necessary to see if that goal would be achieved. See also *Van Breda*, *supra* note 6.

79. See *e.g.* *Sullivan*, *supra* note 27; *Frank*, *supra* note 62; *Shah*, *supra* note 63; *Forsythe v Westfall*, 2015 ONSC 1725, 250 ACWS (3d) 393; *Laflamme*, *supra* note 48.

awards, and average and median costs orders—costs were obviously incurred and including a “zero” warps the average and median statistics. There were also a number of cases with no reported costs. This is likely because it is common for judges to frequently decide a motion, and then encourage the parties to settle the issue of costs.⁸⁰

The overall average costs award for a motion is \$31,940—\$23,261 in 2010, \$36,295 in 2011, \$59,941 in 2012, \$29,003 in 2013, \$21,746 in 2014, and \$15,592 in 2015. As is obviously apparent, 2013 is an outlier. This is because of an enormous \$575,520 costs order in *Ontario v Rothmans Inc.*⁸¹ This appears to reflect the heightened costs and delay endemic to tobacco litigation.⁸² There were also nine decisions in cases⁸³ brought under the *Class Proceedings Act*.⁸⁴ The average cost order in the four class action motions that had reported cost orders is \$69,026.44. Due to the large nature of class actions, they may not be truly indicative of “typical” costs orders. When these four class proceedings and the *Rothmans* case are removed from the 75 cases with costs orders, the average costs order in the remaining 70 cases is \$22,055. If the three substantial indemnity awards are also removed,⁸⁵ the average moves down only slightly more to \$21,556.

The overall median costs award in the 75 cases is \$15,000. The median is \$10,125 in 2010, \$15,719.50 in 2011, \$14,595 in 2012, \$20,500 in 2013, \$13,000 in 2014, and \$10,149.50 in 2015. If one removes *Rothmans* and the four class actions, the overall median becomes \$14,129. Removing also the three substantial indemnity costs decision leaves the median at \$13,136.65.

Forty appeals had costs orders. The overall average was \$21,573—\$14,636 for appeals of 2010 decisions, \$13,715.80 for 2011 decisions, \$64,267 for 2012 decisions, \$22,714 for 2013 decisions, \$13,125 for 2014 decisions, and \$11,313 for 2015 decisions. Again, 2012 is an outlier due to a \$237,332.50 costs award

80. See e.g. *Brisbin v Lunev*, 2010 ONSC 1840 at para 70, 191 ACWS (3d) 443.

81. 2012 ONSC 1804, 215 ACWS (3d) 568.

82. See e.g. Jacob J Shelley, “The Crown’s Right of Recovery Act” (2010) 18:3 Health L Rev 15.

83. *Cannon*, supra note 55; *McKenna v Gammon Gold Inc*, 2010 ONSC 1591, 88 CPC (6th) 27; *Bond v Brookfield Asset Management Inc*, 2011 ONSC 2529, 201 ACWS (3d) 393, aff’d 2011 ONCA 730, 18 CPC (7th) 74, leave to appeal to SCC denied, 34885 (15 November 2012); *Frank*, supra note 62; *Trillium*, supra note 70; *Prince*, supra note 74; *Kaynes v BP, plc*, 2013 ONSC 5802, 117 OR (3d) 685, aff’d 2014 ONCA 580, 122 OR (3d) 162, leave to appeal to SCC denied, 36127 (26 March 2015); *Shah*, supra note 63; *Airia Brands Inc v Air Canada*, 2015 ONSC 5332, 126 OR (3d) 756 [*Air Canada*].

84. *Class Proceedings Act*, 1992, SO 1992, c 6.

85. *Merrill Lynch Canada v Mineralogy Canada Acquisition Corp*, 2011 ONSC 3032, 202 ACWS (3d) 254; *Manson v Canetic Resources Ltd*, 2014 ONSC 1480, 238 ACWS (3d) 43 [*Manson*]; *Petrook v Natuzzi Americas, Inc*, 2013 ONSC 5855, 234 ACWS (3d) 864.

in *Rothmans*.⁸⁶ If *Rothmans* and five class action appellate decisions with reported appellate costs awards are removed from the average, it is reduced to \$13,731. These numbers all exclude the first *Stuart Budd* appeal, as that appeal was not fundamentally about the law of jurisdiction.

The median costs award from the forty appeal costs decisions is \$15,000. This does not change when one removes *Rothmans* and the five class actions. The median is \$15,000 in 2010, 2011, and 2013, \$25,000 in 2012, \$13,750 in 2014, and \$8,750 in 2015.

Excluding *Rothmans* and the class actions, the average costs award of a motion and appeal (added together) is therefore \$35,484. The medians added together, excluding *Rothmans* and the class actions, are \$29,129. This moves down by just over \$500 when the substantial indemnity costs decisions are also removed. It is worth remembering that costs awards (except in the cases of substantial indemnity costs) are typically about half of actual costs incurred.⁸⁷ As such, each party in a non-class action can reasonably expect to spend approximately \$30,000 to \$45,000 on a jurisdiction motion, and \$60,000 to \$75,000 if there is an appeal. It goes without saying that this is a very substantial amount to spend on a procedure that does not address the merits of a dispute—*i.e.*, a step in litigation that, although occasionally necessary and proportionate, is also one that comes with significant financial expense.

E. DELAY

As noted above, 65 lawyers informed me of the date of the service of the statement of claim. If there were multiple dates of service due to multiple defendants, I chose the latest date of service to calculate delay.⁸⁸ Some lawyers could not pinpoint the exact date of service but were able to give a range of a few days or weeks in which service would have been effected. Given that I am calculating delay in months, I included these cases with an estimate. Appendix D indicates the (latest) dates of service of the statements of claim and the dates of resolution of the motion (whether on the motion itself, an applicable appeal, denial of Supreme Court of Canada leave application, reconsideration, or an appeal from reconsideration). From there, I would calculate the delay in months, rounding as appropriate; I erred on the side of “rounding down” as I do not wish to overstate the average

86. *Ontario (Attorney General) v Rothmans Inc*, 2013 ONCA 642, 118 OR (3d) 213.

87. Horne, *supra* note 60.

88. See *e.g.* *Central Sun Mining Inc v Vector Engineering Inc*, 2012 ONSC 7331, 18 CLR (4th) 189 (dates of service on different defendants were between August 31, 2009 and May 10, 2010).

delay and I am working with some estimates. One case, *Airia Brands Inc v Air Canada*,⁸⁹ involved a delay of eight years and eleven months from the last date of service of the statement of claim to the resolution of the motion—nearly twice as long as the next longest delay.⁹⁰ Class counsel informed me that “this was not your typical jurisdiction motion—more of a contest to class definition.”⁹¹ As a result of the very atypical nature of this case, I am primarily using the remaining 64 cases to calculate delay.

The average delay from service of the statement of claim to resolution of the motion was 17.7 months in cases that did not involve an appeal. However, this decreases to 15.8 months when *Air Canada* is excluded. Moreover, the median was 12 months. Apart from *Air Canada*, four cases involved delays of over forty months. The parties in these cases may well have been waiting for resolution of *Van Breda* before proceeding with the motion. One lawyer explicitly told me as much.⁹² When the five longest delays are removed from the average, the average delay is 12.8 months. Excluding *Air Canada*, the average per year was 14.75 months in 2010 (of 4 samples), 13.3 months in 2011 (of 7 samples), 16.1 months in 2012 (of 9 samples), 17.5 months in 2013 (of 11 samples), 18.9 months in 2014 (of 9 samples), and 11.9 months in 2015 (of 7 samples).

In cases with appeals, but no leave application to the Supreme Court of Canada, the average delay from service of the statement of claim to resolution of the motion is 24.8 months. The median is 24 months. In the five cases with leave applications to the Supreme Court of Canada, the average time to resolution of the motion (one of the cases being returned to the Ontario Superior Court of Justice) is 30.6 months, with the median being 29 months. The average delay in all 65 cases is about 22.3 months. Excluding *Air Canada*, the average is just over 21 months, with the median being 16 months.

Ultimately, it is clear that jurisdiction motions cause very significant delay. The above averages may be slightly higher than a typical litigant would experience today due to a few outliers in the aftermath of *Van Breda*. Even so, a party facing a jurisdiction motion can realistically expect a delay of over a year if there is no appeal. If there is an appeal (present in about 30 per cent of the cases), the total delay is likely to be over two years. And in the case of a Supreme Court

89. *Air Canada*, *supra* note 83. The last date of service of statement of claim was September 21, 2006. This is a 107-month delay.

90. *Haufler (Litigation Guardian of) v Hotel Riu Palace Cabo San Lucas*, 2013 ONSC 6044, 117 OR (3d) 275 [*Haufler*] (had a delay of 58 months, 49 months less than the delay in *Air Canada*, *supra* note 89).

91. Email from Charles M Wright (18 December 2016).

92. Interview of David Sloan [nd] (counsel on *Haufler*, *supra* note 90).

of Canada leave application (accounting for about 10 per cent of total cases), the total delay is about 30 months. This is all before the merits of a case are considered. Moreover, despite a decrease in delay in 2015, the overall length of delay appeared to increase over the course of the decade, suggesting that *Hryniak* is not having effects in this area of practice.

F. FORUM SELECTION CLAUSES

Both the Supreme Court of Canada and notable commentators have recognized that forum selections should be encouraged to allow parties to order their contractual affairs through selecting, in advance, the forum to adjudicate potential disputes.⁹³ Twelve of the 147 cases I analyzed used forum selection clauses to grant a jurisdiction motion.⁹⁴ No cases explicitly declined to enforce an exclusive jurisdiction clause, though several cases held choice of forum clauses to be inapplicable⁹⁵ and one case declined to use a non-exclusive forum selection clause as a reason to decline jurisdiction.⁹⁶ There were also three cases involving defendants bringing a jurisdiction and *forum non conveniens* motion despite a forum selection clause conferring jurisdiction upon Ontario. All three of these motions were dismissed.⁹⁷

The predictability created by choice of forum clauses can facilitate access to justice. But this must be balanced against the access to justice concerns that the

93. *Zi Pompey*, *supra* note 36; *Saumier & Bagg*, *supra* note 36.

94. *Silveira*, *supra* note 27; *CP Ships*, *supra* note 51; *Szecsodi v MGM Resorts International*, 2014 ONSC 1323, 248 ACWS (3d) 860; *Kavanagh v Magna Exteriors and Interiors Corp (ola Servicios Decoplas)*, 2014 ONSC 4540, 246 ACWS (3d) 97 [*Kavanagh*]; *Preece*, *supra* note 27; *Bale-Eze Industries Inc v Frazier Industrial Co*, 2012 ONSC 4892, 220 ACWS (3d) 722; *Ironrod Investments Inc v Enquest Energy Services Corp*, 2011 ONSC 308, 198 ACWS (3d) 341; *Furfari v Juncos*, 2011 ONSC 3624, 38 CPC (7th) 110; *Harster Greenhouses Inc v Visser International Trade & Engineering BV*, 2011 ONSC 2608, 334 DLR (4th) 481 [*Harster*]; *Goldmart Farms Inc v Fasig-Tipton Co*, 2010 ONSC 1631, 187 ACWS (3d) 412, Master Muir [*Goldmart*]; *Di Stefano*, *supra* note 55; *Expedition Helicopters Inc v Honeywell Inc*, 2010 ONCA 351, 100 OR (3d) 241, leave to appeal to SCC refused, 33790 (25 November 2010). See e.g. *Honeywell*, *supra* note 75 (an appeal was required to uphold a forum selection clause that was not a contract of adhesion).

95. See e.g. *2249659 Ontario Ltd v Siegen*, 2013 ONCA 354, 115 OR (3d) 241, rev'g 2012 ONSC 3128, 218 ACWS (3d) 540; *Aldo Group Inc v Moneris Solutions Corp*, 2012 ONSC 2581, 221 ACWS (3d) 563, aff'd 2013 ONCA 725, 118 OR (3d) 81, leave to appeal to SCC refused, *Aldo Group*, *supra* note 75.

96. *QBD Cooling Systems Inc v Sollatek (UK) Ltd*, 2015 ONSC 947, 251 ACWS (3d) 431.

97. *Mackie Research Capital Corp v Mackie*, 2012 ONSC 3890, 3 BLR (5th) 312; *Misyura v Walton*, 2012 ONSC 5397, 112 OR (3d) 462; *James Bay Resources Ltd v Mak Mera Nigeria*, 2015 ONSC 1538, 39 BLR (5th) 313.

clauses can cause, particularly in the consumer protection context.⁹⁸ This article is not the place to determine how to balance these concerns. John McEvoy has recently written about this issue,⁹⁹ and the Supreme Court of Canada recently declared a particular choice of forum clause unenforceable in *Douez v Facebook, Inc.*¹⁰⁰ The divided nature of the Court's decision in *Facebook* (with there being no majority opinion), taken in conjunction with its previous decision in *Dell Computer Corp v Union des consommateurs*,¹⁰¹ suggests that legislative intervention may be the preferable way to resolve this area. In any event, given the fact that over 10 per cent of jurisdiction motion decisions are brought despite a seemingly clear choice of forum clause, it would appear that forum selection clauses are neither providing the certainty to parties nor the corresponding reduction of litigation that is desirable.

