

Overview of the Supreme Court Civil Process

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.supremecourtselfhelp.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.

Overview of the Civil Litigation Process

This guidebook is intended to give you a general overview of Supreme Court process and how to deal with its various aspects. Going to court is sometimes referred to as litigation.

Common Terms in Supreme Court

In reviewing this guidebook and the other guidebooks in this series, *Representing Yourself in Supreme Court*, you may come across terms that you are not familiar with. To see definitions of terms commonly used in Supreme Court, please see the guidebook called *Common Supreme Court Terms*.

What is litigation?

Litigation is the process of bringing disputes to court to have them resolved by a judge on the basis of evidence presented by those involved in the dispute. Litigation can be criminal or civil but this series of guidebooks deals only with civil litigation.

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

A civil litigation case can be called:

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

While all these terms are not interchangeable, you may hear or see your case referred to by any of these terms.

In a civil case before the court, proof is based on a balance of probabilities. This means that the court only needs to be convinced that it is more probable than not that one side is right. Judgment is then given in favour of one party. The action can then be dismissed either with or without costs. Costs is money awarded to the successful party to cover at part of their expenses in coming to court.

Parties to litigation

There are two basic ways to start a lawsuit in British Columbia: by filing a form called a *petition* or by filing two forms called a *writ of summons* and a *statement of claim*. These are documents which notify both the court and the people you are suing that you have started litigation. These documents, as well as the documents that are filed in response to them, are called pleadings. For more complete information about starting a case, see the guidebook called *Starting a Civil Proceeding in Supreme Court*.

In general, people who start a lawsuit are called:

- a plaintiff (if the action is started by a writ of summons and statement of claim); or
- a petitioner (if the action is started by a petition).

People who defend a lawsuit are called:

- a defendant (if the action was started by a writ of summons and statement or claim); or
- a respondent (if the action was started by a petition).

Courts in British Columbia

The court system in British Columbia has three levels:

1. **Provincial Court** – the lower level trial court which deals with Small Claims up to \$10,000 (on September 1, 2005 this limit will increase to \$25,000), family, youth criminal offenders, criminal and traffic matters.
2. **Supreme Court** – the higher level trial court. The Supreme Court also hears appeals from the Provincial Court, and

sometimes reviews the decisions of certain provincial tribunals and public decision-making bodies.

3. **Court of Appeal** – the province’s highest court. This court hears appeals from the Supreme Court.

The **Federal Court** has jurisdiction over all matters involving federal laws and tribunals. The **Supreme Court of Canada** is the court of appeal for the Federal Court and from all the appeal courts of the provinces.

General Information about the Supreme Court

Right now, there are about 100 judges of the Supreme Court. Several judges sit each working day in Vancouver, Victoria, and New Westminster. They also sit regularly in other centres, as required. Over 70,000 filings are made in the Supreme Court of British Columbia every year.

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

You can find a complete and current list of the Justices of the Supreme Court of British Columbia at the court website at:

www.courts.gov.bc.ca

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

Court Registries

There are court registries in courthouses all over the province, from Abbotsford to Fort St. John. Each court registry maintains its own files for each action begun in that registry. They are the official record keepers of pleadings and all other documents which are filed in relation to each case. Their staff also

review documents to ensure that they are in the correct form before accepting them for filing.

For the court registry nearest you, check the court's website at www.courts.gov.bc.ca.

The Law

Generally speaking, there are four broad sources of law that you must consider when deciding whether to start litigation. These are statutes (also called legislation or Acts), Rules of Court, regulations and case law. Together they govern the litigation process.

It is important to remember that not all disputes can be resolved by the court. The law determines whether a claim you believe you have against another party is one that can properly be brought to the court for resolution. The law can be complicated and for that reason, it is a good idea to consult with a lawyer about what law applies to your case. This could save you time and energy and will help to ensure that your case is presented in the most efficient way. Lawyers have spent years researching the law and will have a good sense of where you can start to find the law that applies to your case.

1. Statutes

Statutes (which often have "Act" in the title i.e. the Limitation Act) are brought into law by the Parliament of Canada and the Provincial Legislature. They give a general framework for the law in a specific topic area (for example, motor vehicle insurance or retirement homes). You can find copies of the federal or

provincial statutes at most libraries. You can definitely find them at any courthouse library or on their website at www.bccls.bc.ca (click on *Legislation* in the toolbar).

The statutes on this website are not necessarily up to date (check the date noted on the website), so if you need a completely up to date version of the statute, make sure you check with a courthouse library in person.

2. Rules of Court

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

A complete and current list of the Rules can be found at the court website at

www.courts.gov.bc.ca

Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.

3. Regulations

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

One regulation that applies to all civil litigation is the regulation that sets out the fees payable to the Crown (on behalf of the court), to the sheriff and to witnesses. This regulation is Appendix C of the Rules of Court. You can find it with all the other Rules at the court website.

Appendix C sets out the court fees payable:

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

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

4. Case law

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

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

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

If you are researching case law for your own case, the best place to start is at your courthouse library. The library contains summaries of cases going back hundreds of years, and also has access to numerous online summaries of more current cases. Courthouse library staff are trained in research and can help you with the practical aspects of your search, although only a lawyer can give you legal advice.

Forms Used in Supreme Court

Documents called pleadings must be filed with the court to start and respond to a lawsuit. Other documents are required to take certain steps in your action. These documents must be prepared in the format required by the Rules of Court – Appendix A. These forms are updated regularly. Make sure you are using the correct forms. You can do this by downloading the blank forms in either PDF

form or Microsoft Word 6 from the court website at:

www.courts.gov.bc.ca

Once you are on the Supreme Court webpage, click on the link for Supreme Court Act, Rules, and Forms.

