CHAPTER TWENTY: SMALL CLAIMS AND THE CRT

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TABLE OF CONTENTS

CHAPTER TWENTY: SMALL CLAIMS

This Manual is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. Nothing herein creates a solicitor-client relationship. All information in this Manual is of a general and summary nature that is subject to exceptions, different interpretations of the law by courts, and changes to the law from time to time. LSLAP and all persons involved in writing and editing this Manual provide no representations or warranties whatsoever as to the accuracy of, and disclaim all liability and responsibility for, the contents of this Manual. **Persons reading this Manual should always seek independent legal advice particular to their circumstances.**

I. INTRODUCTION

Most people with legal claims under $35,000 are not lawyers and do not have the benefit of legal representation. It can be challenging to choose how to resolve a dispute and how much to claim. While this guide primarily focuses on the Small Claims Court, it briefly reviews other options for resolving disputes, including the Civil Resolution Tribunal (CRT) for Small Claims up to $5,000 in British Columbia. On April 1, 2019, the CRT's jurisdiction expanded to include certain claims about motor vehicle accidents, including liability and damages claims up to $50,000, minor injury determinations, and accident benefits. This chapter of the manual only covers small claims at provincial court and the CRT's small claims jurisdiction, not the accident claims jurisdiction. The jurisdiction for motor vehicles accidents is complicated.

If you are a party to a small claims action or proceeding, take the time to read this guide in its entirety. If you fail to comply with the rules, the process may be delayed, your claim or defence may be weakened, and you may be liable to pay costs and penalties to the other party. Reading this guide will help you be more prepared and minimise confusion.

This guide is meant to explain the general Small Claims Court process; it is not legal advice. Read the guide along with the Small Claims Court Rules and the CRT Rules and obtain legal advice where necessary.

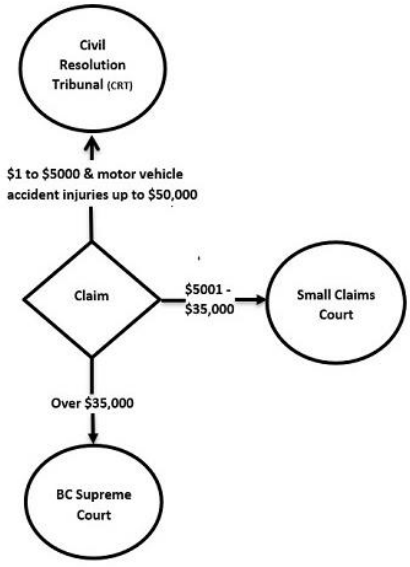

Figure: Small Claim Process from Provincial Court of BC website: https://www.provincialcourt.bc.ca/types-of-cases/small-claims-matters

Directions for in-person proceedings and filings for small claims court (i.e., claims above $5,000) were significantly affected by the ongoing COVID-19 pandemic; however, many of the restrictions have since been removed. Consult the Provincial Court of BC website for up-to-date COVID-19 related notices, directions, and information. As of the time of writing, the following protocols apply to appearances:

- As of July 18th 2022, the BC Provincial court's operations moved away from telephone/Teams audioconferences as the default method of appearance. Some appearances continue to be remote. For the default method of attendance for each appearance, see https://www.provincialcourt.bc.ca/types-of-cases/small-claims-matters/chief-judge-practice-directions and Appendix "A" of NP 28: https://www.provincialcourt.bc.ca/downloads/Practice%20Directions/NP28.pdf For small claims trials, including Rule 9.1 simplified trials, Rule 9.2 summary trials, and Rule 13 default hearings, the default method of hearing and appearance will be in-person, unless a judge otherwise orders or directs.

For the latest updates, we recommend you contact the court registry or visit: https://www.provincialcourt.bc.ca/. The CRT is fully functional and remained so throughout the pandemic.

II. GOVERNING LEGISLATION AND RESOURCES

A. Legislation and Resources

1. Legislation

Corporations

Business Corporations Act, SBC 2002, c 57. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/02057_00

Canada Business Corporations Act, RSC 1985, c C-44. Website:
http://laws-lois.justice.gc.ca/eng/acts/c-44/

Cooperative Associations & Societies

Cooperative Association Act, SBC 1999, c 28. Website:
http://www.bclaws.ca/Recon/document/ID/freeside/00_99028_01

Societies Act, SBC 2015, c 18. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/15018_01

Consumer Protection

Business Practices and Consumer Protection Act, SBC 2004, c 2. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/04002_00

Judgments

Court Order Enforcement Act, RSBC 1996, c 78. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96078_01

Court Order Interest Act, RSBC 1996, c 79. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96079_01

The Enforcement of Canadian Judgments and Decrees Act, SBC 2003, c 29. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03029_01

Court Rules

Bill 19, Civil Resolution Tribunal Amendment Act, 2015, 4th Sess, 40th Parl, British Columbia, 2015 (assented to May 14th, 2015). Website:
http://www.bclaws.ca/civix/document/id/lc/billsprevious/4th40th:gov19-1

Civil Resolution Tribunal Act, SBC 2012, c 25. Website:
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/12025_01

Civil Resolution Tribunal Rules (effective May 1, 2023). Website:
https://civilresolutionbc.ca/wp-content/uploads/CRT-Rules-in-force-May-1-2023.pdf

Court of Appeal Act, RSBC 1996, c 77. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96077_01

Court Rules Act, RSBC 1996, c 80. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96080_01

Court of Appeal Rules, BC Reg 297/2001. Website:
http://www.bclaws.ca/Recon/document/ID/freeside/297_2001a

Judicial Review Procedure Act, RSBC 1996, c 241. Website:
http://www.bclaws.ca/civix/document/id/roc/roc/96241_01

Small Claims Act, RSBC 1996, c 430. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96430_01

Small Claims Rules, BC Reg 261/93. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/261_93_00b

Supreme Court Act, RSBC 1996, c 443. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96443_01

Supreme Court Civil Rules, BC Reg 168/2009. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/168_2009_00

Other Important Statutes

Apology Act, SBC 2006, c 19. Website:
http://www.bclaws.ca/Recon/document/ID/freeside/00_06019_01

Bank Act, SC 1991, c 46. Website:
https://laws-lois.justice.gc.ca/eng/acts/B-1.01/page-1.html

Bankruptcy and Insolvency Act, RSC 1985, c B-3. Website:
https://laws-lois.justice.gc.ca/eng/acts/B-3/page-1.html

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28. Website:
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/03028_01

Crown Proceeding Act, RSBC 1996, c 89. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96089_01

Employment Standards Act, RSBC 1996, c 113. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96113_01

Evidence Act, RSBC l996, c 124. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96124_01

Insurance (Vehicle) Act, RSBC 1996, c 231. Website:
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96231_01

Law and Equity Act, RSBC 1996, c 253. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96253_01

Limitation Act, SBC 2012, c 13. Website:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_12013_01

Local Government Act, RSBC 1996, c 323. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/r15001_00

Motor Vehicle Act, RSBC 1996, c 318. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96318_00

Negligence Act, RSBC 1996, c 333. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/96333_01

Occupier's Liability Act, RSBC 1996, c337. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/96337_01

Personal Property Security Act, RSBC 1996, c 359. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96359_01

Privacy Act, RSBC 1996, c 373. Website:
http://www.bclaws.ca/Recon/document/ID/freeside/00_96373_01

Real Estate Services Act, SBC 2004, c 42. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/04042_01

Residential Tenancy Act, SBC 2002, c 78. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02078_01

Sale of Goods Act, RSBC 1996, c 410. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96410_01

Strata Property Act, SBC 1998, c 43. Website:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/98043_01

Wills, Estates and Succession Act, SBC 2009, c 13. Website:
http://www.bclaws.ca/civix/document/id/complete/statreg/09013_01

2. Books

Bullen, Leake, Jacob, and Goldrein. *Bullen and Leake and Jacob's Precedents of Pleadings*, 15th ed. (London: Sweet and Maxwell, 2004).

Burdett, E. (Ed.). *Small Claims Act and Rules—Annotated*. (Vancouver, B.C.: The Continuing Legal Education Society of British Columbia, Dec 2014).

Celap, M. and Larmondin, P.J. *Small Claims Court for the Everyday Canadian*. (North Vancouver, B.C.: Self-Counsel Press, 2000).

Fraser, Horn and Griffen. *The Conduct of Civil Litigation in British Columbia*. 2nd ed. (Markham: Butterworths, 2007).

Keating, M. *Small Claims Court Guide for British Columbia*. (North Vancouver, B.C.: Self-Counsel Press, 1992).

Martinson, D.J. (Manual Coordinator). *Small Claims Court—1994.* (Vancouver, B.C.: The Continuing Society of British Columbia, April 1994).

Mauet, Casswell, and MacDonald. *Fundamentals of Trial Techniques 2d Canadian ed*. (Toronto: Little Brown, 1995).

McLachlin and Taylor, *British Columbia Court Forms*. (Markham, Ont.: LexisNexis Canada, 2005).

Moore Publishing. (Ed.) *Small Claims Practice Manual*, 3rd Ed. (Richmond, B.C.: Moore Publishing Ltd, 1999).

UBC Law Review Society. (Eds.) *Table of Statutory Limitations for the Province of British Columbia, Revised and Consolidated.* (Vancouver, B.C.: University of British Columbia Law Review Publication, 2006).

Vogt, J. (Ed.). *Provincial Court Small Claims Handbook*. (Vancouver, B.C.: The Continuing Legal Education Society of British Columbia, January 1997).

3. Websites

British Columbia Court of Appeal and Supreme Court Judgment Database: www.courts.gov.bc.ca/search_judgments.aspx

CanLII - Caselaw and legislation database: https://www.canlii.org/en/

Civil Resolution Tribunal: https://civilresolutionbc.ca/

Civil Resolution Tribunal (Solutions Explorer): https://civilresolutionbc.ca/solution-explorer/

Civil Resolution Tribunal Fees: https://civilresolutionbc.ca/resources/crt-fees/

Provincial Court Judgment Database: http://www.provincialcourt.bc.ca/judgments-decisions

- Contains selected decisions from 1999 to the present.

Provincial Courthouses Directory: https://smallclaimsbc.ca/court-locationshttp://

- Contains Small Claims Court locations
- Note: www.smallclaimsbc.ca is run by the Justice Education Society and gives information on Small Claims court. It is not run by the small claims court itself.

Small Claims Court
http://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims

Small Claims Fees
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/261_93_05b

Small Claims Forms
http://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms

Small Claims Pilot Project
http://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/pilot

4. Other Resources

UBC Law Library
Most of the books listed above are available in the Law Library. The *Small Claims Acts and Rules Annotated* and the *Provincial Court Small Claims Handbook*, published by the Continuing Legal Education Society (CLE), are recent publications written by Small Claims Court judges. They include the Act, Rules, and copies of all of the forms. Students can access an online edition of the *Provincial Court Small Claims Handbook* on the UBC Law Library website: http://law.library.ubc.ca/.

Court Registry

The Small Claims Court registry staff does not give legal advice, but they are experienced with the rules and procedures and are helpful. See **Appendix A: Small Claims Registries**.

Online Help Guide Small Claims BC
https://smallclaimsbc.ca/ is a website run by Justice Education Society (JES) with guidelines for small claims processes from start to finish

DIAL-A-LAW
DIAL-A-LAW ((604) 687-4680 or 1-800-565-5297) is a library of pre-recorded messages on a variety of legal topics available by telephone 24 hours a day, seven days a week. Lawyers under the supervision of the Canadian Bar Association, BC Branch, prepare the tapes. Several tapes deal with Small Claims Court. The content of the tapes is also available online: http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts

Company Search:
To search for a **provincially** regulated company, you may request a company or society search in person:

Surrey Board of Trade
101 – 14439 104th Ave
Surrey, BC V3R 1M1
Telephone: (604) 581-7130
Toll-free: 1-866-848-7130

Small Business B.C.
54 - 601 West Cordova St
Vancouver, BC V6B 1G1
Telephone: (604) 775-5525
Toll-free in B.C.: 1-800-667-2272

BC Registry Services
940 Blanshard Street
Victoria, BC V8W 2H3
Telephone: (250) 387-7848
Toll-free in B.C.: 1-877-526-1526
Mailing:
P.O. Box 9431
Station Provincial Government
Victoria, BC V8W 9V3

For more information about searching for provincial companies, refer to:

- http://smallbusinessbc.ca/services/
- http://www.bcregistryservices.gov.bc.ca/
- www.bconline.gov.bc.ca (online feature now available by opening a new account)

Partnerships and non-profit societies are also registered in the company directory and would show up in a search. In cases that involve franchises, it is important to do a company search to see how the other party is registered; it may be possible to sue the parent company and the individual who owns the franchise rights. The search costs $10, and cheques and/or money orders should be made payable to the Minister of Finance at

BC Registries and Online Services
Courier: 200 - 940 Blanshard Street, Victoria, BC V8W 3E6
Mail: PO Box 9431 Stn Prov Govt, Victoria, BC V8W 9V3s

If Unincorporated:

City of Vancouver Licence Office
515 West 10th Ave

Vancouver, BC V5Z 4A8

Telephone: (604) 873-7611
Website: http://vancouver.ca/doing-business/licenses-and-permits.aspx

To search for a **federally** regulated company, refer to:

Industry Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5
Website: www.ic.gc.ca

A collection of useful company directories can be found on the Industry Canada website under the "Programs and Services" heading. Federal corporations can be searched free of charge online.

NOTE: If the defendant is a business, it may be worth checking if that defendant has declared bankruptcy. To do so contact Industry Canada's Head Office of the Superintendent of Bankruptcy at (613) 941-2863 for free.

Translation and Support Services
To find support services and resources, including agencies and people that can provide translation services, please visit:

MOSAIC (Personal/Legal Translation Services)
5575 Boundary Road
Vancouver, BC V5L 2Y7
Tel: (604) 254-0469 Toll-free: 1-877-475-6777
Fax: (604) 254-2321 Toll-free fax: 1-877-254-2321
Email: personal@mosaicbc.org
www.mosaicbc.com

Society of Translators and Interpreters of B.C.
Tel: (604) 684-2940
Fax: (604) 684-2947
www.stibc.org

DIVERSEcity
Tel: (604) 597-0205
Fax: (604) 597-4299
Email: info@dcrs.ca
http://www.dcrs.ca

WelcomeBC
Tel: (604) 660-2421
Toll Free: 1-800-663-7867
http://www.welcomebc.ca/home.aspx

OPTIONS
Guildford Location
9815 – 140th street, Carole Wahl Building
Surrey, BC V4T 4M4
Tel: (604) 584-5811
Fax: (604) 584-7628

Newton Location
13520 – 78th avenue
Surrey, BC V3W 8J6
Tel: (604)-596-4321
Fax: (604)-572-7413
http://www.options.bc.ca/

S.U.C.C.E.S.S. Translation & Interpretation
28 West Pender Street,
Vancouver, BC
Tel: (604)-408-7274 ext 2042em
Email: translation@success.bc.ca
http://www.successbc.ca/

Westcoast Association of Visual Language Interpreters
http://www.wavli.com/

Citizenship and Immigration Canada
Tel: 1-888-242-2100
http://www.cic.gc.ca/english/index-can.asp

Affiliation of Multicultural Societies and Service Agencies of B.C.
Tel: (604) 718-2780 or 1-888-355-5560
Fax: (604) 298-0747
http://www.amssa.org/

Immigrant Services Society of B.C.
Head Office:
2610 Victoria Drive
Vancouver, BC V4N 44L2
Tel: (604 684-2561
Fax: (604)-684-2266

Vancouver (Terminal) Location:
#601-333 Terminal Ave.
Vancouver, BC V6A 4C1
Tel: (604) 684-2561
Fax: (604) 684-2266

Email: info@issbc.org
http://www.issbc.org

III. DO YOU HAVE A CLAIM?

In order to have a legal claim, it must be recognised by the law. A frivolous claim is one that does not disclose a legal cause of action, is incapable of proof, or is otherwise bound to fail. A vexatious claim is one that is brought in order to annoy, frustrate, or antagonise the defendant. A claim may be both frivolous and vexatious.

If a claim is frivolous or vexatious, the claimant will lose and may be penalised up to 10% of the amount of the claim or counterclaim (*Small Claims Rules*, BC Reg 261/93, 20(5) [SCR]). The penalty could be up to $8,750 on a $35,000 claim; it pays to research your cause of action and limit your claim to the proper amount.

A. Types of Claims & Remedies

It is helpful to research each of the following types of claims to ensure that a claim falls within at least one of them. See **Appendix G: Causes of Action** for a partial list of specific causes of action. If you are unable to fit your claim into one of the listed categories, you should consult a lawyer to see if you have a cause of action.

1. Tort

Torts are offences committed by one person against another. Examples include assault, battery, and negligence. Each tort has its own test and defences. Tort law continues to evolve and a person planning to bring a claim in tort should research what must be proven to be successful and which defences may be available to the defendant. Resources include CanLII.org, the courthouse library, and a practising lawyer.

2. Contract

Contract law governs voluntary relationships between parties. It is a complicated and nuanced area of the law and a person planning to bring a claim in contract should research what must be proven to be successful and which defences may be available to the defendant. Resources include CanLII.org, the courthouse library, and a practising lawyer.

NOTE: Courts will generally not enforce illegal contracts or dishonest transactions (see *Faraguna v Storoz*, [1993] BCJ No. 2114). However, *Transport North American Express Inc. v New Solutions Financial Corp.*, 2004 SCC 7 states that a court may enforce legal portions of a contract, thus effectively severing the illegal portion. A common example involves contracts purporting to charge interest rates prohibited under s 347 of the *Criminal Code*. The court will not enforce a term in a contract purporting to charge such a rate. (However, section 347.1 exempts payday loans from criminal sanctions, if certain conditions are met; see **Section V.G: Regulation of Payday Lenders and Criminal Rate of Interest** in **Chapter 9: Consumer Protection**).

3. Equity

The usual remedy for torts and breaches of contract is monetary damages. In circumstances where monetary damages are inadequate or where a legal remedy is improper in the circumstances, the court may grant other relief such as an injunction. The Small Claims Court, pursuant to s 2 of the *Small Claims Act RSBC 1996, c 430 [SCA]*, has a limited jurisdiction to grant equitable remedies. The CRT, pursuant to s 118 of the *Civil Resolution Tribunal Act*, has the same limited jurisdiction. A party seeking an equitable remedy such as an injunction should consult with a lawyer and will likely need to apply to the Supreme Court for relief.

4. Restitution

The law of restitution applies to circumstances where a party has benefited, the other party has suffered a loss as a result, and there is no legal basis for the party to have benefited (*Nouhi v Pourtaghi*, 2022 BCSC 807). The type of claim commonly pursued for a restitution remedy is referred to as "unjust enrichment" and is a complicated and evolving area of the law. A party planning to attain a restitution remedy should consult a lawyer, research what must be proved to be successful and which defences may be available to the defendant. Resources include CanLII.org, the courthouse library, and a practising lawyer.

5. Statute

Certain statutes create a right of action that does not exist in common law. The statute will set out what must be proved, the defences that apply, the types of damages that can be awarded, and how the claim must be brought. A person planning to bring a claim under a statutory cause of action should research the statute as well as how the courts have interpreted it by noting up the applicable provisions. See page 2: "Other Important Statutes". Resources include CanLII.org, the courthouse library, and a practising lawyer.

6. Declaratory Relief

Declaratory relief, whereby the court defines the rights of the parties to resolve legal uncertainties, cannot be claimed at the Provincial Court of British Columbia or the CRT. This includes declarations of who is liable for an accident and then ordering the defendant (often represented by an insurer) to change its liability determination. Parties seeking declaratory relief must do so at the BC Supreme Court (*Supreme Court Civil Rules*, BC Reg 168/2009, 20-4(1)).

B. Types of Damages

Although the Small Claims Court has the jurisdiction to award $35,000, the monetary awards in most cases are significantly less (*Small Claims Court Monetary Limit Regulation*, BC Reg 179/2005). There must be a principled basis for an award of damages and it is helpful to separate a claim into the following types of damages. Ensuring that there is a legal basis for a claim is a critical step as there are penalties for proceeding through a trial in Small Claims Court on a claim that has no reasonable basis for success (*SCR*, s 20(5)).

1. General Damages

General damages, also called non-pecuniary damages, are those that are not easy to quantify and for which a judge must assess the amount of money that, in the circumstances, will compensate for the loss. A common example of general damages is "pain and suffering". The purpose of general damages is to compensate and not to punish; a party should not expect to profit or realise a windfall through an award of general damages. For both general and special damages, the principle of remoteness of damage relates to both tort and contract law cases. Defendants are generally only accountable for harm brought on by their wrongful acts or contractual breaches when that harm was reasonably foreseeable at the time of the conduct in question, or could have been reasonably contemplated to be a consequence of breaching the contractual term. A person planning to claim general damages should be ready to provide evidence of the loss and research the case law to determine how the courts have assessed damages in cases with similar losses and circumstances. Resources include CanLII.org, the courthouse library, and a practising lawyer.

2. *Special Damages*

Special damages are generally quantifiable out-of-pocket expenses that must be specifically claimed and strictly proven (*SCR*, s 20(5)). For example, if a person has been put to expense and has receipts showing the amounts spent, these expenses would be classified as special damages. In a personal injury action, this could be medical bills, or in an action involving faulty equipment, repair bills could be classified as special damages. Each and every expense must be strictly proved with documents or other satisfactory evidence. In *Redl v. Sellin*, 2013 BCSC 581, the Court sets out the test with respect to a claimant's claim for special damages. Generally speaking, claims for special damages are subject only to the standard of reasonableness. As with claims for the cost of future care (see *Juraski v. Beek*, 2011 BCSC 982), when a claimed expense has been incurred in relation to treatment, evidence of medical justification for the expense is a factor in determining reasonableness.

3. *Nominal Damages*

Nominal damages are those where a wrong has been committed but there has been no, or insignificant, damages suffered as a result of the wrong. Certain torts, such as trespass, allow claims for nominal damages however there is little reward and much to be lost. A person who has suffered no damages yet still brings a claim may not recover the costs for bringing a claim that wastes the court's and the parties' time and money. Note that cost awards are limited in small claims cases (*SCR*, s 20(2)) and in CRT cases, legal feels will rarely be awarded (*Civil Resolution Tribunal Rules*, Rule 9.4(3)).

4. *Debt*

Debt is a remedy for breach of contract; see *Busnex Business Exchange Ltd. v Canadian Medical Legacy Corp*, 1999 BCCA 78.. The requirement for establishing a debt or 'liquidated demand' is that the sum of money is evident or able to be calculated by virtue of the contract. If the amount requires more investigation than mere calculation, the amount is not a debt but 'damages'.

5. *Liquidated Damages*

Some contracts provide for a genuine pre-estimate of damages in the event of a breach and allow the non-breaching party to claim for that estimate without having to prove the amount they have actually lost. This amount can be recovered as a debt. If the amount of liquidated damages is not a genuine pre-estimate of damages or is manifestly inappropriate in the circumstances, a court may decline to award them. However, the CRT cannot relieve from a penalty because it is not a "court" (*Law and Equity Act*, s 24(2)).

6. *Statutory Damages*

Statutory damages are those that arise from a breach by the defendant of an obligation found in a statute. The statute and relevant case law should be examined carefully to determine what damages, if any, may be claimed and the principles for assessing damages. Note, there are few statutory breaches which trigger statutory damages.

7. *Aggravated Damages*

Aggravated damages provide additional compensation where the wrongdoer's actions have caused mental distress, injury to dignity or injury to pride (*Campbell v Read*, 22 BCLR (2d) 214 (CA), 1987 Carswell BC 440). Awards of aggravated damages are rare and depend heavily on the actions of the wrongdoer and the circumstances. Aggravated

damages have previously been awarded in cases of aggravated assault and sexual assault (*Thornber v Campbell*, 2012 BCSC 1449; *B(A) v D(C)*, 2011 BCSC 775). The claimant must provide actual evidence of mental distress that results from the wrongdoing of the defendant.

A claimant who seeks aggravated damages must ask for aggravated damages in the Notice of Claim (or "Application for Dispute Resolution" in the CRT). Aggravated damages **cannot** be awarded in addition to the applicable monetary limit at the CRT or small claims.

8. Punitive Damages

Punitive damages, also called "exemplary damages", are reserved for conduct that is so abhorrent that the court must impose an additional penalty to punish the wrongdoer and discourage others from engaging in similar conduct (*Honda Canada Inc. v. Keays*, 2008 SCC 39). Punitive damages are **rarely** awarded.

A claimant who seeks punitive damages must ask for punitive damages in the Notice of Claim (or "Application for Dispute Resolution" in the CRT). Punitive damages **cannot** be awarded in addition to the monetary limit.

C. Limitation Periods

1. Limitation Act

After a certain amount of time has passed, a person loses the right to commence a claim. The amount of time that must pass before the limitation period expires depends on which act applies to the claim.

The *Limitation Act*, SBC 2012, c 13 [*Limitation Act*] came into effect on June 1, 2013. A claim is governed by this Act if the claim was discovered after this date. Under the *Limitation Act*, s 6(1), the basic limitation period that applies to most claims is 2 years after the day on which the claim is discovered.

Discovery occurs the day on which the claimant knew or reasonably ought to have known all of the following:

a) That injury, loss or damage had occurred;
b) That the injury, loss or damage was caused by or contributed to by an act or omission;
c) That the act or omission was that of the person against whom the claim is or may be made; and
d) That, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage (*Limitation Act*, s 8).

However, there are certain situations where the date of discovery is deemed to be a later date, or where the limitation period is suspended. Under s. 24(1) of the *Limitation Act*, acknowledgement of liability by the person against whom the claim is made resets the running of the period to the day the acknowledgement is made. The kind of acknowledgement that qualifies here is strictly defined in s. 24(6). Under s. 25(1), the basic limitation period and ultimate limitation period applicable to the claim do not run if the claimant becomes a person with a disability, while the person continues to be a person under a disability.

For more information, refer to **Appendix F: Limitation Periods** or consult a lawyer.