G. ARE JURISDICTION MOTIONS BEING “ABUSED”?

Before turning to my concluding analysis of the variables related to access to justice connected to jurisdiction motions, I will consider a more qualitative issue—whether jurisdiction motions could be fairly said to be “abused.” This appeared to be a concern of the motion judge in *Stuart Budd*, who properly observed that technical compliance with the *Rules* does not absolve counsel of responsibility to conduct proceedings in a manner that is fair and proportionate.¹⁰² Having said that, it is equally clear that counsel are permitted to bring cases and motions vigorously on behalf of their clients where those motions have a reasonable prospect of success, even if they do not necessarily succeed.

Having read all the jurisdiction motions decided in Ontario from 2010–2015, few if any seem to have been brought in bad faith. Almost always, there was at least an arguable case that the motion could be granted. A common response to a motion being brought in bad faith or for delay is an award of substantial indemnity costs.¹⁰³ But only three cases had awards of substantial indemnity costs

98. See e.g. John McEvoy, “Conflict of Laws and Consumer Contracts in Canada” (Paper delivered at The CJPTA: A Decade of Progress Symposium, Toronto, Ontario, 21 October 2016) [unpublished].

99. *Ibid.*

100. 2017 SCC 33, 411 DLR (4th) 434 [*Facebook*].

101. 2007 SCC 34, [2007] 2 SCR 801.

102. *Stuart Budd* SCJ, *supra* note 5 at para 94.

103. Justice Sharpe described a purpose of costs awards to “sanction litigation behaviour.” See *Fong v Chan* (1999), 46 OR (3d) 330 at para 22, 181 DLR (4th) 614 (CA).

that were not overturned on appeal.¹⁰⁴ In one of those, it was the plaintiff against whom substantial indemnity costs were awarded.¹⁰⁵

Of course, substantial indemnity costs will not be awarded in every case where a motion has been abused. But the better explanation for the frequency, and subsequent delays and costs caused by jurisdiction motions would appear to be that the motions can plausibly be brought with a reasonable prospect of success given the uncertain state of the law.¹⁰⁶ I recognize that jurisdiction motions could be threatened or withdrawn. This happened at least once in 2010 and the parties could not resolve costs.¹⁰⁷ But when one compares the uncertain state of the law to the comparatively high success rates of jurisdiction motions and the few awards of substantial indemnity costs, “abuse” by defendants does not appear to be the primary reason for the access to justice concerns surrounding jurisdiction motions.

H. CONCLUSION ON ACCESS TO JUSTICE CONCERNS

Some positive trends from an access to justice perspective can be seen in the case law this decade. Most obviously, the number of motions brought this decade seems to have declined, suggesting that *Van Breda* has gone some way to providing its goals of certainty and predictability. And possibly, *Hryniak*'s spirit is being heeded outside of the summary judgment context, though this is more doubtful—no cases other than *Stuart Budd* cited its call for a change in how litigation is conducted. Moreover, the number of successful appeals has also decreased, suggesting that motion judges are finding the *Van Breda* framework easier to apply than the *Muscutt* framework.

Having said that, the overall picture is not encouraging from an access to justice perspective. The number of motions brought may have decreased—but not by much. Moreover, almost all seem to have some basis. This has occurred even when a forum selection clause was signed as an attempt to pre-empt jurisdiction battles. This suggests that uncertainty in the law is the primary culprit for the number of motions brought. Moreover, the costs are significant for a matter that does not even address the merits of a dispute—approximately \$30,000–\$45,000 on a jurisdiction motion, and \$60,000–\$75,000 if there is an appeal (which there is on over 30 per cent of cases). Perhaps even more alarmingly, jurisdiction motions are delaying parties by an average of over a year without an appeal and

104. *Manson*, *supra* note 85.

105. *Ibid.*

106. See Monestier, *supra* note 19.

107. See *e.g.* *Normerica*, *supra* note 58.

over two years with an appeal—acknowledging that some of this delay is likely due to other more mundane issues such as scheduling mistakes.¹⁰⁸ So while *Van Breda* may have been a positive development in the law of jurisdiction, there is clearly much more to be done.

IV. WAYS FORWARD

It would be difficult and perhaps even undesirable to eliminate jurisdiction motions. Even if one accepts that a legal dispute (such as a jurisdiction dispute) has a “right answer,” there will be inevitable disagreement over what that right answer is in marginal cases.¹⁰⁹ Litigation also gives courts the opportunity to interpret ambiguities in statutes and develop the common law.¹¹⁰ However, even if elimination of jurisdiction motions is impossible or undesirable, we should still attempt to mitigate the access to justice impediments that they cause. Reducing the number and complexity of jurisdiction motions would surely be welcome.

I will analyze four potential ways to mitigate the number of jurisdiction motions and, accordingly, reduce the access to justice concerns inherent in them. The four potential ways to mitigate the number of jurisdiction motions that I analyze are revising the common law on attornment, a leave requirement for jurisdiction motions, having specialist decision-makers, and reconsidering the substantive law.

A. ATTORNMENT

The motion judge in *Stuart Budd* particularly criticized the case law on attornment as one of the principal reasons jurisdiction motions present an access to justice problem. “Attornment” is found when defendants have taken steps that suggest they have accepted the jurisdiction of the Ontario courts, typically by taking steps to defend the merits of a proceeding.¹¹¹ Attornment is not difficult to establish—it can be found even when a party mistakenly acts in a

108. *Arsenault v Nunavut*, 2015 ONSC 4302, 255 ACWS (3d) 626, aff'd 2016 ONCA 207, 30 CCEL (4th) 46 [*Arsenault*]. Michael Marin, former counsel to the plaintiff, informed me on December 20, 2016 after my email to him regarding date of service that this case had two motion dates, three months apart, due to court scheduling problems.

109. Ronald Dworkin famously argued that a proper legal question yields one “right answer” but that educated lawyers and judges can disagree in good faith over what that answer is. See Ronald Dworkin, “Hard Cases” (1975) 88:6 Harv L Rev 1057.

110. *Hryniak*, *supra* note 7 at paras 1, 26; The Honourable Chief Justice Warren K Winkler, “The Vanishing Trial” (2008) 27:2 Advocates’ Soc J 3 at 4.

111. Walker, *supra* note 8 at 11-2.

way that suggests it is defending the merits of a case, even when it explicitly states that it intends to contest jurisdiction.¹¹² Presumably implicit in the motion judge's criticism of the doctrine in *Stuart Budd* is the suggestion that motions are sometimes brought prematurely because defendants will be deemed to have "attorned" to a jurisdiction if they do not challenge jurisdiction promptly.

One can legitimately gripe that the current law of attornment puts a defendant in an unenviable situation early on in litigation—an expensive motion must be brought promptly, or else a desirable way to proceed is closed. Almost all jurisdiction motions that are brought appear to have an arguable basis. Moreover, only six motions held attornment to be a reason to assume jurisdiction,¹¹³ and in all but one¹¹⁴ of those, there were other reasons. There were also six cases where attornment was found, conceded, or assumed, but turned out to be irrelevant.¹¹⁵ It would not appear, therefore, that revising the law of attornment will significantly improve the access to justice problems caused by the law of jurisdiction.

In any event, the rules on attornment have a strong rationale. The benefits flowing from a successful jurisdiction motion are best realized if the motion is brought as soon as possible. Revising the law of attornment could be a disincentive to a prompt resolution of a claim. This is another reason to be cautious about revising the law of attornment.

112. *Ibid*, citing *Stoymenoff v Aitrouts PLC* (2001), [2001] OTC 690, 17 CPC (5th) 387 (Sup Ct) (concerning a party mistakenly defending the Ontario action). See also *Imagis Technologies Inc v Red Herring Communications Inc*, 2003 BCSC 366, 15 CCLT (3d) 140 (finding attornment even when a challenge to jurisdiction was expressed in the pleadings).

113. *Stubbs v ATS Applied Tech Systems Inc*, 2010 ONSC 2838, 87 CCEL (3d) 165, aff'd 2010 ONCA 879, 272 OAC 386; *Zhang v Hua Hai Li Steel Pipe Co Ltd*, 2013 ONCA 103, 226 ACWS (3d) 124, aff'g 2012 ONSC 4379, 218 ACWS (3d) 821 (though this was not the basis of the motion judge's decision); *Wolfé v Wjeth*, 2011 ONCA 347, 282 OAC 64, aff'g 2010 ONSC 2368, 84 CPR (4th) 43 (again, not the primary basis of the motion judge's decision); *Nadi Inc v Montazemi-Safari*, 2012 ONSC 4723, 220 ACWS (3d) 732 [*Nadi*]; *Title v Canadian Asset Based Lending Enterprise (Cable) Inc*, 2011 ONSC 922, 197 ACWS (3d) 630, rev'd on other grounds, 2011 ONCA 715, 108 OR (3d) 71 (Justice Newbould found attornment "in addition" to jurisdiction); *Patterson v EM Technologies, Inc*, 2013 ONSC 5849, 234 ACWS (3d) 628 [*Patterson*] (attornment was a reason, but not the only reason, jurisdiction was found/assumed).

114. *Nadi*, *supra* note 113.

115. *Preece*, *supra* note 27 (found attornment but allowed the motion due to a forum selection clause); *Kavanagh*, *supra* note 94 (found attornment but nonetheless allowed the motion on the basis of *forum non conveniens*); *Harster*, *supra* note 94 (was prepared to assume defendants had attorned but nonetheless allowed the motion on the basis of a forum selection clause). Attornment was also conceded in *Dempsey*, *supra* note 55; *Consbec*, *supra* note 27; and *Century Indemnity Co v Viridian Inc*, 2013 ONSC 4412, 229 ACWS (3d) 1023 (as defendants only made a *forum non conveniens* argument).

B. LEAVE

When there is risk of a rule of procedural law being abused, a leave requirement is frequently imposed.¹¹⁶ Insofar as it would prevent jurisdiction motions being abused, the leave requirement could be helpful. This is one of the rationales for the leave requirements behind, for example, interlocutory appeals¹¹⁷ and interlocutory steps in proceedings under the *Construction Lien Act*.¹¹⁸ However, given the importance of being able to challenge jurisdiction, the leave requirement could likely only fairly require the defendant to show that the motion has a “reasonable prospect of success” or a “fairly arguable case.”¹¹⁹ Given the current law of jurisdiction, few of the jurisdiction motions brought seem to have been obviously inappropriate. Unless the substantive law is clarified, therefore, the leave requirement would likely be easily met in almost all cases and add just another procedural hurdle for the parties. This would serve to hinder, rather than facilitate, access to justice.

C. SPECIALIZED DECISION-MAKERS

Specialized decision-makers can improve access to justice, by becoming familiar with the substantive law and procedure related to a particular area of law. This expertise is likely to increase efficiency and decrease errors. This has been

116. This is seen, for instance, in the ability to bring a claim under the Ontario *Securities Act*. See *Securities Act*, RSO 1990, c S.5, s 138.8. See also *Green v Canadian Imperial Bank of Commerce*, 2014 ONCA 90 at para 40, 118 OR (3d) 641 (explains the ability to bring a claim under the Ontario *Securities Act*), varied on other grounds, 2015 SCC 60, [2015] 3 SCR 801.

117. *CJA*, *supra* note 66, s 19(1)(b), explained by John Sopinka & Mark A Gelowitz, *The Conduct of an Appeal*, 3d ed (Toronto: LexisNexis, 2012) at § 1.12.

118. RSO 1990, c C.30, s 67(2) (which holds that “[i]nterlocutory steps, other than those provided for in this Act, shall not be taken without the consent of the court obtained upon proof that the steps are necessary or would expedite the resolution of the issues in dispute”). See also *Atlas-Gest Inc v Brownstones Building Corp* (1996), 46 CPC (3d) 366, 62 ACWS (3d) 863 (Ont Sup Ct (Div Ct)) (in which the Divisional Court applied the interests of upholding the prompt resolution of a dispute on its merits).

