Proving Your Case in Supreme Court

Part 1 – About the Supreme Court of BC

If you are preparing your case to be heard in the Supreme Court of British Columbia, there is a lot you will need to know about the court system, the law that applies to your case, and how to prove your case in court.

You need evidence to prove your case in court. There are many rules about how you can bring evidence into court. This book introduces you to the general principles of evidence and explains the kind of evidence you will need in pre-trial court hearings as well as the court hearing itself.

These rules mean that you can't just tell your story to a judge as if you were having a conversation with a friend. So it's important to have a basic understanding of these rules before you go to court.

How to Learn About the Court System

There are several ways you can learn about the court system. If you live near Vancouver, you can drop into the Vancouver Justice Access Centre's Self-Help and Information Services near the Courthouse. It is located at Room 274 – 800 Hornby Street, Vancouver.

You can get information about legal actions in the Supreme Court of BC by dropping into the Centre Monday to Friday, between 9:00 a.m. to noon or 1:30 to 4:00 p.m.

If you do not live near Vancouver, you can go to their website at **www.SupremeCourtSelfHelp.bc.ca**.

Centre staff or the website resources can help you:

- learn about the court system and court procedures,
- get legal information,
- locate and fill out the relevant court forms,
- find out about free legal advice, and
- find alternatives to court.

The Centre's website also has an online presentation that explains how to take your case to the Supreme Court of BC.

The Self-Help Centre materials on the website explain many important court procedures, such as starting or defending a civil proceeding, how to conduct a chambers application, and the discovery process. The guidebook, *Overview of the Civil Litigation Process* provides general information about the court system.

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.

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: www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac

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.justice.gov.bc.ca/cso/index.do
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: www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/sup-civil-forms
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

The Civil Litigation Process

The following list shows you the steps that are taken in a typical case in the Supreme Court of BC. Not all steps may need to be taken in your case, but the list provides a general outline of the procedure.

1. File pleadings to define the issues in your case. Actions are started with a notice of civil claim or by a petition. Pleadings also need to be filed by the defendant or petition respondent in the action. See the guidebooks on starting and defending proceedings in Supreme Court.

2. Obtain and disclose relevant information about your case. The parties must exchange all relevant information about the dispute before a judge hears the case. Disclosure of documents is a very important step in collecting and exchanging information and potential evidence about issues in your case.

3. Get direction or assistance from the court in pre-trial hearings. The court will make decisions about procedural issues in your case before it goes to trial or assist the parties in reaching a settlement. These pre-trial hearings are chambers applications and pre-trial conferences.

   A judge or master can hear pre-trial matters. A master is a type of judge who hears only interlocutory applications. (See the section on chambers applications below.)

4. The trial. A judge will hear your case and make a judgment (a final decision about your dispute) based on the evidence you and the other party present to the court.

The Canadian court system is adversarial in nature. This means that you and the other party are opponents in the dispute. You must both work independently to present your best case and best evidence to the court.

The judge will not help you organize your case or tell you how to make a good legal argument.

Getting Ready for Court

The most important things you can do to prepare for court are:

- Learn about the rules and law you need to present your case to the court.
- Prepare your case. Getting your case organized is the most important thing you can do to prepare for court.

Learn about the law and the Rules of Court

You must learn about the laws that apply to your case. There are four main sources of law:

- statutes (also called legislation or Acts);
- Rules of Court;
- Regulations;
- case law.

You can learn more about these kinds of law by going to the Vancouver Justice Access Centre's Self-Help and Information Services website (**www.SupremeCourtSelfHelp.bc.ca**).

The Supreme Court Rules (also called "the Rules" or the "Rules of Court") set out the procedures that must be followed and the forms that must be used in taking a case through the court system.

The Rules ensure fairness to all the parties involved in a lawsuit. They tell you what steps must be taken throughout the litigation process, which forms to use, and the time limits for completing certain procedures. The Rules ensure that the steps taken throughout the litigation process are predictable for the parties and for the court.

You can find the Rules and forms on the websites noted above in the section on useful resources.

Get organized

It is absolutely critical that you start organizing your case very early in the litigation process. In particular, you must:

- Think about how you will prove your case.
- Consider talking to a lawyer about the chances of your success if your case goes to trial.
- Learn the law that applies to your case.
- Start gathering important documents as soon as possible.
- Keep your documents in a safe place.
- Organize your documents in a logical way (e.g., in date order).
- Store your documents in a binder or on a computer disk.
- Talk to important witnesses about your case and keep notes of those conversations.
- Prepare a trial brief. A trial brief is a binder of important information for your reference, such as:
  - the trial date;
  - contact information for your witnesses, experts, lawyers;
  - a list of everything to file or do before trial;
  - deadlines;
  - a list of facts that you need to prove your claim or your defence;
  - how the facts will be proved (e.g., documents or witnesses);
  - the trial schedule;
  - questions for your witness;
  - questions for cross-examining other witnesses;
  - notes for your opening and closing statement.

You cannot succeed at trial unless your case is well organized. While the judge may help you with simple procedural matters, he or she will not help you understand the law, advise you on evidence you need to prove your case, or organize your evidence for you.

Part 2 – General Principles of Evidence

Evidence is what you present to the court to prove your claim or your defence. It can include oral (spoken) testimony from witnesses or documentary evidence, such as affidavits, contracts, or medical records. It's not enough to make a claim that you are right – you have to prove that you are right.

The rules of evidence

Rules of evidence establish what facts can be presented to the court. The rules also control the procedure for introducing the facts to the court. For example, they will set out what documents will be admitted into evidence, whether they must be served on the other party and the time limits for doing so.

The rules of evidence help the trial run smoothly and efficiently because testimony (the oral evidence of witnesses) and documents are presented to the court in a predictable way. The rules also ensure that the trial procedure is fair to both parties. For example, the court will not allow a party to raise irrelevant issues in support of his or her claim or defence.

Where the rules come from

The rules of evidence come from three sources:

- the Supreme Court Rules;
- provincial legislation (statutes); and
- case law.

The Supreme Court Rules (usually called the Rules of Court or the Rules) are the main source for the rules of evidence that apply in proceedings in the Supreme Court of BC. It is important to read the Rules and understand how the rules of evidence apply to your case. For example, you may need to know how to see important documents that the other party does not want to disclose to you. The Rules will tell you how to do that.

You can find the Rules of Court at: www.bclaws.ca/civix/document/id/loo88/loo88/168_2009_00

Statutes (or legislation) are laws made by the provincial and federal governments. For example, the *Evidence Act* of BC sets out the principles of evidence that apply to civil and family cases being heard in the BC Supreme Court and BC Court of Appeal. (The Court of Appeal has its own set of rules called the Court of Appeal Rules.)

Case law is the decisions made by other judges in the large collection of earlier cases similar to yours. The judge will apply the laws of evidence, in part, according to decisions. The Supreme Court of BC will apply the law from cases previously decided by the Supreme Court of BC, the BC Court of Appeal, the Supreme Court of Canada, then cases decided by courts in other Canadian provinces and territories. Applying the law from previous court decisions is called common law.

Admissibility

A judge can consider your evidence only if it is *admissible*, which means that it is relevant to a material fact in the case and not excluded by any rule set out in the case law, the *Evidence Act*, or the Supreme Court Rules.

