

Justice Delayed: Access to Justice in Tort Litigation – A Comparative Analysis of Tort Claims
in the United Kingdom, the United States, and Canada

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Introduction

“Justice delayed is justice denied,” said British Prime Minister William Gladstone before the House of Commons in 1868. Two centuries later, this age-old legal maxim remains strikingly relevant for comparing the duration of tort claims across different countries. In the United Kingdom, it can take as long as 36 months to resolve a healthcare-related tort claim—nearly three times longer than in Canada.¹ Using data collection and analysis, this study seeks to compare the average processing times of tort claims in the United States, the United Kingdom, and Canada to recommend improvements to access to justice in the U.K. Tort claims are legal claims made by individuals seeking compensation for harm or injury caused by the wrongful actions of another party. The efficiency of a legal system is a critical factor in ensuring access to justice, particularly in the resolution of tort claims, where delays can exacerbate the financial and emotional burdens on those seeking redress. By examining the processing times of motor vehicle, healthcare-related, and general civil tort claims across these three countries, the study aims to highlight disparities in judicial efficiency and their implications for access to justice. The findings will provide insights into how different legal systems manage the complexities of tort litigation and will explore the impact of these

¹ Waldrons solicitors, 'How long do compensation claims take?' (Waldrons Solicitors, 30 August 2023) <<https://www.waldrons.co.uk/insights/how-long-do-compensation-claims-take/>> accessed 14 July 2024

processes on the accessibility and effectiveness of justice for claimants in each country. The study reveals that while the U.K. excels in certain areas, such as motor vehicle torts, it lags significantly in others, like healthcare. The report concludes with targeted recommendations on how the U.K. can learn from both the U.S. and Canada by streamlining healthcare tort processes, expanding online courts, and centralising data collection.

Methodology and Caveats

The data is sourced from a combination of public records, including court statistics, government reports, and independent studies conducted by universities and research institutions. In analysing this data, the study aims to identify patterns and discrepancies in how efficiently each jurisdiction handles tort claims. It is important to note that the data utilised in this report is subject to several limitations. First, while Canada's tort data is centralised and readily available through Statistics Canada, the United States and the United Kingdom present challenges in data collection. In the U.S., data is often fragmented across federal and state jurisdictions, leading to potential inconsistencies. The U.K. lacks a centralised public repository for tort data, relying heavily on insurance companies for statistical information, which may not capture the full scope of the legal process. Furthermore, legal systems, procedural rules, and the categorisation of tort cases vary across these countries. Despite these limitations, the findings provide valuable insights into the relative efficiency of tort processing in each jurisdiction and highlight areas where reforms may be beneficial.

Average Processing Time of Tort Trials in Three Jurisdictions

The processing times of tort trials are a crucial factor in determining the efficiency and effectiveness of a country's legal system. Delays in resolving cases can have significant financial and emotional impacts on the parties involved. This section examines the average processing times for tort trials in the United States, Canada, and the United Kingdom, focusing on three categories: motor vehicle cases, healthcare-related torts, and general civil torts. These three categories are used as they encompass a broad range of common legal disputes, each with a substantial statistical base, making them representative indicators of overall judicial efficiency across different legal systems.² The findings reveal notable differences in efficiency among these countries and offer insights into the strengths and weaknesses of each system.

Motor Vehicle Claims

In claims of personal injury resulting from the use of motor vehicles, the United Kingdom leads with the shortest average processing time of 9 months,³ significantly faster than those of both Canada (15 months)⁴ and the United States (23 months).⁵ The U.K.'s efficiency in this category may be attributed to streamlined procedures and potentially greater use of alternative dispute resolution methods, both of which reduce the burden on the court system.

Canada also performs relatively well, with an average processing time of 15 months, likely benefiting from its centralised approach to data collection and a more efficient legal

² Richard Lewis and others, 'Tort Personal Injury Claims Statistics: Is There a Compensation Culture in the United Kingdom?' [2006] 14(2) Torts Law Journal <<https://dx.doi.org/10.2139/ssrn.892981>> accessed 14 July 2024.