2. Changes due to COVID-19

NOTE: Due to COVID-19, limitation dates were temporarily suspended. However, as of March 25, 2021, the suspension has been lifted, and limitations dates function as per usual.

To calculate limitations dates that were affected by COVID-19, please refer below guidelines for calculating BC limitation periods from the Law Society of BC website.

> If the limitation period would normally have expired between March 26, 2020 and March 25, 2021, add one year to the expiry year of the limitation period. Thus, persons have the same amount of time remaining after the suspension of limitation periods as they did before.
>
> If the cause of action arose before March 26, 2020 and would normally expire after March 26, 2021, add one year to the expiry year of the limitation period.
>
> If the cause of action arose after the suspension of limitation periods but before March 25, 2021, then the limitation period expires March 26, 2023. In this way, a limitation period that began to run during the suspension starts to run when the suspension is lifted.

The CRT remained open and operating normally during the COVID-19 pandemic. The automatic suspension of limitation dates did not apply to the CRT.

IV. CHOOSING THE PROPER FORUM

There are several options for resolving most civil disputes in British Columbia: Alternative Dispute Resolution, specialised tribunals, Small Claims Court, the CRT and the Supreme Court of British Columbia.

Certain claims must be made through administrative tribunals instead of the courts. See, for example, **Section IV.C: Civil Resolution Tribunal** for small claims matters under $5,000, including certain types of disputes between roomates, disputes between a landlord and tenant who share a kitchen and/or bathroom, certain motor vehicle injury disputes, and strata matters, **Chapter 6: Human Rights** for human rights claims proceeding through the Human Rights Tribunal, **Chapter 7: Workers' Compensation** for workers' compensation claims proceeding through the Workers' Compensation Board, **Chapter 8: Employment Insurance** for EI matters proceeding through the Social Security Tribunal, **Chapter 9: Employment Law** for employment law related matters proceeding through the Employment Standards Branch, and **Chapter 19: Landlord and Tenant Law** for tenancy matters proceeding through the Residential Tenancy Branch.

In order to bring a claim in British Columbia, the court or tribunal must have territorial jurisdiction. If either the subject matter of the claim (e.g., the contract or wrongful act) occurred in British Columbia or the Defendant resides or does business in British Columbia, this may be a sufficient connection for a court or tribunal to assert jurisdiction. It is sometimes unclear whether British Columbia has a sufficient connection to the claim and is the most appropriate forum. If the court's jurisdiction is not clear, a claimant should obtain legal advice and review applicable case law; see *Douez v. Facebook, Inc*., 2022 BCSC 914.

Where the dispute is contractual, the existence of a "forum selection clause" may provide further jurisdictional difficulties. Forum selection clauses require the adjudication of claims in the named jurisdiction. Such clauses will generally be upheld absent a finding of "strong cause" to hear the matter in the jurisdiction of another court; see *Borgstrom v Korean Air Lines Co. Ltd.*, 2007 BCCA 263). However, where a "forum selection clause" requires arbitration that would be practically inaccessible for reasons of cost or geography, a court may declare the clause invalid and adjudicate the claim (*Uber Technologies Inc v Heller*, 2020 SCC 16).

A. Small Claims Court

The Small Claims Court is the civil division of the British Columbia Provincial Court and is designed to accommodate unrepresented parties who do not have legal training. The overriding purpose of the Small Claims Court is to resolve disputes in a "just, speedy, inexpensive, and simple manner" (*SCA*, s 2). The Court uses simplified forms, procedures, and rules and encourages settlement.

Small Claims Court is a formal court that applies the law. Although the procedures and rules of evidence are slightly relaxed in order to make it more accessible to the public, it is significantly more formal and principled than the courts portrayed in television programmes.

There are three primary considerations when choosing Small Claims Court: the amount claimed, the court's jurisdiction, and costs.

1. Amount Claimed

As of June 1, 2017, Small Claims Court can award a judgment of up to $35,000. A person whose claim exceeds $35,000 may still choose Small Claims Court but must expressly state in the notice of claim or counterclaim that they will abandon the amount necessary to bring their claim or counterclaim within the court's jurisdiction (*SCR*, Rules 1(4) and 1(5)). Interest and costs are not included in calculating the $35,000 limit.

A claimant must sue all responsible parties for damages arising from a single event in **one** claim; the claimant cannot split claims for damages arising out of a single event into multiple claims in an attempt to circumvent the $35,000 limit. If, however, there are multiple events giving rise to a claim, even if closely related, they may be brought in separate actions (*De Bayer v. Yang*, 2019 BCCRT 298). For example, if a contractor issues an invoice for $20,000 at the end of January for work done in January and issues

another invoice for $20,000 at the end of February for work done in February and both invoices go unpaid, the contractor may sue on each invoice in a separate claim. Rule 7.1(4) permits certain related claims to be heard together.

Where a defendant has pleaded a set-off (the plaintiff owes the defendant money that should be deducted from their award), contributory negligence (the plaintiff's negligence also contributed to their loss), or shared liability (there is another party who is also liable for the same action), the court may consider these defences against the full amount of the claimant's claim provided that the net judgment does not exceed $35,000. This also applies when a set-off forms the basis for a standalone counterclaim. For example, if the claimant proves a $50,000 claim and the defendant establishes a $35,000 set-off, the claimant will have a net judgment of $15,000.

Section 21(2) of the *Small Claims Act* permits the monetary limit to be set by regulation at any amount up to $50,000. Claimants should confirm the current monetary limit prior to filing a claim.

2. Jurisdiction

The Small Claims Court derives its authority from the *Small Claims Act*, the *Small Claims Rules*, BC Reg 261/93, and other acts that expressly confer jurisdiction upon the Provincial Court.

The Small Claims Court has express jurisdiction in claims for:

- debt or damages;
- recovery of personal property;
- specific performance of an agreement relating to personal property or services; or
- relief from opposing claims to personal property (*SCA*, s 3(1)).

The Small Claims Court does not have jurisdiction in claims for libel, slander, or malicious prosecution, according to s 3(2) of the *SCA*, unless such authority is expressly granted in limited circumstances by another statute (e.g., s 171(3) of the *Business Practices and Consumer Protection Act* allows for contraventions of this Act to be heard in Provincial Court even if they involve claims for libel or slander)

The court cannot resolve disputes involving residential tenancy agreements nor can it grant remedies created by statute if there is another dispute resolution mechanism prescribed in the statute. For example, claims for overtime must be claimed through the Employment Standards Branch and not in Small Claims Court. The court has very limited jurisdiction in residential tenancy (*Residential Tenancy Act*, SBC 2002, c 78.), human rights (*Human Rights Code*, RSBC 1996, c 210), and strata property matters. Regarding employment law, the Small Claims Court has jurisdiction over contractual and common law rights.

Other noteworthy areas of law often falling outside the jurisdiction of the Small Claims Division are trusts, wills (i.e., probate), prerogative writs, bankruptcy, and some family law matters. However, the court may have jurisdiction over cases where these areas of law are involved only circumstantially and the essential issues of the case do fall within the court's jurisdiction. For example, in *AMEX Bank of Canada v Golovatcheva* 2007 BCPC 369, the claimant alleged that the defendant had committed fraud by running up a debt that she knew she would escape by declaring bankruptcy. The Small Claims court exerted jurisdiction as essentially, the case at bar was a claim about debt, not bankruptcy.

The Small Claims Court cannot grant injunctions or declaratory relief; however, subject to the *Small Claims Act* and *Small Claims Rules*, the court may make any order or give any direction necessary to achieve the purpose of these statutes.

3. Fees

The fee to file a claim depends on the amount being claimed. The filing fee is $100 for claims of $3,000 or less and $156 for claims over $3,000. All Small Claims Court fees are listed in Schedule A of the *Small Claims Rules*. See **Appendix H: Small Claim Fees**.

If a person is unable to afford the court's fees, they can file an Application to the Registrar (Form 16) together with a Statement of Finances. If accepted, the party will be exempted under Rule 20(1) from paying fees with respect to that court file.

An unsuccessful litigant must, unless a judge or registrar orders otherwise, pay to the successful party:

- any fees the successful party paid for filing any documents;
- reasonable amounts the party paid for serving any documents; and
- any other reasonable charges or expenses that the judge or registrar considers directly related to the conduct of the proceeding (*Gaudet v Mair*, [1996] BCJ. No. 2547 (QL) (Prov Ct); *Faulkner v. Sellars* (1998), 9 CCLI (3d) 247 (BC Prov Ct); *Johnston v. Morris*, 2004 BCPC 511).

Under no circumstances can any party recover any fees paid to a lawyer with respect to the proceeding: s 19(4) of the *Small Claims Act*; however, reasonable disbursements charged by a lawyer with respect to the proceeding may be awarded to the successful party.

B. Supreme Court of British Columbia

The Supreme Court has a broad jurisdiction. It is not bound by any monetary limits and there are few restrictions on the types of claims that it can hear. The Supreme Court can grant injunctions, conduct judicial reviews, and make new law.

The Supreme Court is not designed with special regard to lay litigants. Parties without legal training or legal advice may find it much more difficult to navigate than Small Claims Court. There are, however, a number of resources to help lay litigants bring and defend claims in Supreme Court.

The court fees in Supreme Court are higher than in Small Claims Court; they can be waived, however, for those who cannot afford them.

In Supreme Court, the losing party will often be ordered to pay to the successful party a portion of that party's reasonable legal costs. Costs are awarded using a tariff system and generally on a party and party basis that usually amounts to about twenty per cent of the successful party's costs. While it is possible for the successful party to be fully indemnified through an award of special costs, also known as solicitor-client costs, this is rare and should not be expected.

C. Civil Resolution Tribunal

The role of the CRT is to encourage the resolution of disputes by agreement between the parties, and if resolution by agreement is not reached, then to resolve the dispute by deciding the claims brought to the tribunal by the parties. For up to date information on the CRT, associated legislative changes, and the official rules please visit their website at https://www.civilresolutionbc.ca/.

1. Jurisdiction

The CRT has jurisdiction over small claims disputes up to $5,000, strata property matters, certain disputes about motor vehicle accidents and injuries, and disputes involving societies and co-operative associations. The tribunal will not determine if they have jurisdiction over disputes until an application for dispute resolution is submitted and the required fee paid. While jurisdictional issues are screened at the intake stage, a

tribunal member retains discretion to determine whether the dispute is within the tribunal's jurisdiction. Applicants who want to know if their claim is within the tribunal's jurisdiction before filing a dispute should try using the CRT's Solution Explorer or seek legal advice.

Sometimes, disputes may be "hybrids" in that they include strata, co-operative, motor vehicle injury and/or small claims elements. In general, where a dispute has elements of both a small claim or another type of claim (most commonly strata), the CRT will not consider it a small claim. Applicants should consult the CRT to determine whether two separate applications should be made.

a) Small Claims Matters

The tribunal's small claims jurisdiction is the same as that of the Small Claims Court, however, while the Small Claims Court can resolve claims between $5,001 and $35,000, the CRT is limited in jurisdiction to resolving small claims disputes of $5,000 or under. If a claim is over $5,000 in total value (including contractual interest) it may be reduced to $5,000 or less in order to make an application for dispute resolution at the CRT but this requires abandoning the amount that is over $5,000. This means that part of the claim is gone and can no longer be claimed at the CRT or anywhere else.

The CRT has jurisdiction over the following types of small claims matters:

- Loans and Debt (e.g. a claim for money loaned to someone and not repaid);
- Contract (e.g. A claim for damages caused by the respondent's failure to properly complete a contract);
- Personal Injury;
- Personal property (e.g. a claim for damages caused to the applicant's property or return of personal property);
- Consumer transactions (e.g. a claim for damages for faulty merchandise);
- Insurance Disputes; and
- Some employment.

However, the CRT does not have jurisdiction over claims that

- involve slander, defamation or malicious prosecution (*CRTA*, s 119(a));
- fall within the jurisdiction of other tribunals (i.e., the Residential Tenancy Branch);
- are against the government, or which the government is a party to the dispute (Note: municipalities do not fall within "government" in this context; CRTA, s 119(b)); or
- involve the application of the Canadian Charter of Rights and Freedoms. Note: the CRT does not have jurisdiction over a question of a conflict between the Human Rights Code and another enactment. The CRT also does not have jurisdiction over constitutional questions (*CRTA*, s 114).

b) Strata Property Matters

The CRT can resolve a wide variety of disputes between owners and tenants of strata properties and strata corporations but can only help with disputes where the event triggering the dispute happened in BC. Unlike the Small Claims and Motor Vehicle Injury jurisdictions of the CRT, the Strata Property jurisdiction of the

CRT has no monetary limit. A person may make a request for tribunal resolution of a claim that concerns:

- the interpretation or application of the *Strata Property Act* or a regulation, bylaw, or rule under that Act;
- the common property or common assets of the strata corporation;
- the use or enjoyment of a strata lot (Note: Recent CRT cases have concluded that the CRT generally does not have jurisdiction under its Strata Property jurisdiction to resolve neighbour disputes if the claim is based in tort, such as an owner claiming against another owner in nuisance or negligence for noise or water leak. If you have a dispute with another resident in a strata you may wish to seek legal advice);
- unfair or arbitrary enforcement, or non-enforcement, of strata bylaws, such as noise, pets, parking, rentals, and compliance with the *BC Human Rights Code;*
- whether the strata corporation has treated an owner or tenant significantly unfairly;
- money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act;
- financial responsibility for repairs;
- an action or threatened action by the strata corporation, including the council, in relation to an owner or tenant;
- a decision of the strata corporation, including the council, in relation to an owner or tenant; or
- the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

The CRT's ability to resolve the strata disputes listed above is subject to a number of limitations. A person considering tribunal resolution of a claim listed above should review s 122 of the *Civil Resolution Tribunal Act* to ensure that the CRT is not prohibited from deciding on the matter.

c) Motor Vehicle Injury Matters

The CRT has jurisdiction over most vehicle accident claims in British Columbia. In particular, the CRT can resolve disputes regarding accident benefits, minor injury determinations, fault, damages claims up to $50,000, and entitlement to benefits under the Enhanced Care model.

For more information consult the CRT's solutions explorer, **Chapter 12: Automobile Insurance (ICBC)**, **Chapter 13: Motor Vehicle Law,** and *Dusdal v. ICBC*, 2022 BCCRT 602 which briefly explains recent changes to motor vehicle accident claims.

d) Societies and Cooperative Associations

The CRT can adjudicate disputes about BC societies and cooperative associations. Disputes involving other types of cooperatives, unincorporated societies, societies incorporated outside of BC, and "for-profit" societies are outside of the CRT's jurisdiction.

The *Societies Act* governs societies in BC, and the CRT may only take disputes about societies that are incorporated in BC with the BC Corporate Registry

(*Societies Act*, SBC 2015, c 18, s 14). A person may make a request for tribunal resolution of a claim that concerns:

- the interpretation or application of the BC *Societies Act* or a regulation, constitution or bylaw under that Act, including a request to inspect, or to receive a copy of, a record of a society;
- an action or threatened action by the society or its directors in relation to a member; and
- a decision of the society or its directors in relation to a member.

The foregoing lists contains a number of limitations. A person considering tribunal resolution of a claim listed above should review s 130 of the *Civil Resolution Tribunal Act* to ensure that a limitation does not deny jurisdiction to the tribunal.

The *Cooperative Associations Act* governs cooperative associations in BC, and the CRT may only take disputes about provincial housing or community service cooperatives (*Cooperative Assocication Act*, SBC 1999, c 28, s 159.5). The Act enables persons to make a request for the tribunal resolution of a claim that concerns:

- Interpreting legislation, regulations, memoranda or rules about cooperatives;
- Ordering a cooperative to provide access to its records;
- Ordering a cooperative to comply with its bylaws or the Cooperative Association Act; and
- the person examining, taking extracts from, receiving a copy of or obtaining the record (*Cooperative Assocication Act*, s 159.5).

The CRT's ability to resolve these disputes is subject to a number of limitations; see s 126 of the *Civil Resolution Tribunal Act*. For example, claims cannot be made with respect to any matter relating to terminating membership, expelling members, winding up the cooperative association, or appealing decisions made by the Registrar of Companies.

e) Non-Consensual Sharing of Intimate Images

On March 30, 2023, the BC legislature passed the *Intimate Images Protection Act* (IIPA). Under its authority, the CRT will be able to resolve claims about the non-consensual sharing of intimate images.

The IIPA is not yet in force. It will be brought into force by regulation, at a date to be determined. Once in force, under this legislation, victims will have potential recourse against both individuals who share or threaten to share victims' intimate images non-consensually, as well as against technology companies who publish these images. Under the IIPA, a judge or tribunal decision maker can order a technology company to stop distribution and remove an intimate image from its platform. Technology companies in non-compliance with these orders can face penalties.

To obtain such orders, applicants need to show that the image is an intimate image depicting the applicant, and that another person distributed it without their consent.

f) Authority to Refuse Dispute

The CRT has the discretionary authority to refuse to resolve a claim or dispute that otherwise falls within their jurisdiction.(Civil Resolution Tribunal Act, s 11). Some of the more common reasons are:

- The claim or dispute has already been resolved through a legally binding process, or the claim is more appropriate for another legally binding process
- The request for resolution does not disclose a reasonable claim or is an abuse of process
- The claim or dispute is too complex or impractical for the CRT

2. Process

Using the tribunal to resolve a dispute within its jurisdiction is mandatory by default. However, if the CRT refuses to resolve a claim it can be brought to another court. A party can also apply to court to be exempted from the CRT. For more information see:https://www.provincialcourt.bc.ca/types-of-cases/small-claims-matters/claims-5k-provincialcourt

The tribunal is designed to be more informal, faster, and less expensive than Small Claims Court, and will be conducted primarily using the internet and email. Unlike Small Claims Court, the tribunal generally requires the parties to be self-represented; lawyers are generally not permitted (*Civil Resolution Tribunal Act*, s 20). There are exceptions to this (see subsections 2 and 3), including where a party is a minor or has impaired capacity, where the rules permit the party to be represented or where the tribunal permits representation because it is in the interests of justice and fairness. If a party wishes to request a representative, they should contact the CRT directly to obtain a Representation Request Form.

In considering a request for permission to be represented by a lawyer or other person, the CRT will consider various factors set under rule 1.16.

All representatives and helpers must comply with the CRT's Code of Conduct https://civilresolutionbc.ca/wp-content/uploads/CRT-Code-of-Conduct-Apr-2021.pdf

NOTE: Parties may obtain legal assistance and/or advice without submitting a Form, however, their lawyer will not be able to participate directly in the CRT process.

3. General

The first step in the CRT process is filing your claim. Fill in the online application form and pay the fee. Afterwards, the CRT will issue the respondent a Dispute Notice. Parties may not bring or continue a claim in court more than 28 days after one of the following applicable dates:

- The date the party receives notice of the decision;
- The date of a court order that the CRT not adjudicate a claim; or

The CRT orders are enforceable as an order of the court.

D. Alternative Dispute Resolution

Alternative dispute resolution is useful because it is efficient, inexpensive, **confidential**, informal, and flexible; the parties have control over the outcome. A trial, on the other hand, is formal, less

flexible, and can be more expensive. With few exceptions, everything that is said in a courtroom or written in a filed document can be accessed by any member of the public.

Parties who wish to preserve their relationship, avoid the stress of a trial, keep the details of their dispute private, or resolve their dispute in months instead of more than a year should seriously consider alternative dispute resolution.

1. Negotiations

Negotiation is cost and risk-free. Any contact between the parties should be used to attempt to negotiate a settlement. Parties can negotiate a settlement at any point before a judgment is pronounced. Negotiations are without prejudice, which means they are confidential between the parties and cannot be used against a party in court. Any documentation related to negotiation should have the words "WITHOUT PREJUDICE" written across the top.

Ask the other party if they are represented by a lawyer. If so, all communication should be with the lawyer. If the other party is not represented, ask the other party if they are willing to discuss the claim.

Telephone technique should be **firm** but **not argumentative**. Try to negotiate the best offer possible.

Make a written plan and keep detailed notes of each conversation as it occurs. Plan how best to find out the other side's position and how best to put forward your position.

If a settlement is reached, a letter should be sent to the other party to confirm the agreement. Enclose a duplicate copy for them to sign and return to you. Any settlement should include a mutual release agreement in which both parties agree to not bring any further claims against each other and to withdraw any other proceedings that may have been commenced.

NOTE: If there are multiple defendants, a claimant should obtain legal advice to ensure that an agreement with one defendant does not inadvertently release the other defendants from liability.

2. Mediation

Mediation is a voluntary process in which an independent, neutral party listens to each party's position, focuses the issues in dispute, and assists the parties to come to a settlement agreement. While the mediator plays an active role in ensuring discussion remains productive, the ultimate responsibility for resolving the dispute rests with the parties. The purpose of mediation is not to determine who wins and loses, but to find solutions that meet the needs of the people involved.

Mediation as an alternative to litigation is often a more expedient, less expensive, and more satisfactory route than litigation. In order to mediate outside of the Small Claims Court process, all parties must agree. The parties typically share the cost of mediation.

The CRT's facilitation process is essentially a mediation. In fulfilling its mandate, the role of the Civil Resolution Tribunal is "to encourage the resolution of disputes by agreement between the parties" (*Civil Resolution Tribunal Act*, s 2(3)). The tribunal's mandate is to provide dispute resolution services in a manner that is accessible, speedy, economical, informal and flexible (*CRTA*, s 2(2)).

The Small Claims Court requires that parties participate in either a settlement conference or mediation. Both processes are highly successful in resolving disputes and there is no additional cost to either party. For information on these processes, see the Small Claims Procedural Guides at

https://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/how-to-guides/mediation-between.

Parties who choose to mediate outside of the Small Claims Court process can choose their mediator (Mediate BC website) resolve the dispute sooner and on a more convenient timeline, and spend more time resolving the dispute than the approximately 2.5 hours allocated by the court. Also, since both parties would have agreed to mediate, settlement is more likely than if mediation is compulsory.

3. Arbitration

Arbitration is a voluntary process in which an independent, neutral party will listen to each party's position and resolve the conflict by choosing one of the party's positions. If the arbitrator's decision is binding, the dispute is settled. If the arbitrator's decision is non-binding, the parties may accept it or proceed to litigation. Arbitration can offer a very quick resolution to disputes and encourages both parties to present reasonable offers in order to increase the likelihood that their proposal will be selected. In order to arbitrate, all parties must agree. The parties typically share the cost of arbitration. The Small Claims Court does not require or provide arbitration; parties who wish to arbitrate must do so on their own (British Columbia Arbitration and Mediation Institute website).

V. STARTING A CLAIM

A. Pronouns

Both the BC Supreme Court ("BCSC") and BC Provincial Court ("BCPC") have issued practice directives regarding the form of address for parties and counsel in proceedings, effective December 16, 2020. The changes support a shift in professional practice towards asking all people how they should be respectfully addressed. A link to the BCSC practice direction can be found here: PD-59 Forms of Address for Parties and Counsel in Proceedings.pdf (bccourts.ca). A link to the PCSC practice direction can be found here: NP 24 Form of Address for Parties and Lawyers.pdf (provincialcourt.bc.ca). For example, at the beginning of any in-person or virtual proceeding, when parties are introducing themselves, or lawyers are introducing themselves, their client, witness or another individual, they should provide the judge or justice with each person's name, title (e.g. "Mr./Ms./Mx./Counsel Jones") and pronouns to be used in the proceeding. If a party or counsel do not provide this information in their introduction, they will be prompted by a court clerk to provide this information.

At the CRT, the staff follows similar procedure by asking all parties to identify their pronouns and form of address (e.g. "Mr./Ms./Mx./Counsel Jones"). The CRT works with LGBTQ+ organizations to ensure that it approaches this issue in a respectful and inclusive way that is free of assumptions. If a party does not provide this information, the CRT will default to gender neutral forms of address.

B. Settlement Letter

The fastest and least expensive way to resolve a dispute is to tell the other person what you are claiming from them and why you are claiming it. If the other person agrees with the amount or responds in a manner that leads to a settlement, both parties will save the time, effort, expense, and uncertainty of a lawsuit.

Good faith attempts to settle may involve concessions and admissions of liability. For example, a claimant may offer to settle for less than the claim to account for the cost, time investment, and risk of going to trial. A defendant, for example, may admit liability but dispute the amount owed. Whenever parties can agree on certain points, the likelihood of settlement increases.

Because of the strong public interest in settlement, these bona fide settlement attempts are protected by settlement privilege. This means that, if the matter is not settled, any admissions during negotiations cannot be used against the party who made them (*Boles v. Harrison*, 2021 BCCRT 906). It is prudent to include the words "WITHOUT PREJUDICE" in correspondence involving bona fide attempts to settle to indicate that the party sending the document wishes to rely on settlement privilege; settlement privilege will still apply, however, even if "WITHOUT PREJUDICE" is not included.

Settlement letters should be brief, factual, and clearly state the amount claimed even if that amount exceeds $35,000. Settlement letters should have a courteous tone as a letter that invokes a hostile reaction from the recipient will be counter-productive. A party writing a settlement letter should never threaten criminal or regulatory penalties; **extortion is a criminal offence.** If a settlement between the two parties is not successful, then you may consider drafting a notice of claim.

C. Identifying the Defendant(s)

If a settlement letter is unsuccessful, parties will be required to file a Notice of Claim through Small Claims Court if the claim is for between $5,001 and $35,000; see **Section V.E.: Drafting the Notice of Claim**. If the amount claimed is $5,000 or less, a party will apply for CRT dispute resolution; see **Section V.D: Civil Resolution Tribunal**.

When drafting a Notice of Claim and throughout the litigation process, it is important to stick to the **relevant** facts. Court is not a forum for airing grievances that do not give rise to a claim. For example, in a claim for breach of contract, the fact that the defendant acted rudely is generally not

relevant to the claim. Including irrelevant facts confuses the issues, wastes time, raises tensions, and makes it more difficult to successfully prove the claim. A good rule to follow for each type of claim is to include **only the facts necessary** to satisfy the legal test for that type of claim; brief is better.