The litigation process

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

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

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

The process from start to finish

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

You will find it helpful before you begin any litigation to consult a lawyer. A lawyer can give you information and assistance with every stage of the litigation whether you are suing or being sued. This is true even if you decide to do most of the work yourself. Consulting a lawyer – even if only for a short time – can save you time, money and difficulties in the long run. A lawyer can also put your problem into perspective by giving you neutral, objective advice, something which is very important in litigation.

The list below sets out most of the common steps that are taken in litigation. Not all of these steps will be necessary in every proceeding. This is simply a general outline for your information.

Some of the steps are taken by the person suing, while others are taken by those who are being sued. If the steps are particular to only one party, the words plaintiff or petitioner (for the person starting the proceeding) or defendant or respondent (for the person being sued) will appear.

Actions commenced by writ of summons and statement of claim

1. Begin the action by filing and serving a writ of summons and statement of claim (see guidebook on *Starting a Civil Proceeding in Supreme Court*). **Plaintiff**
2. File and deliver an appearance and statement of defence (see guidebook

called *Defending a Civil Proceeding in Supreme Court*). **Defendant**

3. File and deliver a counterclaim or third party notice, if required (see guidebook on *Defending a Civil Proceeding in Supreme Court*). **Defendant**
4. File and deliver a statement of defence to counterclaim, if required. **Plaintiff**
5. File and deliver a statement of defence to third party notice, if required. **Third Party**
6. Decide when filing the statement of claim or statement of defence whether or not to use fast track litigation or expedited litigation (see guidebook on *Fast Track Litigation* and brochure on *Expedited Litigation Project Rule*). **Plaintiff or Defendant**
7. Discovery process (see guidebook on *Discovery Process*). **Plaintiff and Defendant**
 - a. Discovery of documents.
 - b. Examinations for discovery.
 - c. Interrogatories.
8. Seek direction or assistance from the court through chambers applications (see guidebook on *Chambers Applications*). **Plaintiff and/or Defendant**
9. Determine whether your case is suitable for summary judgment or summary trial (see guidebook on *Summary Judgments and Summary Trials*). **Plaintiff and/or Defendant**
10. Prepare for trial, including the following steps:

- a. Set a trial date;
- b. Decide on expert opinions;
- c. Prepare appropriate books of documents, arguments, and other documentation.

(see guidebook on *Preparing for Trial and Trial*). **Plaintiff and Defendant**

11. Determine whether the case is appropriate for alternatives to trial (see guidebook on *Alternatives to Trial*). **Plaintiff and/or Defendant**
12. Trial (see guidebook on *Preparing for Trial and Trial*). **Plaintiff and Defendant**
13. Receive judgment and costs.

Fast track litigation and expedited litigation

Litigation can be expensive and take a long time to complete. However, there are ways to shorten the process. Fast Track Litigation – Rule 66 is a shortened form of litigation you may want to use if your case was started by a writ of summons and statement of claim. It only applies to actions that will take two days or less to have the trial heard. Many of the steps you will take under Rule 66 will be the same as in a regular lawsuit, but every step is condensed and shortened to save you time and money. You can find more information about Rule 66 in the guidebook *Fast Track Litigation – Rule 66*.

Expedited Litigation Project Rule – Rule 68 is a streamlined form of litigation available in four Supreme Court Registries (Vancouver – Robson Square, Victoria, Prince George and Nelson) after September 1, 2005. Rule 68 applies to actions started by writ of summons and statement of claim that claim \$100,000 or less. Rule 68 limits the pre-trial procedures and evidence that you can call at trial. It also requires you to disclose your information to the other party early on in the litigation process. This means your lawsuit may cost less and take less time to complete. You can find more information about Rule 68 in the guidebook called *Expedited Litigation in Supreme Court – Rule 68*.

Proceedings commenced by petition

1. Prepare and serve a petition and supporting affidavits (see guidebook on *Starting a Civil Proceeding in Supreme Court*). **Petitioner**
2. Prepare and deliver an appearance and responding affidavits (see guidebook on *Defending a Civil Proceeding in Supreme Court*). **Respondent**
3. Proceedings commenced by petition proceed under the rules for chambers applications (see guidebook on *Chambers Applications* for further information on this process).
4. Obtain a date for hearing (see guidebook on *Chambers Applications*). **Petitioner**
5. Prepare for hearing (see guidebook on *Chambers Applications*). **Petitioner and Respondent**
6. Attend hearing in court. **Petitioner and Respondent**
7. Receive Judgment and costs.

Settlement

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

any time in the proceeding and is based on an agreement between the parties to the lawsuit. Very few of the cases which are filed with the court actually proceed all the way to the trial stage because most cases settle without going to trial.

Appearing in Court

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

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

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

the Supreme Court of British Columbia, only members and staff of the Supreme Court are mentioned.

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

The Honourable Madam Justice, followed by her last name (e.g., The Honourable Madam Justice Brown).

- **Masters**
 - o In writing, refer to master as Master followed by his or her last name (e.g., Master White).
 - o In court, address a master as “Your Honour.”
- **Court Clerks**
 - o In court, refer to a court clerk as “Mr. Registrar ” or “Madam Registrar.”

For the next steps, see the guidebooks called:

Starting a Civil Proceeding

Defending a Civil Proceeding

Fast Track Litigation - Rule 66

Discovery Process

Chambers Applications

Summary Judgment and Summary Trial

Preparing for Trial and Trial

Alternatives to Trial

Expedited Litigation in Supreme Court - Rule 68

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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