Relevance

Evidence is relevant if it is related to the facts of the case in some logical or important way. To decide whether evidence is relevant, ask yourself whether the evidence helps you prove the facts of your case.

To give an extreme example, the fact that the roads were icy on the day of the car accident is probably relevant to your case. The fact that the driver of the other car was wearing a blue sweater is not relevant.

Material Facts

A material fact is one that is important or essential to the case. What is material is often determined by the pleadings because the pleadings set out what is being disputed.

For example, if the dispute is about a broken contract for the sale of a boat, the contract itself is a material piece of evidence. But a contract with the same person for the sale of a different boat three years earlier is probably not material to the present dispute.

Rules to Exclude Evidence

The judge may not allow evidence into court if:

- The evidence is privileged – that is, if you have the right to keep that document confidential. (See the discussion on privilege below.)
- It is in the interest of procedural fairness (for example, if the other party wanted to rely on a document that she had not disclosed to you).

Burden of Proof

The person who is asking the court for a remedy has the burden (responsibility or obligation) of proving the facts that support his or her case.

For example, if the plaintiff claims that the defendant agreed to buy the plaintiff's equipment for $115,000, the plaintiff must prove that the parties entered into a clear agreement about the purchase and sale of the equipment.

Standard of Proof

In a civil case, the person submitting the evidence (providing the evidence to the court) must prove that it is true "on a balance of probabilities." This means that it is "more likely than not."

For example, if a party claims that he has paid a debt and provides evidence to prove that payment, the judge will decide "on a balance of probabilities" whether that debt was in fact paid.

Is Proof Necessary?

It is not always necessary to prove every fact that you want to submit as evidence in your case. Some facts are so commonly known that they do not need to be proved, and in a few situations, facts are accepted into evidence on the basis of legal principles, as in judicial notice and admissions.

Judicial Notice

A judge can acknowledge that a fact has been proven without you having to prove it if the community commonly knows the fact. This is called "judicial notice". For example, it would not be necessary to prove that in the year 2004, Christmas was on December 25th. A judge takes judicial notice of facts only occasionally.

A judge must also take "judicial notice" of provincial and federal statutes, as well as provincial Regulations. You would not need to prove, for example, that the *Motor Vehicle Act* of BC was a validly enacted law of the province.

Admissions

A party can admit that certain facts or issues are not in dispute. Also, you and the other party can tell the court that you agree on certain facts in the case. This is called an agreed set of facts. It will speed up the trial process because those facts do not need to be proved in court.

For example, in a motor vehicle accident case, the defendant will often admit liability (that he or she was responsible for the accident) but will dispute the amount of personal injury damages the plaintiff is claiming (called quantum of damages).

If one party admits a fact in this formal way, it is binding on that party. That means that once the defendant, for example, admits liability for the accident, he or she cannot argue against that later.

Formal admissions can be made:

- in the pleadings;
- in a notice to admit (see Rule 7-7(1) and Form 26); or
- in an agreed statement of facts.

Weight of the evidence

The judge will decide the weight (importance) of a piece of evidence in light of all the evidence that has been admitted by the judge into court. Just because evidence has been admitted into court, it does not mean that it will be given the same weigh as other evidence or any weight at all.

For example, if a witness to a fight in a bar had been drinking all day and gives evidence that contradicts the evidence of a police officer that was called to stop the fight, the judge will probably give more weight to the police officer's evidence.

Similarly, the judge will decide if the witness's evidence is credible (i.e., believable). If it is not credible, the judge will not attach much, or any, importance to the evidence. For example, the judge may conclude that the evidence of the wife to someone involved in the fight was biased.

Part 3 – How to Introduce Evidence into Court

Evidence Given by Witnesses

A witness is a person who gives evidence to the court orally under oath or affirmation (see below) or by affidavit (a sworn written statement). Witnesses are a a critical part of the trial process, whether they are giving evidence about what they saw happen or confirming that a document is authentic. A witness must be prepared to answer questions and give good information to the court.

Preparing Your Witnesses for Trial

Preparing your witness before trial involves meeting with your witness to review the evidence that he or she will provide, including facts and documents.

If you have more than one witness, you should review the case with each witness individually. In particular, you should review these matters with your witness:

- Evidence that the witness will be giving in court;
- Documents that you will be showing the witness in court;
- Types of questions that you will be asking in your direct examination;
- Types of questions that the other party will be asking in cross-examination;
- How to answer the questions clearly (in other words, just give the facts); and
- Courtroom etiquette.

While you should prepare your witness to give evidence in court, your witness should not give "scripted" answers to your questions. You should not try to influence your witness to change his or her evidence. He or she should be straightforward and honest at all times.

Refreshing the witness's memory

Trials are often held several years after the event that led to the dispute. Not surprisingly, witnesses may have trouble remembering the details that they are asked to provide to the court. You can help "refresh" your witness's memory before and during trial.

Before trial, it is reasonable for witnesses to refresh their memories on information and events that they will be asked about. You may talk to the witness about the issues in dispute, and talk about the type of questions that you will be asking. You may also want the witness to review documents that will be introduced into evidence.

Remember that how you prepare your witness may affect the weight the judge gives to the witness's testimony. For example, if your witness sounds like he or she is reading from a script you have written, the judge may not believe that her answers were genuine, and not much weight will be given to the evidence.

During trial and with permission from the judge, a witness may refresh his or her memory by referring to notes or documents that were made closer to the time of the event in dispute. The witness can do this if:

- the document was made near the time of the event, while the witness's memory was fresh; or
- the witness created or reviewed the document around the time it was made and confirmed that it was accurate.

The document does not have to be notes or a description of the event in dispute. A witness will often be asked to look at a signature on a document, such as a contract, and verify that this contract is the same one in dispute. Seeing someone's signature on the document may remind the witness that, in fact, he or she saw the document being signed.

Oral Testimony

Most evidence is introduced to the court through witnesses giving oral testimony (spoken evidence given under oath).

Rule 20-5(27) says that unless another statute or Rule says something different, a witness at a trial shall testify:

- in open court; and
- orally (unless the parties agree otherwise).

Witnesses can be the parties themselves, or others who have particular knowledge or information about the dispute.

It is usually a good idea to ask the judge to exclude witnesses during the trial. This means that they have to wait outside the courtroom until it is their time to give evidence. It prevents the witnesses from hearing each other's testimony and changing their evidence in response to what they've heard.

Telling the Truth

Before a witness gives evidence to the court, he or she must agree to tell the truth.

Witnesss can take an oath to tell the truth by placing a hand on a religious text (like the Bible) and swearing that the evidence they give will be true. Or, witnesses can make a solemn affirmation that they will tell the truth. In this case, there is no religious meaning to the commitment to tell the truth.

The judge will give the same amount of weight to evidence given whether the witness takes an oath to tell the truth or affirms to tell the truth.

Competence

A witness must be competent to give evidence. This means that they must have the mental ability (called capacity) to give accurate evidence.

Except in the most extreme circumstances (for example, a witness with a mental illness or Alzheimer's disease), anyone can be called as a witness in your case. Remember, however, that the evidence must be relevant and material to your case. If your witness cannot give accurate and believable information to the court, the judge will not attach much importance to it.