119. See *e.g. Immigration and Refugee Protection Act*, SC 2001, c 27, s 72(1) (this appears to be the standard of the leave requirement to judicially review a determination of refugee status). See also Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw?” (2012) 38:1 Queen’s LJ 1 at 8-9 citing *Bains v Canada (Minister of Employment and Immigration)* (1990), 21 ACWS (3d) 405 at paras 1, 3, 109 NR 239.

particularly discussed in the family law context,¹²⁰ but has been considered in other civil contexts as well. For example, the Toronto Commercial List is considered to be a particularly good example of a specialized group of Ontario Superior Court of Justice judges working in a particular context, with the result being improved access to justice.¹²¹ Could something similar happen with jurisdiction motions? Of the jurisdiction motions I analyzed, the one that had the least delay—less than one month—was a Toronto Commercial List case.¹²²

Nine of the decisions I analyzed were decided by masters instead of judges.¹²³ Is there any evidence that these experts in civil procedure are adjudicating these cases differently? Only three of the nine motions were successful (less than average). Of the six with reported costs decisions,¹²⁴ the average costs award was \$20,393.40 (\$1,162.60 less than the average for all cases, excluding *Rothmans*, the class actions, and the substantial indemnity costs awards), but the median was \$22,783.45 (\$9,646.80 more than the median for all such cases). The average delay in the four cases about which I have information on date of service was 9.5 months, slightly less than the average delay of about a year.¹²⁵ These are interesting observations but, given the small sample size, I am reluctant to draw any normative implications from looking at the masters' records compared to the judges'.

Another concern about having specialized decision makers in the realm of jurisdiction motions is that there are only about two to three dozen motions a year. This is a sizable number but it may not be enough to truly justify a “roster” of judges akin to the Toronto Commercial List. Even so, there could be judges assigned by the Regional Senior Judge to address jurisdiction motions brought

120. See e.g. Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013) at 16, online <www.cfcj-fcj.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>.

121. See e.g. Winkler, *supra* note 110 at 4.

122. *Ghana Gold*, *supra* note 44.

123. *Goldmart*, *supra* note 94; *Tseng*, *supra* note 44; *Kais v Abu Dhabi Education Council*, 2011 ONSC 75, 196 ACWS (3d) 1022 [*Kais*]; *Alexander v Alexander*, 2012 ONSC 2826, [2012] OJ No 2099 (QL) [*Alexander*]; *Kazi v Qatar Airlines*, 2013 ONSC 1370, 226 ACWS (3d) 412 [*Kazi*]; *Patterson*, *supra* note 113; *Harrowand*, *supra* note 67; *Silveira*, *supra* note 27; *Machado*, *supra* note 67.

124. *Goldmart*, *supra* note 94; *Kais v Abu Dhabi Education Council*, 2011 ONSC 100, 195 ACWS (3d) 960; *Alexander*, *supra* note 123; *Kazi*, *supra* note 123; *Harrowand SI v DeWind Turbines Ltd*, 2014 ONSC 3388, 241 ACWS (3d) 53; *Silveira*, *supra* note 27.

125. See Appendix D, below (*Alexander*, *supra* note 123; *Tseng*, *supra* note 44; *Patterson*, *supra* note 113; and *Kais*, *supra* note 123).

in a particular area. For example, Justice Fred Myers was assigned almost all cases in Toronto that raised Rule 2.1, the summary dismissal which came into effect on July 1, 2014; this has seemingly led to a streamlined jurisprudence under the Rule.¹²⁶

Ultimately, it is uncertain if specialized decision-makers—whether a set roster of judges (who could share the motions) or masters—would be a particularly good or feasible solution to access to justice concerns raised by jurisdiction motions. But a pilot project may well be a worthy experiment.

D. REVISITING *VAN BREDA*—OR ADOPTING THE *CJPTA*

1. CLARIFYING THE COMMON LAW

There have been calls since *Van Breda* to further clarify both the law of jurisdiction and *forum non conveniens*.¹²⁷ The uncertainty in the law seems to be the primary cause of the number of jurisdiction motions brought post-*Van Breda*, and it is costing significant time and money to hundreds of litigants, even those who sought to pre-empt these issues through forum selection clauses.¹²⁸ While some flexibility is often necessary to ensure fairness,¹²⁹ the law of jurisdiction seems to have erred excessively in that direction. It is a trite observation that, other things being equal, a simple rule is a good one, as a simple rule provides clarity and minimizes the need for dispute.¹³⁰

It also goes without saying that further clarification would be welcome. Ideas in this respect include having a court decline jurisdiction pursuant to *forum non conveniens* only when it *considers itself a clearly inappropriate forum*¹³¹ to clarifying how much “presence” a defendant must have in a forum to ground a finding of jurisdiction¹³² to making the presumptive connecting factors more objective.¹³³

126. For jurisprudence on Rule 2.1, see *Gao v Ontario (Workplace Safety and Insurance Board)*, 2014 ONSC 6100, 37 CLR (4th) 1 [*Gao*]. This Rule has not been subject to academic analysis to my knowledge. However, according to QuickLaw, Justice Myers’ analysis in *Gao* has been cited 55 times as of January 12, 2017, including by the Court of Appeal for Ontario. See e.g. *Scaduto v Law Society of Upper Canada*, 2015 ONCA 733, 343 OAC 87.

127. See e.g. Monestier, *supra* note 19; Chilenye Nwapi, “Re-Evaluating the Doctrine of *Forum Non Conveniens* in Canada” (2013) 34:1 Windsor Rev Legal Soc Issues 59.

128. *Van Breda*, *supra* note 6.

129. See e.g. Kain, Marques & Shaw, *supra* note 65 at 310; Blom, *supra* note 23 at 18.

130. See Blom, *supra* note 23 at 18.

131. Nwapi, *supra* note 127.

132. See Kain, Marques & Shaw, *supra* note 65 at 286.

133. Monestier, *supra* note 19 at 411, 414ff.

This article is not the forum to address which of these may be particularly valuable—but they should be seriously considered.

2. THE *CJPTA*

The *CJPTA* could also be considered as an alternative and clearer procedure to resolve jurisdiction matters. This attempt to promote certainty through codification has been gaining support for the past two decades.¹³⁴ The Special Issue of the *Osgoode Hall Law Journal* in which this article appears is in large part dedicated to analyzing whether and how this would be a good way forward. Stephen Pitel, once a skeptic of the *CJPTA*, has recently suggested that it is generally preferable to the common law.¹³⁵ There are undeniably disadvantages to codification of the common law, such as insufficient flexibility, the inability to cope with unforeseen circumstances, and the need for excessive litigation in the immediate aftermath of codification.¹³⁶ However, legislators and policymakers should think clearly whether “enough is enough” on this specific topic of jurisdiction motions. The benefits that would likely apply to clarifying the common law of jurisdiction would probably be even more applicable to the adoption of the *CJPTA*, as it would be part of a movement to put all of common law Canada on the same page. The *status quo* of having only three provinces use the statute can lead to potentially undesirable incentives to “forum shop.”¹³⁷

3. FORUM OF NECESSITY—THE ACCESS TO JUSTICE IMPLICATIONS

A *caveat* is required when discussing the adoption of the *CJPTA* as an alternative legal framework to consider the law of jurisdiction. As is well known, the *CJPTA* contains a “forum of necessity,” allowing a province to assert jurisdiction for the sole reason that it is not realistic for a plaintiff to access justice in another

134. See *e.g.* Stephen GA Pitel, “Reformulating a Real and Substantial Connection” (2010) 60:1 UNBLJ 177 at 178.

135. Stephen GA Pitel, Address (Question-and-Answer Period delivered at The *CJPTA*: A Decade of Progress, Toronto, Ontario, 21 October 2016) [unpublished].

136. Evidence scholars, for example, have grappled with this issue for years. For a summary, see Ron Delisle et al, *Evidence: Principles and Problems*, 11th ed (Toronto: Thomson Carswell, 2015) at 30-34.

137. While forum-shopping is frequently frowned upon as it seems antithetical to the interests of the defendant and society at large, not all forum-shopping is necessarily illegitimate. See *e.g.* Nwapi, *supra* note 127 at 104; Elizabeth Edinger, “The Problem of Parallel Actions: The Softer Alternative” (2010) 60:1 UNBLJ 116 at 118.

jurisdiction.¹³⁸ Whether this would truly improve access to justice is debatable. On the one hand, it seems obvious that a forum of necessity would help plaintiffs obtain justice in circumstances when doing so is otherwise impossible or extremely expensive. Insofar as access to justice requires considering not just procedure but substantive justice,¹³⁹ a forum of necessity is a clear benefit to access to justice. But even placing aside the well-known theoretical problems of a forum of necessity (much like “universal jurisdiction,” it may violate principles of public international law),¹⁴⁰ it would also likely create confusion and uncertainty about when it is to apply. It is widely accepted that a jurisdiction that would torture the plaintiff is a circumstance when a forum of necessity is warranted,¹⁴¹ but what actions short of torture are required? The expiry of a limitation period is generally considered insufficient to invoke a forum of necessity¹⁴²—except when it arguably is.¹⁴³ When great financial burden to the plaintiff should lead to the invocation of the forum of necessity is also an open question.¹⁴⁴ It seems inevitable that a forum of necessity would create more litigation over jurisdiction motions. The cost and time involved in that litigation causes the parties’ access to justice problems, as does the inability of others to have their day in court as a result of that litigation. These considerations must be balanced against the fairness to the rare plaintiff who is denied a forum to adjudicate her claim. That plaintiff’s interests may be more important and are certainly more acute, but do they outweigh the lesser but real interests of a larger group of people?

Consider this thought experiment. “Rule A” is fair and just 99 per cent of the time, and predictable and easy to apply 95 per cent of the time. “Rule B” is fair and just 100% of the time, but predictable and easy to apply only 75 per cent of the time. Is the fairness and justice to the 1 per cent achieved through adopting Rule B worth the unpredictability and uncertainty that must be endured by an

138. See e.g. Michael Sobkin, “Residual Discretion: The Concept of Forum of Necessity Under the *Uniform Court Jurisdiction and Proceedings Transfer Act*” (2018) 55:1 Osgoode Hall LJ 203; Chilenye Nwapi, “A Necessary Look at Necessity Jurisdiction” (2014) 47:1 UBC L Rev 211.

139. See e.g. Farrow, “What is Access to Justice,” *supra* note 28 at 970-72

140. See e.g. Kimberly N Trapp & Alex Mills, “Smooth Runs the Water where the Brook is Deep: The Obscured Complexities of *Germany v Italy*” (2012) 1:1 Cambridge J Intl & Comparative L 153 at 162-65.

141. *Bouzari*, *supra* note 27.

142. See e.g. Sobkin, *supra* note 138 at 221 citing *Mitchell v Jekovich*, 2013 ONSC 7494, 28 CCLI (5th) 229.

143. *Ibrahim*, *supra* note 56. This decision was partially based on the defendant’s action. The Court of Appeal for Ontario did note that it was relevant that the law on forum of necessity had changed to the plaintiff’s detriment prior to the motion being heard.

144. Sobkin, *supra* note 138.

additional 20 per cent? Maybe, but maybe not. The maxim “hard cases make bad law” recognizes that the unfairness and injustice in the 1 per cent of cases is that “hard case.” It is at least arguable that the unfairness and injustice to the 1 per cent is less problematic than the inability of the 20 per cent to order their affairs predictably, and resolve their potentially justiciable issues promptly and with minimal expense.

I do not want to be taken to suggest that a *CJPTA* without a forum of necessity would be Rule A, while a *CJPTA* with a forum of necessity would be Rule B. My analysis is insufficiently comprehensive to come to such a conclusion. In any event, Michael Sobkin,¹⁴⁵ Sagi Peari,¹⁴⁶ and Angela Swan¹⁴⁷ have addressed this issue more comprehensively than I have. But it is not controversial that, other things being equal, simple rules are preferable to complicated ones.

A forum of necessity will almost inevitably create jurisdiction battles. While *Van Breda* makes it clear that the presence of the plaintiff in a forum is an insufficient basis to give that forum jurisdiction over the case,¹⁴⁸ it is nonetheless relevant to the *forum non conveniens* analysis.¹⁴⁹ As Michael Sobkin notes, the line between “forum of necessity” and “*forum non conveniens*” can become blurred.¹⁵⁰ As an example, one plaintiff testified that it would be exceptionally difficult for her to pursue a wrongful dismissal claim in Nunavut (where the employment and dismissal took place, and whose law governed the employment contact) due to a risk of “re-traumatization.”¹⁵¹ But after losing her jurisdiction battle in Ontario, she is indeed pursuing a claim in Nunavut.¹⁵² Given the obvious costs in terms of time and money that uncertainty in the law has created in the realm of jurisdiction motions *without an explicit forum of necessity*, we should be careful before adopting a rule that has the potential to create more uncertainty and unpredictability in the law.

145. *Ibid.*

146. Sagi Peari, “Three Objections to Forum of Necessity: Global Access to Justice, International Criminal Law and Proper Party” (2018) 55:1 Osgoode Hall LJ 225.

