

Overview of the Civil Litigation Process

This guidebook gives you an overview of the different levels of courts in BC, as well as an overview of the civil litigation process. You should also read the guidebook, *Alternatives to Going to Court*, because it may be possible for you to resolve your legal dispute without going to court.

Courts in British Columbia

The court system in British Columbia has three levels:

Provincial Court: The **lower level** trial court, which deals with Small Claims up to \$25,000, family, youth criminal offenders, criminal, and traffic matters.

Supreme Court: The **higher level** trial court. The Supreme Court also hears appeals from the Provincial Court, and sometimes reviews the decisions of certain provincial tribunals and public decision-making bodies.

Court of Appeal: The **province's highest court**. This court hears appeals from the Supreme Court. Appeals from the BC Court of Appeal go to the Supreme Court of Canada.

The **Federal Court** system is separate from the provincial court system. Federal courts can only hear cases that are specified in legislation.

For example, the Federal Court can hear cases about disputes between provinces and territories, taxation issues, or cases involving federal Crown corporations (e.g., the Post Office).

Appeals from the Federal Court go to the Federal Court of Appeal, then to the Supreme Court of Canada.

The **Supreme Court of Canada**, located in Ottawa, is the highest-level court in Canada. It hears appeals from every court of appeal in the provinces and territories across Canada, the Federal Court of Appeal, and the Court Martial Appeal Court. There is no appeal from a decision made by the Supreme Court of Canada.

General information about the BC Supreme Court

There are currently about 100 judges of the BC Supreme Court. Several judges hear cases each working day in Vancouver, Victoria, and New Westminster. They also sit regularly in other centres throughout the province, as required. Over 70,000 documents are filed in the Supreme Court of British Columbia every year.

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.

Because of the number of filings in the system, the registry and the courts are very busy and you may find that things may not move as quickly as you expect. This is simply a result of the number of cases passing through the system.

You can find a complete and current list of the Justices of the Supreme Court of British Columbia on the court website at: www.courts.gov.bc.ca.

Right now, there are currently 13 Masters of the Supreme Court. Masters hear most chambers applications (see the guidebook on Applications to Court for more information about these procedures), but they cannot give a judgment that finally resolves a case. If you intend to make a chambers application, you are more likely to appear before a master than a judge.

Court registries

There are court registries in courthouses all over the province, from Abbotsford to Fort St. John. Each court registry maintains its own files for each action begun in that registry. They are the official record keepers of pleadings and all other documents that are filed in relation to each case. Their staff also reviews documents to ensure that they are in the correct form before accepting them for filing. For the court registry nearest you, check the court's website at www.courts.gov.bc.ca.

The Law

Generally speaking, there are three broad sources of law that you must consider when deciding whether to start a lawsuit. Together they govern the litigation process. They are:

- ✦ statutes (also called legislation or Acts), which set out the basic laws;
- ✦ regulations, which provide more details; and
- ✦ case law, which interprets legislation.

In addition, there are rules of court, which are a type of regulation. They govern the litigation process.

A good resource for legal information is Clicklaw at www.clicklaw.bc.ca and it also has resources for finding a lawyer who can help you.

It is important to remember that the court cannot resolve all disputes. The law determines whether a claim you believe you have against another party is one that can properly be brought to the court for resolution.

The law can be complicated and for that reason, it is a good idea to consult with a lawyer about what law applies to your case. This could save you time and energy and will help to ensure that your case is presented in the most efficient way. Lawyers have spent years researching the law and can tell you where you can find the law that applies to your case.

Statutes

Statutes (which often have “Act” in the title – such as the *Family Relations Act*) are brought into law by the Parliament of Canada and the Provincial Legislature. They give a general framework for the law in a specific topic area (for example, motor vehicle insurance or retirement homes).

You can find copies of the federal or provincial statutes at most public libraries. The quickest way to find them is at a website called BC Laws at www.bclaws.ca.

The statutes on this website may not be up to date (check the date noted on the website), so you may need to check with a librarian at the courthouse library or website at www.CourthouseLibrary.ca. You can also find statutes and regulations on its website.

Regulations

Regulations usually set out practical information or procedures relating to particular statutes. They provide specific instructions about the implementation of the statute and tend to change more often than the statute itself.

Case law

It is crucial to understand the case law that relates to your case. Our court system works by making decisions that are based on decisions made in earlier cases – precedent – and because of this, you will need to understand those cases similar to yours that the court has already decided.

Reviewing case law is complicated and time-consuming. There may be hundreds (or even thousands) of cases that seem similar to yours and you may have trouble knowing which cases you should refer to in court. It is a good idea to consult a lawyer about the law that applies to your case. This will give you a good starting point.