The evidence of children is an exception to this general principle. The BC *Evidence Act* (s. 5), states that children over the age of 14 are presumed to be competent to testify in court. The other party can challenge that presumption, and it will be up to the court to decide whether the child is capable of giving good evidence.

The court must make a decision whether to allow evidence from children under 14. In general, young children must be able to understand the nature of an oath or solemn affirmation and be able to communicate the evidence to the court.

Requirement to Give Evidence

Witnesses who do not want to testify or cannot be relied upon to come to court can be compelled (required) to give evidence at trial by serving them (formally giving them a legal document at their home or place of work) with a subpoena. A subpoena is a legal document that tells a witness that he or she is required to attend court to give evidence.
If witnesses under subpoena do not appear in court to give evidence, a warrant can be issued for their arrest and they can be brought to court to testify.

Direct Examination

When your own witness takes the stand to give evidence and been sworn in, you will "examine" or ask him or her questions first. This is called direct examination, or examination in chief.

After your witness has given his or her evidence, the other party will have an opportunity to cross-examine that witness. After your direct examination, the other party will be allowed to cross-examine that witness.

Witnesses provide critical evidence at trial, but they do not take the stand and simply talk about issues in the case. It is your responsibility to structure questions for the witness to answer so that the evidence is presented to the court in a logical way.

Questioning your witnesses

Ask questions that allow your witnesses to tell their stories in their own words. This makes their evidence more credible. Some examples of appropriate questions are:

- What happened when you reached the intersection?
- What did the other driver say to you after the accident?
- Where were you looking?
- Why did you go there?

Leading questions

Generally, you cannot ask "leading" questions when you are examining your own witnesses. A leading question suggests the answer to the witness. For example, "The car was speeding, wasn't it?" is a leading question. "How fast was the car going?" asks the same question in a way that is not leading.

Note that you *can* ask leading questions when you are cross-examining the other party's witness.

There are some exceptions to the general rule that you cannot ask your own witness leading questions. The only time it is appropriate to ask your witness leading questions is when:

- the information is introductory (for example, the time, date, and location of the accident);
- people or things are being identified (for example, the name and occupation of witness);
- the matter is not disputed (for example, ownership of the car); or
- the court gives permission to ask a leading question (for example, when your own witness is "hostile" or having difficulty answering a question. A witness is "hostile" when he or she is withholding evidence or not telling the truth.

Giving evidence yourself

If you are representing yourself in court, you will not have anyone to ask you questions when you have to give evidence (tell the court your version of the dispute). You will simply get in the witness stand and talk about the facts that you want the court to know. As you are doing this, imagine that you are asking yourself questions and give the answers in a clear and logical way.

For example, if you are telling the court what happened when you were in a car accident, present your story by "answering" imaginary questions such as:

- What day was it?
- What time was it?
- What was the weather like?
- Was it light or dark outside?
- Where were you going?
- Were you in a hurry?
- What was your route?

Cross-examination

Cross-examination is when you ask the other party and his or her witnesses questions, and when the other party's lawyer asks you and your witnesses questions.

The purpose of cross-examination is:

- to get testimony from the other party's witness that supports your own case;
- to discredit the witness (make the witness's evidence look less believable).

The scope of questions in cross-examination is broad; you can ask any questions that are relevant to the case, as long as you do not harass the witness. Unlike direct examination of your own witness, you will often ask the witness leading questions.

When a witness takes the stand to give evidence, his or her credibility is on the line. Therefore, in cross-examination, you can ask questions intended to make the witness look less credible. For example, a witness may have testified under direct examination that he drove directly home after work on the day in question. Your cross-examination may focus on your knowledge that, in fact, he was seen drinking at the bar for three hours after work.

Your cross-examination can focus on these areas:

- Showing that the witness favours the other party (he or she is biased).
- Showing that the witness has contradicted himself or herself in previous statements.
- Challenging the witness's memory on certain points.
- Challenging the witness's version of events.

You are not required to cross-examine every witness, but if you do not cross-examine a witness, his or her evidence may be accepted because nothing has been introduced to contradict it.

During cross-examination, the witness should have a chance to explain things that are being introduced as evidence against him or her. It is not appropriate to "ambush" the witness by bringing in unexpected evidence that he or she cannot explain or disagree with.

For example, if you want to bring evidence to the court that the plaintiff was intoxicated during a child access visit, you must ask the plaintiff about his behavior during the access visit before introducing a witness to give evidence of the intoxication.

It is not easy to cross-examine a witness effectively. This section only outlines a few of the basics of conducting a cross-examination. A judge *may* give you some direction when you are conducting a cross-examination.

Inconsistent Statements

A witness may say something at trial that contradicts something he or she said before trial. For example, the witness may have stated in a motor vehicle accident report immediately after the accident that he heard a crash, and turned to see the two cars touching bumpers. Then at trial, the witness may say that he saw the defendant's car crash into the rear of the plaintiff's car.

A witness's earlier statement could have been oral or written, sworn (for example, in an examination for discovery; in an affidavit), or unsworn (for example, a statement to an accident investigator).

You will want to bring these inconsistent statements to the court's attention in order to challenge the credibility of the witness. While you may not be able to prove the truth of either statement (unless the witness concedes that one statement is true), you will show that the witness's evidence is probably not reliable.

The BC *Evidence Act* (sections 13 and 14) tells you how you can challenge a witness's credibility on written or spoken statements, but the technique is basically the same for challenging all previous statements made by the witness – you get the witness to confirm that he or she made the previous statement before showing that it is inconsistent with his or her present testimony.

In your cross-examination you ask the witness if he or she made the earlier statement. If the witness does not distinctly admit making that statement, you must prove that he or she did so by calling evidence of your own to confirm that the statement was made.

Written statements

If a witness made a previous statement in writing, you can cross-examine that witness about the written statement (see s. 13 of the *Evidence Act*.) While you do not have to show the document to the witness (unless the judge asks you to), you must point out the specific parts of the document that are contradictory.

For example, if you were cross-examining the witness about the accident report in the example above, you would ask the witness if he made and signed that written statement. When that is acknowledged, you have the witness read the contradictory parts of the written statement to the court.

If the witness denies making the earlier statement, you must prove that he or she did so by calling another witness to confirm that the statement was made, such as the police officer or insurance adjuster who took the statement.

You would use the same technique if the witness's inconsistent statement were made in an earlier examination for discovery. In that case, you would ask the witness if he or she attended an examination for discovery on a certain day and remind the witness that he or she gave certain answers to certain questions under oath or affirmation. You would then read specific questions and answers from the examination for discovery transcript and have the witness confirm that he or she was asked those questions and gave those answers.

Verbal statements

You can cross-examine a witness about a prior inconsistent oral statement. In the example above, a written accident report may not have been prepared – the witness may have told a police officer what she saw.

You would begin your cross-examination by asking the witness if she made that statement to the police officer. If she denies making that statement, you must prove that she did so by calling the police officer to confirm that the statement was made. (See s. 14 of the BC *Evidence Act*.)

Re-Examination

You can re-examine your own witness if the cross-examination raised an issue that you did not deal with in your direct examination.

The judge may give permission for you to cross-examine a witness for a second time. This may happen if the other party raised new issues with the witness on the re-examination.

Hearsay

Hearsay is an oral or written statement made by someone else earlier, *out of court*, that the witness repeats (or produces) in court to in an effort to prove what was said or written is true.

