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Backgrounder

LRC 72—Report on the Jurisdiction of Local Judges: Stays of Execution and Instalment Orders

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In a jurisdiction as large and geographically diverse as British Columbia one of the challenges of the judicial system has been to provide litigants outside of Vancouver and Victoria with access to the Supreme Court. The reason for this is that while there are a number of judicial centres in the Province, the *Supreme Court Act* requires continuous sittings in two locations only: Victoria and Vancouver. Many Interior communities therefore have only limited local access to a Justice of the Supreme Court.

At the time this report was written, the problem has been met to a large degree in the *Act* by allowing County Court Judges to exercise certain functions that would otherwise be reserved to a Justice of the Supreme Court. It has been noted, however, that the jurisdiction of a County Court Judge, or a Local Judge of the Supreme Court as they are called in the *Act*, is limited in two respects. First, a Local Judge, except in very narrow circumstances, may only order a stay of execution at the time an order is made. There appears to be no power, after an order has been made, to entertain an application to stay execution. Second, a Local Judge of the Supreme Court has no explicit jurisdiction to order that a judgment be payable by instalments. In contrast, there are no such restrictions upon the jurisdiction of a Justice of the Supreme Court.

These two limitations were creating real difficulties for litigants in Interior communities where a Supreme Court Justice is not readily available. Urgent cases have to be transferred to Vancouver or Victoria, which causes delay and increased costs. The report highlights in particular that the inability to entertain an application for a stay of execution is especially critical in the context of mortgage foreclosure proceedings.

The report points out the anomaly that, at the time of writing, a Local Judge of the Supreme Court has jurisdiction to pronounce judgment for an unlimited amount but is denied the power to stay execution on such judgment unless the stay is made contemporaneously with the order. It is also noted that Local Judges did possess such power until 1976 when new rules of court came into force. The conclusion reached in the report is that the jurisdiction

of Local Judges of the Supreme Court should be enlarged with respect to stays of execution and instalment orders and recommendations are made to this effect.

Further Developments

See *Supreme Court Rules*, Rule 42 (25), as amended by B.C. Reg. 18/85, s. 15 (effective 1 April 1985). The County Court ceased to exist in 1990.