³ Waldrons solicitors, 'How long do compensation claims take?' (Waldrons Solicitors, 30 August 2023) <<https://www.waldrons.co.uk/insights/how-long-do-compensation-claims-take/>> accessed 14 July 2024

⁴ 'The Daily: Statistics Canada, 2022'

⁵ Thomas Cohen, 'Tort Bench and Jury Trials in State Courts, 2005.'

framework for handling motor vehicle disputes. The United States has the longest processing time with 23 months, suggesting that the complexity of its legal system and the involvement of multiple parties (including insurance companies) may contribute to longer delays.

Healthcare Claims

Torts of medical negligence reveal a different pattern, with Canada having the shortest processing times at 13 months.⁶ This efficiency may be linked to Canada's healthcare system structure and fewer procedural hurdles in litigating such cases. The United States, at 29 months, indicates a lengthy and complex process, likely due to the high stakes involved in medical malpractice cases and the extensive discovery and expert testimony phases typical in such trials.⁷

Interestingly, the United Kingdom has the longest processing time for healthcare-related torts at 36 months.⁸ This extended duration may reflect the complexities and challenges specific to the U.K.'s healthcare and legal systems, including more rigorous regulatory oversight or a higher threshold for proving negligence.

General Civil Tort Claims

For general civil torts, Canada again emerges as the most efficient, with an average processing time of 15 months.⁹ This consistency across different categories suggests that Canada's legal system may have structural advantages, such as more streamlined procedures or better case management practices.

⁶ 'The Daily: Statistics Canada, 2022'

⁷ Thomas Cohen, 'Tort Trials and Verdicts in Large Counties, 2001' [2004] NCJ 206240(1) Bureau of Justice Statistics: Tort Trials and Verdicts in Large Counties.

⁸ Waldrons solicitors, 'How long do compensation claims take?' (Waldrons Solicitors, 30 August 2023) <<https://www.waldrons.co.uk/insights/how-long-do-compensation-claims-take/>> accessed 14 July 2024.

⁹ 'The Daily: Statistics Canada, 2022.'

The United Kingdom's average processing time of 18 months¹⁰ is slightly better than the United States, which stands at 23 months.¹¹ The U.K.'s performance here is closer to Canada's, indicating that while the U.K. may struggle with healthcare-related cases, it handles general torts more efficiently. The U.S., with the longest processing time, reinforces the notion that its broader legal complexities and procedural intricacies result in slower case resolutions.

Comparisons

The analysis of tort trial processing times across the United States, Canada, and the United Kingdom reveals that:

- a. Canada is the most consistent and efficient across different types of tort cases, particularly excelling in handling healthcare-related torts. This efficiency may be attributed to a more centralised and streamlined legal system, and the addition of small claims courts such as the Civil Resolution Tribunal.
- b. The United Kingdom demonstrates mixed results, with exceptional speed in motor vehicle torts but significant delays in healthcare-related cases. The U.K.'s success in motor vehicle cases could serve as a model for improving efficiency in other types of torts.
- c. The United States has long processing times across all three categories, indicating that its complex legal procedures and the adversarial nature of its system might be contributing to delays. There may be opportunities for reform aimed at simplifying

¹⁰ National accident law, 'How long does a personal injury claim take to settle?' <<https://www.national-accident-law.co.uk/making-a-claim/how-long-does-personal-injury-claim-take>> accessed 14 July 2024.

¹¹ Thomas Cohen, 'Tort Bench and Jury Trials in State Courts, 2005.'

processes and reducing case durations through the introduction of digital courts as are found in Canada and the United Kingdom.

These findings suggest that both the U.S. and the U.K. could benefit from adopting some of the practices seen in Canada.

Innovation in Access to Justice

Canada: Civil Resolution Tribunal (CRT)

The introduction of the Civil Resolution Tribunal (CRT) in 2016 marked a significant advancement in the Canadian justice system, particularly in how minor disputes are resolved. As the first online administrative tribunal in the country, the CRT has addressed long-standing challenges associated with traditional court processes, such as time consumption, high costs, and procedural complexity. By offering a faster and more accessible alternative to civil courts, the CRT has transformed the landscape of dispute resolution in Canada, particularly for individuals facing financial barriers. The CRT operates entirely online, handling small claims and strata property disputes up to \$5000 CAD.¹² The CRT's design emphasises user accessibility, allowing individuals to resolve disputes without the need for legal representation. The average time to resolution in 2021 was 80 days shorter than that of traditional civil courts, highlighting the tribunal's efficiency.¹³ By reducing costs and eliminating the complexities associated with traditional litigation, the CRT has significantly

¹² The civil resolution tribunal, 'The Civil Resolution Tribunal and strata disputes' (British Columbia, 18 May 2022) <<https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/resolving-disputes/the-civil-resolution-tribunal>> accessed 14 July 2024.

