

Choosing Small Claims Court or Expedited Litigation in Supreme Court

This guidebook provides general information about civil, non-family claims in the Supreme Court of B.C. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it. Legal advice must come from a lawyer.

Where You Can Get Help With Your Case

Information if You Represent Yourself

The BC Supreme Court Self-Help Information Centre (www.supremecourtselphelp.bc.ca) provides legal information, education, and referral services for family and civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Vancouver location of the Supreme Court of British Columbia.

Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed under *legal advice* on the website for the BC Supreme Court Self-Help Information Centre.

Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court of BC. Not only do they ensure fairness to all parties involved in a lawsuit, they will guide you through every step of your case and set time limits for when certain steps must be done. You can find these Rules at the courthouse library, or on the court's website at www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

Forms

Official court documents (called court forms) must be used when you bring a dispute to court. You can print out blank forms for use in your lawsuit from the Supreme Court website. Go to www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms).

For information about family law claims, go to www.familylaw.lss.bc.ca.

Before you start your claim, you should consider talking to a lawyer to help you understand the law and the procedures that might apply to your case. You may be eligible to obtain free (pro bono) legal advice.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove;
- the possible legal arguments for your case.

You will also need to know about the Rules of Court and the forms that must be used in your lawsuit. If you do not understand these things, you might miss something (i.e. a deadline) and hurt your case. If you sue and lose, you might be ordered to pay the costs of the other party.

Claims under \$100,000

Bringing a court action can be a complicated and lengthy process. If your Supreme Court claim is for an amount under \$100,000, and you are filing in Vancouver, Victoria, Prince George or Nelson, there may be options available that will lead to a faster, and therefore less expensive, resolution of your legal dispute.

If your claim is for \$25,000 or less, you may be able to bring your action in the Provincial Court - Small Claims Court division, which is the simplest process available, short of negotiating your own resolution.

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

What is Rule 68?

Rule 68 is the Expedited Litigation Project Rule. It provides for faster and more efficient proceedings in the Supreme Court of BC where the amount claimed is \$100,000 or less. It is a pilot project scheduled to run until September 1, 2007.

The guidebook called *Expedited Litigation in Supreme Court – Rule 68* sets out the full details of an expedited proceeding. Expedited proceedings must be used if:

- your claim is for \$100,000 or less (not including interest and costs);
 - you have started your case using a writ of summons and statement of claim;
 - your claim is for money, real property (land and buildings) and/or personal property; and
- your action is commenced in Vancouver, Victoria, Prince George or Nelson.
- While your claim must be for \$100,000 or less to commence an action under Rule 68, the court may ultimately award the successful party an amount greater than \$100,000.
- Expedited proceedings are not available to:
- proceedings started with a petition;
 - family law cases;
 - class action lawsuits.
- Note that the parties can agree to proceed under Rule 68 even if the claim exceeds \$100,000 and the subject of the claim does not fall into one of the specified categories.
- The purpose of Rule 68 is to make the cost of litigation proportional to the value of the amount in dispute. Rule 68 streamlines actions by:
- Requiring parties to exchange comprehensive information at an early stage of the proceeding. For example:
 - o a list of documents must be delivered soon after the case has been started;
 - o a list of witnesses and summary of their evidence must be delivered early in the proceeding.
 - Limiting pre-trial procedures:
 - o examinations for discovery are available only by agreement or by court order and are limited to 2 hours;
 - o pre-trial examination of witnesses is not allowed;
 - o interrogatories are not allowed;
 - o interlocutory applications are generally not allowed unless the parties agree or a case management conference or trial management conference has taken place.

- Limiting trial procedures:
 - o a trial management conference must be held 15 – 30 days before trial;
 - o the parties must deliver a trial brief 7 days before the trial management conference;
 - o jury trials are not allowed;
 - o unless otherwise ordered, each party can only call or tender the report of one expert witness.

What is Small Claims Court?

Small Claims Court is a division of the Provincial Court, the first level of trial court in BC. It is meant to be a “do-it-yourself” kind of court, where ordinary people can handle their own cases.