It is important to make your cause of action (i.e., negligence, breach of contract, etc.), type of damages, and amount of damages very clear. Do not let the judge guess what you want.

1. Suing a Business

a) Corporation

A corporation is a legal entity that is separate from its shareholders and employees. It is identified by a corporate designation such as Incorporated, Limited, Corporation, their abbreviations Inc., Ltd., or Corp., or their French equivalent following the business name.

A corporation can enter into contracts and can sue or be sued. Generally speaking, a corporation's shareholders, officers, directors, and employees are not liable for the actions or liabilities of the corporation or their own actions while acting within the scope of their office or employment. A person who feels that a shareholder, director, officer, or employee of a corporation might be liable should obtain legal advice.

Corporations may be either provincially or federally incorporated. A federal company is incorporated under the *Canada Business Corporations Act*, RSC 1985, c. C-44 [CBCA]. A BC corporation is incorporated under the *Business Corporations Act*, SBC 2002, c 57 [BCBCA]. Corporations may also be registered under the laws of the other provinces and territories. Because a corporation can have multiple locations, every corporation, including non-BCBCA corporations, doing business in BC must provide an address where it can be served with notices of claim and other important documents.

To sue a corporation, a claimant must perform a company search to obtain the registered name and address for the defendant corporation (*SCR*, Rule 1(2.1); and Rule 5(2.1)). The corporation's registered name and address must be the ones on the notice of claim form and a corporate search must be included when filing the notice of claim. See **Section II: Other Resources** for how to complete a company search.

b) Partnership

A partnership can exist between one or more persons and is governed by the *Partnership Act*, RSBC 1996, c 348 [PA].

The rules for determining whether a partnership exists are set out in s 4 of the PA. Generally speaking, all partners are personally liable for the debts of the business: s 7 of the PA. As it is often impossible to tell whether a business is a partnership or a sole proprietorship from the name alone, a claimant should perform a company search to learn the true structure of the business as well as the name and address of each partner.

The proper way to list each partner on the notice of claim is:

Jane Doe d.b.a. XYZ Partnership

John Doe d.b.a. XYZ Partnership

ABC Company Ltd. d.b.a. XYZ Partnership

NOTE: "d.b.a." stands for "doing business as"

NOTE: One should be careful to not confuse partnerships with limited partnerships (LP) or limited liability partnerships (LLP).

c) Sole Proprietorship

A sole proprietorship allows a single person to do business under a business name. Sole proprietorships are registered under Part 4 of the PA. A sole proprietor is personally responsible for the debts of the business.

As it is impossible to tell whether a business is a partnership or a sole proprietorship from the name alone, a claimant should perform a company search to learn the true structure of the business as well as the name and address of the proprietor.

The proper way to list a sole proprietor on the notice of claim is:

Jane Doe d.b.a. XYZ Company

John Doe d.b.a. XYZ Company

ABC Company Ltd. d.b.a. XYZ Company

NOTE: "d.b.a." stands for "doing business as"

d) Other

For other forms of businesses such as limited partnerships (LP), limited liability partnerships (LLP), and unlimited liability corporations (ULC), legal advice is recommended.

2. Suing a Person over 19 Years Old

Do not use titles such as Mr., Mrs. or Ms. Use full names, not initials (i.e., "Dr. D. Smith" should be "Doris Smith"). Claimants may sue more than one defendant if the claim against each defendant is related. Divide the "To" space in half and use one half for the name and address of each defendant; alternatively, the notice of claim filing assistant makes it convenient to add multiple defendants (see https://justice.gov.bc.ca/FilingAssistant/).

3. Suing a Society

A society is a type of not-for-profit corporation registered pursuant to the *Societies Act*, SBC 2015, c 18. The procedure and principles for suing a society are the same as for corporations. A company search is required to ascertain the society's registered address (*SCR*, Rule 1(2.2) and Rule 5(2.2)).

4. Suing I.C.B.C.

The legal name of ICBC is the **Insurance Corporation of British Columbia**. It is a special type of corporation and the usual corporate designation such as Inc. is not required.

5. Suing the Government

a) Federal

The federal government should be named as either "Attorney General of Canada" or "Her Majesty in right of Canada". If an agency of the Crown is to be sued and **if a federal Act permits**, the agency may be sued in the name of that

agency; see *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 23(1); *Goodhead v Law Society (British Columbia)*, [1997] BCJ No. 1779 (BCSC).

b) Provincial

The provincial government should be named as "Her Majesty the Queen in right of the Province of British Columbia" (*Crown Proceeding Act*, RSBC 1996, c 89, s 7).

It should be noted that the CRT cannot resolve disputes where the claim is against the government or the government is a party to the dispute. See **Section IV.C.: Civil Resolution Tribunal** for more information on the jurisdiction of the CRT.

6. Suing the Police

The "Royal Canadian Mounted Police" is not a legal entity that can sue or be sued (*Dixon v Deacon Morgan McEwen Easson*, [1990] B.C.J. No. 1043 (BCSC). A claimant who wishes to sue for damages arising from the conduct of a police officer should sue the Minister of Public Safety and Solicitor General. The individual police officer and the Attorney General of Canada may be named in cases alleging gross negligence or wilful misconduct on the part of the police officer (*Amezcua v Taylor*, 2010 BCCA 128; *Roy v British Columbia (Attorney General)*, 2005 BCCA 88). The Minister of Public Safety and Solicitor General is the proper defendant in a civil action involving the RCMP or RCMP members as of Dec 11, 2015 (*Order of the Lieutenant Governor in Council*, No. 762/2015).

RCMP officers are immune from liability for anything done in the performance of their duty except where the officer has been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or the cause of action is libel or slander. See *Police Act*, RSC 1996, c327, s 11 and s 21;*Crown Liability and Proceedings Act*, RSC 1985, c. C-50, s 3 and s 10; *Acumar Consulting Engineers Ltd. v The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC)*, 2014 BCSC 814 at para 49.

A claimant who is suing a municipal police force should sue the individual police officers as well as the municipality employing the police officers.

7. Suing a Municipality

Municipalities are special corporations. A claimant should search the BC Gazette to obtain the legal name of the municipality.

It is critical that a claimant provide written notice to the city within **two months** of the time, place and manner in which the damage has been sustained. As well, all legal actions must be commenced within 6 months after the cause of action first arose (*Local Government Act*, RSBC 2005, c 1, s 735, s 736). For more information, please see **Chapter 5: Public Complaints**.

8. Suing a Young or Mentally Incompetent Person

A minor, also called an infant, is a person who is under 19 years of age at the time the claim is filed. Mentally incompetent persons, as well as minors, are persons with a legal disability. When suing such persons, the following rules of the *Supreme Court Civil Rules*, BC Reg 168/2009 apply:

- Rule 4-3 (2)(f) for serving documents by personal service;
- Rule 7-2 (9) for examination of mentally incompetent persons for discovery

- Rule 12-5 (50) for evidence from examinations for discovery for mentally incompetent persons
- Rule 20-2(8) for the lawyer for a person under disability
- Rule 20-2(10) if a party to a proceeding becomes a mentally incompetent person
- Rule 25-2 (10) and (11) when delivering notice of applying for an estate grant or for the resealing of a foreign grant in relation to the estate

Persons with a legal disability must be represented by a litigation guardian (*Supreme Court Civil Rules*, BC Reg 168/2009, Rule 20-2(2)). With some limitations, a litigation guardian can be any person ages 19 years or older who is ordinarily resident in British Columbia. The litigation guardian must complete and submit the Litigation Guardian Declaration form (*CRT Rules* (effective May 1, 2021), Rule 1.13(2)).

If the claim involves personal injury, Rule 20-2(4) of the *Supreme Court Civil Rules* applies and requires that the litigation guardian act by a lawyer unless the litigation guardian is the Public Guardian and Trustee.

A party cannot take a step in default against a person with a legal disability without the court's permission. A settlement with a party under a legal disability is not binding unless the court approves it.

9. Suing an Insurance Company other than ICBC

Claims against insurers for coverage can be complicated. A claimant should be aware that claims against insurers may have a shorter limitation period. A claimant should research the law surrounding an insurer's duty to defend, and an insurer's duty to indemnify.

10. Suing an Unknown Person

If a claimant does not know the identity of one or more parties, the claimant can still file a claim using a misnomer. For example, the claimant would list the unidentified defendant as either John Doe or Jane Doe as the case may be. If there are multiple unknown parties, the claimant could add a number to each misnomer (e.g., John Doe 1; John Doe 2). Misnomer also applies to unknown companies.

A claimant should research the law surrounding misnomer and ensure that both the unidentified party and its actions are described in as much detail as possible.

If the party is unknown because of a motor vehicle hit and run, the claimant may sue ICBC as a nominal defendant.

D. Can the Defendant(s) Pay?

One cannot squeeze blood from a stone. If a defendant has insignificant assets or income, the defendant may have no means to pay a judgment; such a person is "judgment-proof" and a claimant with an uncollectible judgment is said to be holding an "empty judgment". A claimant should consider whether it is worth the time, expense, and stress of suing a judgment-proof defendant.

A judgment is enforceable for ten years after it is issued (*Limitation Act*, RSBC 1996, c 266, s 7; *Limitation Act*, SBC 2012, c 13, s 7). After this time, unless it is renewed, the judgment expires and becomes uncollectible. On some occasions, a previously judgment-proof defendant will "come into money" by receiving an inheritance or winning the lottery. This is a rare occurrence and a claimant must invest time and effort to monitor the defendant's circumstances over the ten years that the judgment is enforceable. A more common change in a judgment-proof defendant's circumstances is the defendant securing a higher-paying job.

A claimant should also consider the likelihood of the defendant going bankrupt. If the defendant goes bankrupt, the claimant may recover little or none of the amount of the judgment. For more detail on bankruptcy, see **Section XVII: Enforcement of a Judgment**.

A claimant must decide whether to sue before the limitation period expires. If the limitation period expires, a claimant cannot later sue on that cause of action if the defendant's circumstances change.

E. Civil Resolution Tribunal

The CRT is designed to facilitate dispute resolution in a way that is accessible, speedy, economical and flexible for amounts $5,000 and under. It relies heavily on electronic communication tools. It focuses on resolution by agreement of the parties first, and by the Tribunal's binding decisions if no agreement is reached. Thus, there are several steps to the CRT process before actually applying for dispute resolution with the tribunal.

1. Self Help

A claimant must first attempt to resolve the dispute using the tribunal's online dispute resolution services. The claimant may use the website's resources to gather information and diagnose their claim.

a) Solution Explorer

The Solution Explorer, available on the CRT website, includes free legal information and self-help tools, such as guided pathways, interactive questions and answers, tools, templates and other resources. Applicants can apply to the CRT for dispute resolution right from the Solution Explorer.

Small Claims Solution Explorer website:
https://civilresolutionbc.ca/solution-explorer/

Strata Solution Explorer website:
https://civilresolutionbc.ca/solution-explorer/strata/

Motor Vehicle Injury Solution Explorer website:
https://civilresolutionbc.ca/solution-explorer/vehicle-accidents/

Societies and Cooperative Associations Solution Explorer
https://civilresolutionbc.ca/solution-explorer/societies-and-cooperative-associations/

b) Online Negotiations

The parties may then engage in an online negotiation that is monitored but not mediated or adjudicated. Online negotiations connect parties in order to encourage negotiated settlement. This tool will guide the parties through a structured, low-cost negotiation phase.

2. Dispute Resolution – Case Management

If a claimant's attempt at online dispute resolution has been unsuccessful, the claimant must formally request resolution of the claim through the tribunal and pay all required fees. Generally, a claimant cannot request tribunal resolution if there is a court proceeding or other legally binding process to resolve the claim and a hearing or trial in that court or other legally binding process has been scheduled or has occurred to decide that claim.

During the case management phase, the case manager will attempt to facilitate a settlement between the parties by clarifying the claim, providing facilitated mediation, and asking the parties to exchange evidence. If the dispute is not resolved during facilitation, the case manager will help prepare the parties for the tribunal decision process.

If parties do not resolve the claim during the case management phase, the claim will proceed by tribunal hearing (*CRTA*, s 30). If a party to a dispute fails to comply with an order or direction of the tribunal made during the case management phase, the case manager may (after giving notice to the non-compliant party) refer the dispute to the tribunal for resolution, where the tribunal will: (a) proceed to hear the dispute; (b) make an order dismissing a claim in the dispute that is made by the non-compliant party, or (c) refuse to resolve a claim of the non-compliant party or refuse to resolve the dispute (*CRTA*, s 36).

The CRT takes an active role in the dispute resolution process and ensuring the claim is resolved in a timely manner. Parties must ensure they respond promptly during the CRT process. If a party fails to respond to communications with the case manager, the tribunal may decide the claim without their participation.

The tribunal retains authority to refuse to resolve a claim or dispute and may exercise this authority at any point before making a final decision resolving the dispute. The general authority for refusing to resolve a claim or dispute is set out in s 11 of the *Civil Resolution Tribunal Act*.

3. Applying for Dispute Resolution

To request dispute resolution by the tribunal an applicant must provide to the tribunal a completed Dispute Application Form and pay the required fee.

NOTE: Parties drafting an application to the CRT should review the guidelines set out in **Section V.E: Drafting a Notice of Claim** for advice regarding what information should be included.

Application Costs and Where to Apply

Applications may be made online or a paper application form can be found online at https://civilresolutionbc.ca/resources/forms/#apply-for-crt-dispute-resolution. Fees vary slightly by method of application. The cost to apply for dispute resolution online is $75-125, while the cost by paper application is $100-150.

If you are using a paper application, it may be sent to the CRT by:

PO Box 9239 Stn Prov Govt
Victoria, BC
V8W 9J1

After an Application is Received

After an initial review of the Dispute Application Form, the tribunal will provide to the applicant one of the following:

a) a request for more information about the application;

b) a Dispute Notice with instructions; or

c) an explanation as to why the Dispute Notice will not be issued

Once a Dispute Notice is issued by the tribunal, they will serve it on the respondent if:

a) the applicant has provided the name and address information required for service by ordinary mail,

b) the mailing address for the respondent is in Canada, and

c) the respondent is a person, corporation, strata corporation, partnership, society, co-operative association or municipality.

Serving the Respondents
The CRT usually tries to serve respondents by regular mail. If the tribunal advises the applicant that they must serve the Dispute Notice and instructions for response, the applicant must:

a) serve the Dispute Notice and instructions for response on every respondent named in the dispute and not served by the tribunal within 90 days from the day the Dispute Notice is issued by the tribunal,

b) complete the Proof of Service Form and provide it to the tribunal within 90 days from the day the Dispute Notice is issued by the tribunal, and

c) provide any other information or evidence about the Dispute Notice or service process requested by the tribunal

A Dispute Notice can be served on a respondent by e-mail, registered mail requiring signature, or courier delivery requiring a signature, or personal delivery. Notice by e-mail is acceptable proof that the notice requirements are met *only if* the respondent replies to the email, contacts the CRT about the dispute, or confirms receipt of the Dispute Notice in some other way. Additional rules regarding notice delivery can be found here: https://civilresolutionbc.ca/help/how-do-i-serve-a-dispute-notice/.
If you have unsuccessfully tried to deliver a Dispute Notice to a respondent, you should contact the CRT to request an alternative method of delivery.

a) Permitted Methods of Service

Individual Under 19 Years Old
The applicant must provide the Dispute Notice (by any above method) to that respondent's parent or guardian unless the tribunal orders otherwise.

Individuals Over 19 Years Old with Impaired Mental Capacity
If an applicant knows that a respondent has a committee of estate, a representative appointed in a representation agreement, or an attorney appointed in an enduring power of attorney, the applicant must provide the Dispute Notice to that person.

An applicant must also provide the Dispute Notice to the respondent or the person with whom the respondent normally resides, and the Public Guardian and Trustee.

Companies defined by the Business Corporations Act
An applicant can serve these parties through the following methods:

- by registered mail requiring signature, courier delivery requiring a signature or delivery in person to the address shown for the registered office with the Registrar of Companies;
- by delivery in person at the place of business of the company, to a receptionist or a person who appears to manage or control the company's business there; or

- by delivery in-person to a director, officer, liquidator, trustee in bankruptcy or receiver-manager of the company (*Business Corporations Act*, SBC 2002, c 57).

Extraprovincial Corporation defined by the *Business Corporations Act*
An applicant can serve these parties through the following methods:

- by registered mail requiring signature, courier delivery requiring a signature or delivery in person to the address shown for the head office in the office of the Registrar of Companies if that head office is in British Columbia;
- by registered mail requiring signature, courier delivery requiring a signature or delivery in person to the address shown in the office of the Registrar of Companies for any attorney appointed for the extraprovincial company;
- by delivery in person to the place of business of the extraprovincial company, to a receptionist or a person who appears to manage or control the company's business there; or
- by delivery in-person to a director, officer, liquidator, trustee in bankruptcy or receiver-manager of the extraprovincial company (*Business Corporations Act*, SBC 2002, c 57).

Society incorporated under the *Societies Act*
An applicant can serve these parties through the following methods:

- by registered mail requiring signature, courier delivery requiring a signature or delivery in person to the address for service with the Registrar of Companies; or
- by delivery in-person to a director, officer, receiver-manager or liquidator of the society (*Societies Act*, SBC 2015, c. 18, s 252).

Partnerships
An applicant can serve these parties through the following methods:

- by registered mail requiring signature, courier delivery requiring a signature or delivery in-person to a partner; or
- by delivery in person to the partnership's place of business, to a receptionist or to a person who appears to manage or control the partnership's business there.

Any other type of party
Follow the directions provided by the Tribunal.

ICBC (motor vehicle accident-related claims)
An applicant must also provide the Dispute Notice to the Insurance Corporation of British Columbia (ICBC) by:

- sending a copy of the Dispute Notice by registered mail requiring signature, or courier to 800 – 808 Nelson Street, Vancouver, BC V6Z 2H1; or
- delivering a copy of the Dispute Notice in person to an employee at any ICBC claim centre.

b) Negotiation and Facilitation

The purpose of the case management phase is to facilitate an agreement between the parties and to prepare for the tribunal hearing should it be required. The Preparation for Tribunal Hearing phase may be conducted at the same time as the Facilitated Dispute Resolution phase.

A case manager will determine which processes are appropriate for a particular dispute and has the authority to require the parties to participate. They can adjust or modify the facilitation directions at any time during facilitation. Negotiation

and facilitation may be conducted in writing, by telephone, via videoconferencing, via email, via other electronic communication tools, or a combination of these methods. These negotiations will be mediated by the case manager.

The case manager can direct any party in a dispute to provide to the tribunal and to every other party any information and evidence, including explanations of that information or evidence, information about a party's ability to pay an amount reached by agreement or ordered by the tribunal, responses to another party's information and communications, and that party's position on any proposed resolution of a claim in the dispute. During facilitation, the facilitator can refer any matter requiring a decision or order to a tribunal member, including a party's non-compliance with directions. The information shared during facilitated mediation is confidential and is generally not allowed to be included in the Tribunal Decision Plan, unless it is relevant evidence that would be disclosed in any event.

If the parties reach a resolution by agreement on any or all of the claims in their dispute, they can ask the tribunal to make a consent resolution order to make the terms of their agreement an order of the tribunal, and pay the required fee. If the parties agree to resolve some, but not all, claims by agreement, the case manager can record their draft agreement based on the terms agreed upon by the parties, and provide a draft consent resolution order to a tribunal member immediately, or along with the Tribunal Decision Plan.

If the case manager decides the parties cannot resolve their dispute by agreement, they will inform the parties that activities aimed at finding a resolution by agreement are over and ask the applicant to pay the tribunal decision fee. If the applicant does not pay the tribunal decision fee, a respondent can pay it. If no party pays the tribunal decision fee within the time period set by the case manager, the tribunal may refuse to resolve or dismiss the dispute. If a party pays the tribunal decision fee, the process to prepare the dispute for a tribunal decision will begin.

F. Preparation for Tribunal Hearing

If the negotiation and facilitation process does not result in a settlement, the case manager will assist the parties in preparing for adjudication by ensuring the parties understand each other's positions and by directing the exchange of evidence. Generally, this exchange and communication will occur online. To prepare the dispute for a tribunal decision, the case manager can support the parties in identifying and narrowing the claims or issues that will be decided in the tribunal decision process, identifying the facts relevant to resolving the claims or issues in the tribunal decision process, and taking any other steps to prepare for the tribunal decision process.

As well, the case manager will give the parties a Tribunal Decision Plan, which sets out required information, steps, and timelines to prepare the dispute for the tribunal decision process. Parties must include in the Tribunal Decision Plan all relevant evidence they possess regarding their claim, including evidence which does not support their position (*CRTR*, Rule 8.1(1)). Common kinds of evidence include photos or videos, contracts, correspondence regarding the dispute, and statements from witnesses or experts. All evidence and materials relied on must be translated into English (*CRTR*, Rule 1.7(5)). More information about evidence can be found at https://civilresolutionbc.ca/help/what-is-evidence. The CRT has specific rules regarding expert evidence. See **Section XIII.B.: Expert Witnesses**.

For motor vehicle injury claims, pertinent medical information should also be provided. Note that for this class of dispute there are limits on both the amount of expert evidence that can be submitted and the amount of money that the CRT can order one party to reimburse another for fees and expenses. A party wishing to adduce expert evidence to

support a motor vehicle injury claim should consult: https://civilresolutionbc.ca/blog/expert-evidence-and-expenses-in-mva-personal-injury-disputes for more information. For strata disputes, copies of strata meeting minutes and any complain letters and/or bylaw infraction letters should be included in the Tribunal Decision Plan.

Once the case manager has given the Tribunal Decision Plan to the parties, they cannot add any other party or claim without permission from the tribunal. The tribunal may at any time order that a party be added to the dispute and make directions as to the process to be followed.

If a party does not comply with the Tribunal Decision Plan the tribunal may do any of the following:

a) the tribunal can decide the dispute relying only on the information and evidence that was provided in compliance with the Tribunal Decision Plan;
b) the tribunal can dismiss the claims brought by a party that did not comply with the Tribunal Decision Plan; and
c) the tribunal can require the non-complying party to pay to another party any fees and other reasonable expenses that arose as a result of a party's non-compliance with the Tribunal Decision Plan.

Facilitation ends when the case manager determines that the Tribunal Decision Plan is complete.

G. Drafting the Notice of Claim

The Notice of Claim is the document that starts an action in Small Claims Court. The Notice of Claim form is comprised of several sections and each section must be completed. The form can be either typed or handwritten. Hard copies are available from the court registry (see Appendix A: Small Claims Registries) and an electronic copy is available online at http://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms.

Where possible, a claimant should type the Notice of Claim form. You can use the Small Claims Filing Assistant to complete a claim online which may then be printed and submitted in person or by mail: https://justice.gov.bc.ca/FilingAssistant/index.do. A sample Notice of Claim (see Appendix C: Sample Notice of Claim) is attached and may be a helpful guideline when drafting a Notice of Claim.

1. "From"

This section must contain the claimant's full legal name, address, and telephone number. The claimant has an on-going duty to notify the court registry of any changes to the information in this section. Failure to provide the registry with current and accurate contact information may result in the claimant's claim being dismissed and/or the claimant being liable for costs or penalties.

2. "To"

The claimant must list the full legal name, address for service, and, if available, the telephone number for each defendant. If additional space is required, the claimant may attach a piece of paper listing this information for each defendant. Alternatively, the Notice of Claim filing assistant (visit https://justice.gov.bc.ca/FilingAssistant/) can neatly add multiple defendants onto one Notice of Claim form.

Failure to list the proper legal name of a defendant may result in the claimant's claim against that defendant being dismissed or the judgment against that defendant being

unenforceable. If the limitation period has already expired, the claimant may not be able to correct the error (see **Appendix F: Limitation Periods**).

If you are suing a corporation, the corporation's registered name must be listed here. This registered name can be found by completing a company search. A copy of the company search must be included when filing the notice of claim. See **Section II: Other Resources** for how to complete a company search.

3. "What Happened?"

In this section, the claimant must list the facts that support the claimant's cause(s) of action and the damages that the claimant has suffered. The claimant should adhere to the following general rules:

1. Don't plead evidence – state what you will prove, not how you will prove it
2. Don't plead law – unless you have a statutory cause of action
3. Use paragraphs – use one paragraph to state each fact that you will prove - Number each paragraph, beginning at 1
4. Claimant must prove every fact – therefore, stick to material facts (see below)

In this section, one must set out the facts that give rise to the cause of action, and the loss or damage that resulted. This description should be brief but must inform the opposing party of the case to be met and give the judge an outline of what will be argued. A material fact is one that, if established, could affect the outcome of the proceedings. For examples, in the sample Notice of Claim in Appendix C, paragraphs 1-3 detail facts that go towards the existence and terms of the contract. Paragraphs 4-6 detail facts that go towards the claimant's performance of the contract and the defendant's failure to perform. The Notice of Claim (Form 1) has little space for the facts, but the facts can continue onto another piece of paper. The additional facts must be attached to each copy of the Notice of Claim. In general, the pleadings should be brief, complete, and as accurate as possible.

The facts as alleged must give rise to a legal cause of action. For example, if the legal cause of action is a breach of contract: the claimant must show in the facts the existence of the contract, the specific term alleged to have been breached, and the acts of the defendant that constitute that breach. After the facts, state the legal cause of action(s) that entitle you to the relief you are seeking. If there is more than one cause of action, plead the strongest one and plead the other ones in the alternative. For example, in a claim for a bad car repair, a claimant can sue for breach of contract and negligence. A pleading might read: "In addition, or in the alternative, the claimant claims damages as a result of the defendant's negligent repair of the automobile".

The pleadings should describe:

a) the relationship of the parties (e.g., buyer and seller); and
b) the dates, places, and details of amounts, services, or practices involved.

Claimants will usually be bound by the facts in the pleadings. If the facts or legal basis need to be changed, the claimant may be able to amend the Notice of Claim (*SCR,* Rule 8).