147. Angela Swan, “The Other End of the Process: Enforcement of Judgments” (Paper delivered at The CJPTA: A Decade of Progress, Toronto, Ontario, 21 October 2016) [unpublished].

148. *Van Breda*, *supra* note 6 at para 86.

149. See *e.g. Thompson v Our Lady of the Missions*, 2011 ONSC 382 at para 17, 198 ACWS (3d) 340.

150. Sobkin, *supra* note 138.

151. *Arsenault*, *supra* note 108.

152. Michael Marin, former counsel to the plaintiff, informed me of this fact during a conversation on December 20, 2016 after my email to him regarding date of service.

V. CONCLUSION

After the Court of Appeal for Ontario overturned the decision in *Stuart Budd*, the matter was returned to the Ontario Superior Court of Justice. The Superior Court of Justice proceeded to dismiss the defendants' motion yet again,¹⁵³ and awarded the plaintiffs partial indemnity costs of both motions in the amount of \$50,130.33.¹⁵⁴ The defendants appealed yet again, with the Court of Appeal for Ontario this time dismissing the appeal with a costs award of \$13,000.¹⁵⁵

By the time of the second appeal, over forty-five months had passed since the statement of claim was served on the defendants, and there had been over \$84,000 in costs orders,¹⁵⁶ meaning actual costs were likely twice that. The case had become a paradigm of precisely what the first motion judge had warned about. It is ironic that he was the only one of 147 motion judges to invoke *Hryniak* only to have his decision overturned for reasons (albeit good reasons) unrelated to the merits of the motion before him.

There is undeniably a place for jurisdiction motions in our justice system to promote international comity and judicial economy and to give effect to parties' contractual agreements. But it is also clear that the present law of jurisdiction is posing significant access to justice problems, costing parties considerable legal fees and delay. *Stuart Budd* is admittedly an extreme example, but jurisdiction motions are regularly delaying the resolution of claims by years and costing parties well over \$50,000. A small minority of this is attributable to abuse. But most of it appears to be attributable to the uncertain state of the law of jurisdiction in Canada, and the types of access to justice issues that plague our system of civil litigation more generally. *Van Breda* has gone some way to clarifying the law of jurisdiction, and thus mitigating the access to justice concerns surrounding jurisdiction motions. But Ontario's experience this decade suggests there remains a long way to go.

153. *Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC*, 2016 ONSC 2980, 266 ACWS (3d) 370.

154. *Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC*, 2016 ONSC 3798, 268 ACWS (3d) 40. The Court of Appeal held that the costs of the first motion were to be in the discretion of the judge hearing the second motion.

155. *Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC*, 2016 ONCA 977, 135 OR (3d) 551.

156. *Ibid.* The defendants were awarded \$20,000 for the costs of the first appeal.

VI. APPENDIX A

Search terms used in QuickLaw and WestLaw, for Ontario trial decisions in the years 2010-2015:

“forum conv!” OR (jurisdiction AND “Van Breda”) OR “forum non” OR “Rule 17!”

All cases were noted up.

“Jurisdiction” required a qualifier given that it would otherwise lead to far too many false positives—more than 3,000 results per year. Given that *Van Breda* was decided by the Court of Appeal for Ontario in 2010, it appeared the best choice.

VII. APPENDIX B – NUMBER OF CASES, RESULTS, AND APPEALS

TABLE 1: 2010 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Cannon v Funds for Canada Foundation</i> , 2010 ONSC 4517, 192 ACWS (3d) 50	Partially Granted	1.	Affirmed: 2011 ONCA 185, [2011] OJ No 990 (QL)	Partially Granted
2.	<i>Goldmart Farms Inc v Fasig-Tipton Co</i> , 2010 ONSC 1631, 187 ACWS (3d) 412, Master Muir	Granted		-	Granted
3.	<i>Magnum Integrated Technologies Inc v Integrated Industrial Systems</i> , 2010 ONSC 3389, 84 CPR (4th) 211	Granted		-	Granted
4.	<i>Tucows.com Co v Lojas Renner SA</i> , [2011] SCCA No 450, 436 NR 386	Granted	2.	Overtaken: 2011 ONCA 548, 106 OR (3d) 561	Dismissed
5.	<i>Brisben v Lunev</i> , 2010 ONSC 1840, [2010] OJ No 3216 (QL)	Dismissed	3.	Affirmed: 2011 ONCA 15, 196 ACWS (3d) 995	Dismissed

TABLE 1: 2010 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
6.	<i>MCAP Leasing Limited Partnership v Genexa Medical Inc</i> , 2010 ONSC 6050, 100 CPC (6th) 201	Dismissed		-	Dismissed
7.	<i>McKenna v Gammon Gold Inc</i> , 2010 ONSC 1591, 88 CPC (6th) 27	Partially Granted		(other issues only: 2011 ONSC 3782, 87 CCLT (3d) 123 (Div Ct))	Partially Granted
8.	<i>Lazer-Tech v Dejerrey</i> , 2010 ONSC 1662, 186 ACWS (3d) 384	Granted		-	Granted
9.	<i>Cardinali v Strait</i> , 2010 ONSC 2503, 97 CPC (6th) 290	Dismissed		-	Dismissed
10.	<i>Di Stefano v Energy Automated Systems Inc</i> , 2010 ONSC 493, 68 BLR (4th) 209	Granted		-	Granted
11.	<i>Kahlon v Cheecham</i> , 2010 ONSC 1957, 187 ACWS (3d) 700	Granted		-	Granted
12.	<i>Wolfe v Wyeth</i> , 2010 ONSC 2368, 84 CPR (4th) 43	Dismissed	4.	Affirmed: 2011 ONCA 347, 373 NSR (2d) 79	Dismissed
13.	<i>Canada Hot Tub Outlet v Canada Spas Depot Inc</i> , 2010 ONSC 2524, 96 CPC (6th) 359	Granted		-	Granted
14.	<i>Zhejiang Ruyi Canada Inc v Transglobal Communications Group Inc</i> , 2010 ONSC 204, [2010] OJ No 150 (QL)	Granted		-	Granted
15.	<i>Collingwood Ethanol LP v Humblet Inc</i> , 2010 ONSC 2132, 91 CLR (3d) 112	Dismissed		-	Dismissed

TABLE 1: 2010 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
16.	<i>Litner (Litigation Guardian of) v Saunders</i> , 2010 ONSC 4862, 192 ACWS (3d) 1155	Granted		-	Granted
17.	<i>Dundee Precious Metals Inc v Marsland</i> , 2010 ONSC 6484, 104 OR (3d) 51	Granted	5.	Overturned: 2011 ONCA 594, 108 OR (3d) 187	Dismissed
18.	<i>Luk v Pottery Barn</i> , 2010 ONSC 5540, 195 ACWS (3d) 683	Granted		-	Granted
19.	<i>Van Kessel v Orsulak</i> , 2010 ONSC 6919, 9 CPC (7th) 434	Granted		-	Granted
20.	<i>Dennis v Farrell</i> , 2010 ONSC 2401, 84 CCLI (4th) 64	Dismissed		-	Dismissed
21.	<i>Wielgomas v Anglocom Inc</i> , 2010 ONSC 6289, 335 DLR (4th) 745	Granted	6.	Affirmed (except on costs): 2011 ONCA 490, 335 DLR (4th) 741	Granted
22.	<i>Bunyan v Ens</i> , 2010 ONSC 216, 99 OR (3d) 304	Dismissed		-	Dismissed
23.	<i>Branconnier v Mabeux</i> , 2010 ONSC 1524, 185 ACWS (3d) 634	Dismissed		-	Dismissed
24.	<i>Salus Marine Wear Inc v Queen Charlotte Lodge Ltd</i> , 2010 ONSC 3063, 189 ACWS (3d) 82	Dismissed		-	Dismissed
25.	<i>Roadtrek Motorhomes Ltd v Avalex Acoustics Ltd</i> , 2010 ONSC 2700, 188 ACWS (3d) 1015	Granted	7.	Overturned: 2010 ONCA 878, 196 ACWS (3d) 688	Dismissed

TABLE 1: 2010 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
26.	<i>Sun Life Assurance Co of Canada v Yellow Pages Group Inc</i> , 2010 ONSC 2780, 190 ACWS (3d) 95	Dismissed		-	Dismissed
27.	<i>Galustian v SkyLink Group of Companies Inc</i> , 2010 ONSC 292, 85 CPC (6th) 132	Granted	8.	Security for costs ordered for appeal: 2010 ONCA 645, 268 OAC 157	Granted
28.	<i>Expedition Helicopters Inc v Honeywell Inc</i> , 2010 ONSC 732, 184 ACWS (3d) 1003	Dismissed	9.	Overtuned: 2010 ONCA 351, 262 OAC 195	Granted
29.	<i>Shinoff v BMO Nesbitt Burns Inc</i> , 2010 ONSC 926, 185 ACWS (3d) 633	Granted		-	Granted
30.	<i>Jabbour v Eparchy of Our Lady of Lebanon of Los Angeles</i> , 2010 ONSC 2475, 2010 CarswellOnt 10731 (WL Can)	Dismissed	10.	Affirmed, 2011 ONCA 140, [2011] OJ No 796 (QL)	Dismissed
31.	<i>Wideawake Entertainment Group Inc v Lavi</i> , 2010 ONSC 1659, 187 ACWS (3d) 987	Dismissed		-	Dismissed
32.	<i>Stubbs v ATS Applied Tech Systems Inc</i> , 2010 ONSC 2838, 87 CCEL (3d) 165	Dismissed	11.	Affirmed: 2010 ONCA 879, 272 OAC 386	Dismissed
33.	<i>Moisan v Antonio Sanita Land Development Ltd</i> , 2010 ONSC 3339, 191 ACWS (3d) 433	Action Dismissed On Other Grounds		-	Action Dismissed On Other Grounds

TABLE 2: 2011 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Export Packers Co v SPI International Transportation</i> , 2011 ONSC 5907, 208 ACWS (3d) 315	Granted	1.	Affirmed: 2012 ONCA 481, 294 OAC 319	Granted
2.	<i>Toronto (City) v Tseng</i> , 2011 ONSC 4594, 87 MPLR (4th) 220, Master Muir	Dismissed		-	Dismissed
3.	<i>Galaxy Dragon Ltd v Topwater Exclusive Fund IV LLC</i> , 2011 ONSC 6818, 209 ACWS (3d) 317	Granted	2.	Affirmed: 2012 ONCA 382, 216 ACWS (3d) 347	Granted
4.	<i>Kais v Abu Dhabi Education Council</i> , 2011 ONSC 75, 196 ACWS (3d) 1022	Dismissed		-	Dismissed
5.	<i>Bond v Brookfield Asset Management Inc</i> , 2011 ONSC 2529, 201 ACWS (3d) 393	Granted	3.	Affirmed: 2011 ONCA 730, 18 CPC (7th) 74	Granted
6.	<i>Obéji Chemicals LLC v Kilani</i> , 2011 ONSC 1636, 200 ACWS (3d) 95	Dismissed		-	Dismissed
7.	<i>1673332 Ontario Ltd v Habonim Industrial Valves & Actuators Ltd</i> , 2011 ONSC 4973, 206 ACWS (3d) 301	Dismissed		-	Dismissed
8.	<i>Elfarnawani v International Olympic Committee</i> , 2011 ONSC 6784, 20 CPC (7th) 412	Granted		-	Granted
9.	<i>1756670 Ontario Inc v Roxboro Excavation Inc</i> , 2011 ONSC 7289, 2010 ACWS (3d) 587	Granted		-	Granted
10.	<i>Comstock Canada Ltd v SPI Systems Ltd (cob SPI Controls)</i> , 2011 ONSC 2652, 100 CLR (3d) 289	Dismissed		-	Dismissed

TABLE 2: 2011 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
11.	<i>Jennings v Haas</i> , 2011 ONSC 2872, 335 DLR (4th) 225	Granted		-	Granted
12.	<i>Moore v Vancouver Fraser Port Authority</i> , 2011 ONSC 3692, 204 ACWS (3d) 278	Granted		-	Granted
13.	<i>Thompson v Our Lady of the Missions</i> , 2011 ONSC 382, 198 ACWS (3d) 340	Dismissed		-	Dismissed
14.	<i>Jafarzadehahmadsargoorabi v Sabet</i> , 2011 ONSC 5827, 209 ACWS (3d) 540	Granted	4.	Affirmed: 2012 ONCA 391, 219 ACWS (3d) 105	Granted
15.	<i>Title v Canadian Asset Based Lending Enterprise (Cable) Inc</i> , 2011 ONSC 922, 197 ACWS (3d) 360	Dismissed	5.	Allowed on other grounds: 2011 ONCA 715, 108 OR (3d) 71	Dismissed
16.	<i>Consbec Inc v Walker</i> , 2011 ONSC 2944, 202 ACWS (3d) 61	Granted		-	Granted
17.	<i>Furfari v Juncos</i> , 2011 ONSC 3624, 38 CPC (7th) 110	Granted		-	Granted
18.	<i>Harster Greenhouses Inc v Visser International Trade & Engineering BV</i> , 2011 ONSC 2608, 334 DLR (4th) 481	Granted		-	Granted
19.	<i>Dempsey v Staples</i> , 2011 ONSC 1709, 12 MVR (6th) 30	Dismissed		-	Dismissed
20.	<i>Abdula v Canadian Solar Inc</i> , 2011 ONSC 5105, 92 BLR (4th) 324	Dismissed	6.	Affirmed: 2012 ONCA 211, 110 OR (3d) 256	Dismissed
21.	<i>Mehmood v Gray</i> , 2011 ONSC 1735, 199 ACWS (3d) 772	Granted		-	Granted