It is important to keep in mind that British Columbia Supreme Court judges and masters *must* follow the law as set out in cases that have been decided by higher courts, meaning the British Columbia Court of Appeal and the Supreme Court of Canada. Although a judge in the British Columbia Supreme Court is not strictly bound to follow cases decided by other judges in the same court, a case with similar facts from the same court will usually be persuasive because it benefits everyone to have consistent decisions from the court on the same point of law.

Decisions made by trial or appeal courts in other provinces will generally not be helpful unless the courts in British Columbia have not made a decision on the point of law which is relevant to your case. If you are researching case law for your own case, the best place to start is at your courthouse library. The library contains summaries of cases going back hundreds of years, and also has access to numerous online summaries of more current cases. Courthouse library staff is trained in research and can help you with the practical aspects of your search, although only a lawyer can give you legal advice.

Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court. They are a road map for steering your case through trial and beyond. The Rules are very important because they provide guidelines for each step in the litigation process and also set time limits for when certain steps must be completed. You can find answers to many of your questions about the litigation process by referring to the Rules.

A complete and current list of the Rules can be found at the court website at www.courts.gov.bc.ca. Once you are on the Supreme Court page, click on Quick Links, then on Legislation and Court Rules. Regulations deal with matters like court fees and interest rates.

The court rules also set out the fees payable to the Crown (on behalf of the court), to the sheriff, and to witnesses. These are contained in Appendix C of the Rules of Court. You can find it with all the other Rules at the court website.

Appendix C sets out the court fees payable:

- ♦ To the court registry for:
 - filing documents
 - scheduling a trial date
 - copying court documents
 - renting rooms for examinations for discovery
- ♦ To witnesses for:
 - a daily witness fee
 - travel
 - allowances
 - preparation
- ♦ To the sheriff for:
 - service of documents
 - searches
 - various other services

These fees change from time to time, so you should check with the court registry, at the courthouse library or on the court website for the current fees payable in each case.

Court Forms

Documents called pleadings must be filed with the court to start and respond to a lawsuit. Special forms are required to take certain steps in your action. These forms are attached to each guidebook in this series. These forms are required by the Rules of Court – Appendix A and *must* be prepared in that format. The forms are updated regularly. You can find them at the links provided at the end of this guidebook.

What is litigation?

Going to court is sometimes referred to as litigation. Litigation is the process of bringing disputes to court to have them resolved by a judge on the basis of evidence presented by those involved in the dispute. Litigation can be criminal or civil, but this series of guidebooks deals only with civil litigation, not including family law disputes. For family law disputes, see information on the Legal Services Society’s website at www.familylaw.lss.bc.ca.

Any party, including individuals, limited companies, partnerships, or other legal entities can be involved in civil litigation. Civil litigation deals with torts (the legal term for a civil wrong, injury or harm), contractual and other disputes or claims under the law.

A civil litigation case can be called:

- an action
- a matter
- a lawsuit
- a proceeding
- a case.

While all these terms are not entirely interchangeable, you may hear or see your case

referred to by any of these terms. In a civil case that goes to trial, proof is based on a balance of probabilities. This means that a judge only needs to be convinced that it is more probable than not that one side is right.

Judgment is then given in favour of one party. When the case has concluded, costs may be awarded to the successful party to cover part of their expenses in coming to court (called “costs”). The guidebook on *Costs in the Supreme Court* covers this topic in more detail.

The litigation process

The more you know and understand about the litigation process, the fewer difficulties you will have. Knowledge will also help you anticipate, prepare for and deal with:

- the cost of the proceeding;
- the length of time it might take to get a final resolution;
- the complicated and personal questions you might have to ask or answer;
- the amount of time and money it takes to prepare for all aspects of litigation, but especially:
 - starting a case
 - document discovery
 - examination for discovery
 - chambers applications, if necessary
 - trial
 - getting your judgment paid.

Many of these topics are dealt with more fully in the other guidebooks in this series. You may want to read each of the guidebooks before starting a proceeding so that you have a good overview of the process before you decide to begin.

Most cases are started with a notice of civil claim, but some types of cases must be started with a document called a petition. You must use the correct document to start your legal action. You do not have a choice about how to start your lawsuit – the Supreme Court Rules dictate the correct procedure. If in doubt, you should get legal advice to answer this key question.

In *very* general terms, cases relating to wills and estate matters, interest in land, or the property of people under a disability (such as infants) are started with a petition. It is very important to read the full text of Rule 2-1 to understand the particular cases that must be commenced by petition. All other cases are started by filing a notice of civil claim, and are called “actions”.