When there is more than one defendant, the claimant should make it clear whether their liability is joint, several, or joint and several. This distinction affects the enforcement of a judgment and any subsequent actions arising out of the same cause. Liability stated as joint and several is more inclusive.

If liability is joint, the defendants must be sued as a group; however, the claimant can recover the full amount from any or all of the defendants.

Where liability is several, the claimant can sue any or all of the defendants; however, each defendant is obligated to repay only their own portion of the debt.

Where liability is joint and several, the claimant may sue any or all of the defendants and may recover the full amount from any or all of the defendants. The debtors can then litigate among themselves to apportion the debt between them.

4. "Where?"

The claimant should enter the name of the municipality as well as the province where the cause of action arose. If the cause of action arose outside of British Columbia, the claimant must state in the "What Happened?" section how the court has jurisdiction over the claim (*Dreambank*, supra).

5. "When?"

List the date or dates when the cause(s) of action arose. Unless the date is very clear or the limitation period is about to expire, stating the month and year is sufficient. It is prudent to state the date as follows:

- when the date is known: "On or about August 15, 2012";
- if only the month is known: "In or about August 2012"; or
- if the cause(s) of action arose over time: "From about May 2012 to August 2012".

6. "How Much?"

This is where the claimant describes the remedy. In most cases, this will be an amount of money. However, a claimant may request an alternative remedy. For example, the claimant could request the return of an item or, in the alternative, the value of it, as well as damages. A claimant who wants items returned should consider what condition they will be in and whether they really want them back.

a) Interest

If there is no mention of interest in a contract between the parties, the court will award interest to the successful claimant from the date the cause of action arose until the date of judgment (*Court Order Interest Act*, RSBC 1996, c 79, s 1(1); *Red Back Mining Inc v Geyser Ltd*, 2006 BCSC 1880 (CanLII)). This is called "pre-judgment interest". Interest in a claim for debt is calculated from the date the debt became due and, in a claim for damages, from the date the damages arose.

The court sets the interest rate every six months and publishes a table listing the rates applicable to each six-month period. The Notice of Claim should indicate a claim for "Interest pursuant to the *Court Order Interest Act"* but leave the amount area blank; the registry will calculate the amount according to the table.

NOTE: While a claimant may be paying a higher interest rate on a credit card or loan as a result of the defendant's actions, the claimant is limited to the pre-judgment interest rate set by the court unless the parties have expressly agreed that interest will be paid.

If the parties have agreed on a rate of interest, the Notice of Claim should indicate a claim for contract interest, the applicable interest rate, and the date from which the interest began to accrue. The amount of interest that has accrued up to the date of filing should be included on the Notice of Claim as well as the amount of interest that accrues each day. It is important to note that a claim for contract interest is, in substance, a claim for contractual damages. Accordingly, the claim for contract interest together with the principal amount must be within the Small Claims Court's monetary jurisdiction. If a claim for contract interest has or could cause the total claim to exceed the court's monetary jurisdiction, it would be

prudent to state on the Notice of Claim that the claimant abandons the amount necessary to bring the claim within the Small Claims Court's monetary jurisdiction.

If the parties have agreed that interest will be paid but have not agreed on a rate of interest, the rate of interest is five per cent per annum (*Interest Act*, RSC 1985, c I-15, s 3).

Generally, even if the parties agree to a rate of interest expressed with reference to a period other than one year (e.g., 2% per month), a claimant can only recover a maximum of five per cent per annum unless the contract expressly states a yearly rate or percentage of interest that is equivalent to the other rate (e.g., 24% per annum) (*Interest Act*, RSC 1985, c I-15, s 4).

It is a criminal offence to receive, or enter into an agreement to pay or receive, interest at a rate that exceeds 60% per annum (*Criminal Code*, RSC 1985, c C-46, s 347(1)). Interest has a broad definition and includes fees, fines, penalties, commissions, and other similar charges including costs relating to advancing credit.

If the judgment is not paid immediately, post-judgment interest may be awarded. The court has the discretion to vary the rate of interest or to set a different date from which the interest commences (*Court Order Interest Act*, RSBC 1996, c 79, s 8).

b) Claims between $5,001 – $35,000

In order to sue in Small Claims Court for a claim exceeding $35,000, the claimant must state, "The Claimant abandons the portion of any net judgment that exceeds $35,000" (*SCR*, Rules 1(4) and (5)). At any time prior to trial, the claimant can decide to sue for the full amount and apply to transfer the claim to the Supreme Court of British Columbia (*Der v Giles*, 2003 BCSC 623). Once the trial has been heard, however, the abandonment is likely permanent.

There is an exception to the $35,000 limit. If more than one claimant has filed a Notice of Claim against the same defendant(s) concerning the same event, or, if one claimant has filed Notices of Claim against more than one defendant concerning the same event, the judge may decide each claim separately, even though the total of all the claims (not including interest and expenses) exceeds $35,000 (*SCR*, Rule 7.1(4)). Such claims often have a trial at the same time although the claimant(s) must request this.

Filing Fees
Filing fees are those fees paid to file the Notice of Claim and are either $100 or $156 unless the fees have been waived (BC Reg. 261/93, s 1). Payments can be made with cash, debit card, cheque (including certified cheque), money order, or bank draft. Cheques and money orders should be payable to the Minister of Finance. The registry staff will enter this amount. Filing fees are recoverable if the claimant is successful. (See **Appendix H: Small Claims Court Fees**).

Please note that fees for the CRT are different. (See **Appendix I: Civil Resolution Tribunal Fees**).

Service Fees
Service fees are an estimate of the cost of serving the defendant(s). The amount varies based on the method of service and the number of defendants. For information about the costs, refer to sections 15 and 16 of the *Court Rules Act and Small Claims Act*. The registry staff will enter this amount. Service fees are recoverable if the claimant is successful; however, as the claimed amount is only

an estimate, a judge has discretion to either increase or decrease the allowed service fees.

Other Expenses
Unless a judge or the Registrar orders otherwise, an unsuccessful party **must** pay to the successful party:

- any fees the successful party paid for filing any documents;
- reasonable amounts the successful party paid for serving any documents (Rule 20(2) and;
- any other reasonable charges or expenses directly related to the proceedings (Rule 20(2); *Barry v Rouleau*, [1994] BCJ No. 1212 (QL) (Prov Ct*); Gaudet v Mair*, [1996] BCJ No. 2547 (QL) (Prov Ct); *Johnston v. Morris et al.*, 2004 BCPC 511).

An example of a reasonable expense related to the proceedings is a company search. Another example is costs to purchase cases used in argument (*Faulkner v Sellars* (1998), 9 CCLI (3d) 247 (BC Prov Ct). For additional case examples, please see footnote 72. If such expenses are known at the time of filing, they should be stated on the Notice of Claim. If they occur afterwards, the successful party may request them at the conclusion of the trial.

Although legal fees **cannot** be recovered, legal disbursements may be recoverable if they fit one of the criteria above.

Parties are not compensated for the time they spend preparing for or attending court.

H. Filing a Notice of Claim

1. Cost

The cost to file a notice of claim is $100 if the claim is for $3,000 or less. The cost increases to $156 for claims above $3,000 and up to $35,000. A person who is unable to afford the filing or other fees may apply to the registrar for a fee waiver (*SCR*, Rule 20(1)) by filing an Application to the Registrar and a Statement of Finances. (See **Appendix H: Small Claims Court Fees**).

2. Where to File

A claimant must file the notice of claim (*SCR*, Rule 1(2)) at the Small Claims registry (see Appendix A: Small Claims Registries) nearest to where:

- the defendant lives or carries on business (*DreamBank*); or
- the transaction or event that resulted in the claim took place.

This can sometimes be unclear in the case of contracts that are executed by fax or email or in other claims, such as negligence, where the conduct complained of took place in a number of locations; see DreamBank; *Rudder v Microsoft Corp.*, [1999] 47 CCLT (2d) 168 (ON SC). A claimant may wish to obtain legal advice if there is any uncertainty regarding where to file.

If two different Small Claims registries have jurisdiction, the claimant should choose the one that is most convenient. If the defendant disputes the claimant's choice, the defendant can file an application for change of venue and a judge will decide the most appropriate location.

A company can live in multiple locations including where it is registered, where it carries on business, and where its records are kept (*DreamBank, supra; Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s7).

3. How to File

The claimant must file at least four complete and identical copies of the notice of claim. One copy is for the court, one is for the claimant, one is a service copy, and one is required for **each** defendant.

Once the notice of claim has been filed and stamped by the registry and the fee, unless waived, has been paid, the claimant must, within one year, serve a copy on the defendant.

I. Serving a Notice of Claim

A copy of the filed Notice of Claim **together with a blank Reply form** (available from the registry) must be served on each defendant (*SCR*, Rule 2(1)). A claimant has 12 months from the date of filing to serve the defendants (*SCR*, Rule 2(7)). If more time is required, the claimant can apply to the registrar for an extension (*SCR*, Rules 2(7), 16(2)(a), and 16(3)).

The permissible methods for serving a defendant depend on who the defendant is. The table below sets out how each category of defendant can be served. If a defendant is evading service or, after a diligent search, cannot be found, a claimant may apply to a judge for an order for substitutional service.

Defendant	**Permitted Methods of Service**
Individual Over 19 Years Old	Personal service Registered mail requiring signature to residence (*SCR*, Rule 2(2))
Individual Under 19 Years Old	Personal service on the minor's mother, father, or guardian Personal service on another person as directed by a judge upon application (*SCR*, Rules 2(6) and 18(2))
Individual outside BC	See "Individual Over 19 Years Old" or "Individual Under 19 Years Old" Defendant has 30 days to respond (*SCR*, Rule 3(4))
BC Corporation	Leaving a copy at the **delivery address** for the registered office Registered mail requiring signature to the **mailing address** for the registered office Personal service on a receptionist or manager at the company's place of business Personal service on a director, officer, liquidator, trustee in bankruptcy, or receiver-manager If the company's registered office has been eliminated, as directed by a judge on application (*SCR*, Rule 2(3))
Extraprovincial Corporation	See Rule 2(4)
Unincorporated Company (Proprietorship)	Personal service on proprietor Registered mail requiring signature to proprietor's residence (*SCR*, Rule 2(2))
Unincorporated Company (Partnership)	Personal service on a partner Personal service on a receptionist or manager at the place of business Registered mail requiring signature to a partner's residence (*SCR*, Rule 2(5))
Company outside BC	See Rule 18(6.1)

Strata Corporation	Personal service on a council member Registered mail requiring signature to its most recent mailing address on file in the Land Title Office (*Strata Property Act*, SBC 1998, c 43, s 64)
Society	Personal service on anyone at the address for service Personal service on a director, officer, receiver-manager, or liquidator Registered mail requiring signature to the address for service (*Societies Act*, SBC 2015, c 18; SCR, Rule 18(3))
Unincorporated Association	Personal service on an officer Registered mail requiring signature to the registered office (*SCR*, Rule 18(5))
Incorporated Cooperative Association, Housing Cooperative, Community Service Cooperative	Personal service or by registered mail requiring signature to the registered office of the association (*Cooperative Association Act*, SBC 1999, c 28, s 28)
Trade Union	Leaving with the business agent (*SCR*, Rule 18(5))
Municipality	Personal service on the Clerk, Deputy Clerk, or similar official (*SCR*, Rule 18(1))
ICBC	Personal service on a receptionist at 800 – 808 Nelson Street, Vancouver, BC V6Z 2L5
Estate	Personal service on the administrator, executor, or executrix (*Wills Estate and Succession Act*, SBC 2009, c13, s 61(1))

If a defendant is served incorrectly, a claimant cannot obtain a default order until after the defendant has been properly served. If the defendant has been served incorrectly but files a Reply, the claimant does not have to serve the defendant again.

1. Personal Service

Personal service is effected when the claimant gives the notice of claim and blank reply form to the defendant in a manner that ensures that the nature of the document is brought to the defendant's attention. For example, a Notice of Claim inside an unmarked and sealed envelope or rolled inside of a newspaper is not properly served.

If a defendant knows the nature of the document and has touched it, service has likely been affected. If the defendant knows of the nature of the document and refuses to touch it, the claimant may place it at the defendant's feet.

Personal service can be affected by any adult who is not under a legal disability. A claimant may wish to have a friend or a process server serve the Notice of Claim.

NOTE: Personal service should not be used as a means of intimidating or exacting revenge on a defendant. While it may seem satisfying to personally serve the defendant, alternative methods should be employed if there is a risk of a heated exchange. Such an exchange may lead to physical violence and, in any event, negative encounters in the course of the litigation will be counterproductive to settlement discussions.

2. Registered Mail

Registered mail is a service offered by Canada Post. In order to prove that a document was served by registered mail, a party must either obtain a copy of the signature obtained by Canada Post at the time of delivery or obtain a printout of the delivery confirmation from www.canadapost.ca.

3. Substitutional (Alternate) Service

When, after a diligent search, a claimant is unable to locate the defendant or the defendant is evading service, the claimant can apply to the registrar (*SCR*, Rule 16(3)) for permission to serve the defendant in another manner (*SCR*, Rules 16(2)(e) and 18(8)). An affidavit and a hearing are not required.

The alternate method of service that is ordered should be sufficient to bring the claim to the defendant's attention. Suggested methods of alternate service include a Facebook message, email, facsimile, regular mail, and text message to all known addresses and phone numbers for the defendant. Other methods include posting the Notice of Claim on the defendant's door. The claimant should seek an order requiring service in as many methods as will be reasonably necessary to make the defendant aware of the claim.

J. Amending a Notice of Claim

Anything in a Notice of Claim, reply or other document that has been filed by a party may be changed by that party (a) without any permission, before a settlement conference, mediation, trial conference or trial, whichever comes *first*; or (b) with the permission of a judge (*SCR*, Rule 8(1)). If permission of a judge is required, the applicant must complete an application form (Form 16), follow the instructions on the form, and file it at the registry with the amended document (Rule 8).

If a Notice of Claim or Reply is being amended, changes must be underlined, initialled and dated on the revised document and, if there is an order authorizing the change, the document must contain a reference to it (Rule 8(2)). The document must then be filed at the registry and served again on each party to the claim before any further steps are made in the claim. The other party may then change their reply through the same process if they choose, or they may rely on their original reply.

A party wishing to withdraw their claim or other filed document may do so at any time before a judgement has been rendered or formal acceptance of offer has been filed, by filing a copy of a notice of withdrawal at the registry and serving the notice on the parties that were served with the document that is being withdrawn (Rule 8(4)).

K. Proof of Service

Once the defendant has been served, the claimant can complete a Certificate of Service and file it along with the service copy of the Notice of Claim. Find Form 4 at https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms. If there are multiple defendants, the claimant should file a Certificate of Service and service copy of the Notice of Claim for each defendant. Other methods of written proof of service are available (*SCR*, Rule 18(14)). Rarely, a judge may allow sworn oral evidence of personal service (*SCR*, Rule 18(15)).

If the defendant files a reply, it is assumed that the claimant served the claim and therefore the claimant is not required to file a Certificate of Service. Therefore, if the claimant expects the defendant to reply there is no need to immediately file a Certificate of Service. If the defendant does not reply, a Certificate of Service must be filed before seeking a default judgement.

VI. RESPONDING TO A CLAIM

If a party is responding to a claim over $5,000, proceed to **Section VI.B.: Possible Strategies**.

A. Civil Resolution Tribunal

A respondent who receives a Dispute Notice must within 14 days of receiving it (or if notice was provided outside British Columbia within 30 days) complete a Dispute Response Form and provide the Dispute Response Form to the tribunal. CRT forms can be accessed on their website at: https://civilresolutionbc.ca/resources/forms/.

A party named as a respondent to a dispute who fails to respond to a properly delivered Dispute Notice by the date shown on the notice is in default. If every respondent is in default, an applicant may request a default decision and order from the tribunal. However, if there are multiple respondents and only one respondent is in default, the entire dispute is assigned to a tribunal member, unless it is otherwise settled in the facilitation process. See **Section VII. Default Order** for more information

However, if a respondent requires more time to respond, they can request an extension from the tribunal before the deadline to respond (*CRTR*, Rule 3.1(2)).

B. Possible Strategies

1. Notify Insurance Company

Many insurance policies cover more liabilities than their description would suggest. For example, many homeowner and tenant policies cover claims for damages or injuries arising from acts or omissions by the insured anywhere in the world. An example would be accidentally tripping a person who falls and breaks their hip. These policies also tend to include most people in the household including young children and foster children.

There are many exclusions and limitations, but it is always best to let the insurer know about a claim against you. If the insurer will defend you, the insurer will bear the costs of your defence and possibly pay any damages that are awarded.

NOTE: It is important to contact the insurer as soon as possible and to not make any admissions that might jeopardise a defence. Failing to promptly notify the insurer, admitting liability, or taking steps in the claim may permit the insurer to deny coverage.

2. Apologising

Many lawsuits arise or continue because a wrongdoer has not apologised to the party who was wronged. In BC, a person may apologise for a wrongful act or failure to act without the apology becoming an admission of liability (*Apology Act*, SBC 2006, c 19, 2(1) and (2)). A sincere apology can often avert litigation or form an important foundation for a settlement. Under the act, such an apology may include words that admit or imply an admission of fault.

Admissions of fact: however, at common law, the courts and CRT have drawn a distinction between apologies covered by the the *Apology Act*, (admissions of fault or liability) and those that include admissions of fact. The courts have found that factual admissions ("I am sorry, *I was looking at my phone while driving*") can be considered by decision makers. Explanatory statements that accompany apologies such as " I was in a hurry" or "I was angry" go beyond admissions of fault excluded by the *Apology Act* and may be accepted into evidence (*Schnipper v. Nadeau*, 2022 BCCRT 173)

3. Option to Pay all or Part

If a defendant pays the entire amount of the claim directly to the claimant, the defendant need not file a Reply (*SCR*, Rule 3(1)(a)). The defendant should retain a receipt as proof of payment and request that the claimant withdraw the claim. Only the claimant may withdraw a claim and, if a withdrawal is filed, all parties who were served with the Notice of Claim must be served with a copy of the withdrawal.

When considering this option, a defendant should be aware of other possible problems aside from the lawsuit. For example, if the claimant has placed derogatory information on the defendant's credit file, the defendant should ask the claimant to remove this negative information as part of the settlement. If the claimant is unwilling to remove the information, the defendant may still settle the claim but may find it difficult or impossible to remove the information from the credit file. The process for removing incorrect information from a person's credit file is outside the scope of this guide.

In Small Claims Court, if the entire claim is admitted but the defendant requires time to pay or only part of a claim is admitted (*SCR*, Rule 3(1)(b) or (c)), the defendant must file a reply form but may also propose a payment schedule for what is admitted. The payment schedule must detail how the amount will be paid back. The Registrar can order the proposed payment schedule if the claimant consents to it (*SCR*, Rule 11(10)(b)). If the claimant does not consent to the proposal or no payment schedule is proposed, the claimant may summon the defendant to a payment hearing (See **Section XVI: Enforcing a Judgment**).Similarily, at the CRT the defendant may file a response admitting the claim which the applicant can enforce through Small Claims Court.

4. Option to Oppose all or Part

A defendant who opposes all or part of the claim (*SCR*, Rule 3(1)(d)) must file a Reply form detailing what is admitted, what is opposed, or what is outside the defendant's knowledge. The reply should list reasons for any parts that are opposed. A defendant should avoid a general denial of the entire claim; a detailed examination of each element of the claim and why the defendant thinks it is wrong is much more persuasive.

Before deciding to oppose a claim, a defendant should ensure that there is a legal defence to the claim. A penalty can apply if a defendant proceeds through trial with a Reply that is bound to fail (*SCR*, Rule 20(5)).

5. Counterclaim

If the defendant wants the court to order something other than a dismissal of the claimant's claim, the defendant will need a counterclaim. A counterclaim means that, in addition to the defendant disputing the claim, the defendant seeks to sue the claimant. A defendant may file a counterclaim whether they agree or disagree with all or a part of the claim (*SCR*, Rule 4(1)). Counterclaims are claims filed by the defendant against the applicant; they are generally based on the same underlying facts as the applicant's claim. A defendant who wishes to counterclaim should review **Section III: Do You Have a Claim?** and **Section IV: Choosing the Proper Forum**. A counterclaim is essentially a Notice of Claim but on a different form. A counterclaim must have a legal basis; there are penalties for proceeding to trial if there is no reasonable basis for success (*SCR*, Rule 20(5)).

Although a defendant can start a separate claim either in Small Claims Court or another forum instead of counterclaiming, if the parties and witnesses are the same and the claim falls within the Small Claims Court jurisdiction, it is preferable that the defendant file a counterclaim so that both matters are heard together. If the defendant has commenced an action in a different forum, this should be mentioned in the Reply (see

https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/courthouse-services/court-files-records/court-forms/small-claims/scl002.pdf)

A counterclaim is made on the Reply form by following the instructions and paying the required fee. The fee for a counterclaim is the same as the fee for a Notice of Claim and is eligible for a fee waiver. For more information about making a counterclaim, refer to Guide #2 - Making a claim for proceedings initiated in small claims court (https://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/how-to-guides/making-a-claim) and Guide #3 - Making a claim for proceedings previously initiated before the CRT (https://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/how-to-guides/making-a-claim-crt).

The relationship between a counterclaim and a set-off should be noted. A counterclaim is a standalone claim and it is possible for a defendant to succeed on a counterclaim even when the claimant has been unsuccessful on the primary claim. A set-off on the other hand, is a defence. If the defendant is successful, a set-off will reduce the amount payable to the claimant. In other words, the amount that the defendant claims the claimant owes them is subtracted from any damages claimed by the claimant. If the claimant is unsuccessful, the set-off defence does not apply; the defendant is not awarded the amount of the set-off. For more information about set-offs see: *Jamieson v. Loureiro*, 2010 BCCA 52.

a) Filing and Services

As the counterclaim is on the reply form, it must be filed at the same time as the Reply (*SCR*, Rule 4(1) and (2)), within the time allowed for filing a Reply (*SCR*, Rule 3(4)), and at the registry where the notice of claim was filed (*SCR*, Rule 3(3)).
The registry will serve the claimant with the reply and counterclaim within 21 days of it being filed (*SCR*, Rules 3(5) and 4(2)).

b) Replying to a Counterclaim

Once served, the claimant (now a defendant by counterclaim) must follow the same rules as replying to a Notice of Claim (*SCR*, Rule 5(7)). The claimant should review this section of the guide in its entirety.

6. Counterclaims through the Civil Resolution Tribunal

Once served, the applicant (now a respondent by counterclaim) must follow the same rules as replying to a Dispute Notice (*SCR*, Rule 1.1(32) and (33)). The applicant should review this section of the guide in its entirety.

Unless the tribunal directs otherwise, within 30 days of providing the Dispute Response Form to the tribunal, a respondent can request a "counterclaim" by:

- indicating in a completed Dispute Response Form that the respondent will add at least one claim in the dispute;
- completing an Additional Claim Form;
- providing the Additional Claim Form to the tribunal; and
- paying the required fee to add a claim (see **Appendix I: Civil Resolution Tribunal Fees**). Note: a counterclaim is not necessary if the respondent is only claiming fees and dispute-related expenses; a respondent may claim fees and dispute related expenses in the tribunal decision process.

7. Third Party

If the defendant who has filed a Reply believes that a person or legal entity other than the claimant should pay all or part of the claim, they may make a claim against that other party by completing a Third Party Notice. Find Form 3 at https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms. If a settlement conference, mediation session, or a trial conference has not been held, leave of the court is not required (*SCR*, Rule 5(1)(a)). If any of these have been held, the defendant must apply to the court for an order permitting the counterclaim to be filed against the third party (*SCR*, Rule 5(1)(b)).

A third party claim is different from a claim against the incorrect defendant. A third party claim is made when a defendant believes that a third party should reimburse them if they are found to be liable to the claimant. For example, if a defendant is sued for a credit card debt, the defendant may third party the cardholder who actually spent the money giving rise to the debt.

A defendant who wishes to issue a third party notice should review **Section III. Do You Have A Claim?** and **Section IV. Choosing The Proper Forum**. A third party claim is essentially a Notice of Claim but on a different form. A third party claim must have a legal basis and there are penalties for proceeding to trial if there is no reasonable basis for success.

a) Filing and Service

To start a third party claim, the defendant must complete Form 3 and file it in the same registry where the Notice of Claim was filed (*SCR*, Rule 5(2)). The defendant must serve the third party with a copy of the filed Form 3, a blank Reply form, a copy of the Notice of Claim, a copy of the Reply to the Notice of Claim, and all of the documents and notices the other party would have received (*SCR*, Rule 5(3)); all of these documents are to be served in the same manner as serving a Notice of Claim (*SCR*, Rule 5(4)). A defendant has only **30 days** after filing to serve the third party and file a certificate of service at the registry (*SCR*, Rule 5(5)); find Form 4 https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms. If the third party is not served and the certificate of service is not filed within 30 days, the third party notice expires but can be renewed (*SCR*, Rule 5(5.1)).

The registry will serve the claimant with the third party notice within 21 days of its being filed (*SCR*, Rule 5(6)).

b) Replying to a Third Party Notice

Once served, a third party must follow the same rules as replying to a Notice of Claim (*SCR*, Rule 5(7)). The third party should review this section of the guide in its entirety.

c) Adding a Third Party through the Civil Resolution Tribunal

A respondent who believes another person is responsible for a claim can request resolution of the claim against that other person, often referred to as a "third party claim" by:

i. indicating in a completed Dispute Response Form that the respondent will apply for dispute resolution against the other person,
ii. completing an Additional Claim Form identifying the other person and describing any claims against that person,
iii. providing the Additional Claim Form to the tribunal, and
iv. paying the required fee to add a claim (see **Appendix I: Civil Resolution Tribunal Fees**).

A respondent who adds an additional party to a claim must complete the steps for applying for CRT Dispute Resolution, except the time frame for providing notice to the other person is 30 days instead of 90 days and the original Dispute Notice and any responses must be provided along with the Dispute Notice for the additional claims.