TABLE 2: 2011 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
22.	<i>Ironrod Investments Inc v Enquest Energy Services Corp</i> , 2011 ONSC 308, 198 ACWS (3d) 314	Granted		-	Granted
23.	<i>Merill Lynch Canada Inc v Mineralogy Canada Acquisition Corp Pty Ltd</i> , 2011 CarswellOnt 3755 (WL Can) (SCJ)	Dismissed		-	Dismissed

TABLE 3: 2012 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Ontario v Rothmans, Inc</i> , 2012 ONSC 22, 28 CPC (7th) 68	Dismissed	1.	Affirmed: 2013 ONCA 353, 115 OR (3d) 561	Dismissed
2.	<i>Central Sun Mining Inc v Vector Engineering Inc</i> , 2012 ONSC 7331, 18 CLR (4th) 189	Granted	2.	Reversed: 2013 ONCA 601, 117 OR (3d) 313	Dismissed
3.	<i>Young v Home Depot, USA, Inc</i> , 2012 ONSC 1971, 212 ACWS (3d) 734	Dismissed		-	Dismissed
4.	<i>Gordon v Deiotte</i> , 2012 ONSC 1973, 109 OR (3d) 626	Dismissed		-	Dismissed
5.	<i>Alexander v Alexander</i> , 2012 ONSC 2826, [2012] OJ No 2099 (QL)	Granted		-	Granted
6.	<i>Aldo Group Inc v Moneris Solutions Corp</i> , 2012 ONSC 2581, 221 ACWS (3d) 563	Dismissed	3.	Affirmed: 2013 ONCA 725, 118 OR (3d) 81	Dismissed

TABLE 3: 2012 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
7.	<i>McAlpine v McAlpine</i> , 2012 ONSC 297, 108 OR (3d) 672	Granted		-	Granted
8.	<i>Misyura v Walton</i> , 2012 ONSC 5397, 112 OR (3d) 462	Granted		-	Granted
9.	<i>2249659 Ontario Ltd v Siegen</i> , 2012 ONSC 3128, 218 ACWS (3d) 540	Granted	4.	Reversed: 2013 ONCA 354, 115 OR (3d) 241	Dismissed
10.	<i>Mackie Research Capital Corp v Mackie</i> , 2012 ONSC 3890, 3 BLR (5th) 312	Dismissed		-	Dismissed
11.	<i>Paraie v Cangemi</i> , 2012 ONSC 6341, 113 OR (3d) 231	Granted		-	Granted
12.	<i>Cugalj v Wick</i> , 2012 ONSC 2407, 40 CPC (7th) 356	Granted		-	Granted
13.	<i>United States of America v Yemec</i> , 2012 ONSC 4207, 41 CPC (7th) 362	Granted		-	Granted
14.	<i>Zhang v Hua Hai Li Steel Pipe Co</i> , 2012 ONSC 4379, 218 ACWS (3d) 821	Dismissed	5.	Affirmed: 2013 ONCA 103, 226 ACWS (3d) 124	Dismissed
15.	<i>Umutomi c Safari</i> , 2012 CSON 6962, 232 ACWS (3d) 370	Dismissed		-	Dismissed
16.	<i>Bale-eze Industries Inc v Frazier Industrial Co</i> , 2012 ONSC 4892, 220 ACWS (3d) 722	Granted		-	Granted
17.	<i>Cesario v Gondek</i> , 2012 ONSC 4563, 113 OR (3d) 466	Dismissed		-	Dismissed
18.	<i>Nagra v Malhotra</i> , 2012 ONSC 4497, 111 OR (3d) 446	Dismissed		-	Dismissed

TABLE 3: 2012 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
19.	<i>Amtim Capital Inc v Appliance Recycling Centers of America</i> , 2012 ONSC 1214, 212 ACWS (3d) 89	Dismissed	6.	Affirmed: 2012 ONCA 664, 298 OAC 75	Dismissed
20.	<i>Nadi Inc v Montazemi-Safari</i> , 2012 ONSC 4723, 220 ACWS (3d) 732	Dismissed		-	Dismissed
21.	<i>Colavecchia v Berkeley Hotel Ltd</i> , 2012 ONSC 4747, 112 OR (3d) 287	Granted		-	Granted
22.	<i>Avanti Management and Consulting Ltd v Argex Mining Inc</i> , 2012 ONSC 4395, 219 ACWS (3d) 555	Dismissed		-	Dismissed
23.	<i>Frank v Farlie, Turner & Co, LLC</i> , 2012 ONSC 5519, 113 OR (3d) 25	Granted		-	Granted
24.	<i>Wilson v Riu</i> , 2012 ONSC 6840, 98 CCLT (3d) 337	Granted		-	Granted
25.	<i>Mining Technologies International Inc v Krako Inc</i> , 2012 ONSC 2239, 2012 CarswellOnt 8034 (WL Can)	Dismissed	7.	Affirmed: 2012 ONCA 847, 99 CCLT (3d) 46	Dismissed
26.	<i>Wynn Las Vegas LLC v Teng</i> , 2012 ONSC 1927, 214 ACWS (3d) 103	Dismissed		-	Dismissed

TABLE 4: 2013 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Tamminga v Tamminga</i> , [2013] OJ No 4515 (QL)	Granted	1.	Affirmed: 2014 ONCA 478, 120 OR (3d) 671	Granted
2.	<i>Kazi v Qatar Airlines</i> , 2013 ONSC 1370, 226 ACWS (3d) 412	Dismissed		-	Dismissed
3.	<i>Inukshuk Wireless Partnership v 4253311 Canada Inc</i> , 2013 ONSC 5631, 117 OR (3d) 206	Dismissed		-	Dismissed
4.	<i>Ghana Gold Corp (Re)</i> , 2013 ONSC 3284, 3 CBR (6th) 220	Dismissed		-	Dismissed
5.	<i>Royal Bank of Canada v DCM Erectors Inc</i> , 2013 ONSC 2864, 228 ACWS (3d) 687	Dismissed		-	Dismissed
6.	<i>Greta Inc v De Lange</i> , 2013 ONSC 3086, 228 ACWS (3d) 688	Dismissed	2.	Affirmed: 2014 ONCA 107, 237 ACWS (3d) 377	Dismissed
7.	<i>Trillium Motor World Ltd v General Motors of Canada Ltd</i> , 2013 ONSC 2289, 51 CPC (7th) 419	Dismissed	3.	Affirmed: 2014 ONCA 497, 120 OR (3d) 598, 2016 SCC 30, 349 OAC 1	Dismissed
8.	<i>West Van Inc v Daisley</i> , 2013 ONSC 1988, 228 ACWS (3d) 417	Granted	4.	Affirmed: 2014 ONCA 232, 119 OR (3d) 481	Granted
9.	<i>Brown v Spagnuolo</i> , 2013 ONSC 5178, 231 ACWS (3d) 949	Granted		-	Granted
10.	<i>Lixo Investments Ltd v Gowling, Lafleur, Henderson</i> , 2013 ONSC 4862, 230 ACWS (3d) 706	Granted	5.	Affirmed: 2014 ONCA 114, 237 ACWS (3d) 375	Granted

TABLE 4: 2013 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
11.	<i>Haufler (Litigation Guardian of) v Hotel Riu Palace</i> , 2013 ONSC 6044, 117 OR (3d) 275	Granted		-	Granted
12.	<i>Mitchell v Jeckovich</i> , 2013 ONSC 7494, 28 CCLI (5th) 229	Granted		-	Granted
13.	<i>Sullivan v Four Seasons Hotels Ltd</i> , 2013 ONSC 4622, 116 OR (3d) 365	Granted		-	Granted
14.	<i>Kaynes v BP plc</i> , 2013 ONSC 5802, 117 OR (3d) 685	Dismissed	6.	Reversed: 2014 ONCA 580, 122 OR (3d) 162	Granted
15.	<i>Leone v Scaffidi</i> , 2013 ONSC 1849, 87 ETR (3d) 93	Dismissed		-	Dismissed
16.	<i>Patterson v EM Technologies, Inc</i> , 2013 ONSC 5849, 234 ACWS (3d) 628	Dismissed		-	Dismissed
17.	<i>Bedford v Abushmaies</i> , 2013 ONSC 1352, 226 ACWS (3d) 1026	Dismissed		-	Dismissed
18.	<i>Prince v ACE Aviation Holdings Inc</i> , 2013 ONSC 2906, 115 OR (3d) 721	Partially granted	7.	Reversed (entirely granted due to cross-appeal): 2014 ONCA 285, 120 OR (3d) 140	Granted
19.	<i>Thinh v Philippe</i> , 2013 ONSC 7395, 96 ETR (3d) 114	Granted		-	Granted
20.	<i>Jones v Raymond James Ltd</i> , 2013 ONSC 4640, 229 ACWS (3d) 708	Dismissed		-	Dismissed
21.	<i>Kozicz v Preece</i> , 2013 ONSC 2823, 228 ACWS (3d) 689	Granted		-	Granted

TABLE 4: 2013 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
22.	<i>Petrook v Natuzzi Americas, Inc</i> , 2013 ONSC 4508, 10 CCEL (4th) 317	Dismissed		-	Dismissed
23.	<i>Bouzari v Bahremani</i> , 2013 ONSC 6337, 253 ACWS (3d) 936	Dismissed	8.	Reversed: 2015 ONCA 275, 126 OR (3d) 223	Granted
24.	<i>Century Indemnity Co v Viridian Inc</i> , 2013 ONSC 4412, 229 ACWS (3d) 1023	Dismissed		-	Dismissed
25.	<i>Bearsfield Developments Inc v McNabb</i> , 2013 ONSC 7063, 234 ACWS (3d) 913	Dismissed		-	Dismissed

2014

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Harrowand SL v Dewind Turbines Ltd</i> , 2014 ONSC 2014, 239 ACWS (3d) 630, Master Dash	Dismissed	1.	Reversed: 2014 CarswellOnt 19177 (WL Can)	Allowed
2.	<i>Khan v Layden</i> , 2014 ONSC 6868, 247 ACWS (3d) 555	Dismissed		-	Dismissed
3.	<i>Manson v Canetic Resources Ltd</i> , 2014 ONSC 261, 237 ACWS (3d) 93	Allowed		-	Allowed
4.	<i>Leonard v GC Surplus</i> , [2014] OJ No 1906 (QL) (Small Claims Court)	Dismissed		-	Dismissed
5.	<i>Christmas v Fort McKay First Nation</i> , 2014 ONSC 373, 119 OR (3d) 21	Allowed		-	Allowed
6.	<i>Szecsodi v MGM Resorts International</i> , 2014 ONSC 1323, 248 ACWS (3d) 860	Allowed		-	Allowed

2014

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
7.	<i>Kavanagh v Magna Exteriors and Interiors Corp (ola Servicios Decoplas)</i> , 2014 ONSC 4540, 246 ACWS (3d) 97	Allowed		-	Allowed
8.	<i>David S Laflamme Construction Inc v Canada (Attorney General)</i> , 2014 ONSC 1379, 31 CLR (4th) 285	Action dismissed on other grounds	2.	Affirmed: 2014 ONCA 775, 34 CLR (4th) 187	Action dismissed on other grounds
9.	<i>Montel Inc v Kipawa Sales & Services Inc</i> , 2014 ONSC 83, 237 ACWS (3d) 72	Dismissed		-	Dismissed
10.	<i>Victory v Sattar</i> , 2014 ONSC 641, 237 ACWS (3d) 900	Dismissed		-	Dismissed
11.	<i>Central Sun Mining Inc v Vector Engineering Inc</i> , 2014 ONSC 1849, 239 ACWS (3d) 628	Dismissed		-	Dismissed
12.	<i>Kornhaber v Starwood Hotels and Restaurants Worldwide Inc</i> , 2014 ONSC 6182, 246 ACWS (3d) 567	Allowed		-	Allowed
13.	<i>Solloway v Klondex Mines Ltd</i> , 2014 ONSC 391, 237 ACWS (3d) 92	Allowed	3.	Affirmed: 2014 ONCA 672, 244 ACWS (3d) 833	Allowed
14.	<i>Endress + Hauser Canada Ltd v Aikman</i> , 2014 ONSC 3067, 240 ACWS (3d) 855	Allowed		-	Allowed
15.	<i>Romanko v Nettina</i> , 2014 ONSC 5153, 44 CCLI (5th) 96	Allowed		-	Allowed
16.	<i>Wu v Ng</i> , 2014 ONSC 7126, 6 ETR (4th) 104	Dismissed		-	Dismissed
17.	<i>Ismail v Pafco Insurance</i> , 2014 ONSC 1290, 237 ACWS (3d) 902	Dismissed		-	Dismissed