Hearsay is generally not admissible as evidence in trial, but may be admissible in some other court hearings. (See, for example, the section on an interlocutory chambers applications, below.) For example, if you are the plaintiff in a car accident and a witness to the accident told you that he saw the defendant drive through a red light, you would have to call that witness to give that evidence in court.

It is not good enough if you tell the court that someone who witnessed the accident told you what happened. The defendant must have the opportunity to hear that witness's evidence in court and to cross-examine the witness about his statement.

A statement made out of court is admissible if it is *not given for the purpose of proving that the content of the statement is true*. The statement may be told to the court simply as proof that the statement was made. For example, a witness may have heard someone he did not know tell a shop owner that the sidewalk in front of his store was icy. A person later falls down in front of the store. The witness may repeat that unknown person's statement in court to show that such a statement was made to the shop owner, but not to show that the sidewalk was icy and slippery. This may be important evidence in the case to prove that the shop owner knew earlier in the day that the sidewalk was slippery. The witness's statement may be admitted into evidence.

Double hearsay is not admissible in any type of court hearing. Double hearsay is when the source of the information is two people away from the person who gives the evidence to the court. For example, if A comes to court and says that she saw B hit her child, that is direct evidence and clearly admissible. If A comes to court and says that C told her that she saw B hit her child, that is hearsay evidence and is admissible in some court hearings.

However, if A comes to court and says that D told her that C told her that B hit her child, that is "double hearsay" and is not admissible in any court hearing.

Exceptions to the hearsay rule

There are exceptions to the rule against hearsay. If the hearsay falls into one of these categories, it may be accepted into evidence during trial.

The following are some of the most common types of exceptions.

Verbal statements. Some verbal statements made by others may be admitted into court at trial:

- A statement made by someone, who is no longer living, against his or her own interest. For example, if a deceased person was heard to say that he owed someone money, the court may assume that he would not have made such a statement unless it were true.
- A spontaneous statement or an excited utterance made when doing something (sometimes called "res gestae"). For example, a person cries out in pain when picking up a heavy object. A witness who saw that person cry out in pain can give evidence that the person experienced pain.
- Testimony in a former proceeding. (See Supreme Court Rule 12-5(54)). Transcript evidence given by a witness in a previous court proceeding is admissible if the witness is not available for this trial.

Documents. The general rule is that statements of fact contained in a document are not evidence of those facts unless the document falls within one of the exceptions to the hearsay rule, such as the exception for business records under s. 42 of the *Evidence Act*.

For more information about how to admit specific documents into evidence and exceptions to the hearsay rule for documents, see the section below on documents as evidence.

Opinion Evidence

A witness's role is to tell the facts to the court and the judge's role is to draw a conclusion based on those facts. The opinion of a witness is generally not admissible, although there are many exceptions to this rule.

Lay Witnesses

A "lay" witness is an ordinary witness who has been called to give evidence only on the facts that he or she observed, not to offer a professional or "expert" opinion on an issue at trial. Most witnesses are lay witnesses.

An opinion of a lay witness is admissible if it is based on personal observation of something that is commonly known. The judge will decide whether the opinion is an assessment that ordinary people with ordinary experience and common knowledge are able to make.

For example, a lay witness may be able to give an opinion about the speed of a car that he saw driving down the street, but not the speed of an airplane that was flying overhead.

Similarly, a lay witness may be able to give an opinion about the speed of a car that he or she saw driving down the street, but not the speed of an airplane that was flying overhead. Similarly, a lay witness may be able to give an opinion on things like distance, the identity or emotional state of a person, recognition of handwriting, and other things that people generally know about.

Expert Witnesses

An expert is someone qualified with special knowledge, skill, training, and experience, like an engineer or a doctor. An expert can express an opinion based on information that he or she has personally observed, or information that was provided by others.

For example, an expert in motor vehicle accident analysis could go to the scene of the accident, measure skid marks, and give the court an expert opinion about the speed of the cars involved in the accident. Or, the expert might be able to give an opinion based on photographs of the accident scene.

Part 11 of the Rules of Court deals with the evidence of experts. An expert's duty is to *assist the court* and not to be an advocate for any party. Unlike other witnesses, whose opinion is not admissible at trial, an expert's opinion is admissible if it provides information to the court that would not normally be within the judge's knowledge.

You and the other party can appoint a simple joint expert (Rule 11-3). You must settle certain issues before doing so (for example, the expert you agree to appoint; the issue the expert is being asked to resolve; the agreed facts or assumptions the expert is relying on to reach his or her opinion).

An expert must prepare a written report if you intend to call the expert to give evidence at trial. The report must be delivered at least 84 days before the trial date. Either party can ask the expert to come to the trial to be cross-examined. If no one asks the expert to come to trial, the report may be tendered into evidence without the expert needing to come to court.

If you call the expert to trial to be cross-examined, you can ask him or her questions to challenge the report. For example, you might want to ask the expert questions about:

- his or her qualifications (why he or she is especially qualified to give an opinion on a particular issue);
- his or her opinion;
- the facts considered in reaching this opinion; and
- test or experiments performed in reaching the opinion.

Documents as Evidence

Documents can also be evidence in court. A "document" has a broad meaning under Rule 1-1. In general, a document is a physical or electronic record of information recorded or stored by means of any device, and includes photographs, films, and sound recordings.

When thinking about what type of evidence you can use to prove your case, remember that a document is *anything that contains information*, such as a memo, invoice, letter, drawing, transcript, information in a computer hard drive, on a floppy disk, or CD.

The discovery process

The discovery process is how you and the other party gather information about the case and find out what happened during the dispute that led to your lawsuit. The discovery process is only used in actions started with a notice of civil claim. It is not used in originating applications (started with a petition). The guidebook, *The Discovery Process*, gives you more information about discovery procedures.

The discovery process includes the discovery of documents as well as examinations for discovery, interrogatories, and pre-trial examination of witnesses.

Discovery of documents

In general, you and the other party must disclose (reveal) all your documents to all parties in the action, whether you believe the documents hurt your case or not. This is called "discovery of documents". Supreme Court Rule 7-1 (Discovery and Inspection of Documents) sets out the rules and guidelines for the parties to share their documents before trial.

A document must be disclosed if it relates to a "matter in question" in the case, whether or not the document would be admissible in a trial.

For example, a document that contains hearsay must be disclosed even though it may not be admitted at trial.

A matter in question is an issue that a party has raised in the pleadings. You must search all your files – paper and electronic – to find everything that relates to your case.

Just because a document has been disclosed does not mean that it automatically gets entered or admitted into the court case at the trial. (See the section below, called "How to enter documents into court.")

Lists of documents

When you have decided which documents need to be disclosed, you must list the documents on Form 22. The list must then be served on all other parties within 35 days after the end of the pleading period (when the notice of civil claim, response, counterclaim, reply, and any amendments are completed).

A list of documents has three parts. It is easiest to list documents in chronological (date) order:

- **Part 1** includes all documents that are or have been in your possession or control and that could be used by any party at trial to prove or disprove a material fact.
- **Part 2** includes all other documents (if any) that you intend to refer to at trial. For example, these may be documents that you know exist but that were never in your possession or control.
- **Part 3** includes "privileged" documents (discussed below). You must provide a general description of each document and explain why you believe it is privileged.