C. Time Limits

Unless a defendant pays the amount of the claim directly to the claimant and asks the claimant to withdraw the claim, the defendant must file a Reply within the required time limit (*SCR*, Rule 3(1)(a)). **Failure to file a Reply may result in the claimant obtaining a Default Order.**

The time limits for filing a Reply are generally the same whether the defendant is:

- a defendant served with a Notice of Claim (*SCR*, Rule 3(4));
- the claimant served with a counterclaim (Rule 4(3.1)(b)); or
- a third party served with a third party notice (Rule 5(7)).

If the defendant was served inside British Columbia, a Reply must be filed within **14 days after service** (Rule 3(4)). If the defendant was served outside British Columbia, a Reply must be filed within **30 days after service** (Rule 3(4)). The one exception is where the claimant is served with a counterclaim. The claimant is required to file a Reply within 14 days after service even if the claimant is served outside British Columbia.

A. D. Defences

For every cause of action, there is usually at least one possible defence. Some of the more common defences are listed here however a defendant should research the claimant's cause of action or obtain legal advice to determine which defences might be applicable.

1. Common Defences

a) Contributory Negligence

Where a claimant was careless **and** this carelessness contributed to the damages suffered, a defendant might plead the defence of contributory negligence. An example is where a claimant tripped over a bag that was carelessly left in a walkway. The defendant may be liable but the claimant may have been contributorily negligent for failing to keep watch for obstacles.

A defendant who believes that the claimant was partially at fault should state in the reply: "The defendant pleads and relies upon the *Negligence Act" (Negligence Act*, RSBC 1996, c 333). Each party is liable to the degree that they are at fault; where degrees of fault cannot be determined, liability is apportioned equally (s 1(2)).

b) Consent

Where, by express or implied agreement, a claimant knew of and understood the risk they were incurring and voluntarily assumed that risk, the defendant will not be liable. Because voluntary assumption of risk is a complete defence, it is very difficult to prove.

c) Criminality

Where a claimant stands to profit from criminal behaviour or compensation would amount to an avoidance or disavowal of a criminal sanction, the claimant cannot recover damages (*Hall v Hebert*, [1993] 2 SCR 159; *British Columbia v Zastowny*, [2008] 1 SCR 27). This is narrowly construed and a claimant should read *Hall v Hebert* before relying upon it.

d) Inevitable Accident

If the defendant can show that the accident could not have been prevented even if the defendant had exercised reasonable care, the defendant cannot be liable (*Rintoul v X-Ray and Radium Industries Ltd*, [1956] SCR 674). For this defence to apply, the defendant must have had no control over whatever occurred and its effect could not have been avoided even with the best effort and skill.

e) Illegality

If the claimant is suing on a contract that is illegal (i.e., it calls for a criminal interest rate), the defendant may ask the court to decline to enforce the illegal provision or possibly the entire contract. Depending on the circumstances, the court may consider modifying the contract to remove the illegality.

f) Self Defence

If the defendant honestly and reasonably believed that an assault or battery was imminent and used reasonable force to repel or prevent the assault or battery, the defendant may not be liable for any injuries or damage suffered by the claimant as a result (*R. v Lavallee*, [1990] 1 SCR 852; *Wackett v Calder*, [1965] 51 D.L.R. (2d) 598; *Brown v Wilson*, [1975] BCJ No. 1177; *R v Beckford*, [1987] All ER 425).

g) Defence of Third Parties

The same general rules apply as for self-defence provided that the use of force is reasonable (*Gambriell v Caparelli*, [1974] 54 D.L.R. (3d) 661).

h) Mitigation

A claimant who alleges to have suffered harm has a duty to take reasonable actions to minimize their losses. This applies, for instance, if the claimant was injured in a personal injury matter or if the claimant suffered harm from a breach of contract. The defendant bears the onus of proving on a balance of probabilities that the claimant did not mitigate their losses. If it is found that the claimant did not take reasonable steps to minimize their losses, such as seeking medical care to assist with their injuries in a personal injury action, then the damages payable to the claimant may be reduced.

D. Filing a Reply

The Reply must be filed in the same registry where the Notice of Claim was filed (*SCR*, Rule 3(3)). There is a filing fee except where the defendant admits and agrees to pay the entire claim or obtains a fee waiver. Generally, a Reply cannot be filed late, however, in practice, the registry may allow a Reply to be filed late as long as the registrar has not made a default order or set a date for a hearing (*SCR*, Rule 3(4)(b)).

E. Serving a Reply

The registry will serve the Reply and Counterclaim, if any, on each of the other parties within 21 days (*SCR*, Rules 3(5) and 5(6)).

VII. DEFAULT ORDER

A default order is a court or tribunal decision that is available to apply for when the opposing party fails to respond to the dispute notice or Notice of Claim by the required date. However, it is good practice to take extra measures to ensure the opposing party is truly electing not to respond. Even if a default order is granted, the party in default generally has a low bar to meet when applying to cancel it.

A. Civil Resolution Tribunal

A party named as a respondent to a dispute who fails to respond to a properly delivered Dispute Notice by the date shown on the notice is in default. If every respondent is in default, an applicant may request a default decision and order from the tribunal by:

a) providing a completed Request for Default Decision and Order form together with supporting evidence of dispute-related expenses and the value of non-debt claims,
b) if the applicant served the Dispute Notice, providing a completed Proof of Notice Form, and
c) paying the required fee to request a default decision and order.

If the applicant's claim is for something other than debt, they will need to provide evidence to support their requested remedy. An applicant must request a default decision within 21 days of being requested to do so, or the tribunal may dismiss or refuse to resolve the application.

1. Requesting Cancellation of a Default Order

If the party in default seeks to cancel the default order, they may request the cancellation of a default order by

a) completing and submitting the Request for Cancellation of Final Decision or Dismissal Form,
b) providing a completed Dispute Response Form if one has not already been provided to the tribunal,
c) providing evidence to support their request,
d) paying the required fee, and
e) following any other directions provided by the tribunal.

The tribunal will consider several factors when deciding whether to cancel a default order. In reviewing the request for cancellation, a tribunal member will consider whether

- the requesting party's failure to respond to the Dispute Notice or to comply with the Act, rules or regulations was willful or deliberate,
- the request was made as soon as reasonably possible after the requesting party learned about the decision and order, and
- the Dispute Response Form shows a defence that has merit or is at least worth investigating, in the case of a default decision (*Civil Resolution Tribunal Rules* (effective May 1, 2022), Rule 10.2).

The requesting party has the burden to provide sufficient evidence on the factors above (see Section VI.D: Defences).

B. Small Claims Court

If a defendant chooses not to defend a claim, the claimant wins by default. Evidence of the defendant's choice not to defend the claim can include the defendant's failure to file a Reply.

A claimant should not rush to the registry to file an Application for Default Order. Sometimes, a defendant may have a good reason for not filing a Reply on time and may have a defence to the claim that the court wishes to explore. In these circumstances, the court will set aside the default order and the claim will proceed in the ordinary course. A default order should only be used where the defendant has truly elected not to defend against the claim.

Where a defendant has not filed a Reply on time, it is a good idea to contact the defendant to determine why the Reply was not filed and to advise the defendant that a default order will be obtained if a Reply is not filed.

A default order can also be obtained if a defendant does not attend a mediation session (*SCR*, Rules 7.3(40)). If the defendant does not attend a settlement conference (*SCR*, Rule 7(17)), trial conference (*SCR*, Rule 7.5(17)), or trial (*SCR*, Rules 9.1(26), 9.2(11), and 10(9)). The judge or justice of the peace may grant a payment order instead of the claimant having to apply for a default order.

1. Requesting a Default Order

Unless the defendant was served outside of British Columbia or the court has otherwise ordered, a defendant has fourteen full days to file a Reply. This does not include the date the Notice of Claim was served and the date that the Application for Default Order is filed (*SCR*, Rule 17(10)).

To apply for a default order, the claimant must file Form 5 and pay a $25.00 fee. A certificate of service (Form 4) confirming service of the Notice of Claim and blank Reply form must also be in the file (*SCR*, Rule 6(3)). The claimant can ask the court to add the $25.00 fee plus reasonable expenses to the amount of the default judgment.

If the claim is for a specific amount of debt, the registrar will grant a default order for the amount claimed plus expenses and interest (*SCR*, Rule 6(4)). If the claim is for anything other than a specific amount of debt, the registrar will schedule a hearing before a judge (*SCR*, Rule 6(5)). Once a hearing has been set, the defendant cannot file a Reply without a judge's permission (*SCR*, Rule 6(8)). If another defendant to the claim has filed a Reply and a date has been set for either a settlement conference, trial conference, or trial, the hearing will be held on that date (*SCR*, Rule 6(6)). A defendant who has not filed a reply is not entitled to notice of the hearing date (*SCR*, Rule 6(7)).

At a hearing, a default order is not automatic. The claimant must give evidence and produce documents to prove the amount owing as well as convince the court that the default order should be granted (*SCR*, Rule 6(9)).

2. Setting Aside Default Orders and Reinstating Claims

If a party obtains a default order or a hearing for assessment of damages is scheduled, the party in default can apply to a judge to set aside the default order (*SCR*, Rules 16(6)(j) and 17(2)) and file a Reply (*SCR*, Rule 16(6)(d)). The party in default must file the application as soon as possible upon learning of the default order and attach to the application an affidavit containing:

- a reasonable explanation for not filing a Reply (or failing to attend a mediation session, trial conference, or trial);
- a reasonable explanation of any delay in filing the application;
- the facts supporting the claim, counterclaim, or defence; and

- why permitting the order would be in the interests of justice (*SCR*, Rule 17(2)(b); *Miracle Feeds v D. & H. Enterprises Ltd.*, [1979] 10 BCLR 58 (Co. Ct.) [*Miracle Feeds*]; *Nichol v Nichol*, 2015 BCCA 278).

The party in default must show that:

- the failure to file a Reply (or failure to attend a mediation session) was not wilful, deliberate or blameworthy (*Miracle Feeds*, *supra*; *Hubbard v Acheson*, 2008 BCSC 970; *McEvoy v McEachnie*, 2008 BCSC 1273; *Anderson v T.D. Bank*, 70 BCLR 267 (BC CA); *Doyle v Lunny Design and Production Group Inc.*, 2009 BCSC 925; and *Innovest Development Corp. (Receiver of) v Lim*, 1999 CanLII 5356 (BCSC));
- the application to set aside the default order was made as soon as reasonably possible after obtaining knowledge of the default order (*Camnex Marketing Inc. v Aberdeen Financial Group*, 2009 BCSC 763);
- if there has been a delay in applying to set aside the default order, an explanation for the delay; and
- if the party in default is the defendant, there is a defence that is not bound to fail.

Where the party in default is a defendant who has not filed a Reply, the defendant should also bring copies of the Reply and be prepared to file them immediately if the judge grants permission.

If the default order is cancelled, the party who obtained it may ask the court to award reasonable expenses that relate to the cancellation. These expenses may include the cost of filing the application for default order, significant travelling expenses, and lost wages that were incurred only as a result of the cancellation.

VIII. HOW YOUR CLAIM WILL PROCEED

A number of pilot projects have been implemented at some of the busier court registries. To anticipate how your claim will proceed and which rules will apply, find the court location where your claim will be heard and the heading that best describes your claim.

The length of time it will take to resolve a claim depends on:

1. how busy the court is (to find out how far ahead dates are being set at your location, ask at the court registry or the Judicial Case Manager);
2. how much time the trial is expected to take (a matter requiring a full day trial will often be scheduled later than a simpler matter);
3. whether the documents can be served without delay;
4. whether the claim is disputed; and
5. the number of applications filed.

Complying with all of the court's rules and orders will ensure that the claim is heard as soon as possible.

A. Vancouver (Robson Square) and Richmond Small Claims

1. Claims of $5,001 - $10,000

Where the claim and counterclaim, if any, are each $5,001 – $10,000 (not including interest or expenses) and are not for either personal injury or financial debt, a simplified trial will be scheduled pursuant to Rule 9.1 of the *SCR*. The trial is conducted without complying with formal rules of procedure and evidence, but if the adjudicator (meaning a judge or a justice of the peace) deems it appropriate, the adjudicator may conduct the trial with a formal examination and cross-examination of parties and witnesses.

Before the trial begins, an adjudicator will (a) review the documents filed by the parties; (b) determine whether the parties are able to settle the matter; and (c) if the parties are able to settle the matter, make a payment order or other appropriate order in the terms agreed to by the parties (*SCR,* Rule 9.1(21)).

Except for the trial, no other court appearances are typically required. The trial will be held for one hour before an adjudicator. To learn who decides the case and how long it takes, visit http://www.smallclaimsbc.ca/trial/simplified-trial.

2. Claims Exceeding $10,000

Any party to a proceeding where the amount of a claim, counterclaim, or third party notice exceeds $10,000 **may** initiate Rule 7.3 of the *SCR* which is mediation. Following mediation or if mediation is not initiated, a settlement conference will be scheduled unless the claim relates to a motor vehicle accident where only liability for property damage is disputed. The final step is a trial pursuant to Rule 10 of the *SCR.*

3. Claims for Financial Debt

If the claimant or counterclaimant **is in the business** of lending money or extending credit and is suing for a debt that arises from a loan or the extension of credit, a summary trial will be scheduled pursuant to Rule 9.2 of the *SCR*; except for the trial, no other court appearances are typically required. The trial will be held before a judge and usually takes fewer than 30 minutes to complete.

B. Surrey, North Vancouver, Victoria, or Nanaimo

1. Claims of $10,000 or Less

After a Notice of Claim is filed and the opposing party responds, a settlement conference will be scheduled unless the claim relates to a motor vehicle accident where only liability for property damage is disputed. The final step is a trial pursuant to Rule 10 of the *SCR*.

2. Claims Exceeding $10,000

Any party to a proceeding where the amount of a claim, counterclaim, or third party notice exceeds $10,000 **may** initiate Rule 7.3 of the *SCR* which is mediation. Following mediation or if mediation is not initiated, a settlement conference will be scheduled unless the claim relates to a motor vehicle accident where only liability for property damage is disputed. The final step is a trial pursuant to Rule 10 of the *SCR*.

C. Other Registries

1. Claims of $10,000 or Less

If the claim does not proceed by way of Simplified Trials (Rule 9.1) or if the claim does not proceed by way of Summary Trial for Financial Debt, a settlement conference will be scheduled unless the claim relates to a motor vehicle accident where only liability for property damage is disputed (*SCR*, Rule 7(2)(b)). If the claim relates to a motor vehicle accident where only liability for property damage is disputed, the registrar will set the claim for trial.

All parties must attend the settlement conference and must be prepared. If a settlement conference cannot be conducted properly because a party is not prepared for it, a judge may order that unprepared party to pay the reasonable expenses of the other parties *(SCR*, Rule 7(4), (5) & (6)). At a settlement conference, a judge may: (a) mediate any disputed issues; (b) decide on issues that do not require evidence; (c) make a payment order or other appropriate order in the terms agreed by the parties; (d) order that the claim be set for trial conference; (e) set at trial date if a trial is necessary; (f) order a party disclose documents and records; (g) if damage to property is involved in the dispute, order a party to permit a person chosen by another party to examine the property damage; (h) dismiss any claims; and (i) make any other orders (*SCR*, Rule 7(14)).

The final step is a trial pursuant to Rule 10.

2. Claims Between $10,000 and $35,000

Any party to a proceeding where the amount of a claim, counterclaim, or third party notice is between $10,000 and $35,000 may initiate Rule 7.3 of the *SCR* mediation by filing a "Notice to Mediate for Claims Between $10,000 and $35,000" (Form 29) and delivering a copy of that filed notice to every other party named on a notice of claim, reply or third party notice that has been filed in the proceeding.

If the parties do not reach an agreement at mediation on all issues, the registrar may set (a) a settlement conference (if a settlement conference has not been completed); (b) a trial (if a settlement conference has been completed); or c) a trial conference (*SCR*, Rule 7.3(53)).

D. Civil Resolution Tribunal ($5,000 or less)

The CRT is designed to facilitate dispute resolution in a way that is accessible, fast, economical and flexible. It relies heavily on electronic communication tools. It focuses on resolution by agreement of the parties first, and by the tribunal's binding decisions if no agreement is reached.

Adjudicators will decide most cases by reviewing the evidence and arguments submitted through the tribunal's online tools. Tribunal members may have their staff request additional evidence via email; however, this is rare. The tribunal member may order a telephone, video or face-to-face hearing if warranted by the circumstances. Again, this is rare, and if parties seek such hearing, they should request it during their case management. The tribunal can determine all matters relating to the tribunal decision process and, if at any time before or during the tribunal decision process, the tribunal decides that a dispute requires further facilitation, it can refer the dispute back to facilitation, and suspend the tribunal decision process until a facilitator refers the dispute back to the tribunal decision process.

The tribunal member also has the authority to refuse to resolve the dispute on the basis of jurisdiction, or for reasons outlined in section 11 of the *Civil Resolution Tribunal Act*.

IX. PRE-TRIAL APPLICATIONS AND PROCEDURES

A. Offers to Settle

If a party rejects a formal offer to settle, the trial judge may order a party who rejected an offer to settle to pay a penalty of up to 20 per cent of the offer (*SCR*, Rule 10.1(7)). However, this rule does not apply if the proceeding was started by a notice of CRT claim, or if Rule 9.1 of the *Small Claims Rules* applies (the amount of the claim and counterclaim, if any, are each for $10,000 or less, and if one of the following applies: the claim was started after November 25, 2007 and is for $5,000 or less; the claim was started on or after June 1, 2017 and is for more than $5,000; or the claim is part of a proceeding started by a notice of a CRT claim and, on or after June 1, 2017) (*SCR*, Rule 9.1(2)). This can happen in one of two ways. If the defendant makes an offer that the claimant rejects and, at trial, the claimant is awarded an amount including interest and expenses that is equal to or less than the offer, the penalty is deducted (*SCR*, Rule 10.1(5)). If the claimant makes an offer the defendant rejects, and the claimant is awarded a sum including interest and expenses that equals or exceeds the claimant's offer, the penalty is added onto the award (*SCR*, Rule 10.1(6)).

A formal offer to settle must be made using Form 18 and served on the party to whom the offer is made as if it were a Notice of Claim (*SCR*, Rule 10.1(1)). The party offering to settle may also fill out a certificate of service. Neither the Form 18 nor the certificate of service is filed at the registry; if the party making the offer wishes the penalties to apply, these forms should be presented to a judge for the first time *after* a decision is given at trial.

A formal offer must be made within 30 days of the conclusion of a:

- settlement conference;
- trial conference.

Once the first of any of these hearings has concluded and 30 days have elapsed, formal offers cannot be made without the permission of a judge (*SCR*, Rule 10.1(2)). However, the parties can continue to make and accept informal offers to settle up until the point a judgement is rendered.

Parties making formal offers are not permitted to shorten the acceptance deadline on Form 18 - the allotted period for accepting a formal offer is 30 days after the date the offer was served.

B. Withdrawing a Claim, Counterclaim, Reply, or Third Party Notice

A party may withdraw a claim, counterclaim, reply, or third party notice at any time (*SCR*, Rule 8(4)). To do so, a party must file a notice of withdrawal (*SCR*, Rule 8(4)(a), Form scl019 at the registry and then promptly serve the notice of withdrawal on all parties who had been previously served with the claim, counterclaim, reply, or third party notice (*SCR*, Rule 8(4)(b)). A Notice of Withdrawal may be served by ordinary mail or personal service (*SCR*, Rule 18(12)).

Once a pleading is withdrawn, it cannot be reinstated, used, or relied upon without the permission of a judge (*SCR*, Rules 8(6) and 16(7)).

Withdrawing a claim does **not** result in the dismissal of a counterclaim. The counterclaim may still proceed unless it is also withdrawn (*Ishikawa v Aoki and Japanese Auto Centre Ltd.*, 2002 BCPC 683). In the CRT, a party who wants to withdraw its claim can do so in adherence with the CRT Rules. Before the end of case management, the party can request permission to withdraw the claim (*CRT Rules* (effective May 1, 2021), Rule 6.1). After the dispute has been assigned to a tribunal member, the party must obtain the tribunal member's permission to withdraw its claim. If the party seeks to pursue a withdrawn claim, they must obtain permission of the tribunal. The tribunal will consider many factors, including the reason for the withdrawal, any prejudice to the other parties, expired limitation periods, the tribunal's mandate, and the interests of justice and fairness.

C. *Adjournments and Cancellations*

Once a date for a hearing, settlement conference, or trial has been set, any party can apply for an adjournment or to cancel the hearing (*SCR*, Rule 17(5)).

If seeking an adjournment, try to first obtain the consent of the opposing party prior to applying to a judge. If consent is given, Form 17 must be filed in the registry as soon as possible.

A trial will only be adjourned if a judge is satisfied that it is unavoidable and if an injustice will result to one of the parties if the trial proceeds (*SCR*, Rule 17(5.1)). There is a $100 fee for adjournments where the application is made less than 30 days before a trial and notice of the trial was sent 45 days before the trial's date (*SCR*, Schedule A, Line 14; Rule 17(5.2)). The fee must be paid within 14 days of the granting of the adjournment (*SCR*, Rule 17(5.3)). If a party fails to pay this fee, a judge may dismiss the claim, strike out the reply, or make any order they deem fair (*SCR*, Rule 17(5.4)).

D. *Pre-Judgment Garnishment*

If the claim is for debt, a "garnishing order before judgment" may be issued at the same time a Notice of Claim is filed. Except for wages and interest, almost any debt can be garnished before a judgment. Since injustice can sometimes occur from the procedure, few garnishing orders are issued before judgment. Practically, the court will grant a garnishing order before judgment in only certain circumstances, for instance where the claimants will be unable to collect if they succeed (*Intrawest Corp. v Gottschalk*, 2004 BCSC 1317).

To obtain a pre-judgment garnishing order, the claimant must file an affidavit stating: if a judgement has been recovered or an order made, that it has been recovered or made, and the amount is unsatisfied; or if a judgement has not been recovered, that an action is pending, the time of its commencement, the nature of the cause of action, the actual amount of the debt, claim or demand, and that it is justly due and owing after making all just discounts. In either case, the claimant must also state: that any other person is indebted or liable to the defendant (the garnishee), the judgement debtor or person liable to satisfy the judgement or order, and is in the jurisdiction of the court; and with reasonable certainty, the place of residence of the garnishee (*Court Order Enforcement Act*, RSBC 1996, c 78, s 3(2)).

If the registry grants the order, the claimant must serve both the garnishee and the defendant. If the garnishee is a bank, the garnishing order must be served on the branch where the account is located (*Bank Act*, SC 1991, c 46, s 462(1)). If the garnishee is a credit union, the order must be served on its head office. A separate order must be obtained for each garnishee. The Garnishee must pay the greater of the amount owed to a Defendant and the amount shown on the garnishing order to the Court Registry. It is extremely important to find out the correct legal name of the Garnishee. This is because if you use the wrong name on the Garnishment documents, the Garnishee can refuse to pay to the Court money owed to the Defendant. If the Garnishee is a company, a search at the BC Corporate Registry Office would be useful.

In some cases of fraud, the Supreme Court can issue a Mareva Injunction freezing the defendant's worldwide assets (*Fernandes v Legacy Financial Systems, Inc.*, 2020 BCSC 885); this prevents the defendant from dealing with **any** of their assets in any way.

It is also possible to apply for a "garnishing order before action". This is a separate form from a pre-judgement garnishment. This form is used before a Notice of Claim has been registered at a Small Claims Court Registry (see http://www.courts.gov.bc.ca/supreme_court/self-represented_litigants/Supreme%20Court%20Document%20Packages/Garnishment%20Package.docx) .

E. *Transfer to Supreme Court*

A judge at the settlement/trial conference, at trial, or after application by a party at any time, **must** transfer a claim to Supreme Court if they are satisfied that the monetary outcome of a claim (not

including interest and expenses) may exceed $35,000 (*SCR*, Rule 7.1(1)). However, the claimant may expressly choose to abandon the amount over $35,000 to keep the action in the Small Claims Court (*SCR*, Rule 7.1(2)). For personal injury claims, a judge must consider medical or other reports filed or brought to the settlement conference by the parties before transferring the claim to Supreme Court (*SCR*, Rule 7.1(3)).

If a counterclaim for more than $35,000 is transferred under this rule, the original claim can still be heard in Small Claims Court if the claim is $35,000 or less (*Shaugnessy v Roth*, 2006 BCCA 547).

F. Amendments

If a party wants the court or tribunal to order something different or in addition to what is in the initiating document, then the party must amend the claim as early in the process as possible. This would occur if, for example, the claimant sought to change the amount of the existing claim. Failure to do so may result in the additional claim not being heard for procedural fairness reasons. Only in extraordinary circumstances will the CRT amend a claim during the decision phase (*CRT Rules* (effective May 1, 2021), Rule 1.19(3)). A party who wants to amend, change, add, or remove anything in a filed document, such as the amount, the name of a party, or a fact, must follow Rule 8 (*Royal Bank of Canada v Olson*, [1990] 44 B.C.L.R. (2d) 87 (BCSC)).

1. Permission to Amend

Anything in any filed document can be changed by the party who filed it. Permission is not required unless **any** of the following has begun:

- a settlement conference;
- a mediation under Rule 7.4;
- a trial conference under Rule 7.5;
- a trial under Rule 9.1; or
- a trial under Rule 9.2 (*SCR*, Rule 8(1)).

If any of these steps have commenced, the party must apply to a judge for permission to amend the document (*SCR*, Rules 8(1)(b) and 16(7)).

2. Amendment Procedure

Changes to the document must then be underlined, initialled and dated (*SCR*, Rule 8(2)). If a judge has allowed the amendment, the document should reference the order. For example, the document might state, "Amended Pursuant to Rule 8(1)(b) by Order of the Honourable Judge Law on September 1, 2012." For the specific amending procedure for the CRT, see Rule 1.19 of the CRT Rules.

3. Serving Amendments

Before taking any other step in the claim, the party must serve a copy of the amended document on each party to the claim (*SCR*, Rule 8(3)).