A notice of civil claim and a petition are documents that notify both the court and the people you are suing that you have started a court proceeding. These documents, as well as the documents that are filed in response to them, are called pleadings. For more complete information about starting a case, see the guidebook called, *Starting an Action by Notice of Civil Claim*.

In general, people who start a lawsuit are called:

- a plaintiff (if the action is started by a notice of civil claim); or
- a petitioner (if the action is started by a petition).

People who defend a lawsuit are called:

- a defendant (if the action was started by notice of civil claim); or
- a petition respondent (if the action was started by a petition).

You will find it helpful to consult a lawyer before you begin any litigation. A lawyer can give you information and assistance with every stage of the litigation whether you are suing or being sued. This is true even if you decide to do most of the work yourself. Consulting a lawyer – even if only for a

short time – can save you time, money and difficulties in the long run. A lawyer can also put your problem into perspective by giving you neutral, objective advice, something that is very important in litigation.

The following may be helpful to see, in short form, how things might take place as your case progresses. Not all steps will be needed in all litigation, but this list gives general details of what is likely to happen in most cases.

Actions commenced by notice of civil claim

1. Decide whether to bring an action in the Provincial Court (small claims division) or the Supreme Court (see guidebook, *Choosing Small Claims or Fast Track Litigation*).
2. **Plaintiff** starts the action by filing and serving a notice of civil claim (see guidebook, *Starting an Action by Notice of Civil Claim*).
3. **Defendant** files and serves a response (see guidebook, *Defending an Action Started by Notice of Civil Claim*).
4. **Defendant** files and delivers a counterclaim or third party claim, if applicable (see guidebook, *Defending an Action Started by Notice of Civil Claim*).
5. If required, **plaintiff** files and delivers a response to the counterclaim.
6. If required, **third party** files and serves a response.
7. **Plaintiff or defendant** decides whether to proceed by fast track litigation (see guidebook, *Fast Track Litigation*).
8. **Plaintiff and defendant** start discovery process (discovery of documents; examinations for discovery; interrogatories) (see guidebook, *The Discovery Process*).

9. **Plaintiff and defendant** may need to make pre-trial applications in chambers to obtain directions or assistance from the court (see guidebook, *Applications to Court*).
10. **Plaintiff and defendant** consider resolving case without going to trial (see guidebook, *Resolving Your Case Before Trial*).
11. **Plaintiff and defendant** prepare for trial by setting trial date; considering expert opinions; preparing documents for trial (see guidebook, *Trials in the Supreme Court*).
12. **Plaintiff and defendant** attend the trial and receive judgment and award of costs (see guidebook, *Costs in the Supreme Court*).
13. **Plaintiff or defendant** (winning party) prepares and files court order (see guidebook, *Drafting Court Orders*).
14. **Plaintiff or defendant** enforces judgment (see guidebook, *Enforcing Court Orders*).

Proceedings commenced by petition

1. **Petitioner** prepares and serves petition and supporting affidavits (see guidebook, *Starting a Proceeding by Petition*).
2. **Respondent** prepares and delivers response to petition, with supporting affidavits (see guidebook, *Defending a Proceeding Started by Petition*).
3. Proceedings follow the rules for chambers applications (see guidebook, *Applications to Court*).
4. **Petitioner** obtains a date for hearing the petition in court (see guidebook, *Starting a Proceeding by Petition*).
5. **Petitioner and respondent** prepare for hearing in court (chambers) (see guidebooks, *Applications to Court* and *Starting a Proceeding*

by *Petition*).

6. **Petitioner and respondent** attend the court hearing and receive judgment and award of costs (see guidebook, *Costs in the Supreme Court*).
7. **Petitioner or respondent** (winning party) prepares and files court order (see guidebook, *Drafting Court Orders*).
8. **Petitioner or respondent** enforces judgment (see guidebook, *Enforcing Court Orders*).

Settlement

One important step, which is not mentioned in the steps above, is settlement of your case. It is not mentioned as part of the steps because the court is not generally involved in settling cases although there are certain rules, which can be used to seek the assistance of the court in settling a matter.

Settlement can happen at any time – before a lawsuit has been started, or after the proceedings have begun. A settlement is based on an agreement between the parties to the lawsuit. Fewer than 3% of cases that are filed with the court actually proceed all the way to the trial stage because most cases settle without going to trial. Be sure to read the guidebook called, *Resolving Your Case Before Trial*, to find out how you can settle your lawsuit before going to trial.