The list of documents tells the other party where they can examine the documents, so keep them in order in a convenient file and make sure they are available for inspection.

You can ask the other party (and they can ask you) to make copies of all or certain documents for you.

You must continue to disclose documents right up to the time of trial. If you have forgotten about documents or find documents after you have prepared your list of documents, you must deliver an amended (additional) list of documents to the other party.

When documents are disclosed in a lawsuit, they are confidential and cannot be used for any purpose other than the lawsuit, unless the court or the other party has agreed. You cannot, for example, show the documents to people who are not involved in the lawsuit or use the documents in a different lawsuit.

Privilege

Privilege means that you have the right to keep a document confidential and you do not have to show it to the other party. In other words, you have to tell the other party that the document exists, but you do not have to let the other party see it.

You can claim that a document is privileged if it is part of your "solicitor-client relationship." These privileged documents are:

- a communication between yourself and your lawyer (for example, a letter from your lawyer discussing your case);
- a "brief" (for example, a research memo) that your lawyer prepared to assist himself or herself in preparing your case;
- if you are representing yourself, documents that you have created during the course of your lawsuit (for example, your diary that records your physical recovery from an accident; notes from witnesses that you have interviewed);
- experts' reports which have not been delivered under Rule 11-1.

If you have claimed that a document is privileged and the other party doesn't agree with you, they can make an application in chambers to find out whether in fact the document should be disclosed.

You may want to talk with a lawyer about the law relating to privileged documents, as it might be difficult for you to determine which documents are privileged. You may harm your case if you provide copies of privileged documents to the other side. The nature of the privileged documents must be described in a way that, without revealing the privileged information, will enable the other parties to assess the validity of your claim for privilege.

Proving documents at trial

At trial, a document can be put into evidence:

- to prove that it exists; or
- to prove its contents.

To prove that a document is real (to "authenticate" it), the person who created the document can be called as a witness to give evidence about it. Or, the document's authenticity can be admitted, for example, under a notice to admit. (See the section on Admissions.)

If a document is put into evidence to prove its contents, it will be considered as hearsay, and therefore not admissible, unless it falls within one of the exceptions to the hearsay rule. (See the discussion on Hearsay.)

The use of documents as evidence is covered by the "best evidence" rule. This means that you generally need to submit the original document if you want to prove its contents. If the original document cannot be produced, you may need to explain to the court why you are submitting a copy – the original may be lost, destroyed, or someone else may have it.

Specific Documents

During the course of litigation, you may have to introduce many documents into evidence, such as business records (for example, an invoice) or a financial institution record (for example, a bank statement). The BC *Evidence Act* will give you information about how these documents can be admitted into evidence.

Business records are discussed in s. 42 of the *Evidence Act*. A statement of a fact in a business record is admissible as evidence of the fact if:

- the document was kept or made in the usual course of business; and
- it was in the usual and ordinary course of business to record the statement of fact in the record.

You will need to call the person responsible for making and keeping the business records to give evidence that the document is authentic, unless authenticity has been admitted. Medical records fall into the category of business records.

Records from financial institutions (a statement from a bank) are discussed in s. 34 of the Evidence Act. A bank manger or accountant can come to court or provide an affidavit confirming that the bank record is authentic.

Government records are discussed in ss. 25, 28-33 of the *Evidence Act*. These sections deal with both proving authenticity and the contents of various types of government records.

The *Motor Vehicle Act* (sections 82 and 82.1), provide that certain ICBC records are "self-authenticating", meaning that they do not need to be authenticated by a witness or by admission. These sections also provide that statements of fact contained in these records are admissible as evidence of those facts.

Entering documents into evidence

When evidence has been admitted into court in a trial, it becomes an exhibit. Certain steps must be followed in order to get a piece of evidence marked as an exhibit in the trial.

In this example, you are the plaintiff wants the court to admit (accept) a signed contract as an important piece of evidence. You are representing yourself and have called a witness to give evidence that he saw the defendant sign the contract. You have disclosed the contract in his list of documents to the defendant.

1. Show the contract to the other party's lawyer. Tell the judge that you have disclosed this document to the other party before trial (or have provided him or her with a copy).
2. Show the contract to the witness.
3. Ask the witness questions, leading him to confirm that he saw the defendant sign the contract and that the signature is the defendant's.
4. Ask the judge to admit the contract into evidence as an exhibit. (For example, say: "My Lord, I'd like to offer this contract as the next exhibit.") If the other party does not object to the document being entered into evidence as an exhibit, the judge will confirm that it is an exhibit and give it an exhibit number.

Written Sworn Statements as Evidence

Written sworn statements include affidavits and transcripts from examinations for discovery, interrogatories, and pre-trial examination of witnesses. Note that examinations for discovery, interrogatories, and pre-trial examination of witnesses can only be used in some actions started by notice of civil claim.

Affidavits

An affidavit is a written declaration of facts that the person (the deponent) swears or affirms is true. The deponent must sign the affidavit under oath (that is, you swear that the contents are true) in front of a justice of the peace at the court registry, a lawyer, or a notary public. You must give a copy of the affidavit to the other party.

Affidavits are primarily used in chambers hearings. Affidavits are rarely used in regular trials because evidence is usually entered in other ways, such as through the evidence of witnesses. A witness who gives evidence in trial must generally do so in person, so that he or she can be cross-examined on the evidence by the other party. In some cases, however, the court will allow evidence to be given by affidavit if the deponent is not able or available to appear in court or if it would be too expensive to bring the deponent to the trial.

Supreme Court Rule 22-2 (and Form 109) gives information about affidavits. See also the guidebook, *A Guide to Preparing Your Affidavit*.

The statements made in the affidavit must be relevant to the case and it must contain only facts, not opinions. For example, in your affidavit you can say that you saw the plaintiff's car drive through an intersection without stopping at a red light because that is a fact. You cannot say that the plaintiff is a bad driver, because that is just your opinion.

You can attach important documents to your affidavit. These attachments are called exhibits. The affidavit itself must refer to the exhibit and confirm that it is a true copy of the original.

Transcripts

You can also use transcripts (written records) from examinations for discovery, interrogatories, and pre-trial examination of witnesses as evidence.

Examinations for Discovery

An examination for discovery is a meeting where one party asks the other party a series of questions. The examination takes place before a court reporter who records the questions and answers and can produce a transcript (written record) of the examination for discovery. The party being examined must take an oath or make an affirmation that he or she will tell the truth at the discovery. Information about examinations for discovery can be found in Rule 7-2.

The examination for discovery takes place in a meeting room (not a courtroom) and is closed to the public. The only people present are the parties, their lawyers, and a court reporter. Although a judge is not present at the examination for discovery, it is part of the court process and should be conducted with a degree of formality.

Unless the court orders, or the parties agree, examinations for discovery are limited to 7 hours per party conducting the examination. For fast track litigation under Rule 15-1, examinations for discovery are limited to a total of 2 hours by parties conducting the examination unless the parties agree to longer.

You can ask a broad range of questions in the examination for discovery, provided they are relevant to your case. Your goal is to find out what happened in your dispute. The person being examined must take an oath or make an affirmation to tell the truth at the discovery and must answer questions within his or her knowledge, which includes providing the names and addresses of others who might know the answers to the questions. Rule 7-2(18) gives some guidelines about the scope of your examination for discovery.