If the amended document is a Notice of Claim, Counterclaim, or Third Party Notice, it must be served as if it was an original. If the amended document is a Reply or some other document, it can be sent by regular mail to the address of each party to the action (*SCR*, Rule 18(12)(b)). Documents served by ordinary mail are presumed served 14 days after being mailed unless there is evidence to the contrary (*SCR*, Rule 18(13)). While proof of service is not required, it is recommended.

4. Responding to Amendments

Generally, there is no obligation to respond to an amendment (*SCR*, Rule 8(3.1)). For example, a defendant's current Reply may satisfactorily respond to a minor change to a Notice of Claim. If the defendant chooses not to file an amended Reply, the claimant cannot apply for a default order (*SCR*, Rule 8(3.2)).

A party who wishes to respond to an amendment should follow the same procedures outlined in this section.

X. MEDIATION

Mediation is available through the courts for claims between $10,000 and $35,000. Rule 7.2, which mandated mediation for certain claims under $10,000, was repealed effective January 1st, 2019. Parties are also free to mediate on their own. See **Section IV. D.: Alternative Dispute Resolution**.

A. Claims Between $10,000 - $35,000 – Rule 7.3

This rule applies to all registries except the Vancouver (Robson Square) court registry. See **Section IV. D.: Alternative Dispute Resolution**.

Any party to a proceeding where the amount of a claim, counterclaim, or third party notice exceeds $10,000 **may** initiate mediation by filing a Notice to Mediate (Form 29) and serving it on every other party to the proceeding (*SCR*, Rules 7.3(2), (3), and (5)). If mediation has been scheduled all parties must select a mediator, attend the mediation, and agree on the amount that each party will pay towards the costs of mediation (*SCR*, Rules 7.3(9)-(10), (17)-(23), and (33)-(36)). By default, the parties will split the cost (*SCR*, Rule 7.3(35)(b)(i)). If the parties cannot agree on a mediator, the BC Mediator Roster Society may be requested to appoint one (*SCR*, Rule 7.3(10)).

Parties must attend the mediation session in person unless an application is filed for adjournment (*SCR*, Rule 7.3(30)), for a teleconference (Rule 7.3(25)), or for an exemption (Rule 7.3(28)). If a party fails to attend as required, the mediator will fill out a verification of default (Form 31) and provide it to the party in attendance (*SCR*, Rule 7.3(37). After filing Form 31, the party in attendance can file a request for judgment or dismissal (Form 23) which dismisses the claim if the party not attending is the claimant or gives a default order if the party not attending is the defendant (*SCR*, Rules 7.3(38)-(41)).

B. Preparing for Mediation

Preparation is essential in order to achieve the most from mediation. Each party should provide copies of relevant documents to the other party. Parties have the ability to create their own resolution and should consider creative settlement options. Mediation is not a forum to assess blame or resolve legal questions; it is designed to end the dispute in a manner that satisfactorily addresses the interests, legal and otherwise, of each party. It is important to listen to the other party expressing their interests and allow the mediator to help the parties resolve the dispute.

C. Procedure

Mediation is a flexible process that allows the mediator to help the parties achieve a settlement. A mediator is not necessarily a lawyer but is a skilled, experienced professional. Although mediation sessions can vary with respect to the process, there are generally some standard steps that are followed.

All parties and representatives will be seated at a table with one to three mediators. The mediators will describe the mediation process, and ask each person attending to sign an Agreement to Mediate. This must be signed in order for the mediation process to proceed. The Agreement to Mediate form includes a confidentiality clause (any information disclosed in the session that is not otherwise discoverable is inadmissible and mediators cannot be called to testify in later proceedings) and ensures that the parties present have full authority to settle the case.

After signing the Agreement to Mediate, both parties will have a short time to tell their story. The mediator will summarize the key points in dispute. Once the main issues are identified, the mediator will look for common interests in an attempt to assist parties to resolve the dispute. The mediator will assist the parties to negotiate and reach an amicable resolution. During the process, it is not uncommon for a mediator to have a private conference with each party.

If the parties agree to a resolution, the mediator will draft an Agreement setting out the terms of the resolution. It may include monetary and non-monetary terms, and may have a non-compliance clause setting out consequences for failing to fulfil the obligations set out in the Agreement. If there

is no non-compliance clause, the default amount will be the original amount claimed in the action. The mediator will file the agreement in the Small Claims Court registry after each party signs the agreement.

XI. SETTLEMENT CONFERENCE

Settlement conferences are held in all court registries and are mandatory for all cases barring select exceptions: i) motor vehicle accident cases where only liability for property damage is disputed, and ii) simplified or summary trials (under now Rule 9.1 and 9.2) unless a judge orders otherwise.

A. Who Must/Can Attend

The registry will serve the parties by mail with a Notice of Settlement Conference (Form 6) at least 14 days in advance (*SCR*, Rule 7(3)).

All parties, with or without legal representation, must attend the settlement conference, although there is are exceptions for: claims resulting from a motor vehicle accident, the defendant is disputing the amount of the claim but not liability, and a person appointed by ICBC attends instead of the defendant (*SCR*, Rule 7(4)). If a party is not an individual (i.e., a company), someone who has authority to settle the claim for the company must attend (*Kamloops Dental Centre v Mcmillan*, [1996] 28 BCLR (3d) 60 (BCSC)). If a party sends a lawyer or articled student and does not attend personally or send a company representative, that party will be deemed to have not attended the settlement conference. A party may appear by telephone if an application is made to and approved by the Registrar prior to the date set for the conference (*SCR*, Rule 16(2)(c.1)). If a party does not attend or does not have full authority to settle, the judge can dismiss a claim, grant a payment order, or make any other appropriate order (*SCR*, Rules 7(17)). If a party attends but is unprepared, a judge may order the unprepared party to pay the other party's reasonable costs (*SCR*, Rules 7(6) and 20(6)).

Witnesses cannot attend except in unusual and exceptional cases. A witness who does attend the settlement conference will usually be asked to wait outside.

Support persons: unless a judge orders or directs otherwise, a litigant may have a support person with them at any small claims or family proceeding except for settlement/trial conferences, family case conferences, or family settlement conferences. Litigants must inform the judge before the commencement of the proceedings that a support person is present with them. Rules for the conduct and role of support persons can be found in NP11.

(https://www.provincialcourt.bc.ca/downloads/Practice%20Directions/NP11.pdf)

B. What to Bring

Each party must bring to a settlement conference **all relevant documents and reports** whether the party intends to use them at trial or not (*SCR*, Rule 7(5)). Documents include any contracts, invoices, bills of sale, business records, photographs.

Each party should prepare a brief chronological summary of its case and support it with evidence. Claimants should bring more than one written estimate or quote, if there is a large sum of money involved.

Pursuant to Small Claims Rule 7(5), each party must submit all relevant documents and reports to the registry at least 14 days before the date of the conference, and serve all relevant documents and reports on the other parties at least 7 days before the settlement conference.

Note: settlement conferences held via Teams may have different deadlines for filing and service, as well as restrictions on the length of documents. Parties should adhere to the specific requirements set out in the notice of settlement/trial conference and any relevant orders made in respect to the conference. For more information on requirements for documents for use in settlement conferences and small claims proceedings generally, see:

https://www.provincialcourt.bc.ca/downloads/Practice%20Directions/SMCL03.pdf

Note: subject to specific orders for disclosure, the content of a party's settlement conference documents is somewhat a matter of discretion. However, providing a convincing array of evidence can be strategically beneficial in presenting a strong case and a greater incentive to the other parties to settle.

If the claim is for personal injury, the claimant must file and serve a Form 7 certificate of readiness and required records before a settlement conference will be scheduled (*SCR*, Rule 7(5)). There can be consequences for failing to file the certificate of readiness on time (*SCR*, Rule 7(5)).

C. What May Happen

A settlement conference is scheduled for 30 to 60 minutes before a judge in a conference room at the courthouse. The judge at the settlement/trial conference will not be the judge at trial, if a trial is necessary. The parties will sit at a table with the judge. The judge will say a few words and ask each party to give a brief summary of their case. The claimant generally goes first. The judge may then lead both the claimant and defendant into a discussion on what, if anything, the parties can agree on. If the parties agree on the final result, the judge will make the order. However, the parties may agree on some issues and leave issues in dispute to be resolved at trial. The judge will assess how much time is required for trial.

A judge at a settlement conference may make any order for the just, speedy, and inexpensive resolution of the claim (*SCR*, Rule 7(14)). This includes mediating and making orders regarding admissibility of evidence, inspections of evidence, or production of evidence to the other party. The judge may also dismiss a claim that discloses no triable issue, is without reasonable grounds, is frivolous, or is an abuse of the court's process (*SCR*, Rule 7(14)((i); *Belanger v AT&T Canada Inc*., [1994] BCJ No. 2792; *Cohen v Kirkpatrick*, 1993 CanLII 2059 (BCSC); and *Artisan Floor Co. v Lam*, [1993] 76 BCLR (2d) 384 (BCSC)). Examples include claims that are outside the court's jurisdiction, where the claimant presents no evidence, or where the limitation period at the date of filing the Notice of Claim had expired. A judge cannot dismiss a case at the settlement conference on the basis of issues relating to the credibility of witnesses or evidence.

A judge may also order that multiple claims be heard at the same time, or consolidated into one claim (*Schab v Active Bailiff Service Ltd*., [1993] BCJ No. 2936). The distinction is important. Claims heard at the same time may each individually be awarded up to $35,000, while claims which are consolidated into one claim may only be awarded $35,000 combined.

Any agreement valid under contract law can result in a binding settlement. Agreements entered into by lawyers with their client's knowledge and consent are binding but can be set aside in some circumstances (*Harvey v British Columbia Corps of Commissionaires*, 2002 BCPC 69).

If all claims are not settled, the parties should acquire a record of the settlement conference, which may outline all of the issues in the case, all admissions, the number of witnesses, the anticipated length of the trial, and anything that must be disclosed.

NOTE: If the settlement pertains to an action against a lawyer for which a complaint has been filed with the Law Society, a party cannot use complaint withdrawal as a bargaining technique; it is improper during settlement negotiations to offer to withdraw a complaint against a lawyer as a part of the settlement (*Gord Hill Log Homes Ltd. v Cancedar Log Homes*, 2006 BCPC 480).

D. Disclosure

Trial by ambush is not permitted. Each party is entitled to know the evidence for and against its position. If the parties cannot reach a settlement, the focus will turn to trial preparation. The judge at a settlement conference has the power to order production of documents and evidence. Each party should attend the settlement conference with a list of documents and evidence that is believed to be in the possession of the other party.

A judge will order the parties to exchange copies of all documents or allow for their inspection before trial. Disclosure must be timely (*Golden Capital Securities Ltd. v Holmes*, 2002 BCSC 516). These documents should be compiled in a tabbed binder for easy reference at trial.

Each party must be prepared to disclose the name of each witness that that party intends to call, indicate what evidence each witness will give, and provide a time estimate. If expert evidence will be used, it is helpful if a written report (or at least a draft copy) is available for the settlement conference. If an expert report is not available, parties will be ordered to exchange those reports

prior to trial. There is a minimum deadline of 30 days before trial (*SCR*, Rules 10(3) and (4)); however, the judge at the settlement conference can be asked to change the time limits.

If a party does not comply with a disclosure order, a judge may adjourn the trial, the settlement conference, or both, order that party to pay expenses, order the trial to proceed without allowing that evidence to be used, or dismiss the action.

NOTE: For case law relating to the disclosure of medical documents and ethical obligations of physicians to their patients see *Cunningham v Slubowski*, 2003 BCSC 1854.

NOTE: For case law on obtaining disclosure from the Crown (e.g., from a related criminal case) in a civil case see *Huang (litigation guardian of) v Sadler*, [2006] BCJ No. 758 (BCSC) and *Wong v Antunes*, 2008 BCSC 1739.

NOTE: For case law pertaining to the admissibility of evidence obtained through electronic surveillance (e.g., recording telephone conversations and videotaping) and whether it will be considered a violation of the *Privacy Act*, RSBC 1996, c 373, see *Watts v Klaemt*, 2007 BCSC 662. For case law on obtaining evidence from third parties see *Lewis v Frye*, 2007 BCSC 89.

A judge may also order the exchange of all case law prior to the trial date.

Parties should consider writing to the other side after the settlement conference to confirm the deadline, the documents required, and remedies that will be pursued if there is no disclosure. When sending documents, it is important to include a list or outline of what material is enclosed.

E. Enforcing a Settlement Agreement

If an agreement reached at a settlement conference includes payment, and if a party does not comply, the agreement can be cancelled (*SCR*, Rule 7(20)). After filing an affidavit describing the non-compliance, the person entitled to payment may file a payment order for either the amount agreed to by the parties as the default amount and noted on the record as the default amount endorsed by the judge at the settlement conference or the full amount of the original claim if there was no default amount endorsed by the judge.

XII. TRIAL/PRE-TRIAL CONFERENCES

A. Trial Conference

A trial conference only applies to claims at the Vancouver (Robson Square) registry. Parties should see **Section XI: Settlement Conference** for information regarding the purpose of, preparation for, and conduct of a trial conference. A trial conference is similar to a settlement conference with a few notable exceptions, such as:

- the focus will be on trial preparation rather than on settlement
- a party does not have to attend if a lawyer, articling student, or other representative attends on that party's behalf (*SCR*, Rule 7.5(12));
- a Trial Statement (Form 33) must be filed at least 14 days before the trial conference and served on all other parties at least 7 days before the trial conference (*SCR*, Rules 7.5(9) and (10));
    - The trial statement form must include 4 sections: a statement of facts, amount claimed and calculation of the amount, a witness list, and the documents intended to be relied on at trial
- a certificate of readiness is not required as it will have been provided prior to Rule 7.4 mediation;
- the judge may require the parties to jointly retain an expert (*SCR*, Rule 7.5(14)(e)(ii)); and the judge may give a non-binding opinion regarding the probable outcome of the trial (*SCR*, Rule 7.5(14)(j)).

There may be consequences for failing to file and serve the Trial Statement on time (*SCR*, Rule 20(6); *Yewchuk v Cleland*, 2002 BCPC 200; *Irving v Irving*, [1982] 6 WWR 193 (BCCA); and *Busse v Robinson Morelli Chertkow*, [1999] BCJ No. 1101 (BCCA)). The Registrar must serve a Notice of Trial Conference (Form 32) at least 30 days prior to the date set for the conference. A judge may make any order for the just, speedy, and inexpensive resolution of the claim including those enumerated in Rule 7.5(14).

B. Pre-Trial Conference

At most registries, a pre-trial conference will be scheduled for claims with trials that are scheduled to be longer than one half-day. In many ways, this is similar to a settlement conference. There are basically no rules for pre-trial conferences. The general purpose is to ensure that the parties are prepared for trial, that all orders have been complied with, that all disclosure has been made, and that all witnesses will attend the trial. The judge will try to narrow the number of witnesses to reduce court time. In practice, it is a good idea to review the witnesses on your list and be prepared to address whether the evidence that each witness will give is redundant or conflicts with any rule of evidence. One of the more common issues that arises is hearsay. In addition, the judge will review the admissibility of documentary evidence, particularly that of written evidence. The judge will also ensure that the matter falls within the jurisdictional limits of the Small Claims Court and that the claim is not beyond its limitation period. Finally, even at this late date, the judge will encourage the claimants and defendants to settle the matter. The parties may receive an order allowing another 30 days after the pre-trial conference to serve a formal settlement offer to the opposing party. The offer to settle must be made according to Rule 10.1 and penalties may apply to parties who refuse the formal offer to settle. For example, if the court after trial grants the claimant a sum that is equal to or less than the defendant's formal settlement offer, the claimant can be ordered to pay the defendant a penalty of up to 20 per cent of the settlement offer.

It is not uncommon for judges at a pre-trial conference to decide the case based on the law without hearing any evidence. Some consider this to be an improper use of pre-trial conferences. However, as stated above, there are no rules governing pre-trial conferences so you should be aware of this going into a pre-trial conference.

XIII. PREPARATION FOR TRIAL

Many, if not most, litigants find trials to be extremely unnerving. While a small claims trial is not predictable, preparing well in advance can help a party to avoid surprises, present a more compelling case, and alleviate fears about the process.

It is important to consider the merits of a claim before proceeding to trial. If there is no reasonable or admissible evidence, the claim is bound to fail (i.e.,, a statute prohibits recovery), or a limitation period has passed, the judge may impose a penalty. A penalty of up to 10 per cent of the amount of the claim may be imposed if a party proceeds to trial without any reasonable basis for success (*SCR*, Rule 20(5)).

A. Trial Binder

A tabbed trial binder helps a party to effectively present its case at trial. A suggested format is:

Tab l: Opening Statement: a brief summary of the issues in the case.

Tab 2: Pleadings: all filed documents in chronological order with a list or index.

Tab 3: Orders: all court orders that have been made.

Tab 4: Claimant's Case: anticipated evidence of the claimant and claimant's witnesses, including reminders for introduction of exhibits and blank pages for taking notes of the cross-examination.

Tab 5: Defendant's Case: blank pages for notes of the direct examination of defendant and defendant's witnesses and anticipated cross-examination questions.

Tab 6: Closing Arguments/Submissions: brief review of the evidence, suggested ways to reconcile conflicts in the evidence, a review of only the most persuasive case law and its application to the facts.

Tab 7: Case Law: prepare three copies of each case relied on (for you, the judge, and the opposing party). Carefully scrutinize the need for multiple cases to support your argument and limit yourself to as few as possible.

Tab 8: Exhibits: you will need the original (the exhibit) and three copies (for you, the judge, and the opposing party). You need to be able to prove when, why, and by whom the exhibit was created, and also be able to argue why it is relevant (i.e., document plan or photograph).

Tab 9: Miscellaneous: any additional documents, notes, lists, and correspondence.

B. Expert Witnesses

Expert witness testimony is not admissible unless their expertise and special knowledge are: (1) **necessary** for the court to understand the issues (i.e., the subject matter of the dispute is outside the knowledge of an ordinary person) (*R. v Mohan*, [1994] 2 SCR 9) or (2) provides useful **context** to difficult evidence for the benefit of the trier of fact *Anderson v Canada* (Attorney General), 2015 CarswellNfld 381 (NLTD)).

Whether expert evidence is necessary is a contextual consideration and it can sometimes be unclear when it is required; however, it can be very important as a failure to provide expert evidence when it is required can result in the failure of a party's claim. If you are unsure about whether you need expert evidence for your claim, seek legal advice.

Expert evidence is generally required to establish the standard of care of a professional, such as a contractor. The main exceptions to this rule are when the professional's work was obviously substandard or when the issue is not technical (*Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196).

The expert's testimony cannot include the expert's assessment of the credibility of either the claimant or the defendant (*Movahed v Leung*, [1998] BCJ No. 1210; *Brough v Richmond*, 2003 BCSC 512; and *Campbell v Sveinungsen*, 2008 BCSC 381). Expert witness testimony is

inadmissible if it relates to issues that the court is capable of understanding and analysing without assistance (*Sengbusch v Priest*, [1987] 14 BCLR (2d) 26 (BCSC)).

For more information on expert testimony, see the Provincial Court's Small Claims Guide (https://www.provincialcourt.bc.ca/downloads/smallclaims/Small%20Claims%20Guide.pdf). Expert evidence is addressed on pages 11-13 and sample expert reports are provided on pages 56-60 and 65-66.

1. Small Claims

Evidence may be given by an expert at trial or through a written report. An expert report must be the opinion of only **one** person. Written reports or a notice of expert testimony must be served at least 30 days before trial (*SCR*, Rules 10(3) and (4)).

An expert witness report should include the resume or qualifications of the expert, a brief discussion of the facts of the case supporting the opinion or conclusion, the opinion or conclusion itself, and what was done to arrive at that conclusion.

An exception to the "in-person" rule for expert witnesses is permitted for estimates and quotes. A party may bring a written estimate for the repair of damage or a written estimate of the property value and present it as evidence at trial without calling the person who gave the estimate or quote. Parties should obtain more than one estimate or quote, especially if the sum of money involved is large. Estimates of repairs or value of property are not considered to be expert evidence (SCR, Rule 10(8)), but must be served on all other parties at least 14 days before trial.

If the claimant does not serve the estimate in time, they can ask the trial judge for permission to present it anyway at trial. The claimant may or may not get permission to do so. The other party may ask for a trial adjournment to obtain their own estimate or quote. If the adjournment is granted, the claimant could be penalised and ordered to pay the other party's expenses.

2. Civil Resolution Tribunal

Experts giving evidence at a CRT hearing are there only to assist the tribunal and should not advocate for a particular side or party (*CRTR*, Rule 8.3(7)). Expert evidence may only be relied on if the party relying on it provides it to all other parties, unless the tribunal decides otherwise, by the deadline set by the case manager(*CRTR*, Rule 8.3(1)). In addition, the person providing it must provide their qualifications and it must be accepted by the tribunal as qualified by education, training, or experience to give that opinion (*CRTR*, Rules 8.3(2) and (3)).

The case manager may require that a partyproviding written expert opinion evidence also provide a copy of the expert's invoice and any correspondence relating to the requested opinion to every party(*CRTR*, Rule 8.3(4)) by a certain date. The tribunal can direct one or more parties to obtain expert opinion evidence and decide how the cost for these witnesses will be borne (*CRTR*, Rules 8.3 (5) and (6)).

For motor vehicle injury claims, the tribunal will determine whether additional expert evidence is reasonably necessary and proportionate through a consideration of factors which include:

- The type of bodily injury or injuries;
- The nature of the claim to be decided by the tribunal;
- The other evidence available;
- The amount claimed;
- The timeliness of the request, and

- Any other factors the tribunal considers appropriate (*CRTR*, Rule 8.4(1)).

In addition, for disputes filed under the CRT's motor vehicle injury jurisdiction, the tribunal may order an independent medical examination on its own behest or at the request of one of the parties (*CRTR*, Rule 8.5(1)). A party who cannot afford to pay the cost of obtaining expert evidence in a motor vehicle injury dispute can ask that the tribunal order another party to pay, although this is contingent on the other party's ability to pay and the likelihood that the requesting party's claim will be successful (*CRTR*, Rule 8.6).

C. Witness Preparation

For Small Claims trials, a party should review the evidence of its witnesses at least one week before trial and confirm the witnesses' attendance. Witnesses should understand how a trial is conducted, the role of a witness, and the requirement that witnesses tell the truth.

CRT disputes on the other hand, are almost always done in writing. Therefore, witnesses should provide signed statements setting out their evidence.

1. Ensuring Attendance

Each party must ensure that its witnesses will attend court. If a party is not absolutely certain that a witness will attend, the witness should be personally served with Form 8: Summons to a Witness together with reasonable estimated travelling expense at least 7 days before the witness is required to appear (*SCR*, Rules 9(1)-(3)). The minimum travelling expenses must cover round-trip, economy fare such as bus fare to and from the court. While lost salary and other expenses do not have to be paid, a party should be reasonable and generous if possible to avoid making a witness bear the cost of litigation.

If a witness who has been served with a summons does not appear at trial, the summoning party may ask the judge for an adjournment or a warrant of arrest (Form 9; *SCR*, Rules 9(7) and (14)).

2. Telling the Truth

Giving evidence in court is a solemn and serious affair. Lying to the court can be a criminal offence and result in imprisonment. A witness must be well prepared to give evidence.

To emphasise the formality of the proceeding, witnesses must either swear an oath to or solemnly affirm that they will tell the truth. Sworn and affirmed testimony are equally regarded; the choice of whether to swear or affirm is the witness'.

Swearing an oath involves the witness placing their right hand on a religious text and swearing to tell the truth with reference to their chosen religion. While the bible is the default, several religious texts are available if pre-arranged with the court. The standard oath, "Do you swear that the evidence you are about to give the court, in this case, shall be the truth, the whole truth and nothing but the truth, so help you God?", can be modified according to religious preference.

A witness who does not want to swear a religious oath should give a solemn affirmation. The wording of the solemn affirmation is: "Do you solemnly affirm that the evidence you are about to give the court, in this case, shall be the truth, the whole truth and nothing but the truth?".

A witness does not need to know the details of each party's position. If a witness has been told the merits and legal arguments of each side, there is a risk that the witness may advocate for a party by including arguments while testifying. Such conduct is not

persuasive, suggests that the witness may be biased, and may undermine the witness' credibility.

3. Arranging an Interpreter

Trials and hearings are conducted in English. If a party or the party's witness does not speak English, the party must arrange for an interpreter to be present. There is a list of interpreters available from the court registry however the court does not certify interpreters (*Sandhu v British Columbia*, 2013 BCCA 88). A party may use any person who is competent to reliably, accurately, and competently translate what is said in court; the judge has, however, discretion to reject the party's choice of interpreter.

An interpreter should be prepared to testify as to their experience and training. An interpreter who is related to a party may be rejected on the basis of potential bias and an interpreter who is inexperienced or untrained may be rejected on the basis of incompetence. If a party does not arrange an interpreter for a hearing or if the court rejects the interpreter, the party may be liable for a penalty and the reasonable costs of the other party. The party requiring an interpreter should ask the judge at the settlement or trial conference to decide whether the chosen interpreter is acceptable.

The party requiring the interpreter is responsible for the costs of the interpreter; these costs can be, however, recovered if the party is successful at trial.

4. General Advice for Witnesses

- Discuss whether the witness will swear or affirm their testimony.
- The microphones in court do not amplify; they are for recording purposes only. Face the judge when testifying and speak slowly, clearly, and loudly enough for the judge to hear.
- Witnesses should wear appropriate business attire.
- Witnesses should never guess, assume, or argue with the judge or one of the lawyers.
- If a lawyer or other party says, "Objection", or the judge starts speaking, the witness should stop testifying and wait for the judge's instructions.
- On direct examination, the witness should answer questions fully.
- On cross-examination, the witness should answer as briefly and succinctly as possible.

D. Documentary Evidence

Each party should have the original and three copies of each document to be entered as an exhibit. The original will be marked as an exhibit and the other three are for the judge, the opposing party, and you to work from during the trial. Keep track of the exhibits and always refer to them by the correct number.