Fast track litigation

Litigation can be expensive and take a long time to complete. However, there are ways to shorten the process. Fast track litigation is a shortened form of litigation you may want to use if your case was started by a notice of civil claim. It only applies to actions where the parties consent to the process, where the amount claimed is \$100,000 or less, or where the trial will take three days or less to be heard.

Many of the steps you will take if you proceed by fast track litigation will be the same as in a regular lawsuit, but every step is condensed and shortened to save you time and money.

You can find more information about this procedure in the guidebook, *Fast Track Litigation*.

Appearing in Court

Court is a formal and serious setting. Make sure that you do everything possible to make a good impression when you appear in the courtroom. Here are some tips to help you:

- ✦ Dress in a professional and conservative way.
- ✦ Be on time. A great many people will be waiting to get started and you don't want to make a bad impression by keeping them waiting. The hours of the BC Supreme Court are from 10:00 a.m. – 12:30 p.m., and then from 2:00 p.m. – 4:00 p.m. Sometimes an ongoing proceeding will begin earlier or run later if more time is needed. The court clerk concludes the day by saying what time and on what date the proceeding will continue.
- ✦ Use professional language. Don't use slang or swear words. Follow the guidelines below when speaking to a judge or a master.
- ✦ Don't chew gum or bring food or drinks into the courtroom.
- ✦ Turn off your cell phone and other electronic devices.
- ✦ Address your remarks to the judge or master, not to the lawyer on the other side.
- ✦ Speak up. Courtrooms can be noisy and it is important that the judge or master hear you clearly. You might also need to remind your witnesses to speak loudly so they can be heard.
- ✦ Always be polite. If someone is saying something you think is wrong, wait until they finish speaking before you make your point.
- ✦ Be prepared. You will make a better impression if you come to court with your position prepared and organized. Make a checklist of all the things you need to take with you and all the things you will need to tell the judge or master.
- ✦ Use a formal style when addressing everyone, whether in writing or in person. No one is ever offended because you call him or her by his or her formal title; but some people might be offended if you are too casual. Refer to other parties and witnesses as "Mr. X" or "Mrs./Ms. Y", rather than by their first names, even if you know them very well.
- ✦ When a judge or master enters or leaves the courtroom, a court clerk will say, "Order in court." At that time, you should stand.
- ✦ When the judge or master gives his or her decision, take notes to ensure that you understand the result. If you need to have something clarified, ask for clarification right away, while all the parties are still in the courtroom.

The ways to address members and staff of the court are set out below. Although they may seem awkward, addressing a judge or a master correctly will help you present your case in court. Because this guidebook deals only with the Supreme Court of British Columbia, only members and staff of the Supreme Court are mentioned.

The Chief Justice of the Supreme Court:

- ✦ In writing, refer to the Chief Justice as "The Honourable Chief Justice ____", followed by his or her last name (e.g., The Honourable Chief Justice Bauman).
- ✦ In court, address the Chief Justice as "My Lord" or "My Lady."

- ✦ On a written court order, the correct term is “The Honourable The Chief Justice.”

Supreme Court Judges:

- ✦ In writing, refer to a male judge of the Supreme Court as “The Honourable Mr. Justice _____”, followed by his last name (e.g. The Honourable Mr. Justice Brown).
- ✦ In court, address a male judge as “My Lord.”
- ✦ On a written court order, the correct term is “The Honourable Mr. Justice _____”, followed by his last name (e.g., The Honourable Mr. Justice Brown).
- ✦ In writing, refer to a female judge as “The Honourable Madam Justice _____”, followed by her last name (e.g., The Honourable Madam Justice White).
- ✦ In court, address a female judge as “My Lady.”
- ✦ On a written order, the correct term is “The Honourable Madam Justice _____”, followed by her last name (e.g., The Honourable Madam Justice Brown).

Masters:

- ✦ In writing, refer to master as “Master _____”, followed by his or her last name (e.g., Master White).
- ✦ In court, address a master as, “Your Honour.”

Registrars:

- ✦ In court, refer to the Registrar as “Mr. Registrar”, or “Madam Registrar.”

Court Clerks:

- ✦ In court, refer to a court clerk as “Mr. Registrar”, or “Madam Registrar.”

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:

Guidebooks for Representing Yourself in Supreme Court Civil Matters.

Produced by: www.JusticeEducation.ca

Funded by: www.LawFoundationBC.org



© July 2010. Justice Education Society of BC

ISBN 978-0-9866689-6-8

The Society acknowledges the contributions of the Ministry of Attorney General.