Choosing Small Claims or Fast Track Litigation

Taking your dispute to court can be a complicated and lengthy process. If your Supreme Court claim is for an amount under $100,000, or if it can be tried in 3 days or less, there may be options available that will lead to a faster, and therefore less expensive, resolution of your legal dispute.

If your legal dispute involves a claim for $25,000 or less, you may be able to bring your action in the Provincial Court – Small Claims Court division. This is the simplest process, short of mediating or negotiating your own resolution.

This guidebook is intended to help you understand the options available to you when deciding whether to commence your action in the BC Supreme Court or the Small Claims division of the Provincial Court.

Fast Track Litigation

Rule 15-1 sets out the fast track litigation procedure for actions (claims started by a notice of claim). It provides for faster and more efficient proceedings in the Supreme Court of BC. Fast track litigation is allowed in four scenarios:

1. The only claims in the property are for money, real property (land and buildings) or personal property and the total amount claimed, not including interest and costs, is $100,000 or less; OR

2. The trial can be completed in 3 days or less; OR

3. All parties consent; OR

4. The court orders the case into fast track litigation.

Even if the basis of your eligibility for fast track litigation is that your claim is for $100,000 or less, the court may nevertheless ultimately award the successful party an amount greater than $100,000.

Fast track proceedings are not available in:

- matters started by petition;
- family law cases; or
- class action lawsuits.

This Guidebook provides general information about civil, non-family claims in the Supreme Court of BC. It does not explain the law. Legal advice must come from a lawyer, who can tell you why you should do something in your lawsuit or whether you should take certain actions. Anyone else, such as court registry staff, non-lawyer advocates, other helpers, and this guidebook can only give you legal information about how to do something, such as following certain court procedures.

Standards are in effect for the filing of all Supreme Court civil and Supreme Court family documents, except divorce and probate. When you submit your completed documents, registry staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the court and ensure it is correct.

For information about how to get help with your case, see the last page of this document.

The purpose of fast track litigation is to make the cost of litigation proportional to the value of the amount in dispute and the complexity of the case. Fast track litigation streamlines actions by:

- requiring a case planning conference to set out a plan and timeline for the case before (with some exceptions) a party files any applications with the court;
- limiting examinations for discovery to 2 hours;
- not allowing juries;
- providing a quick trial date; and
- limiting costs awarded to the successful party.

For more information, see the guidebook *Fast Track Litigation*, which sets out the full details of this process.

Small Claims Court

Small Claims Court is a division of the Provincial Court, the first level of trial courts in BC. It is meant to be a "do-it-yourself" kind of court, where ordinary people can handle their own cases. The Small Claims Court is cheaper, less formal, faster, and has less complicated rules and procedures than Supreme Court. Its purpose is to provide a system for "just, speedy, simple and inexpensive" resolution of disputes.

The Small Claims Court may only hear claims up to $25,000. That amount includes all claims listed on the notice of claim, no matter how many defendants there are, and it includes the value of any goods that the claimant is asking for. It does not include any interest or expenses that the claimant might be entitled to.

If your claim is for an amount greater than $25,000, you can reduce the amount you are claiming against the other party and start your lawsuit in Small Claims Court. For example, if someone owes you $30,000 for an unpaid debt, it might be worthwhile for you to abandon your claim to the extra $5,000 and bring the action for repayment of $25,000 in Small Claims Court.

In general, the type of cases handled by Small Claims Court are set out in s. 3(1) of the *Small Claims Act*, and include claims:

- for debt or damages;
- for recovery of personal property;
- for specific performance of an agreement;
- relating to personal property or services; and
- relief from opposing claims to personal property.

There are some kinds of cases that cannot be handled in Small Claims Court, no matter how little money is involved:

- landlord and tenant cases;
- libel and slander actions;
- malicious prosecution;
- cases involving the title to land;
- enforcing foreign judgments;
- some claims on a deceased's estate;
- recovery of personal property under the *Personal Property Security Act*;
- some strata property claims;
- most builders' liens issues;
- many employment issues;
- bankruptcy issues;
- trade mark claims; and
- cases seeking an injunction (e.g., ordering someone to stop doing an activity).

A discussion about the types of claims that are not available in Small Claims Court can be found in a book called "Provincial Court Small Claims Handbook" published by the Continuing Legal Education Society of BC. You can find a copy in courthouse libraries. You can learn more about the Small Claims Court at www.SmallClaimsBC.ca, including a series of guidebooks to help you through your Small Claims action.

You should consider talking to a lawyer about whether your case is suitable for Small Claims Court. Information about how to get help with your case is set out at the back of this guidebook.

Small Claims Court or Fast Track Litigation?

The Small Claims Court is designed for litigants who do not have a lawyer. The entire process is faster, simpler, and easier to follow. On the other hand, some complex cases are more suited for the formal structure offered by the Supreme Court.

Here are some general guidelines to help you decide which court is appropriate for your case:

How much money is involved?

The Small Claims Court cannot award more than $25,000.

What type of claim do you have?

You cannot bring certain actions in Small Claims Court (see the discussion above.)

Will you be hiring a lawyer?