The Small Claims Court is less formal and has less complicated rules and procedures than Supreme Court and your case will be heard sooner than in the Supreme Court. Its purpose is to provide a system for “just, speedy, simple and inexpensive” resolution of disputes.

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

If your claim is for an amount greater than \$25,000, you can reduce the amount you are claiming against the other party and start your lawsuit in Small Claims Court. For example, if someone owes you \$35,000 for an unpaid debt, you could “abandon” your claim to the extra \$10,000 and bring an action for repayment of \$25,000 in Small Claims Court.

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

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

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

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

A discussion about the types of claims that are not available in Small Claims Court can be found in a book called “Provincial Court Small Claims Handbook” published by the Continuing Legal Education Society of BC. You can find a copy in courthouse libraries.

You can learn more about the Small Claims Court at www.provincialcourt.bc.ca. A series

of guides are available to help you through your small claims action (see www.ag.gov.bc.ca/courts/civil/smallclaims/).

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

Expedited litigation or Small Claims Court?

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

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

- **How much money is involved?** The Small Claims Court cannot award more than \$25,000.
- **What type of claim do you have?** You cannot bring certain actions in Small Claims Court. (See the discussion above.)

- **Will you be hiring a lawyer?** The Small Claims Court is designed for litigants who do not have a lawyer. The rules are written in plain language, the forms are simpler, the rules of evidence are relaxed, and the entire procedure is easier to follow. If you plan to hire a lawyer, no part of your legal fees will be reimbursed to you if you are successful at trial in the Small Claims Court. On the other hand, the process is shorter and more streamlined, which will inevitably reduce legal fees.
- **How complex is your case?** The Supreme Court Rules allow more flexibility in resolving complex cases. For example, the Rules allow for discovery of documents and disclosure of what witnesses are expected to say, which lets you fully understand the other party's case before trial. There is no formal discovery process in Small Claims Court.
- **Opportunities for early resolution.** While both courts allow either party to compel the other to attend mediation, the Small Claims Court is geared to bring the parties before the court at an early stage for a settlement conference.

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

Other resources

Other guidebooks in this series:

Guide to a Successful Interview with a Lawyer
Common Supreme Court Terms
Overview of the Supreme Court Civil Process
Starting a Civil Proceeding in Supreme Court
Defending a Civil Proceeding in Supreme Court
Alternatives to Trial
Preparing for Trial and Trial in Supreme Court
Discovery Process
Summary Judgment and Summary Trials in Supreme Court
Fast Track Litigation in Supreme Court — Rule 66
Expedited Litigation in Supreme Court — Rule 68
A Guide to Preparing Your Affidavit
Chambers Applications
Judicial Review

For definitions of common court terms, see the guidebook called:

Common Supreme Court Terms

This guidebook is part of a series, *Guidebooks for Representing Yourself in Supreme Court*, produced by:



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

	Rule 68	Small Claims Court
Monetary limit	100,000	25,000
Jurisdiction	any Supreme Court in BC	any Provincial Court in BC
Pleadings	writ of summons only (no petitions)	notice of claim only
Types of claims	debt; real property; personal property; damages (money to compensate for loss or injury)	debt; damages; personal property (see text for restrictions)
Examinations for discovery	by agreement only	no, but can do informally at settlement conference
Pre-trial discovery of documents	yes	no, but can do informally at settlement conference
Pre-trial examination of other witnesses	no	no
Interrogatories	no	no
Witnesses at trial	yes, if procedure followed	yes
Expert witnesses	one for each party (some exceptions)	yes
Interlocutory applications	yes, in some limited circumstances	limited procedural applications to registrar
Mediation available	yes, with the notice to mediate (most cases)	yes, for claims up to \$10,000 in some registries, and with the notice to mediate in all registries for claims between \$10,000 and \$25,000
Trial scheduling (wait time)		faster
Length of trial		usually much shorter
Overall cost of bringing action (e.g., filing fees)		less expensive
Court costs (i.e., filing fees, allowed expenses, and a portion of legal fees)	awarded to successful party	only filing fees and allowed expenses can be recovered