

Highlights from Chapter 7—Third-party Litigation Funding

Third-party litigation funding (3P Funding) offers an opportunity for clients, lawyers and law firms to obtain funding from private and public third-party sources to pay for litigation.

Private 3P Funding involves a third-party funder entering into a litigation funding agreement with a plaintiff, lawyer or law firm to finance legal fees and disbursements. The third-party funder has no legal right or interest in the matters at issue in the litigation, but participates as financier in exchange for a share or percentage of the settlement or judgement award. Examples include contingency fee agreements, litigation loans, and adverse cost insurance.

Public 3P Funding is collected and distributed to litigants through statutory mechanisms. 3P Funding mechanisms are designed to allocate federal and provincial funding to both individual and groups of litigants. Examples include provincial class proceedings funds, legal aid plans, and workers' compensation advocacy services.

Optimal uses

- **Powerful opposition** (equalize the financial playing field between plaintiffs and large, well-funded defendants);
- **Riskier cases** (encourage lawyers and firms to expand their risk threshold);
- **Industry-specific** (e.g. commercial litigation or intellectual property cases).

| Advantages | Disadvantages | Ethics and professional responsibility considerations |
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| <ul style="list-style-type: none">• Improved accessibility to cases not traditionally taken on contingency• Enhance application in jurisdictions with two-way cost regimes• Diversifying risk• Improves client ability to pay for necessary disbursements• Coverage for out-of-pocket litigation expenses | <ul style="list-style-type: none">• Litigation privilege and disclosure• Lack of regulation• Potential undue influence and power imbalances• Potential to advance unmeritorious cases• A form of insurance | <ul style="list-style-type: none">• Complications from lawyer self-financing• Threats to the independence of plaintiffs and counsel• Limited applicability |

Opportunities for systemic, structural, or legal change

The consultation participants and research highlighted three ideas where changes could be considered to promote 3P Funding in British Columbia: regulations for litigation funding agreements; greater judicial oversight; and expand to include arbitration matters.