2014

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
18.	<i>Ibrahim v Robinson</i> , unreported	Dismissed		Affirmed: 2015 ONCA 21, 124 OR (3d) 106	Dismissed

TABLE 5: 2015 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
1.	<i>Tyoga Investments Ltd v Service Alimentaire Desco Inc</i> , 2015 ONSC 3810, 255 ACWS (3d) 326	Dismissed	1.	Affirmed: 2016 ONCA 15, 262 ACWS (3d) 350	Dismissed
2.	<i>Hitlab Inc v Anderson</i> , 2015 ONSC 2535, 253 ACWS (3d) 325	Granted		-	Granted
3.	<i>Legge v Young</i> , 2015 ONSC 775, 125 OR (3d) 67	Granted		-	Granted
4.	<i>Orthoarm Inc v American Orthodontics Corp</i> , 2015 ONSC 1880, 125 OR (3d) 312	Dismissed		-	Dismissed
5.	<i>Currie v Farr's Coach Lines Ltd</i> , 2015 ONSC 2352, 253 ACWS (3d) 330	Granted		-	Granted
6.	<i>Goldbar v Haaretz.com</i> , 2015 ONSC 1128, 125 OR (3d) 619	Dismissed	2.	Affirmed: 2016 ONCA 515, 132 OR (3d) 331	Dismissed
7.	<i>Arsenault v Nunavut</i> , 2015 ONSC 4302, 255 ACWS (3d) 626	Granted	3.	Affirmed: 2016 ONCA 207, 30 CCEL (4th) 46	Granted
8.	<i>Shah v LG Chem, Ltd</i> , 2015 ONSC 2628, 125 OR (3d) 773	Granted		-	Granted
9.	<i>Airia Brands Inc v Air Canada</i> , 2015 ONSC 5332, 126 OR (3d) 756	Granted		-	Granted

TABLE 5: 2015 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
10.	<i>Machado v Catalyst Capital Group Inc</i> , 2015 ONSC 6313, 27 CCEL (4th) 116	Dismissed	4.	Affirmed: 2016 ONSC 6719, 34 CCEL (4th) 274 (Div Ct)	Dismissed
11.	<i>Silveira v FY International Auditing & Consulting Corp.</i> , 2015 ONSC 338, 37 BLR (5th) 308	Granted		-	Granted
12.	<i>QBD Cooling Systems Inc v Sollatek (UK) Ltd</i> , 2015 ONSC 947, 251 ACWS (3d) 431	Dismissed		-	Dismissed
13.	<i>CIBC v Glasford</i> , 2015 ONSC 197, 248 ACWS (3d) 65	Granted	5.	Affirmed: 2015 ONCA 523, 255 ACWS (3d) 879	Granted
14.	<i>James Bay Resources Ltd v Mak Mera Nigeria Ltd</i> , 2015 ONSC 1538, 39 BLR (5th) 313	Dismissed	6.	Affirmed: 2015 ONCA 781, 128 OR (3d) 198	Dismissed
15.	<i>Candoo Excavating Services Ltd v Ipex Inc</i> , 2015 ONSC 809, 42 CLR (4th) 153	Dismissed		-	Dismissed
16.	<i>Forsythe v Westfall</i> , 2015 ONSC 758, 125 OR (3d) 135	Granted	7.	Affirmed: 2015 ONCA 810, 128 OR (3d) 124	Granted
17.	<i>Algonquins of Barriere Lake First Nation v Canada (Attorney General)</i> , 2015 ONSC 3505, 255 ACWS (3d) 252	Granted		-	Granted
18.	<i>Carolina Foods Inc v 838116 Ontario Inc</i> , 2015 ONSC 1342, 251 ACWS (3d) 66	Granted		-	Granted

TABLE 5: 2015 CASES, RESULTS, AND APPEALS

	Case Name	Result (At Motion)	Appeal	Appeal Result	Final Result
19.	<i>Cook v 1293037 Alberta Ltd (cob Traveller's Cloud 9)</i> , 2015 ONSC 7989, 261 ACWS (3d) 844	Granted	8.	Affirmed: 2016 ONCA 836, 272 ACWS (3d) 301	Granted
20.	<i>Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC</i> , 2015 ONSC 519, 66 CPC (7th) 316	Dismissed	9.	Affirmed: 2016 ONCA 977, 135 OR (3d) 551*	Dismissed
21.	<i>CP Ships Ltd v Icecorp Logistics Inc</i> , 2015 ONSC 6243, 260 ACWS (3d) 62	Granted		-	Granted
22.	<i>Mannarino v Brown Estate</i> , 2015 ONSC 3167, 50 CCLI (5th) 122	Granted		-	Granted

* Original motion overturned in 2016 ONCA 60, 129 OR (3d) 37, but re-dismissed in 2016 ONSC 2980, 266 ACWS (3d) 370, leading to the second appeal.

VIII. APPENDIX C – COSTS

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
1.	<i>Khan v Layden</i> , 2015 ONSC 146, 261 ACWS (3d) 844	\$1,921	
2.	<i>Paraie v Cangemi</i> , 2012 ONSC 6341, 113 OR (3d) 231	\$2,000	
3.	<i>Mehmood v Gray</i> , 2011 ONSC 1735, 199 ACWS (3d) 772	\$2,500	
4.	<i>Endress + Hauser Canada Ltd v Aikman</i> , 2014 ONSC 3067, 240 ACWS (3d) 855	\$3,000	
5.	<i>Kahlon v Cheecham</i> , 2010 ONSC 1957, 187 ACWS (3d) 700	\$3,000	
6.	<i>Silveira v FY International Auditing & Consulting Corp</i> , 2015 ONSC 338, 37 BLR (5th) 308 (Master)	\$3,304.51	

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
7.	<i>Cugalj v Wick</i> , 2012 ONSC 2407, 30 CPC (7th) 356	\$3,500	
8.	<i>Stubbs v ATS Applied Tech Systems Inc</i> , 2010 CarswellOnt 10562 (WL Can) (SCJ)	\$3,500	
9.	<i>McAlpine v McAlpine</i> , 2012 ONSC 297, 108 OR (3d) 672	\$3,604.71	
10.	<i>Moore v Vancouver Fraser Port Authority</i> , 2011 ONSC 3692, 204 ACWS (3d) 278	\$4,000	
11.	<i>Comstock Canada Ltd v SPI Systems Ltd (cob SPI Controls)</i> , 2011 ONSC 2652, 100 CLR (3d) 289	\$4,500	
12.	<i>Kazi v Qatar Airlines</i> , 2013 ONSC 1370, 226 ACWS (3d) 412	\$5,000	
13.	<i>Dempsey v Staples</i> , [2011] OJ No 5326 (QL)	\$5,000	
14.	<i>Lazer-Tech v Dejerrey</i> , 2010 ONSC 1662, 186 ACWS (3d) 384	\$5,000	
15.	<i>Roadtrek Motorhomes Ltd v Aralex Acoustics Ltd</i> , 2010 ONCA 878, 196 ACWS (3d) 688, rev'g 2010 ONSC 2700, 188 ACWS (3d) 1015	\$5,000	
16.	<i>Litner (Litigation Guardian of) v Saunders</i> , 2010 ONSC 4862, 192 ACWS (3d) 1155	\$5,334	
17.	<i>Goldmart Farms Inc v Fasig-Tipton Co</i> , 2010 ONSC 1631, 187 ACWS (3d) 412, Master Muir	\$5,489	
18.	<i>Alexander v Alexander</i> , 2012 ONSC 2826, [2012] OJ No 2099 (QL)	\$6,000	
19.	<i>Zhang v Hua Hai Li Steel Pipe Co</i> , 2012 ONSC 5298, [2012] OJ No 4506 (QL)	\$6,000	
20.	<i>Di Stefano v Energy Automated Systems Inc</i> , 2010 ONSC 493, 68 BLR (4th) 209	\$6,500	
21.	<i>Bearsfeld Developments Inc v McNabb</i> , 2013 ONSC 7063, 234 ACWS (3d) 913	\$7,000	
22.	<i>CP Ships Ltd v Icecorp Logistics Inc</i> , 2015 ONSC 6243, 260 ACWS (3d) 62	\$7,500	
23.	<i>Wynn Las Vegas LLC v Teng</i> , 2012 ONSC 1927, 214 ACWS (3d) 103	\$7,500	

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
24.	<i>Salus Marine Wear Inc v Queen Charlotte Lodge Ltd</i> , 2010 ONSC 5170, [2010] OJ No 4389 (QL)	\$7,500	
25.	<i>Montel Inc v Kipawa Sales & Services Inc</i> , 2014 ONSC 83, 237 ACWS (3d) 72	\$8,600	
26.	<i>Hitlab Inc v Anderson</i> , 2015 ONSC 2535, 253 ACWS (3d) 325	\$9,500	
27.	<i>Export Packers Co v SPI International Transportation</i> , 2011 ONSC 6906, [2011] OJ No 5227 (QL)	\$9,606.39	
28.	<i>Orthoarm Inc v American Orthodontics Corp</i> , 2015 ONSC 1880, 125 OR (3d) 312	\$10,000	
29.	<i>Carolina Foods Inc v 838116 Ontario Inc</i> , 2015 ONSC 1342, 251 ACWS (3d) 66	\$10,000	
30.	<i>Wu v Ng</i> , 2015 ONSC 320, 6 ETR (4th) 117	\$10,000	
31.	<i>CIBC v Glasford</i> , 2015 ONSC 1843, 250 ACWS (3d) 396	\$10,298.20	
32.	<i>Wielgomas v Anglocom Inc</i> , 2011 ONCA 490, 335 DLR (4th) 741, var'g 2010 ONSC 6289, 335 DLR (4th) 745	\$12,750	
33.	<i>Christmas v Fort McKay First Nation</i> , 2014 ONSC 373, 119 OR (3d) 21	\$13,000	
34.	<i>Jafarzadehabmadsargoarabi v Sabet</i> , 2011 ONSC 7166, 212 ACWS (3d) 327	\$13,136.65	
35.	<i>Mitchell v Jeckovich</i> , 2014 ONSC 210, 28 CCLI (5th) 240	\$13,935.78	
36.	<i>Legge v Young</i> , 2015 ONSC 775, 125 OR (3d) 67	\$14,321.67	
37.	<i>Bale-eze Industries Inc v Frazier Industrial Co</i> , 2012 ONSC 5505, 221 ACWS (3d) 527	\$14,595.34	
38.	<i>Amtim Capital Inc v Appliance Recycling Centers of America</i> , 2012 ONSC 1902, [2012] OJ No 1330 (QL)	\$15,000	
39.	<i>Colavecchia v Berkeley Hotel Ltd</i> , 2012 ONSC 5868, 221 ACWS (3d) 532	\$15,000	

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
40.	<i>1673332 Ontario Ltd v Habonim Industrial Valves & Actuators Ltd</i> , 2011 ONSC 4973, 206 ACWS (3d) 301	\$15,000	
41.	<i>Tucows.com Co v Lojas Renner SA</i> , 2010 ONSC 5851, 334 DLR (4th) 564	\$15,000	
42.	<i>Luk v Pottery Barn</i> , 2010 ONSC 5540, 195 ACWS (3d) 683	\$15,000	
43.	<i>Consbec Inc v Walker</i> , 2011 ONSC 2944, 202 ACWS (3d) 61	\$15,719.50	
44.	<i>Leone v Scaffidi</i> , 2013 ONSC 2847, 87 ETR (3d) 105	\$18,000	
45.	<i>Petroot v Natuzzi Americas, Inc</i> , 2013 ONSC 5855, 234 ACWS (3d) 864	\$19,177.07	Substantial Indemnity
46.	<i>Cook v 1293037 Alberta Ltd (cob Traveller's Cloud 9)</i> , 2015 ONSC 7989, 261 ACWS (3d) 844	\$20,000	
47.	<i>Haufler (Litigation Guardian of) v Hotel Riu Palace</i> , 2014 ONSC 2686, 241 ACWS (3d) 61	\$20,000	
48.	<i>James Bay Resources Ltd v Mak Mera Nigeria Ltd</i> , 2015 ONSC 2487, 252 ACWS (3d) 663	\$21,000	
49.	<i>Brown v Spagnuolo</i> , 2013 ONSC 6665, 233 ACWS (3d) 800	\$21,000	
50.	<i>Manson v Canetic Resources Ltd</i> , 2014 ONSC 1480, 238 ACWS (3d) 43	\$23,896.92	Substantial Indemnity
51.	<i>Lixo Investments Ltd v Gowling, Lafleur, Henderson</i> , 2013 ONSC 6181, 233 ACWS (3d) 39	\$24,000	
52.	<i>Dundee Precious Metals Inc v Marsland</i> , 2011 ONCA 594, 108 OR (3d) 187, rev'g 2010 ONSC 6484, 104 OR (3d) 51	\$25,000	
53.	<i>Greta Inc v De Lange</i> , 2013 ONSC 4931, 230 ACWS (3d) 974	\$25,000	
54.	<i>Mackie Research Capital Corp v Mackie</i> , 2012 ONSC 3890, 3 BLR (5th) 312	\$26,000	