¹³ The civil resolution tribunal, 'How long does the CRT process take?' (Civil Resolution Tribunal, 2022-2023) <<https://civilresolutionbc.ca/help/how-long-does-the-crt-process-take/>> accessed 14 July 2024.

enhanced access to justice for those who might otherwise be unable to afford or navigate the court system.

United States: Small Claims Courts and Alternative Dispute Resolution (ADR)

In the United States, small claims courts and Alternative Dispute Resolution (ADR) methods, such as mediation and arbitration, serve as the primary mechanisms for resolving minor disputes. Small claims courts are designed to be accessible and user-friendly, with simplified procedures that allow individuals to represent themselves. However, the process is still tied to physical court appearances, which can be time-consuming and costly, particularly for individuals who must take time off work or travel to court.

ADR, while effective in many cases, typically requires the agreement of both parties to participate and may still involve legal representation, which can increase costs. Furthermore, while some states have begun experimenting with online dispute resolution (ODR) systems, these are not yet as widespread or integrated into the judicial system as Canada's CRT. As a result, while small claims courts and ADR provide valuable alternatives to traditional litigation, they do not offer the same level of efficiency, accessibility, or cost-effectiveness that the CRT provides in Canada.

United Kingdom: Small Claims Track and the Online Court

In the United Kingdom, the Small Claims Track within the county courts is a main avenue for resolving minor disputes up to £10,000 GBP.¹⁴ Similar to the U.S. small claims courts, the Small Claims Track is designed to be accessible, with a simplified procedure that allows individuals to represent themselves. However, the process similarly remains largely tied to physical court proceedings.

¹⁴ Part 27, Civil Procedure Rules, United Kingdom Ministry of Justice.

Prior to Brexit, U.K. businesses and consumers had access to the European Union's Online Dispute Resolution (ODR) platform. However, since 2021, the ODR platform is no longer available in the U.K.¹⁵ Instead, the U.K. has piloted the "Online Court" for small claims, which aims to streamline dispute resolution through digital means.¹⁶ The courts and tribunals services allocated £1 billion to the modernisation programme with projected completion in 2019. However, these initiatives failed to meet the targeted output, pushing back the deadline to 2023, and have not yet achieved the level of efficiency and accessibility seen in the Canadian CRT.¹⁷

Comparison

The CRT in Canada stands out for its comprehensive, user-friendly online platform that significantly reduces both the time and cost of resolving disputes. Unlike the U.S. and U.K. systems, which still rely heavily on physical court appearances and traditional procedures, the CRT offers an online process that is accessible to a broader range of individuals, particularly those with financial constraints.

While the United States and the United Kingdom have made progress in integrating online tools and ADR methods into their dispute resolution processes, they have not yet achieved the same level of accessibility and efficiency as the CRT. The CRT's ability to resolve disputes 80 days faster than traditional courts, combined with its focus on minimising costs, makes it a model for modernising justice systems in other countries. The CRT

¹⁵ Lorraine Conway, 'Consumer disputes: Alternative Dispute Resolution (ADR)' [2022] House of Commons Library Research Briefing.

¹⁶ Law society, 'Court Reform: Remote Hearings' (The Law Society, 24 July) <<https://www.lawsociety.org.uk/campaigns/court-reform/whats-changing/remote-hearings>> accessed 14 July 2024.

¹⁷ Joshua Rozenberg, 'The Legal Education Foundation' (The Online Court: will IT work?, July) <<https://long-reads.thelegaleducationfoundation.org/>> accessed 14 July 2024.

demonstrates the potential of small, specialised courts to provide faster, more accessible justice, setting a benchmark for future developments in the U.S. and the U.K.

Bodies Making Tort Data Accessible

Transparency in tort data increases understanding in trends of legal claims, thereby informing public policy to further access to justice. However, the collection and publication of this data vary significantly across countries, reflecting different legal systems, governmental structures, and approaches to transparency. This section provides a comparative analysis of the availability tort data is in the United States, Canada, and the United Kingdom.