The rules of admissibility of evidence are more loosely applied in an examination for discovery. For that reason, questions and answers only have to relate to a matter in question in the dispute.

For example, the party who is conducting the examination or the party who is answering questions may refer to things that he or she has been told by others (hearsay).

You might use a transcript from an examination for discovery if a witness gives different evidence at trial than he or she did in the examination for discovery. Your purpose will be to show that the witness is not credible because he or she has given two different versions of the story.

For example, the witness may have said under oath in an examination for discovery that he went through the intersection when the light was amber. If he states at trial that he stopped when the light changed to amber, he has given two different versions of the event.

At trial, you can remind the witness that he made the prior statement by reading in that part of the examination for discovery transcript and having him admit that he made that previous statement under oath. If the witness cannot explain the inconsistent statements, it will be evidence that the witness is not reliable.

Interrogatories

Interrogatories are written questions, given to the other party to answer under oath. (Information about interrogatories is set out in Rule 7-3.) You can deliver a list of questions to the other party and they have to provide answers, in the form of an affidavit, within 21 days. They are only allowed by consent or with the court's permission.

Interrogatories are useful to get factual information and perhaps help you decide on other important questions for an examination for discovery. You might want to use interrogatories to get factual information like numbers; data; bank account numbers; inventory lists; customer lists, and so on.

Interrogatories can be used at trial in the same way as examination for discovery transcripts. You can read more about interrogatories in the guidebook, *The Discovery Process*.

Pre-trial examination of witnesses

In addition to examining another party in the lawsuit, you can sometimes examine a witness before trial (see Rule 7-5). The court must give permission for you to examine a witness before trial, so you will have to make a chambers application to get such an order.

You can use this procedure if you need information from someone who is not a party to the lawsuit and you cannot get the information any other way (if the witness will not respond to your request for the information).

Use of transcripts at trial

The court may allow a transcript to be submitted as evidence at trial if a witness:

- is dead;
- is unable to come to court to testify because of illness, age, or imprisonment;
- cannot be forced to attend by subpoena.

Use of recorded testimony (under oath) at trial is generally described in Rule 12-5(54)).

Evidence from a discovery transcript or answers to interrogatories are admissible against the party who gave evidence. For example, the plaintiff may enter parts of an examination for discovery transcript of the defendant, and vice versa.

If you are using an examination for discovery transcript in a trial, you have to present it to the witness during cross-examination. In other words, if you are examining the defendant at trial, and he or she has given evidence that is different from the evidence he or she gave in the examination

for discovery, you have to ask the evidence about the evidence he or she gave in discovery. (See "Examination for Discovery" above.)

Part 3 – Types of Court Hearings

The rules of evidence are less restrictive at pre-trial hearings than at trial because pre-trial hearings deal with matters other than the main issue in the lawsuit, such as procedural issues in the case. Some common pre-trial hearings are discussed below.

Interlocutory Chambers Applications

If you started your lawsuit with a notice of civil claim (for example, in a family law action or a motor vehicle accident claim), you may be involved in a chambers application to resolve procedural issues that come up before trial. Chambers applications take place in a public courtroom and are heard by a judge or master (a type of judicial official who hears only interlocutory applications).

These types of chambers applications are called "interlocutory." In an interlocutory application, the court is asked to make an order that does not make a final decision about the rights of the parties and their claim. For example, a divorce proceeding may not come to trial for a long time and the wife may need a temporary order from the court for spousal support. This is an interlocutory application because the court is not being asked to make a final decision about the rights of the parties and their claim.

Other hearings happen in chambers, but they are asking the court for final orders. The main types of these court hearings are discussed below. (See summary judgments, summary trials, and hearings of a petition. See also the guidebook, *Applications to Court* for more details about chambers applications.

Evidence at an interlocutory chambers application

Supreme Court Rule 22-1 gives you information about applications heard in chambers. Evidence is generally given by affidavit, not by the oral testimony of witnesses.

In special circumstances, the court can make an order under Rule 22-1(4) for other types of evidence to be admitted. For example, the court can order that a deponent of an affidavit (the person who has sworn that the contents of the affidavit are true) come to the chambers application (or appear before another person) so that he or she can be cross-examined. (Note that this is rarely ordered.)

Hearsay evidence is admissible in chambers, but the judge may not give it as much weight as other, better evidence. Double hearsay is not admissible. (See the discussion on hearsay.)

Trial Management Conferences

A trial management conference (TMC) is a meeting with a judge to discuss how the trial of your case will proceed (Rule 12-1). The parties and their lawyers must attend the conference. If a party is represented by a lawyer, he or she does not have to attend provided they are readily available for consultation during the conference either in person or by telephone. If you are required to attend, but fail to do so, the judge may proceed without you, adjourn the conference, or order you to pay costs to another party.

The TMC must take place at least 28 days before the scheduled trial date at a time and place fixed by the registrar (Rule 12-1(1)). The TMC is usually conducted by the judge who will preside at the trial of your case.

At the TMC the judge may consider and make orders on many issues (set out in Rule 12-2(9)), including:

- a plan for how the trial should be conducted;
- amendment of pleadings;
- facts to be admitted at trial;
- documents to be admitted at trial, including agreements as to the purpose for using the documents at trial or preparing a common book of documents;
- limits on how long witnesses can be examined and cross-examined;
- that the evidence of witnesses be presented at trial in affidavit form;
- adjournment of the trial;
- that the opening statements and final submissions be presented in writing; and
- that the number of days set aside for trial should be changed.

The judge cannot hear any application by which affidavit evidence is required, or make a final order in the case unless the parties consent.

Case Planning Conferences

The purpose of a Case Planning Conference (CPC) is to bring the parties together early in the litigation to talk about how the case will proceed. A CPC is not mandatory, but may be requested by the court or either party after the pleadings are completed. These conferences, held by a judge or master, will ensure that cases keep moving forward in a way that is consistent with the proportionality principle. (The number and length of legal processes allowed is proportionate to the amount involved, the importance of the issues in dispute and the complexity of the case.)

At any point in your lawsuit (after the pleadings are complete), the court may direct that a CPC take place. If that happens, the court will direct that one of the parties request a CPC.

CPCs are held in private with lawyers, their clients, and a judge or master. They are informal meetings where the judge explores pre-trial issues and settlement options with the parties.

It may not be the same judge who hears your case if it goes to trial. The CPC is recorded, but the recording is not available to anyone without a court order.

The judge or master will set the parameters of the litigation in a case plan order. The order may address issues such as dispute resolution options, dates for the exchange of documents, electronic document procedures, the limits on examinations for discovery, and basic information about the use of experts, if any.

Read the guidebook, *Case Planning Conferences*, for more information about this procedure.

Evidence at the case planning conference

Both parties must prepare case plan proposals for the CPC, which set out the party's proposal for how the case should proceed. The case plan proposal must be in Form 20 and indicate the party's proposal with respect to:

- discovery of documents;
- examinations for discovery;
- dispute resolution procedures;
- expert witnesses;
- witness lists; and
- trial type, estimated trial length, and preferred periods for the trial date.

Because it is not the purpose of the CPC to resolve the main dispute set out in the pleadings, you do not have to come to the conference with evidence, affidavits, or witnesses to prove any issues. You must, however, be prepared to discuss the issues in the case, procedural matters, and settlement options.