Before a document can be marked as an exhibit, it must be authenticated. The witness must identify its origins and that it is a true copy. Give the original document and a copy to the clerk and ask the clerk to show the original to the witness. Ask the witness to identify it: "I'm showing you a letter dated…", "Do you recognize it?", "Is this your signature?" or "Is it addressed to you?" When the witness has identified its origins and there are no objections, ask the judge to accept it as an exhibit: "May this be marked exhibit #1?"

Unless the court orders otherwise, Affidavits and Exhibits in small claims proceedings must be no longer than 25 pages in total, cannot be provided on a USB stick or other electronic data storage

device, including a video or audio file. For more rules on the content and format of documentary evidence, see https://www.provincialcourt.bc.ca/downloads/Practice%20Directions/SMCL03.pdf.

NOTE: In exceptional circumstances, the judge may permit a witness to provide evidence by affidavit rather than testifying at trial (*Withler and Fitzsimonds v Attorney General (Canada)*, 2005 BCSC 1044 at para 18; and *Sangha v Reliance*, 2011 BCSC 371).

NOTE: A judge may examine and compare headshots or handwriting, but should only place very limited weight on their own judgement in these situations (*R. v Nikolovski*, [1996] 141 DLR (4th) 647 (SCC); and *R. v Abdi*, [1997] 34 OR (3d) 499 (Ont CA)).

The CRT decides whether the hearing is held in writing, orally, or a combination of the two (*CRT Rules* (effective May 1, 2021), Rules 9.1). CRT disputes are almost always done in writing. As such, evidence rules differ from those at Court. Refer to Part 8 of the CRT Rules for information about evidence: https://civilresolutionbc.ca/resources/rules-and-policies/

XIV. TRIAL

A trial is often very difficult, stressful, and unpredictable. If possible, it is generally in the best interests of all parties to settle. However, if the matter cannot be resolved at the settlement/trial conference, a trial will be scheduled (*SCR*, Rule 10). The notice of trial will be sent by mail to the parties' address on file. If a claimant does not attend the trial, the claim will be dismissed. If a defendant or third party does not attend, the claim will be allowed and judgment granted against the absent party.

Statements made by the claimants or the defendants at the settlement/trial conference are protected by settlement privilege and **cannot be used at trial**. A statement made during the settlement/trial conference is **not** admissible in cross-examination. Also, the judge at the settlement/trial conference will not be the trial judge. This allows the parties to discuss without fear that their statements will be used against them at trial.

Parties should remember that settlement is possible at any time before the judge decides the case. This includes after evidence and arguments are heard at trial.

Parties should watch at least one trial in order to familiarise themselves with the correct procedure.

A. Simplified Trial for Claims: $5,001 - $10,000

Vancouver (Robson Square) and Richmond hold simplified trials pursuant to Rule 9.1. Simplified trials are set for one hour before an adjudicator. An adjudicator will usually be a justice of the peace but may occasionally be a judge. A justice of the peace adjudicator is referred to as "Your Worship". Simplified trials are held in the evening in Vancouver and during the day in Richmond.

The parties must each file a Trial Statement (Form 33) at least 14 days before the trial date and serve each other party at least 7 days before the trial (*SCR*, Rules 9.1(17) and (18)). There are penalties for failing to comply with these timelines (Rule 9.1(19)).The trial does not need to comply with formal rules of procedure and evidence (*SCR*, Rule 9.1(20)). The adjudicator will ask questions and control the proceedings to stay within the one-hour timeframe.

B. Summary Trial for Financial Debt

At the Vancouver (Robson Square) registry, financial debt claims will be set for a half-hour summary trial before a judge. Financial debt claims are claims in which one of the parties is in the business of loaning money or extending credit. Often, little in the way of defence can be offered in situations of financial debt and the summary trial may in some ways come to resemble a payment hearing. Where a defence with some merit is advanced, the judge may send the claim to mediation, order a trial conference, or order a traditional trial (*SCR*, Rule 9.2(13)). The judge may conduct the trial without complying with the formal rules of evidence or procedure (Rule 9.2(9)). Note the rules requiring early disclosure of all relevant documents (Rules 9.2(7) and (8)).

C. Regular Trial

Rule 10 trials are held at all registries and are the most common form of small claims trial.

1. Courtroom Etiquette

- Be on time. If you are late, apologize and be prepared to give an excellent explanation.
- Introduce yourself and state your name clearly. Remember to spell your surname for the record.
- Use simple words; do not use "legalese".
- Do not speak directly with opposing parties. Make submissions only to the judge and have them ask questions to the opposing party.

- Never call witnesses by their given name. Use Mr., Ms., Miss,Mrs., or their preferred title, followed by their last name.
- A judge of the Provincial Court is referred to as "Your Honour" and the clerk is referred to as "Madame Clerk" or "Mister Clerk". When referring to another party, use Mr., Ms., Miss, or Mrs. followed by their last name or refer to them according to their status in the claim (e.g., the defendant).
- Generally, you should limit objections to issues that are of central importance to your case. If you have an objection, stand up quickly and say "objection". The judge will acknowledge you and may ask for the reason you are objecting.

2. Court Room Layout

The judge's bench is usually elevated above the rest of the court so the judge has a good view of the proceedings. The litigants' table is in front of the judge, and the parties will come and sit there when their case is called. Often there is a raised lectern to hold papers when a litigant stands to ask questions. The court clerk's table is beside the witness box and between the litigants' table and the judge's bench. The witness box will be on either the judge's left or right. The public gallery will fill up the remaining part of the courtroom. Parties will wait in the gallery until their case is called.

There will be microphones throughout. They do not amplify your voice and are for recording purposes only. **Speak at a moderate speed and project your voice.**

3. Check-In Procedure

The court clerk will ask ahead of time for the names of each party and, if they have one, their lawyer. Each party must tell the court clerk or judge as soon as possible if there are any preliminary motions or applications that should be heard first, whether there are any problems with witnesses and possible delays, and whether the number of witnesses or issues has changed from the settlement conference. This will help to determine the schedule of cases for the day and avoid as many delays as possible.

If all matters on a given day proceed to trial, the courtroom will often be overbooked, and you will be asked about the urgency of your trial. If you are not heard first, you may be given a choice to wait and see if another judge becomes available, or to adjourn to another date. If the trial has been previously adjourned, or expert or out of town witnesses are present, the trial will likely be given priority.

When the clerk has everyone organized, the judge will be called in. The clerk will announce, "order in court" and everyone must stand. The judge will bow before sitting and all parties should then bow in return before sitting. Next, the court clerk will call out the name of a case, at which time all parties, in that case, will come to the front and identify themselves to the judge.

4. General Order of Proceedings

a) Preliminary Motions

b) Claimant's Case

- Claimant's opening statement
- Claimant's direct examination of its witnesses
- Defendant's cross-examination of the claimant's witnesses
- Claimant's re-examination of its witnesses
- Defendant's re-examination of the claimant's witnesses

c) Defendant's Case

- Defendant's opening statement
- Defendant's direct examination of its witnesses
- Claimant's cross-examination of the defendant's witnesses
- Defendant's re-examination of its witnesses
- Claimant's re-examination of the defendant's witnesses

d) Closing Arguments

- Claimant's closing
- Defendant's closing
- Claimant's rebuttal

e) Judgment

5. Opening Statement

The claimant's opening statement should summarise the facts surrounding the claim, the legal basis for the claim, and the relief that is sought. The defendant's opening statement should summarise the defendant's version of the facts and the reasons it opposes the claimant's claim or the relief the claimant is seeking.

The opening statement should also alert the court to the types of evidence that will be presented and from whom the court will hear. Opening statements should not contain legal arguments and should be as brief as possible.

If there are witnesses other than the parties, the claimant should ask for an order excluding those witnesses from the courtroom.

6. Direct Examination

When each party is examining its own witness, it is that party's direct examination. The party calling the witness should tell the court whether the witness will swear or affirm their testimony.

Witnesses can be led on matters that are not in issue (i.e., their name, where they work, etc.). Leading questions tend to be ones where the answer is either yes or no. Leading the witness at the start will help the witness to relax.

When asking questions about issues that are in dispute or are related to a party's claim or defence, that party should refrain from suggesting answers to the witness. The witness must be allowed to give evidence in their own words.

A witness must authenticate all documents that are entered into evidence unless the parties have agreed to their authenticity. When authenticating a document, pass three copies to the clerk: one for the judge, one for the court record, and another for the witness. Once the witness has identified the document, it will be entered into evidence and given an exhibit number.

When the other party is conducting its direct examination, take detailed notes for cross-examination and closing arguments.

7. Cross-Examination

Once the direct examination of a witness has concluded, the witness may be cross-examined by the other party. There are two main purposes of cross-examination: to point out inconsistencies and omissions and to introduce facts or conclusions. If the

witness has performed poorly or has not been damaging, it may not be necessary to cross-examine that witness.

Some questions can make the situation worse. A witness should never be asked to repeat what they said during direct examination. This only emphasizes the point and allows the witness to clarify or minimise weaknesses.

At some point in cross-examination, the opposing version of the facts should be put to the witness to allow them to comment. This is known as the rule in *Browne v Dunn* and, if not followed, can result in less weight being placed on a witness' evidence or the recall of adverse witnesses (*Budnark v Sun Life Assurance Co. of Canada*, [1996] 7 WWR 670 (BCCA)).

A witness should not allow the cross-examiner to misconstrue their evidence. If a question is unclear, the witness should ask for clarification. Only the question asked should be answered and additional information should not be volunteered. It is okay if the witness does not know the answer to a question; the witness should not guess the answer.

NOTE: Parties must not speak to their witnesses after cross-examination and before or during re-examination about the evidence or issues in the case without the court's permission (*R. v Montgomery*, [1998] 126 CCC (3d) 251 (BCSC)). If such a discussion occurs, the witness' evidence may be tainted and the court may not believe it.

8. Re-Examination

If new evidence is introduced during cross-examination that was not reasonably anticipated in direct examination or if a witness' answer needs to be clarified or qualified, the judge may give permission to re-examine the witness on the new evidence (*R v Moore*, [1984] OJ No. 134; and *Singh v Saragoca*, 2004 BCSC 1327 at para. 40). During re-examination, leading questions cannot be asked.

9. Closing Arguments

Closing arguments are an opportunity for each party to persuade the judge of its position. Evidence that strengthens the case should be highlighted and evidence that weakens the case should be explained and addressed. The weaknesses should be addressed in the middle of the closing so that the closing may start and finish on positive notes.

It may be necessary to comment on the credibility of witnesses, conflicts in testimony, and the insufficiency of evidence. The comments should be factual and allow the judge to arrive at a conclusion.

It is also important to summarise the relevant law and refer to specific cases that are on point. All case law should have been shared with all other parties well in advance of the trial.

Closing is not an opportunity to introduce new evidence. If something has been omitted, it can only be introduced if the judge grants permission to re-open that party's case.

10. Judgment

When the evidence, submissions, and closing arguments are finished, the judge must give a decision. The judge may give a decision orally at the end of the trial, at a later date, or in writing (*SCR*, Rule 10(11)). The registrar will notify the parties of the date to come back to court for reasons or, if the decision is in writing, when it was filed in the registry (Rules 10(12) and (13)).

When payment from one party to another is part of the judgment, the judge must make a payment order at the end of the trial and ask the debtor whether they need time to pay

(*SCR*, Rules 11(1) and (2)). If the debtor does not require time to pay, the judgment must be paid immediately (Rule 11(7)). If time to pay is needed, the debtor may propose a payment schedule, and if the successful party agrees, the judge may order payment by a certain date or by instalments (Rules 11(2)(b), (3), and (4)). If the creditor does not agree to the debtor's proposal, the judge may order a payment schedule or a payment hearing (Rule 11(5)).

If a payment schedule is not ordered, the debt is payable immediately and the creditor is free to start collection proceedings (Rule 11(7)).

D. CRT – Tribunal Process

Written hearings: the CRT hearing process is different as its hearings are generally done in writing. These hearings occur if the parties do not reach an agreement in the negotiation and facilitation stages.

In preparation for the hearing, a case manager will help each party access the online platform and create a Tribunal Decision Plan. The case managers will guide the parties in the following process:

1. The applicant submits their arguments and their evidence
2. The respondents reply to the arguments and submit their own evidence
3. The applicant gives a final reply to the respondents' arguments
4. The case manager might create a Statement of Facts to help the tribunal member identify what things the participants agree and disagree on

During this process, the case manager will provide parties a timeline for when to provide evidence and arguments to the CRT member. If a party needs more time, they can ask the case manager for extension, which will be subject to the case manager's discretion.

As per the CRT Rules, parties must provide all relevant evidence to the CRT, even if it might hurt their case (*CRT Rules (*effective May 1, 2021), Rule 8.1(1)). In fact, it is an offence under the *Civil Resolution Tribunal Act* to provide false or misleading information to the CRT. Evidence should be relevant and may include contracts, correspondence, photos/videos, and statements; see the CRT webpage "Evidence" at https://civilresolutionbc.ca/help/what-is-evidence/. The total evidence should be presented in a digital copy, ideally, such as a Word document or a PDF. Keep in mind the maximum size per file is 250MB. If you need to upload a larger file, see https://civilresolutionbc.ca/contact-us. If a party seeks to alter the evidence, such as highlighting a pertinent section, the party must add a description of what alterations they made for the tribunal.

Parties will have a chance to respond to evidence and arguments by the opposing party or parties; see the CRT webpage "Get a CRT Decision" at https://civilresolutionbc.ca/tribunal-process/tribunal-decision-process/. Parties seeking to submit expert evidence do so at this time.

The CRT member will then make a decision based on the evidence and arguments. Their decision does not include communications between parties from the negotiation and facilitation phases as those are confidential. The decision is usually available online, in writing. This final decision is binding and enforceable. For more information about the process, visit https://civilresolutionbc.ca/help/what-is-a-final-decision/.

XV. COSTS AND PENALTIES

The court expects parties to act reasonably and follow the rules. Parties who do not follow the rules or are unsuccessful may be liable for certain costs and penalties.

A. Costs to Successful Party

Generally, the unsuccessful party must pay the successful party's expenses (*SCR*, Rule 20(2)). Any reasonable expenses directly related to the proceedings may be claimed. This includes filing fees, costs for document reproduction, and other costs incidental to the trial process.

A list of expenses should be brought to trial and can include expenses incurred due to the lateness, unpreparedness, or general misconduct of a party (*SCR*, Rule 20(6)) as long as the party claiming the expenses has actually spent that amount of money (*Weeks v Ford Credit Canada Ltd*, [1994] BCJ No 1737).

Wages lost for attending court cannot generally be recovered (*McIntosh v De Cotiis Properties Ltd*, 2002 BCPC 57). Where a claim before the small claims court has been withdrawn and there are no appropriate grounds to recall it, neither costs nor penalties can be assessed (*SCR*, Rule 8; *Northwest Waste Systems v Szeto*, 2003 BCPC 431).

In circumstances where the successful party has acted unfairly, withheld information, misled the court, or wasted the court's time, the successful party may have to pay the unsuccessful party's costs (*Tilbert v Jack*, [1995] BCJ No 938).

NOTE: A lawyer's fees cannot generally be claimed as expenses (SCA, s 19(4); and *Weeks v Ford Credit Canada Ltd*., [1994] BCJ No 1737). The only exception is where the contract between the parties requires the reimbursement of legal costs; however, this only applies to legal **fees** that are not related to the claim (*Wetterstrom et al. v Craig Management Enterprises Ltd.*, 2009 BCPC 165).

B. Frivolous Claims

A judge has discretion to order a penalty of up to 10 per cent of the amount claimed or the value of the counterclaim if the party proceeded through trial with no reasonable basis for success (*SCR*, Rule 20(5)).

C. Failure to Settle

If there has been a formal offer to settle under Rule 10.1 that was not accepted, a penalty, in addition to any other expenses or penalties – up to 20 per cent of the amount of the offer to settle – may be imposed if the offer was the same or better than the result at trial.

D. Civil Resolution Tribunal Costs

The CRT can award fees and dispute-related expenses, so long as they are reasonable. If a dispute is not resolved by agreement and a tribunal member makes a final decision, the tribunal member will usually order the unsuccessful party to pay the successful party's tribunal fees and reasonable dispute-related expenses (*CRT Rules* (effective May 1, 2022), Rule 9.5(1)). In addition, one party may have to pay the other party expenses relating to witnesses and summonses, and other reasonable costs paid by the other party (Rule 9.5(2)). It is rare that the CRT would order a party to pay the opposing party's legal fees. In deciding those claims, the CRT will consider a variety of factors including the complexity of the dispute, the degree of involvement by the representative, and whether a party or representative's conduct has caused unnecessary delay or expense (Rule 9.5(3)).

XVI. APPEAL

A. *CRT Small Claims Decisions and Appeals*

A party who is dissatisfied with a ruling can seek judicial review in the Supreme Court of British Columbia. There are various standards of review applicable to different cases (standard of review refers to the level of scrutiny a reviewing court will apply to a decision). The standard of review is variable because courts have struggled with the interpretation of s 58 of the *Administrative Tribunals Act*. For example, the BCSC has ruled that the standard of review for CRT decisions on strata property matters is patent unreasonableness (*The Owners, Strata Plan VR320 v. Day*, 2023 BCSC 364) The Supreme Court of Canada has defined this to apply to decisions that "contain an immediately obvious defect, which is "so flawed that no amount of curial deference can justify letting it stand" and almost borders on the absurd (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52). However, generally speaking, the standard of review for CRT decisions is correctness, unless the issue under review relates to:

- findings of fact, in which case, the finding must either be unreasonable or made without any evidence to support it in order for a reviewing court to reverse it. In such cases, the reviewing court may remit the decision back to the CRT or replace it with the court's own decision ;
- discretionary decisions, in which case, the decision must be arbitrary, made in bad faith, be based entirely or predominantly on irrelevant factors, or fail to comply with a statute in order for a reviewing court to reverse it; or
- natural justice and procedural fairness, which are considered with the tribunal's mandate in mind (*Administrative Tribunals Act*, SBC 2004, c 45, s 58(2)).C

B. *Appealing from Small Claims Court*

Any party to a proceeding may appeal to the Supreme Court an order to allow or dismiss a claim if the judge made the order after a trial (*SCA*, s 5). An appeal must be started within 40 days, beginning on the day after the order of the Provincial Court is made (*SCA*, s 6). A review of the order under appeal may be on questions of fact or law (*SCA*, s 12(a)). A mistake of fact could involve a misunderstanding by the Judge of evidence given by a witness. For example, if a witness reported that a particular event happened and, in the decision, the Judge bases their decision on the fact that event didn't happen, there could be a basis for an appeal. A mistake of law occurs where the Judge makes an error in deciding which law should apply. Not every error made by a Small Claims Court judge will be the basis for a successful appeal. The test which the Supreme Court Judge must apply is called the "clearly wrong test". If the Small Claims Court judge's decision about the facts or the law is not clearly wrong, the appeal will fail. An appeal is usually not a new trial; it will be based on the transcripts of the trial in Small Claims Court. The Supreme Court may, however, exercise its discretion to hear the appeal as a new trial (*SCA*, s 12(b)). No new evidence may be adduced at the appeal without leave of the court (Practice Direction: Standard Directions for Appeals from Provincial Court; *SCA*, s 12).

For claims that do not fit the criteria for an appeal, the *Judicial Review Procedure Act*, RSBC 1996, c 241, allows the Supreme Court of British Columbia to review decisions made by Provincial Court judges prior to trial. This includes interlocutory orders, the dismissal of a claim at a settlement conference, and adjudicator decisions in Simplified Trials under Rule 9.1. The appropriate standard of review for orders subject to judicial review is reasonableness. For further information on judicial review, see *0763486 BC Ltd. v Landmark Realty Corp*, 2009 BCSC 810; *Wood and Lauder et al. v Siwak*, 2000 BCSC 397; *Der v Giles*, [2003] BCJ No 938; and *Nicholson v Lum*, [1996] BCJ No 860.

If an order dismissing a claim is appealed to the Supreme Court, that appeal does not automatically appeal the counterclaim to the Supreme Court, nor vice versa. Each appeal is a separate matter and needs to be filed separately in the Supreme Court. Both appeals will, of course, be heard together (*Shaughnessy v Roth*, 2006 BCSC 531).

1. Filing an Appeal

You must act quickly if you wish to appeal a decision as there are many steps involved and only a short a period of time. Within 40 days of the order being made (*SCA*, s 6), an appellant must, in one day, do all of the following:

- file a Notice of Appeal in the Supreme Court registry closest to the Provincial Court where the order being appealed was made (s 7);
- deposit with the Supreme Court $200.00 as security for costs plus the amount of money required to be paid by the order under appeal (s 8(1) and (2)) or apply to the Supreme Court to reduce the amount required to be paid (s 8(3));
- apply to the registrar of the Supreme Court for a date for hearing the appeal that is at least 21 days, but not more than 6 months, after the filing date (s 8(3)); and
- file a copy of the Notice of Appeal in the Provincial Court registry where the order under appeal was made (s 7(2)).

An application to reduce the amount required to be deposited does not need to be served on any person; however, if the court reduces the amount required to be deposited, the appellant must serve notice of this order on the other parties to the appeal (s 8(6)).

The cost to file a Notice of Appeal in Supreme Court is $200.00 and the cost for filing an application to reduce the amount of the deposit is $80.00. An appellant who cannot afford these fees can apply to the Supreme Court registrar for indigent status.

A copy of both the Notice of Appeal and the Notice of Hearing must be served on every respondent affected by the appeal (s 11(1)). Fourteen days after filing the Notice of Appeal, the appellant must provide the Registrar with proof that the Notice of Appeal and the Notice of Hearing have been served on the respondents.

The Appellant must also order transcripts of the oral evidence given at the Small Claims Court trial and the Judge's reasons for judgment. The Appellant must pay for a copy of the transcript for the Court and one for each party to the appeal. Transcripts cost several dollars per page. So, depending on how long the trial lasted, the transcript could be many, many pages and cost hundreds and even thousands of dollars.

For a detailed checklist of the steps you must take to make an appeal, please see **Appendix L: Small Claims Appeals**.

2. The Decision of the Supreme Court

On hearing an appeal, the Supreme Court may make any order that could be made by the Provincial Court, impose reasonable terms and conditions on an order, make any additional order it considers just, and award costs to any party under the *Supreme Court Civil Rules* (BC Reg 168/2009). **There is no further appeal from a Supreme Court order** (SCA, s 13(2)).

XVII. ENFORCEMENT OF A JUDGMENT

A judgment is valid for 10 years (*Limitation Act*, RSBC 1996, c 266, s 3(3)(f)). During that time, a judgment creditor may use whatever means permitted by law to enforce the order (*Court Order Enforcement Act*, RSBC 1996, c 78). First, the successful party must fill out a payment order form (Form 10) and file it in the registry. Interest and expenses need to be included, and a plain piece of paper showing those calculations should be attached. Although it is called a "payment order", the form is used even if no payment of money is ordered. There is space at the bottom of the form for a description of a non-monetary order. The registry will compare it with the court record for accuracy and it will then be signed and ready for pick-up or mailed within a day or two.

The judgment creditor should send a copy of the payment order with a demand letter to the debtor. If the court did not give the debtor a deadline, the judgment debt is due immediately (*Court Order Enforcement Act*, RSBC 1996, c 78, s 48(1)). The demand letter should warn that, if payment is not received by a certain date (i.e., 10 days later), other enforcement proceedings will be pursued.

The Small Claims Court has an excellent procedural guide entitled "Getting Results" (http://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/how-to-guides/getting-results). Once an enforcement strategy has been decided upon, a judgment creditor should consult the booklet for detailed instructions on how to commence enforcement proceedings.

To enforce payment, a creditor may use any of the following methods (*SCR*, Rule 11(11)):

A. Prohibition on Enforcement

While a debtor is in compliance with a payment schedule, the judgment creditor cannot take any additional steps to collect the debt (*SCR*, Rule 11(6)). If a payment hearing is ordered because the creditor did not agree with the debtor's proposed payment schedule, the creditor may not take any steps to collect the debt before the hearing (Rule 11(8)). If a summons to a payment hearing is otherwise filed, the creditor may not attempt to collect the judgment debt until after the hearing is over or the summons is either withdrawn or cancelled (Rule 11(17)).

If the debtor defaults on the payment schedule, the balance becomes due immediately and the creditor may then take other steps to collect the balance (Rule 11(14)).

The Small Claims Court may be **unable** to enforce a mediation agreement if doing so would exceed its jurisdiction. Other mediation agreements and the decisions of adjudicators in simplified trials can be enforced (*Carter v Ghanbari*, 2010 BCPC 266; *Wood v Wong*, 2011 BCSC 794).

It may not be possible to enforce a judgment against a debtor who has discharged the judgment debt in bankruptcy. A judgment creditor who learns that a judgment debtor plans to file for bankruptcy should review *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 178 and obtain independent legal advice.

B. Order for Seizure and Sale

An order for seizure and sale allows for personal property belonging to the debtor to be seized by a bailiff and sold at public auction. Examples of personal property that can be seized include vehicles, furniture, and electronics. A personal judgment debtor (i.e., not a corporation) is entitled to retain certain personal property up to a certain value set by regulation (*Court Order Enforcement Act*, RSBC 1996, c 78, s 71(1); *Court Order Enforcement Exemption Regulation*, BC Reg 28/98, s 2).

The net proceeds (after deduction of the bailiff's fees and expenses) are given to the judgment creditor. Once a judgment creditor has filed Form 11, the registrar can grant an order for seizure and sale if there is no payment schedule or if the debtor has not complied with a payment schedule (*SCR*, Rules 11(11)(a) and 11(14)(b)).

The debtor is not notified of the order prior to seizure. A seizure and sale is not carried out by the creditor and must be done by private bailiffs. Before an order is issued, the creditor must deposit the estimated fees and expenses of the bailiffs. An order for seizure and sale is valid for one year.