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
55.	<i>Elfarnawani v International Olympic Committee</i> , 2011 ONSC 6784, 20 CPC (7th) 412	\$28,823.73	
56.	<i>Victory v Sattar</i> , 2014 ONSC 1763, 238 ACWS (3d) 564	\$30,000	
57.	<i>Harster Greenhouses Inc v Visser International Trade & Engineering BV</i> , 2011 ONSC 3708, 204 ACWS (3d) 482	\$30,000	
58.	<i>Nadi Inc v Montazemi-Safari</i> , 2012 ONSC 5492, [2012] OJ No 4570 (QL)	\$32,000	“Somewhat more” than partial indemnity costs
59.	<i>Sun Life Assurance Co of Canada v Yellow Pages Group Inc</i> , 2010 ONSC 2780, 190 ACWS (3d) 95	\$33,000	
60.	<i>Bond v Brookfield Asset Management Inc</i> , 2011 ONSC 3761, 216 ACWS (3d) 314	\$35,000	Class Action
61.	<i>Title v Canadian Asset Based Lending Enterprise (Cable) Inc</i> , 2011 ONSC 1562, 199 ACWS (3d) 372	\$35,000	
62.	<i>Kais v Abu Dhabi Education Council</i> , 2011 ONSC 100, 195 ACWS (3d) 960	\$39,566.90	
63.	<i>Solloway v Klondex Mines Ltd</i> , 2014 ONSC 1632, 238 ACWS (3d) 560	\$42,000	
64.	<i>Bouzari v Bahremani</i> , 2015 ONCA 275, 126 OR (3d) 223, rev’g 2013 ONSC 6337, 253 ACWS (3d) 936	\$50,000	
65.	<i>Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC</i> , 2016 ONSC 3798, 268 ACWS (3d) 40, also including costs of 2015 ONSC 519, 66 CPC (7th) 316	\$50,000	
66.	<i>Merill Lynch Canada Inc v Mineralogy Canada Acquisition Corp Pty Ltd</i> , 2011 ONSC 3032, 202 ACWS (3d) 254	\$56,564.29	Substantial Indemnity
67.	<i>Harrowand SL v Dewind Turbines Ltd</i> , 2014 CarswellOnt 19177 (WL Can) (Div Ct), rev’g 2014 ONSC 2014, 239 ACWS (3d) 630, Master Dash	\$63,300	
68.	<i>Collingwood Ethanol LP v Humblet Inc</i> , 2010 ONSC 2132, 91 CLR (3d) 112	\$64,000	

TABLE 6: COSTS AWARDS (MOTIONS) IN ORDER OF MAGNITUDE

	Costs Decision	Costs of Motion	Unique Characteristics
69.	<i>Cannon v Funds for Canada Foundation</i> , 2010 ONSC 5658, 193 ACWS (3d) 741	\$66,105.76	Class Action
70.	<i>Ghana Gold Corp (Re)</i> , 2013 ONSC 5790, 3 CBR (6th) 220	\$69,917.58	
71.	<i>Wilson v Riu</i> , 2013 ONSC 635, 98 CCLT (3d) 342, var'd 2013 ONSC 2586, 2 CCLT (4th) 169	\$72,508.60	Judge made arithmetical error, requiring variation
72.	<i>Kaynes v BP plc</i> , 2014 ONCA 580, 122 OR (3d) 162 rev'g 2013 ONSC 5802, 117 OR (3d) 685	\$75,000	Class Action
73.	<i>McKenna v Gammon Gold Inc</i> , 2010 ONSC 3630, 88 CPC (6th) 83	\$100,000	Class Action
74.	<i>Abdula v Canadian Solar Inc</i> , 2011 ONSC 7055, 210 ACWS (3d) 590	\$250,000	
75.	<i>Ontario v Rothmans, Inc</i> , 2012 ONSC 1804, 28 CPC (7th) 103	\$575,520	Tobacco

TABLE 7: COSTS AWARDS (APPEALS) IN ORDER OF MAGNITUDE

	Appellate (Costs) Decision	Costs of Appeal	Unique Characteristics
1.	<i>Arsenault v Nunavut</i> , 2016 ONCA 207, 30 CCEL (4th) 46	\$5,000	
2.	<i>Stubbs v ATS Applied Tech Systems Inc</i> , 2010 ONCA 879, 272 OAC 386	\$5,000	
3.	<i>Wielgomas v Anglcom Inc</i> , 2011 ONCA 490, 335 DLR (4th) 741	\$5,000	
4.	<i>Roadtrek Motorhomes Ltd v Aralex Acoustics Ltd</i> , 2010 ONCA 878, 196 ACWS (3d) 688	\$5,000	
5.	<i>Jabbour v Eparchy of Our Lady of Lebanon of Los Angeles</i> , 2011 ONCA 140, [2011] OJ No 796 (QL)	\$6,000	
6.	<i>CIBC v Glasford</i> , 2015 ONCA 523, 255 ACWS (3d) 879	\$7,500	
7.	<i>James Bay Resources Ltd v Mak Mera Nigeria Ltd</i> , 2015 ONCA 781, 128 OR (3d) 198	\$7,500	

TABLE 7: COSTS AWARDS (APPEALS) IN ORDER OF MAGNITUDE

	Appellate (Costs) Decision	Costs of Appeal	Unique Characteristics
8.	<i>Cook v 1293037 Alberta Ltd (cob Traveller's Cloud 9)</i> , 2016 ONCA 836, 272 ACWS (3d) 301	\$7,500	
9.	<i>Tamminga v Tamminga</i> , 2014 ONCA 478, 120 OR (3d) 671	\$7,500	
10.	<i>West Van Inc v Daisley</i> , 2014 ONCA 232, 119 OR (3d) 481	\$7,500	
11.	<i>Ibrahim v Robinson</i> , 2015 ONCA 21, 124 OR (3d) 106	\$7,500	
12.	<i>Galaxy Dragon Ltd v Topwater Exclusive Fund IV LLC</i> , 2012 ONCA 382, 216 ACWS (3d) 347	\$7,500	
13.	<i>Galustian v SkyLink Group of Companies Inc</i> , 2010 ONCA 645, 268 OAC 157	\$9,000	Security for Costs Ordered for Appeal
14.	<i>Tyoga Investments Ltd v Service Alimentaire Desco Inc</i> , 2016 ONCA 15, 262 ACWS (3d) 350	\$10,000	
15.	<i>Solloway v Klondex Mines Ltd</i> , 2014 ONCA 672, 244 ACWS (3d) 833	\$10,000	
16.	<i>Machado v Catalyst Capital Group Inc</i> , 2016 ONSC 6719, 34 CCEL (4th) 274 (Div Ct)	\$10,000	
17.	<i>Jafarzadehahmadsargoorabi v Sabet</i> , 2012 ONCA 391, 219 ACWS (3d) 105	\$11,070	
18.	<i>Trillium Motor World Ltd v General Motors of Canada Ltd</i> , 2014 ONCA 497, 120 OR (3d) 598	\$12,000	
19.	<i>Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC</i> , 2016 ONCA 977, 135 OR (3d) 551	\$13,000	
20.	<i>Amtim Capital Inc v Appliance Recycling Centers of America</i> , 2012 ONCA 664, 298 OAC 75	\$15,000	
21.	<i>Export Packers Co v SPI International Transportation</i> , 2012 ONCA 526, 219 ACWS (3d) 67	\$15,000	
22.	<i>Brisben v Lunev</i> , 2011 ONCA 15, 196 ACWS (3d) 995	\$15,000	

TABLE 7: COSTS AWARDS (APPEALS) IN ORDER OF MAGNITUDE

	Appellate (Costs) Decision	Costs of Appeal	Unique Characteristics
23.	<i>Greta Inc v De Lange</i> , 2014 ONCA 107, 237 ACWS (3d) 377	\$15,000	
24.	<i>Dundee Precious Metals Inc v Marsland</i> , 2011 ONCA 594, 108 OR (3d) 187	\$17,000	
25.	<i>Lixco Investments Ltd v Gowling, Lafleur, Henderson</i> , 2014 ONCA 114, 237 ACWS (3d) 375	\$17,000	
26.	<i>Harrowand SL v Dewind Turbines Ltd</i> , 2014 CarswellOnt 19177 (WL Can) (Div Ct)	\$17,500	
27.	<i>David S Laflamme Construction Inc v Canada (Attorney General)</i> , 2014 ONCA 775, 34 CLR (4th) 187	\$17,500	
28.	<i>Mining Technologies International Inc v Krako Inc</i> , 2012 ONCA 847, 99 CCLT (3d) 46	\$20,000	There was also a motion for leave to appeal to the Divisional Court, but that appears to be related to either unrelated relief and/or was made erroneously in the wrong court: 2012 ONSC 3555, 218 ACWS (3d) 822 and 2012 ONSC 4505, [2012] OJ No 3687 (QL)
29.	<i>Bond v Brookfield Asset Management Inc</i> , 2011 ONCA 730, 18 CPC (7th) 74	\$20,000	Class Action
30.	<i>Tucows.com Co v Lojas Renner SA</i> , 2011 ONCA 548, 106 OR (3d) 561	\$24,000	
31.	<i>2249659 Ontario Ltd v Siegen</i> , 2013 ONCA 513, 230 ACWS (3d) 986	\$24,000	
32.	<i>Cannon v Funds for Canada Foundation</i> , 2011 ONCA 185, [2011] OJ No 990 (QL)	\$25,000	Class Action
33.	<i>Wolfe v Wyeth</i> , 2011 ONCA 347, 282 OAC 64	\$25,000	
34.	<i>Expedition Helicopters Inc v Honeywell Inc</i> , 2010 ONCA 351, 262 OAC 195	\$25,000	

TABLE 7: COSTS AWARDS (APPEALS) IN ORDER OF MAGNITUDE

	Appellate (Costs) Decision	Costs of Appeal	Unique Characteristics
35.	<i>Title v Canadian Asset Based Lending Enterprise (Cable) Inc</i> , 2011 ONCA 715, 108 OR (3d) 71	\$25,000	
36.	<i>Central Sun Mining Inc v Vector Engineering Inc</i> , 2013 ONCA 601, 117 OR (3d) 313	\$25,000	
37.	<i>Goldhar v Haaretz.com</i> , 2016 ONCA 515, 132 OR (3d) 331	\$30,000	
38.	<i>Kaynes v BP plc</i> , 2014 ONCA 580, 122 OR (3d) 162	\$50,000	Class Action
39.	<i>Prince v ACE Aviation Holdings Inc</i> , 2014 ONCA 285, 120 OR (3d) 140	\$50,000	Class Action
40.	<i>Ontario v Rothmans, Inc</i> , 2013 ONCA 642, 118 OR (3d) 213	\$237,332.50	Tobacco Litigation

IX. APPENDIX D – DELAY

TABLE 8: CASES WITHOUT APPEALS (IN LENGTH OF DELAY)

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
1.	<i>Ghana Gold Corp (Re)</i> , 2013 ONSC 3284, 3 CBR (6th) 220	May 8, 2013	June 7, 2013	1
2.	<i>Obégi Chemicals LLC v Kilani</i> , 2011 ONSC 1636, 200 ACWS (3d) 95	December 23, 2010	March 24, 2011	3
3.	<i>Avanti Management and Consulting Ltd v Argex Mining Inc</i> , 2012 ONSC 4395, 219 ACWS (3d) 555	April 4, 2012	July 27, 2012	4
4.	<i>Wu v Ng</i> , 2014 ONSC 7126, 6 ETR (4th) 104	July 2014	December 9, 2014	5
5.	<i>Alexander v Alexander</i> , 2012 ONSC 2826, [2012] OJ No 2099 (Master) (QL)	Mid-December 2011	May 11, 2012	5
6.	<i>Century Indemnity Co v Viridian Inc</i> , 2013 ONSC 4412, 229 ACWS (3d) 1023	January 3, 2013	June 26, 2013	5