Judicial Case Conferences

Pre-trial meetings for family law cases are called judicial case conferences (JCC). A JCC is a confidential and informal hearing where the parties and their lawyers sit at a table with a judge or master (a type of judicial official who hears only interlocutory applications) and discusses the issues. See Family Rule 7-1 for a general discussion of the topic.

A JCC must normally be held before a party brings an interlocutory application. Applications are called "interlocutory" when the court is not being asked to make a final decision about the matter in dispute. (Applications can be brought before a JCC is the situations set out in Rule 7-1(3)).

The overall purpose of the JCC is to help the parties agree on some or all of the matters in dispute. Every effort is made to settle the case. If that cannot be done, the judge or master will discuss with the parties how and when the trial will be heard and how it can be conducted in a cost-efficient manner.

Evidence at the conference

A JCC is a private and informal hearing in front of a judge or master. The parties and their lawyers are present – they normally sit at a table with a judge and discuss the issues in the case.

There is no evidence presented at a JCC. The hearing is confidential. The JCC is recorded, but no one can listen to the recording without a court order and no one can use what was said during the JCC is subsequent proceedings. So, for example, if you said at the JCC that you would consider paying spousal support of $500 per month, the other party cannot refer to your statement in a later court hearing to fix spousal support.

Default Judgment

If the defendant is "in default," it means that he or she has failed to do something, such as file court documents on time. In this situation, you can ask the court to make a default judgment, which means to make a final judgment in your favour. For example, if a defendant does not file a response to your notice of civil claim, you can apply for default judgment under Supreme Court Rule 3-8.

An application for default judgment does not require a court hearing. It is made by submitting documents to the court registry and is called a "desk order." You can apply for default judgment if your claim is for:

- liquidated damages (the amount you are claiming can be easily determined by looking at documents or other evidence, such as an unpaid invoice for merchandise)
- unliquidated damages (the amount you are claiming has to be decided by the court, such as a claim for damages for an injury); or
- the return of personal property wrongfully held by the defendant.

If your case does not fall into one of these categories, you will have to make a summary judgment application under Rule 9-6. More information is set out in the guidebook, *Resolving Your Case Before Trial*.

Evidence in a default judgment application

In order to apply for a default judgment you must provide the following material to the court registry:

- An affidavit of service to prove that your notice of civil claim was served on the defendant.
- Proof that the defendant has not served a response to civil claim.
- A requisition (Form 17), endorsed by a court registrar with a notation that no response to a civil notice of claim has been filed by the court.
- A draft default judgment order (use Form 8).

- A bill of costs if you are asking for final judgment in your case (a bill of costs sets out the costs of the action you claim you are entitled to under Appendix B of the Rules). See the guidebook, Costs, for more information on this topic
- A calculation of interest on your claim, if you are claiming interest.

Summary Judgment

"Summary" means "brief." In a summary judgment, the court's process is dramatically shortened, so you can save time and money by using this procedure if it is appropriate. Summary judgment applications are made under Supreme Court Rule 9-6.

A summary judgment application can be made in front of a judge or a master when it is clear that either the plaintiff or defendant has no case, such as where a debt has been incurred but not paid. You would only bring such an application if there were clearly no evidence that the other party had a reasonable claim or defence. A summary judgment application is made in chambers, so the rules and procedures governing chambers applications apply (Rules 8-1 to 8-6).

After the defendant in an action has responded to a notice of civil claim, the plaintiff can apply to the court for summary judgment on the grounds that the defendant has no real defence to the claim. If the court agrees, it will give judgment in favour of the plaintiff.

If the court decides that there is no defence to part of the plaintiff's claim, the plaintiff's action can continue on the remaining part of the claim. For example, if the plaintiff claims that the defendant owes him money, the court may agree that the debt exists, but the plaintiff still has to prove the amount of money owing to him or her. In this case, the action would continue only on the issue of the amount owing to the plaintiff.

The defendant can also bring an application for summary judgment. After the defendant serves a responding pleading, he or she can apply to the court for judgment on the ground that there is no basis for the whole or part of the plaintiff's claim.

For more details, see the guidebook, *Resolving Your Case Before Trial*.

Evidence at a summary judgment application

The party who brings a summary judgment application (either the plaintiff or the defendant) files an affidavit setting out the facts supporting his or her application in chambers. Witnesses do not normally give evidence at these hearings. Although the hearing is held in chambers, the rules of evidence are stricter than for an interlocutory chambers application because you are asking the court to make a final order.

Your affidavit must be clear, complete, and well drafted because you are asking the court to make a final order based on that affidavit. The affidavit can contain only information that you have direct knowledge about. If you do not have direct knowledge of the facts that you need to present to the court, you will have to get separate affidavits from everyone who does.

If you are the plaintiff and you are bringing a summary judgment application, your affidavits must contain this information:

- the facts that prove your claim; and
- statements declaring that you (or the person swearing the affidavit) do not know of any facts that would provide a defence to your claim, except perhaps as to the amount that you are claiming.

If you are the defendant and you are bringing a summary judgment application, your affidavits must contain this information:

- the facts that prove that there is no basis for the plaintiff's claim; and
- statements declaring that you (or the person swearing the affidavit) do not know of any facts that would support the plaintiff's claim.

Summary Trials

A summary trial is a brief trial. A Supreme Court Rule 9-7 summary trial is an alternative to a full trial. It is different than a full trial because:

- it is held in chambers;
- evidence is given by affidavit instead of by witnesses; and
- it is shorter (there is no testimony from witnesses).

You can apply for a summary trial if:

- the defendant has filed a response to the notice of civil claim;
- a third party has filed a response to a third party notice; or
- the plaintiff has filed a response to a counterclaim.

Summary trials are appropriate when affidavits can provide enough evidence for the judge to reach a decision.

In deciding whether a summary trial is the appropriate type of hearing for the case, the judge will consider:

- the amount of the claim involved;
- the complexity of the issues; and
- whether a delay would harm either party's case. (Waiting for a trial date may cause a delay.)

A judge hears a summary trial in chambers, so the rules and procedures governing chambers applications apply to the hearing (see Rules 8-1 to 8-6). The judge hearing the summary trial application can decide that a full trial is needed. Masters cannot hear summary trial applications.

The summary trial should be as brief as possible, but it will often take more than two hours. In that case, you must follow the rules about lengthy chambers applications (see the guidebook, *Applications to Court*).

Evidence at a summary trial

Although a summary trial is held in chambers, you are asking the court to make a final order, so the rules of evidence are stricter than an interlocutory chambers application.

Like summary judgment applications, evidence in summary trials is presented by affidavits, not the testimony of witnesses in court. You may also present other evidence, including:

- answers to interrogatories;
- questions and answers from examination for discovery transcripts;
- admissions made in response to a notice to admit request; and
- expert reports.

Your affidavit must be clear, complete, and well drafted because you are asking the court to make a final order based on that affidavit. The court does not allow hearsay evidence in applications for final orders, so the affidavit can contain only information that you have direct knowledge about. If you do not have direct knowledge of the facts that you need to present to the court, you will have to get separate affidavits from everyone who does.

Fast Track Litigation

Fast track litigation under Rule 15-1 allows you to shorten the entire litigation process if you have an action where the amount in issue is $100,000 or less or needs no more than three days of trial. This option is also available if the parties to the action consent or the court orders the case into the fast track. What this means to you is that your case can be concluded much faster and at far lower cost.