The Small Claims Court is designed for litigants who do not have a lawyer. The rules are written in plain language, the forms are simpler, the rules of evidence are relaxed, and the entire procedure is easier to follow. If you plan to hire a lawyer, no part of your legal fees will be reimbursed to you if you are successful at trial in the Small Claims Court. On the other hand, the process is shorter and more streamlined, which will inevitably reduce legal fees.

How complex is your case?

The Supreme Court Civil Rules allow more flexibility in resolving complex cases. For example, the rules allow for discovery of documents and disclosure of what witnesses are expected to say, which lets you fully understand the other party's case before trial. There is no formal discovery process in Small Claims Court.

Opportunities for early resolution

While both courts allow either party to compel the other to attend mediation, the Small Claims Court is geared to bring the parties before the court at an early stage for a settlement conference. A fast track action in Supreme Court brings the parties together for a case planning session, which will include discussion about the most appropriate dispute resolution procedures.

Pilot projects

The Robson Square Courthouse in Vancouver is running a pilot project, where some cases (depending on the type) proceed very quickly through different dispute resolution processes, depending on the type of case. If you plan on filing your action in the Robson Square registry, you should review the Small Claims BC website at www.SmallClaimsBC.ca.

A lawyer can help you decide if you should bring your action in Small Claims Court or the Supreme Court of BC. Information about how to get legal advice is set out on the front page of this guidebook.

The following chart sets out the differences between a fast track proceeding in Supreme Court and an action brought in Small Claims Court. It may help you decide which court is appropriate for you.

Fast Track Litigation vs. Small Claims Court

	Fast Track Litigation	**Small Claims Court**
Maximum amount of claim	$100,000 (unless the trial will be 3 days or less, or the parties consent to the fast track litigation)	$25,000
Where to file	Any Supreme Court in BC	Any Provincial Court in BC
Types of claims	Debt; real property; personal property; damages (money to compensate for loss or injury) or other case if can be tried in 3 days or less	Debt; damages; personal property (see text above for restrictions)
Examinations for discovery	Yes Limited to 2 hours unless parties consent to longer	No
Pre-trial discovery of documents	Yes	No
Interrogatories (see guidebook, *The Discovery Process*)	No Unless court grants leave	No
Witnesses at trial	Yes	Yes
Expert witnesses	Yes	Yes
Pre-trial applications to court	Yes, after a case planning conference has been held	Limited procedural applications to registrar
Mediation available	Yes With a notice to mediate (most cases)	Yes for claims up to $10,000 in some registries, and with the notice to mediate in all registries for claims between $10,000 and $25,000
Trial scheduling (wait time)	If you apply for a trial date within 4 months after the date you choose fast track litigation procedure, your trial date will be within 4 months	Faster
Length of trial	May be limited to 3 days. If proceeding based on value of case, the court will set the limit on the length of trial	Usually much shorter
Overall cost of bringing action (e.g., filing fees)	More expensive	Less expensive
Court costs (i.e., filing fees, allowed expenses, and a portion of legal fees)	Amount of costs, exclusive of disbursements, are fixed according to length of trial (costs that can be recovered are explained in the guidebook, *Costs in the Supreme Court*)	Only filing fees and allowed expenses can be recovered

Get Help With Your Case

Before you start your claim, you should think about resolving your case without going to court (see the guidebook, Alternatives to Going to Court). If you do not have a lawyer, you will have to learn about the court system, the law that relates to your case, what you and the other side need to prove, and the possible legal arguments for your case. You will also need to know about the court rules and the court forms that must be used when you bring a dispute to court.

Legal Information Online

All *Guidebooks for Representing Yourself in BC Supreme Court Civil Matters*, along with additional information, videos and resources for Supreme Court family and civil cases are available on the Justice Education Society website: www.SupremeCourtBC.ca.

Clicklaw gives you information about many areas of law and free services to help you solve your legal problems: www.Clicklaw.bc.ca.

The Supreme Court of BC's website has information for people who are representing themselves in court: www.Courts.gov.bc.ca/supreme_court/self-represented_litigants/

Legal information services

The Vancouver Justice Access Centre's, Self-help and Information Services includes legal information, education and referral services for Supreme Court family and civil cases. It is located at 290 - 800 Hornby Street in Vancouver (open Monday to Friday): www.SupremeCourtSelfHelp.bc.ca.

For information about other Justice Access Centre services in Vancouver and Nanaimo, see: www.JusticeAccessCentre.bc.ca.

Legal advice

You may be eligible for free (pro bono) legal advice. Access ProBono Society of BC's website gives you information about the legal assistance that is available to you: www.AccessProBono.ca.

Legislation

BC Legislation (statutes), regulations, and Rules of Court can be found at: www.BCLaws.ca.

Court rules and forms

Supreme Court forms can be completed in 3 ways:

1. Completed online and filed at: www.CourtServicesOnline.gov.bc.ca
2. Completed online, printed and filed at the registry
3. Printed, completed manually and filed at the registry

Court forms that can be completed online are available at: www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_civil.htm
Printable court forms are available at: www.SupremeCourtBC.ca/civil/forms

Common legal terms

You can find out the meaning of legal terms at: www.SupremeCourtBC.ca/glossary

Family law

For information about family law claims, see: www.FamilyLaw.LSS.bc.ca.

This guidebook is part of a series:

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