TABLE 8: CASES WITHOUT APPEALS (IN LENGTH OF DELAY)

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
7.	<i>Royal Bank of Canada v DCM Erectors Inc</i> , 2013 ONSC 2864, 228 ACWS (3d) 687	December 2012	May 16, 2013	5
8.	<i>Toronto (City) v Tseng</i> , 2011 ONSC 4594, 87 MPLR (4th) 220 (Master)	March 8, 2011	July 28, 2011	5
9.	<i>Inukshuk Wireless Partnership v 4253311 Canada Inc</i> , 2013 ONSC 5631, 117 OR (3d) 206	March 7, 2013	September 6, 2013	6
10.	<i>Ironrod Investments Inc v Enquest Energy Services Corp</i> , 2011 ONSC 308, 198 ACWS (3d) 341	June 2010	January 25, 2011	7
11.	<i>Candoo Excavating Services Ltd v Ipex Inc</i> , 2015 ONSC 809, 42 CLR (4th) 153	July 11, 2014	February 4, 2015	7
12.	<i>Carolina Foods Inc v 838116 Ontario Inc</i> , 2015 ONSC 1342, 251 ACWS (3d) 66	August 6, 2014	March 2, 2015	7
13.	<i>Orthoarm Inc v American Orthodontics Corp</i> , 2015 ONSC 1880, 125 OR (3d) 312	September 5, 2014	March 30, 2015	7
14.	<i>Patterson v EM Technologies, Inc</i> , 2013 ONSC 5849, 234 ACWS (3d) 628	Early 2013	September 17, 2013	7
15.	<i>McAlpine v McAlpine</i> , 2012 ONSC 297, 108 OR (3d) 672	April 29, 2011	January 12, 2012	8
16.	<i>Shinoff v BMO Nesbitt Burns Inc</i> , 2010 ONSC 926, 185 ACWS (3d) 633	May 22, 2009	February 8, 2010	8
17.	<i>Kahlon v Cheecham</i> , 2010 ONSC 1957, 187 ACWS (3d) 700	July 11, 2009	April 20, 2010	9
18.	<i>Bearsfield Developments Inc v McNabb</i> , 2013 ONSC 7063, 234 ACWS (3d) 913	February 1, 2013	November 14, 2013	9
19.	<i>Endress + Hauser Canada Ltd v Aikman</i> , 2014 ONSC 3067, 240 ACWS (3d) 855	August 1, 2013	June 5, 2014	10
20.	<i>Legge v Young</i> , 2015 ONSC 775, 125 OR (3d) 67	May 2014	March 10, 2015	10
21.	<i>Nadi Inc v Montazemi-Safari</i> , 2012 ONSC 4723, 220 ACWS (3d) 732	October 26, 2011	August 28, 2012	10
22.	<i>Manson v Canetic Resources Ltd</i> , 2014 ONSC 261, 237 ACWS (3d) 93	February 21, 2013	January 13, 2014	11
23.	<i>Van Kessel v Orsulak</i> , 2010 ONSC 6919, 9 CPC (7th) 434	Mid-January 2010	December 24, 2010	11

TABLE 8: CASES WITHOUT APPEALS (IN LENGTH OF DELAY)

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
24.	<i>Victory v Sattar</i> , 2014 ONSC 641, 237 ACWS (3d) 900	Late January 2013	January 29, 2014	12
25.	<i>Mehmood v Gray</i> , 2011 ONSC 1735, 199 ACWS (3d) 772	March 2010	March 18, 2011	12
26.	<i>Patterson v EM Technologies, Inc.</i> , 2013 ONSC 5849, 234 ACWS (3d) 628	September 2012	September 17, 2013	12
27.	<i>Petrook v Natuzzi Americas, Inc.</i> , 2013 ONSC 4508, 10 CCEL (4th) 317	May 11, 2012	July 3, 2013	14
28.	<i>Umutomi c Safari</i> , 2012 CSON 6962, 232 ACWS (3d) 370	September 19, 2011	December 6, 2012	15
29.	<i>Khan v Layden</i> , 2014 ONSC 6868, 247 ACWS (3d) 555	July 2013	November 26, 2014	16
30.	<i>Shah v LG Chem, Ltd.</i> , 2015 ONSC 2628, 125 OR (3d) 773	December 24, 2013	April 23, 2015	16
31.	<i>Montel Inc v Kipawa Sales & Services Inc.</i> , 2014 ONSC 83, 237 ACWS (3d) 72	September 11, 2012	January 17, 2014	16
32.	<i>United States of America v Yemec</i> , 2012 ONSC 4207, 41 CPC (7th) 362	Late March 2011	August 24, 2012	17
33.	<i>Furfari v Juncos</i> , 2011 ONSC 3624, 38 CPC (7th) 110	Late December 2009-Early January 2010	June 13, 2011	17
34.	<i>QBD Cooling Systems Inc v Sollatek (UK) Ltd.</i> , 2015 ONSC 947, 251 ACWS (3d) 431	August 14, 2013	February 11, 2015	18
35.	<i>Currie v Farr's Coach Lines Ltd.</i> , 2015 ONSC 2352, 253 ACWS (3d) 330	October 2013	April 23, 2015	18
36.	<i>Kais v Abu Dhabi Education Council</i> , 2011 ONSC 75, 196 ACWS (3d) 1022	March 25, 2009	January 5, 2011	21
37.	<i>Wilson v Riu</i> , 2012 ONSC 6840, 98 CCLT (3d) 337	Early January 2011	November 29, 2012	22
38.	<i>Frank v Farlie, Turner & Co, LLC</i> , 2012 ONSC 5519, 113 OR (3d) 25	Late December 2010	October 2, 2012	22
39.	<i>Szecsodi v MGM Resorts International</i> , 2014 ONSC 1323, 248 ACWS (3d) 860	March 2012	March 3, 2014	24
40.	<i>Bedford v Abushmaies</i> , 2013 ONSC 1352, 226 ACWS (3d) 1026	December 2010	March 6, 2013	27

TABLE 8: CASES WITHOUT APPEALS (IN LENGTH OF DELAY)

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
41.	<i>1673332 Ontario Ltd v Habonim Industrial Valves & Actuators Ltd</i> , 2011 ONSC 4973, 206 ACWS (3d) 301	Early March 2009	August 22, 2011	27
42.	<i>Kavanagh v Magna Exteriors and Interiors Corp (ola Servicios Decoplas)</i> , 2014 ONSC 4540, 246 ACWS (3d) 97	February 29, 2012	July 31, 2014	29
43.	<i>Dennis v Farrell</i> , 2010 ONSC 2401, 84 CCLI (4th) 64	September 12, 2007	April 23, 2010	31
44.	<i>Bale-eze Industries Inc v Frazier Industrial Co</i> , 2012 ONSC 4892, 220 ACWS (3d) 722	January/February 2009	August 28, 2012	42
45.	<i>Central Sun Mining Inc v Vector Engineering Inc</i> , 2014 ONSC 1849, 239 ACWS (3d) 628	May 10, 2010	April 28, 2014	47
46.	<i>Mitchell v Jeckovich</i> , 2013 ONSC 7494, 28 CCLI (5th) 229	Late 2009	December 5, 2013	48
47.	<i>Haufler (Litigation Guardian of) v Hotel Riu Palace</i> , 2013 ONSC 6044, 117 OR (3d) 275	Late 2008	September 27, 2013	58
48.	<i>Airia Brands Inc v Air Canada</i> , 2015 ONSC 5332, 126 OR (3d) 756	September 21, 2006	August 26, 2015	107

TABLE 9: CASES WITH APPEALS

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
1.	<i>James Bay Resources Limited v Mak Mera Nigeria Limited</i> , 2015 ONSC 1538, 39 BLR (5th) 313, aff'd 2015 ONCA 781, 128 OR (3d) 198	September 10, 2014	November 11, 2015	14
2.	<i>Mining Technologies International Inc v Krako Inc</i> , 2012 ONSC 2239, 2012 CarswellOnt 8034 (WL Can), aff'd ONCA 847, 99 CCLT (3d) 46	Early-to-mid-2011	November 22, 2012	14
3.	<i>Galaxy Dragon Ltd v Topwater Exclusive Fund IV LLC</i> , 2011 ONSC 6818, [2011] OJ No 5255 (QL), aff'd 2012 ONCA 382, 216 ACWS (3d) 347	January 27, 2011	May 30, 2012	16

TABLE 9: CASES WITH APPEALS

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
4.	<i>Brisben v Lunev</i> , 2010 ONSC 1840, [2010] OJ No 3216 (QL), aff'd 2011 ONCA 15, 196 ACWS (3d) 995	June 2009	January 7, 2011	19
5.	<i>Tyoga Investments Ltd v Service Alimentaire Desco Inc</i> , 2015 ONSC 3810, [2015] OJ No 3133 (QL), aff'd 2016 ONCA 15, 262 ACWS (3d) 350	May 7, 2014	January 8, 2016	20
6.	<i>Wielgomas v Anglocom Inc</i> , 2010 ONSC 6289, 335 DLR (4th) 745, aff'd 2011 ONCA 490, 335 DLR (4th) 741	Summer 2009	June 29, 2011	23
7.	<i>Lixo Investments Ltd v Gowling, Lafleur, Henderson</i> , 2013 ONSC 4862, 237 ACWS (3d) 375, aff'd 2014 ONCA 114, [2014] OJ No 667 (QL)	January 2012	February 2, 2014	25
8.	<i>Arsenault v Nunavut</i> , 2015 ONSC 4302, [2015] OJ No 3494 (QL), aff'd 2016 ONCA 207, 30 CCEL (4th) 46	February 3, 2014	March 3, 2016	25
9.	<i>Jabbour v Eparchy of Our Lady of Lebanon of Los Angeles</i> , 2010 ONSC 2475, 2010 CarswellOnt 10731 (WL Can), aff'd 2011 ONCA 140, [2011] OJ No 796 (QL)	November 8, 2008	February 23, 2011	27
10.	<i>2249659 Ontario Ltd v Siegen</i> , 2012 ONSC 3128, [2012] OJ No 3263 (QL), rev'd 2013 ONCA 354, 115 OR (3d) 241	January 11, 2011	May 31, 2013	29
11.	<i>Wolfe v Wyeth</i> , 2010 ONSC 2368, 84 CPR (4th) 43, aff'd 2011 ONCA 347, 373 NSR (2d) 79	December 3, 2007	May 5, 2011	41
12.	<i>Stuart Budd & Sons Ltd v IFS Vehicle Distributors ULC</i> , 2015 ONSC 519, [2015] OJ No 979 (QL), rev'd 2016 ONCA 60, 129 OR (3d) 37; re-decided 2016 ONSC 2980, 266 ACWS (3d) 370, aff'd 2016 ONCA 977, 135 OR (3d) 551	March 22, 2013	December 23, 2016	45

TABLE 10: CASES WITH SUPREME COURT LEAVE APPLICATIONS

	Decision	Date Service of Statement of Claim	Date of Motion Resolution	Delay in Months
1.	<i>Prince v ACE Aviation Holdings Inc</i> , 2013 ONSC 2906, 115 OR (3d) 721, aff'd 2014 ONCA 285, 120 OR (3d) 140, leave to appeal denied, [2014] SCCA No 273	April 9, 2013	October 23, 2014	18
2.	<i>CIBC v Glasford</i> , 2015 ONSC 197, 248 ACWS (3d) 65, aff'd 2015 ONCA 523, 255 ACWS (3d) 879, leave to appeal denied [2015] SCCA No 410	July 2014	April 7, 2016	21
3.	<i>Kaynes v BP plc</i> , 2013 ONSC 5802, 117 OR (3d) 685, rev'd 2014 ONCA 580, 122 OR (3d) 162, leave to appeal denied, [2014] SCCA No 452	November 15, 2012	March 16, 2015	29 (stay later lifted)
4.	<i>Tucows.com Cc v Lojas Renner SA</i> , 2010 ONSC 5851, 334 DLR (4th) 564, rev'd, 2011 ONCA 548, 106 OR (3d) 561, leave to appeal denied, [2011] SCCA No 450	November 16, 2009	May 24, 2012	30
5.	<i>Central Sun Mining Inc v Vector Engineering Inc</i> , 2012 ONSC 7331, 98 CCLT (3d) 291, rev'd 2013 ONCA 601, 117 OR (3d) 313, leave to appeal denied [2013] SCCA No 475; returned to Superior Court, 2014 ONSC 1849, 239 ACWS (3d) 628	September 2009	April 28, 2014	55