Rule 15-1 can only be used if you have started your case with a notice of civil claim. It does not apply to cases started with a petition. Fast track litigation cannot be used in family proceedings, class proceedings, or jury trials. There are special rules about the length of examinations for discovery (2 hours), the availability of interlocutory applications, and costs.

Read the guidebook, *Fast Track Litigation* for full details on these types of cases.

Evidence at a fast track trial

The evidence you need to submit to prove your case will be the same whether the trial is "fast tracked" or not. You will need to be very careful about estimating the amount of time needed to examine your witnesses, both yours and the other party's, as the trial must be completed in 3 days or less.

Hearing of a Petition

Some lawsuits are started with a notice of civil claim. If the case goes to trial, it will be held in court before a judge.

Other lawsuits are started by an originating application (a petition). In these cases, the hearing will be in chambers and a judge will make a final decision at that time. For example, if you start an action for judicial review, like a review of an arbitrator's decision under the *Residential Tenancy Act*, you must file a petition.

A judge will hear the petition in chambers, so the rules and procedures governing chambers applications apply. See the guidebook, *Applications to Court*, to help you with this procedure.

Evidence at the hearing of a petition

Although this hearing is in chambers, the rules of evidence are stricter than an interlocutory chambers application because you are asking the court to make a final order. The evidence is given by affidavit, not by witnesses. In proceedings started by petition, there is no discovery of documents or examinations for discovery.

For more information, see the guidebook, *Starting a Proceeding by Petition*.

Trials

A judge will hear your case at a trial if you do not settle your case with the other party or you have not chosen to resolve the action by one of the shorter court procedures (such as a summary trial).

The trial is your opportunity to tell your story to a judge by presenting important and relevant evidence about your dispute. Get familiar with trial procedure by reviewing Rules 12-1 to 12-6.

The steps taken in a typical trial are set out in the guidebook, *Trials in Supreme Court*.

Evidence at a trial

The most important thing to remember about preparing for a trial is that you must be organized. In addition to organizing the law that you have researched about your case, you must organize all your evidence – your documents and your witnesses. You need to think about the facts that you need to prove to the court and how you will prove them.

You will probably provide evidence through:

- witnesses;
- experts witnesses and/or experts reports; and
- documents.

The rules about how you can introduce evidence through witnesses and documents are discussed earlier in this book.

Appeals to the Supreme Court

An appeal is when you ask the Supreme Court to review a decision made by the Provincial Court or sometimes a tribunal. You can appeal to the Supreme Court only if a statute gives you that right. For example, you can appeal decisions from the Provincial Court of BC and decisions made by some administrative bodies, like the Superintendent of Motor Vehicles, because that right is set out in legislation.

If a statute does not specifically give you the right to appeal to the Supreme Court of BC, you have to appeal by way of judicial review, which is discussed below.

Appeals tend to focus on law rather than facts. The Supreme Court judge will not find fault with the trial judge's determination of the facts unless it was clearly wrong.

Appeals from Small Claims Court

The procedure for appealing a Small Claims decision is set out in:

Part 2 of the *Small Claims Act of BC* (found at **www.bclaws.ca**.) and; Supreme Court Rule 18-3(3)).

An appeal is not simply a new trial in the Supreme Court, except when a Supreme Court judge so orders, which is rare. Instead, an appeal focuses on whether or not the trial judge made any mistakes of fact or law in his or her decision.

You cannot bring new evidence in your appeal unless the court allows it (which is unusual).

The powers of the court when hearing an appeal from the Small Claims Court are set out in Rule 18-3(7).

Appeals from family cases in Provincial Court

Section 16 of the *Family Relations Act* allows you to appeal a family court decision made in Provincial Court, as long as it was not an interim order. An interim order is an order that does not finally settle matters between the parties.

The appeal is governed by a standard set of rules. You must bring the appeal within 40 days of the Provincial Court order. The procedure is set out in s. 16(4) of the *Family Relations Act*.

You must make and serve the following documents on the respondent:

- a notice of appeal in Form 73 or 74;
- an affidavit of service of the notice of appeal;
- a complete transcript of the oral evidence given at the Provincial Court hearing and the reasons for judgment. (The appellant must order and pay for these.)
- a written outline setting out:
  - the grounds of the appeal;
  - the order you are asking the court to make;
  - the facts and law that you are relying on (including a list of authorities – cases law and legislation).

You cannot bring new evidence to the appeal in Supreme Court (unless the court gives its permission to do so, which is unusual). The Supreme Court will review the transcript of the Provincial Court hearing and hear your legal argument (your reasons why the Provincial Court did not properly apply the law to the facts of your case).

After hearing your appeal, the Supreme Court can made one of these orders:

- confirm the order of the Provincial Court;
- set aside the order of the Provincial Court;
- make any order that the Provincial Court could have made;
- direct the Provincial Court to have a new hearing.

Appeals from tribunals

You can appeal a decision of a tribunal to the Supreme Court only if the legislation that applies to your case gives you the right to appeal. For example, you can appeal a decision by the Superintendent to suspend your driver's licence under the provisions of the *Motor Vehicle Act*).

Once the appeal has been filed in the Supreme Court, it is governed by the Supreme Court Rules (see Rule 18-3). According to Rule 18-3(7), the court can give directions about the hearing of the appeal, including orders that:

- documents or transcripts be produced;
- evidence be introduced using affidavits or that evidence be given orally; or
- the appeal be decided by hearing argument on a point of law only.

You cannot enter new evidence at the appeal unless the court allows you to do so.

Judicial Review

If a statute does not specifically give you the right to appeal to the Supreme Court, you may still be able to have a tribunal decision reviewed under the *Judicial Review Procedure Act*.

For example, you can apply to the Supreme Court of BC to review an arbitrator's decision under the Residential Tenancy Act. However, the court recognizes that administrative tribunals, like the Residential Tenancy Tribunal, are specialized in their area of expertise and so the court is not easily persuaded to reverse a tribunal's decision.

You cannot normally enter new evidence at the judicial review hearing. See the guidebook, *Judicial Review: A Lay Person's Guide*.

Evidence at a Judicial Review Hearing

In a judicial review, the judge will not re-try your case or focus on whether he or she would have made a different decision than the tribunal. Therefore, you generally cannot bring new facts or evidence to the review.

You start an application for judicial review with a petition. You will need these documents and evidence:

- A petition, which asks for relief (a remedy) under the *Judicial Review Procedure Act*.
- An affidavit, that tells the court what happened in the tribunal hearing. The affidavit can only contain information that was submitted at the tribunal hearing. It cannot contain new evidence. It will contain this information:
  - the various stages of the tribunal and the hearing dates;
  - the documents that were put before the tribunal (as exhibits);
  - the tribunal's decision (as an exhibit);
  - a transcript of the tribunal hearing (as an exhibit, if there is a transcript); and
- An outline (a legal argument) that includes the following:
  - the facts you are relying on;
  - the order you are asking the court to make;
  - the statutes you are relying on; and
  - the legal argument you are making.

If the judicial review hearing will take more than two hours, it will be put on the trial list and you will have to prepare a written argument (see the guidebook, *Applications to Court*).

This guidebook is part of a series:

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