United States: Decentralised Data Collection from both the Public Authority and Independent Studies

In the United States, the collection and dissemination of tort data are characterised by a decentralised approach. The Bureau of Justice Statistics (BJS) of the United States Department of Justice is the primary government body responsible for publishing data related to various aspects of the justice system, including torts. The BJS conducts its own studies, such as the Civil Justice Survey of State Courts (CJSSC), but also relies on data that is initially collected by independent studies conducted by universities and other research institutions. These independent studies are crucial because they provide the raw data and analyses that the BJS later uses to inform its reports.

This decentralised system has its advantages and disadvantages. On one hand, it allows for a wide variety of studies and methodologies, leading to a rich diversity of data and perspectives. On the other hand, the lack of a centralised data collection system can lead to inconsistencies and gaps in the data, making it difficult to create a cohesive national picture of tort trends.

Canada: Centralised Data Collection by Public Authority

In contrast to the United States, Canada employs a more centralised approach to the collection and publication of tort data. Statistics Canada, the national statistical agency, is responsible for conducting studies and publishing data related to torts. This centralisation ensures that the data is collected using consistent methodologies and is published in a uniform manner, making it easier to track trends and analyse data on a national scale.

The centralisation of tort data collection in Canada allows for greater coherence and reliability in the data, facilitating more effective policy-making and public understanding. However, this system also places a significant burden on Statistics Canada to ensure that its data collection methods are comprehensive and up to date.

United Kingdom: Data Provided by Insurance Companies

In the United Kingdom, the situation is markedly different from both the United States and Canada. There is no public body responsible for the collection and publication of tort data. Instead, this data is primarily provided by insurance companies. These companies collect data on tort claims as part of their regular business operations, and they may choose to make some of this information available to the public, often through industry reports.

The reliance on private companies for data introduces several barriers to access. Insurance companies are not obligated to make their data publicly available, and when they do, the data may be presented in aggregate forms that are less useful for detailed analysis. Moreover, the data that is made available may be influenced by the commercial interests of these companies, leading to potential biases and a lack of comprehensive coverage. Researchers and policymakers may find it difficult to obtain detailed, reliable data without resorting to proprietary or paid sources, which can be both costly and time-consuming.

The absence of a centralised, publicly accessible database for tort data in the U.K. means that finding specific information often requires navigating through multiple private sources, each with its own limitations. This fragmented landscape makes it much harder to compile a clear picture of tort trends and outcomes compared to the more straightforward processes available in the U.S. and Canada.

Recommendations for Improving Access to Justice in the United Kingdom

The analysis of the processing times of tort claims in the United Kingdom, compared with those in the United States and Canada, underscores the need for targeted reforms to enhance access to justice. While the U.K. performs well in resolving motor vehicle torts, it faces significant challenges in healthcare-related cases and general civil tort claims. These disparities highlight areas where the U.K. can improve its legal processes to ensure faster, more accessible justice for all citizens. The following are three recommendations for the United Kingdom, based off practices in Canada and the United States:

- a. **Streamline Healthcare Tort Processes.** The lengthy processing time of 36 months for healthcare-related torts suggests a need for reform. The U.K. should streamline procedural requirements and consider adopting alternative dispute resolution methods, such as pre-trial mediation, to reduce delays and improve efficiency in this area.
- b. **Expand the Online Court.** Following the success of Canada's Civil Resolution Tribunal (CRT), the U.K. would benefit from furthering the development and integration of the Online Court. Expanding the Online Court can provide quicker, more accessible avenues for resolving tort claims, reducing reliance on traditional court processes that often lead to delays.

- c. **Centralise data collection and reporting.** To improve the efficiency and transparency of its legal system, the U.K. would benefit from centralising its tort data collection and reporting. By establishing a single, standardised database managed by a public body, the U.K. can ensure consistent data collection across all types of tort claims, similar to the approach used by Statistics Canada. This centralisation would allow for better analysis of trends, identification of bottlenecks in the legal process, and more informed policymaking. It would also enhance access to justice by making reliable, comprehensive data readily available to researchers, policymakers, and the public, ultimately contributing to more efficient and equitable legal outcomes.

By implementing these recommendations, the United Kingdom can build on its strengths and address its weaknesses, ultimately improving access to justice and ensuring that the legal system serves the needs of all individuals, regardless of the nature of their tort claims.

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