C. Garnishment After Judgment

Garnishment requires a third party, often the debtor's employer or bank, to pay money owing to the debtor into court instead of to the debtor. The creditor must file an affidavit that describes the amount of the payment order, the amount still owing and the name and address of the garnishee. The affidavit must be sworn before a notary, a lawyer, or a justice of the peace at the registry. Certain assets such as social assistance payments (welfare, disability) and joint accounts may not be garnished. With some exceptions, only 30 per cent of the debtor's salary can be garnished (*Court Order Enforcement Act*, RSBC 1996, c 78, s 3(5)-(7)).

The creditor must also fill out a garnishing order identifying the garnishee (the bank or the employer) with its full legal name and address. In the case of a bank, the specific branch must be identified and must be located in British Columbia. The garnishee will pay the entire amount it owes the debtor (i.e., the positive balance in a bank account). The garnishing order does not freeze the account; the claimant may re-garnish the bank at any time.

Once the creditor receives a garnishing order, they must serve both the garnishee and the debtor either personally, or by registered mail requiring signature.

Once an order for garnished wages is served on the garnishee, the order is only valid for wages due and owing within **seven** days (*Court Order Enforcement Act*, RSBC 1996, c 78, s 1) – it is, therefore, critical to have some knowledge relating to the debtor's pay schedule. If the garnishee owes money to the debtor, they must pay the amount owed into court. All money paid into court is held until further order of the court.

A creditor may apply for the garnishment of a debtor's bank account and accounts receivable *before* a judgment is reached. This is called a pre-judgment garnishing order. For more information, see **Section III.B.4.: Garnishment of Bank Accounts and Other Accounts Receivable** in **Chapter 10: Creditors' Remedies and Debtors' Assistance**.

D. Payment Hearing

A payment hearing may be scheduled before a judge or justice of the peace (*SCR*, Rule 12). The default method of appearance is by telephone or Teams audio or videoconference. The payment hearing will determine the debtor's ability to pay and whether a payment schedule should be ordered (*SCR*, Rule 12(1)). Such a hearing may be requested by a creditor or debtor or ordered by a judge (Rule 12(2)). However, if a creditor has an order for seizure and sale, they must get the permission of a judge to also have a payment hearing. The debtor must bring records and evidence of income and assets, debts owed to and by the debtor, any assets the debtor has disposed of since the claim arose, and the means that the debtor has, or may have in the future, of paying the judgment (Rule 12(12)). Costs to the applicant in such a proceeding are added onto the sum of the judgment.

A creditor who requests a hearing must file Form 12: Summons to a Payment Hearing. The registry will set a date on the form and the person named in the summons must be served **personally** at least seven days before the date of the hearing (Rules 12(7) and 18(12)(b)); service by mail is not permitted.

If the debtor is having difficulty paying, they can request a hearing by filing Form 13: Notice of Payment Hearing which must be served on the creditor at least seven days before the date of the hearing, but may be served by regular mail as long as it is mailed at least 21 days in advance of the hearing date (Rules 12(11), 18(12)(b), and 18(13)).

If a person who was properly summoned or ordered by the court to attend a payment hearing does not attend, the creditor may ask that the judge or justice of the peace issue a warrant (Form 9) to arrest that person (*SCR*, Rule 12(15)).

If a creditor does not appear, the hearing may be held, cancelled, or postponed (Rule 12(14)).

E. Driver's Licence Suspension

If damages are a result of a motor vehicle accident involving property damage exceeding $400, bodily injury, or death (*Motor Vehicle Act*, RSBC 1996, c318, s 91(1)), the creditor may apply to the Superintendent of Motor Vehicles within 30 days of the judgment to have the debtor's driver's licence suspended. The Superintendent may suspend the licence upon receiving the judgment.

F. Default Hearing

If the debtor does not comply with a payment schedule, the creditor may request a default hearing by filing Form 14: Summons to a Default Hearing. The creditor should request from the debtor the same documents as would be requested for a Payment Hearing. The summons must be served personally by **either** a court bailiff or a sheriff (i.e., not the creditor) at least seven days before the hearing (*SCR*, Rule 13(5)). The judge at the hearing may confirm or vary the terms of the payment schedule (Rule 13(7)) or imprison the debtor if the defendant does not appear or if the reason for failing to comply with the payment schedule amounts to contempt of court (Rules 13(8) and (9)).

The Registrar's authority to waive fees extends only to registry services and **not** court bailiff or sheriff's services. If a creditor cannot afford a court bailiff's or the sheriff's services, the claimant can complete an Application to a Judge seeking, pursuant to Rule 13(8), to hold the debtor in contempt and obtain a Warrant of Imprisonment to imprison the debtor for up to 20 days. This application can be served personally by the applicant to avoid the court bailiff's or sheriff's fees. If the creditor will testify at the hearing as to the debtor's failure to comply with the payment schedule, an affidavit is not required.

G. Execution Against Land

If the debtor owns land in British Columbia, the creditor can register the judgment against the land (*Land Title Act*, RSBC 1996, c 250, ss 197 and 210). If you do not know whether the debtor owns land, you can do a name search at the land title office, for a fee. If the property is sold or transferred after registration of certificate of judgement, some or all of the judgment may be paid. Registering a certificate of judgment prevents the Debtor from selling or mortgaging the land unless the debt owed to the Creditor is paid off. Even if the Debtor owns land jointly with another person, it may be useful to register a certificate of judgment against the land. A certificate of judgment is subject to a prior registered mortgage and the rights of a *bona fide* purchaser who, before registration of the certificate of judgement, has acquired an interest in land in good faith and for valuable consideration under an instrument not registered at the time of the registration of the judgment (*Court Order Enforcement Act*, RSBC 1996, c 78, s 86).

Once the judgment is registered, the creditor may apply for an order to sell the property, but only through the Supreme Court of BC. It is outside the jurisdiction of the Provincial Court to order a lien to be placed or removed against property. The process of having a Debtor's land sold to pay off a debt owed to a creditor is very complicated, costly and time-consuming. For example, if the land is used by the Debtor as principal residence in the Capital Regional District or the Greater Vancouver Regional District, and the Debtor's equity in the land is less than $12,000 the land is exempt from being taken and sold. If the land is located elsewhere in BC and is used by the Debtor as a principal residence and the Debtor's equity is less than $9,000 the land is exempt from being taken and sold (*Court Order Enforcement Act*, RSBC 1996, c 78, s 71.1). Because of this complicated process, legal advice should be obtained to determine whether it would be financially worthwhile to apply for an order to sell.

A certificate of judgment can be obtained at the Small Claims Court Registry from the Registrar. The cost is $30.00. The certificate of judgment can then be registered at the Land Title Office where the land is registered. The cost of filing the certificate of judgment at the Land Title Office is $25.00. The certificate is effective for two years. After the two years expires, a new certificate of judgment must be obtained and filed again.

H. Bankruptcy

If a person files a consumer proposal or becomes bankrupt, the law automatically puts in place a "stay of proceedings". With a few exceptions, a stay prevents any legal action from being commenced or continued against the bankrupt party. The person's trustee will send legal notice of the stay to any person or business currently engaged in legal action against the person declaring bankruptcy. The stay is also sent to the Court that is handling the person's legal action and if a creditor has already obtained a judgment against the person, a copy is sent to debtor's employer as well to stop the garnishee.

The Stay of Proceedings is only effective against debts that are dischargeable (i.e., can be eliminated) by bankruptcy law. Things like child support, spousal support, restitution orders, repayment of debts based on fraud or misrepresentation and some others are not stopped by a stay. A complete list of the debts can be found under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 178.

There are ways for creditors to circumvent a Stay of Proceedings. However, individuals with a judgment awarded in Small Claims Court are advised to speak with a trustee and discuss the mechanism of submitting a proof of claim. This form must be filled out to share in the dividends and vote at the first meeting of creditors (if one is held). The form contains the name of the creditor and the bankrupt and the nature and amount of the claim, as well as other information. A list of instructions is usually included. You must attach a Statement of Account providing the details of the claim along with supporting documents or other evidence that establishes the validity of your claim.

I. Debt collection

Part 7 of the *Business Practices and Consumer Protection Act* (BPCPA) deals with debt collection practices and applies to all transactions, including consumer to consumer, business to consumer, and consumer to business. A collector is defined as "any person, whether in British Columbia or not, who is collecting or attempting to collect a debt". Collectors should be aware of the proscriptions in this *BPCPA* because there are penalties and fines associated with violating the provisions. For example, Part 10 s 171 of the Act gives rise to a statutory cause of action in Provincial Court to recover damages caused by contraventions of the Act and also gives the Provincial Court jurisdiction for defamation and malicious prosecution.

J. Civil Resolution Tribunal

Under the *Civil Resolution Tribunal Act*, section 58.1, a CRT order may be enforced by filing it in the BC Provincial Court. This can be done if a party has either a consent resolution order, or a final decision. The BC Provincial Court must be provided with a validated copy of the order. A validated copy of a CRT order is sent with the CRT decision. Once a small claims order is received, it can be filed immediately. Effective from July 1st, 2022, the BC government amended the *CRTA* to remove a previously existing process for parties to dispute the decision by making a Notice of Objection. As such, the only remaining option to appeal CRT decisions now is through application for judicial review.

When a CRT order is filed with the BC Provincial Court, it has the same force and effect as if it were a judgment of the BC Provincial Court. The enforcement procedures are within the Court's jurisdiction. That is, the CRT has no powers of enforcement for its own orders, or for orders from other tribunals such as the Residential Tenancy Branch.

XVIII. APPENDICES

A. Appendix A: Small Claims Registries

METRO VANCOUVER

ABBOTSFORD
32203 South Fraser Way
Abbotsford, BC V2T 1W6
Telephone: (604) 855-3200
Fax: (604) 855-3232

CHILLIWACK
46085 Yale Rd
Chilliwack, BC V2P 2L8
Telephone: (604) 795-8350
Fax: (604) 795-8345

NEW WESTMINISTER
651 Carnarvon St
New Westminster, BC V3M 1C9
Telephone: (604) 660-8522
Fax: (604) 660-1937

NORTH VANCOUVER
200 East 23rd St
North Vancouver, BC V7L 4R4
Telephone: (604) 981-0200
Fax: (604) 981-0234

PORT COQUITLAM
Unit A – 2620 Mary Hill Rd
Port Coquitlam, BC V3C 3B2
Telephone: (604) 927-2100
Fax: (604) 927-2222

RICHMOND
7577 Elmbridge Way
Richmond, BC V6X 4J2
Telephone: (604) 660-6900
Fax: (604) 660-1797

SURREY
14340 57th Ave
Surrey, BC V3X 1B2
Telephone: (604) 572-2200
Fax: (604) 572-2280

VANCOUVER (ROBSON SQUARE)
Box 21, 800 Hornby St
Vancouver, BC V6Z 2C5
Telephone: (604) 660-8989
Fax: (604) 660-8950

BRITISH COLUMBIA

ATLIN
Box 100 Third Street
Atlin, BC V0W 1A0
Telephone: (250) 651-7595
Fax: (250) 651-7707

BURNS LAKE
508 Yellowhead Hwy
PO Box 251
Burns Lake, BC V0J 1E0
Telephone: (250) 692-7711
Fax: (250) 692-7150

CAMPBELL RIVER
500 – 13th Ave
Campbell River, BC V9W 6P1
Telephone: (250) 286-7650
Fax: (250) 286-7512

CLEARWATER
Box 1981, RR #1 363 Murtle Cres
Telephone: (250) 674-2113

Clearwater, BC V0E 1N1	Fax:	(250) 674-3092

COURTENAY

420 Cumberland Rd, Room 100	Telephone:	(250) 334-1115
Courtenay, BC V9N 2C4	Fax:	(250) 334-1191

CRANBROOK

102 11th Ave S, Room 147	Telephone:	(250) 426-1234
Cranbrook BC V1C 2P3	Fax:	(250) 426-1352

DAWSON CREEK

1201 103 Ave, Room 125	Telephone:	(250) 784-2278
Dawson Creek, BC V1G 4J2	Fax:	(250) 784-2339

DUNCAN

238 Government St	Telephone:	(250) 746-1258
Duncan, BC V9L 1A5	Fax:	(250) 746-1244

FORT NELSON

Bag 1000	Telephone:	(250) 774-5999
Fort Nelson, BC V0C 1R0	Fax:	(250) 774-6904

FORT ST. JOHN

10600 100 St	Telephone:	(250) 787-3231
Fort St. John, BC V1J 4L6	Fax:	(250) 787-3518

GOLDEN

837 Park Dr	Telephone:	(250) 344-7581
Box 1500	Fax:	(250) 344-7715
Golden, BC V0A 1H0		

KAMLOOPS

223 – 455 Columbia St	Telephone:	(250) 828-4344
Kamloops, BC V2C 6K4	Fax:	(250) 828-4332

KELOWNA

1 – 1355 Water St	Telephone:	(250) 470-6900
Kelowna, BC V1Y 9R3	Fax:	(250) 470-6939

MACKENZIE

64 Centennial Dr		
Box 2050	Telephone:	(250) 997-3377
Mackenzie, BC V0J 2C0	Fax:	(250) 997-5617

MASSET

1066 Orr St	Telephone:	(250) 626-5512
Box 230	Fax:	(250) 626-5491
Masset, BC V0T 1M0		

NANAIMO

35 Front St	Telephone:	(250) 716-5908
Nanaimo, BC V9R 5J1	Fax:	(250) 716-5911

NELSON

320 Ward St	Telephone:	(250) 354-6165
Nelson, BC V1L 1S6	Fax:	(250) 354-6539

PENTICTON
100 Main St
Penticton, BC V2A 5A5
Telephone: (250) 492-1231
Fax: (250) 492-1378

PORT ALBERNI
2999 4th Ave
Port Alberni, BC V9Y 8A5
Telephone: (250) 720-2424
Fax: (250) 720-2426

PORT HARDY
9300 Trustee Rd
Box 279
Port Hardy, BC V0N 2P0
Telephone: (250) 949-6122
Fax: (250) 949-9283

POWELL RIVER
103 – 6953 Alberni St
Powell River, BC V8A 2B8
Telephone: (604) 485-3630
Fax: (604) 485-3637

PRINCE GEORGE
250 George St
Prince George, BC V2L 5S2
Telephone: (250) 614-2700
Fax: (250) 614-2717

PRINCE RUPERT
100 Market Pl
Prince Rupert, BC V8J 1B8
Telephone: (250) 624-7525
Fax: (250) 624-7538

QUESNEL
350 Barlow Ave
Quesnel, BC V2J 2C2
Telephone: (250) 992-4256
Fax: (250) 992-4171

ROSSLAND
2288 Columbia Ave
Box 639
Rossland, BC V0G 1Y0
Telephone: (250) 362-7368
Fax: (250) 362-9632

SALMON ARM
550 – 2nd Ave NE
PO Box 100 Stn Main
Salmon Arm, BC V1E 4S4
Telephone: (250) 832-1610
Fax: (250) 832-1749

SECHELT
5480 Shorncliffe Ave
PO Box 160
Sechelt, BC V0N 3A0
Telephone: (604) 740-8929
Fax: (604) 740 8924

SMITHERS
3793 Alfred St
#40 Bag 5000
Smithers, BC V0J 2N0
Telephone: (250) 847-7376
Fax: (250) 847-7710

TERRACE
3408 Kalum St
Terrace, BC V8G 2N6
Telephone: (250) 638-2111
Fax: (250) 638-2123

VALEMOUNT
1300 4th Ave
Telephone: (250) 566-4652

PO Box 125	Fax:	(250) 566-4620
Valemount, BC V0E 2Z0		

VERNON

3001 27th St	Telephone:	(250) 549-5422
Vernon, BC V1T 4W5	Fax:	(250) 549-5621

VICTORIA

2nd Floor, 850 Burdett Ave	Telephone:	(250) 356-1478
Victoria, BC V8W 9J2	Fax:	(250) 387-3061

WESTERN COMMUNITIES

1756 Island Hwy	Telephone:	(250) 391-2888
PO Box 9269	Fax:	(250) 391-2877
Victoria, BC V8W 9J5		

WILLIAMS LAKE

540 Borland St	Telephone:	(250) 398-4301
Williams Lake, BC V2G 1R8	Fax:	(250) 398-4459

B. Appendix B: Sample Demand Letter

123 Parliament Way
Richmond, British Columbia
V6K 1H6

18 June 2007

WITHOUT PREJUDICE

Mr. Wilfred Laurier
321 Confederation Drive
Vancouver, BCV1K 5L2

Attention : Mr. Laurier

Dear Sir:

Re: Contract with Macdonald Painting & Restoration. Dated January 5, 2000, and amended by way of an oral contract.

On January 5, 2000, you signed a detailed Contract with me outlining the work that was to be completed for $6000.00. In addition, in August 2000, you asked me to repair some damage that a moving company had created and to pressure wash the house. At that time I informed you that this additional work would cost $1400.00.

On or about January 5, 2000, you issued me a $2500 cheque as a deposit for the work to be completed on the home and garage at 321 Confederation Drive. There were problems with the work that was done. I corrected the problems you listed and on March 10, 2000, I notified you that there was $4900.00 due. This amount has not yet been paid.

I am considering starting a legal action in the Small Claims Division of the Provincial Court for debt. Such action could result in a judgment in the amount of $4900.00 plus all disbursements, costs, and interest.

I do not want to litigate and will forgo further action upon receipt of $4,900 in the form of a certified cheque or money order made payable to Mr. Macdonald and mailed to 12345 Macdonald Street, Vancouver, British Columbia, V6T 1Z1. Non-payment within 14 days of the receipt of this letter will result in the commencement of action without further notice. Correspondence should be directed to my attention at my office. If you have any questions or comments do not hesitate to call.

Yours truly,

Mr. John A. Macdonald

C. Appendix C: Sample Notice Of Claim

NOTICE OF CLAIM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

REGISTRY LOCATION: Richmond

NOTICE OF CLAIM

FROM:
Fill in the name, address and telephone number of the person(s) or business(es) making the claim.

CLAIMANT(S)

NAME: John A Macdonald
ADDRESS: 123 Parliament Way
CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia | POSTAL CODE: V6K 1H6 | TEL #: 604-555-5785

TO:
Fill in the name, address and telephone number of the person(s) or business(es) the claim is against.

DEFENDANT(S)

NAME: Wilfred Laurier
ADDRESS: 321 Confederation Drive
CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia | POSTAL CODE: V1K 5L2 | TEL #: 604-967-1111

WHAT HAPPENED?
Tell what led to the claim.

The Claimant claims against the Defendant in breach of contract:

1. On 5 January 2013, Mr. Laurier hired Mr. Macdonald to paint his home, signing a detailed Contract outlining the work that was to be completed for $6 000.00.

2. In August 2013, Mr. Laurier asked Mr. Macdonald to repair some damage that a moving company had caused, and to pressure wash the house.

3. Mr. Macdonald informed Mr. Laurier that this additional work would cost $1 400.00.

4. On or about 5 January 2013, Mr. Laurier issued Mr. Macdonald a $2 500.00 cheque as a deposit for the work to be completed on the home and garage at 321 Confederation Drive.

5. On 12 January 2013, Mr. Laurier informed Mr. Macdonald that the paint was cracking in certain areas. Mr. Macdonald corrected this problem, and on 10 March 2013 notified Mr. Laurier that he owed $4 900.00.

6. This amount has not yet been paid

☐ If you need more space to describe what happened, attach another page, mark it "Page 2 of the Notice of Claim" and check this box. A copy of the attached page must accompany each copy of the Notice of Claim

WHERE?
Tell where this happened.

CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia

WHEN?
Tell when this happened.

12 January 2013

HOW MUCH?
Tell what is being claimed from the defendant(s). If the claim is made up of several parts, separate them here and show the amount for each part. Add these amounts and fill in the total claimed.

a	Amount owing under original contract minus deposit	$ 3,500.00
b	Amount owing for additional work	$ 1,400.00
c	Court Ordered Interest	$
d		$
e		$
	TOTAL	4,900.00
	+ FILING FEES	
	+ SERVICE FEES	
	= TOTAL CLAIMED	$

☐ DEBT
☐ OTHER THAN DEBT

TIME LIMIT FOR A DEFENDANT TO REPLY

The defendant **must complete and file the attached reply within 14 days from being served** with this notice, unless the defendant settles this claim directly with the claimant. **If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant.** Then the defendant will have to pay the amount claimed plus interest and further expenses.

The Court Address for filing documents is:

court copy

FORM 1
SCL001 12/2006
(OPC 7530854501)

court copy

1. Claims in Debt

Claims in debt are quantified. Usually, the parties can agree on the amount owing.

SAMPLE: The claimant's claim is for a debt in the amount owing to the claimant on account for (or, for the price of) goods sold and delivered (or services rendered) by the claimant to the defendant at their request. The goods sold (or services rendered) were: (description of goods or services) and were delivered (or rendered) on or about the 29th day of July 2007 at 3875 Point Grey Road in the City of Vancouver, BC. The claimant has demanded payment of this sum by the defendant but the defendant has refused or neglected to pay.

If the defendant has partially paid the original amount owing, this should be detailed in the Notice of Claim.

2. Claims for Damages

Damages are a claim for a loss where the parties do not agree on an amount owed. These claims often refer to breach of contract, misrepresentation, or negligence.

SAMPLE: The claimant's claim is against the defendant(s) (and each of them jointly and severally) for the sum of $3,000 for damages to the claimant's house resulting from a roof installed on or about the 10th day of June, 2007, at (or near) 2120 West 2nd Avenue in the City of Vancouver, British Columbia, due to the roof being negligently installed by the defendant... causing damages of the above amount. The defendant's said negligence consisted of... (i.e., improper installation or materials).

SAMPLE: The claimant had a contract with the defendants to paint the claimant's house for $3,000. The defendants never painted the house. The claimant had to pay XYZ Painters $3,950 to paint the house. This happened in Coquitlam, British Columbia, in May of 2007.

The statement of facts should be broken down into separate paragraphs. Facts should be listed as one fact per numbered paragraph.

In a claim for damages, the claimant may not know what the amount should be. In such cases, the claimant should claim a figure that they would accept in settlement, or if doubtful of the amount, $35,000 should be claimed and the court will determine the appropriate amount of damages. Furthermore, Small Claims court can award aggravated and punitive damages. Aggravated damages are considered compensatory and may be awarded even if not plead specifically; see *Epstein v Cressey Development Corp.* [1992] 2 WWR 566 (BCCA). Punitive damages are not compensatory and must be plead specifically; see *Gillespie v Gill Et. Al.* [1999] B.C.P.C. No. 2021. For a discussion of aggravated damages see *Kooner v Kooner* [1989] B.C.S.C. No.62. For a discussion of aggravated and punitive damages, see *Siebert v J & M. Motors Ltd.* [1996] B.C.J. No.876.

3. Other Remedies

The Notice of Claim is designed for claims in debt and for damages, but other claims are available, such as specific performance of a contract, *quantum meruit* or return (recovery) of an item.

SAMPLE: The claim is against the defendant for the return of their lawnmower, which was borrowed by the defendant who refused to return it. This happened in Surrey, British Columbia, in July of 2007.

In cases such as this, ignore the dollar amount for the "How Much" section. Indicate instead what the claimant seeks, i.e.., "The claimant asks for an order that their lawnmower be returned to them". You should consider the possible condition of the goods when deciding whether to ask for damages instead.

D. Appendix D: Sample Reply to Claim:

REGISTRY FILE NUMBER

REGISTRY LOCATION: Richmond

REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

☑ To a Claim
☐ To a Counterclaim

REPLY

TO:
Copy the name, address and telephone number of the claimant from the Notice of Claim.

NAME: John A Macdonald — CLAIMANT(S)
ADDRESS: 123 Parliament Way
CITY, TOWN, MUNICIPALITY: Richmond — PROV.: British Columbia — POSTAL CODE: V6K1H6 — TEL. #: (604) 555-5785

FROM:
Fill in the name, address and telephone number of the defendant filing this reply.

NAME: Wilfred Laurier — DEFENDANT
ADDRESS: 321 Confederation Drive
CITY, TOWN, MUNICIPALITY: Richmond — PROV.: British Columbia — POSTAL CODE: V1K 5L2 — TEL. #: (604) 967-1111

DISPUTE:
Using the "HOW MUCH" section of the Notice of Claim as a guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.

a ~~$3500 - Disagree - Paint cracked due to wrong undercoat being used on metal garage doors, but Mr. Macdonald refused to apply proper undercoat, simply repainting garage doors instead.~~

b ~~$1400 - Disagree - Additonal work was discussed but Mr. Laurier never agreed to pay for this work to go ahead. Also, house was not fully pressure washed.~~

c

d

e

AGREEMENT WITH THE CLAIM: I (NAME) _____ agree to pay $ _____

If you agree to pay all or part of what is claimed, make a proposal.

I could make the following payments:
(GIVE DATES AND AMOUNTS)

COUNTERCLAIM (YOU SHOULD ONLY FILL OUT THIS PART OF THE FORM IF YOU WISH TO MAKE A CLAIM AGAINST THE CLAIMANT)
(THIS PART IS NOT TO BE USED WHEN REPLYING TO A COUNTERCLAIM)

WHAT HAPPENED?
Briefly tell what has led to your counterclaim.

~~Since events in January, cracks have appeared in paint on other parts of the home's exterior. Mr. Laurier will have to have the entire home repainted and prefers to hire a different professional. Mr. Laurier claims under breach of contract for the return of his deposit.~~

HOW MUCH?
Tell what you are claiming. If your counterclaim has more than one part, separate each part and fill in each individual amount, then add the individual amounts to make the total.

a	Return of deposit	$ 2500.00
b		$
c		$
	TOTAL	$ $2500.00
	+ FILING FEES	$
	= TOTAL CLAIMED	$

court copy

FORM 2
SCL 002 01/2008
(OPC 7530854502)

court copy

E. Appendix E: Glossary

AMENDMENT
Modification of submitted materials. Amendments can consist of additions, deletions, and corrections.

ADJOURNMENT
In court settings, postponement of an appearance date until a later, fixed, date.

BALANCE OF PROBABILITIES
The civil standard of proof. To prove a civil case, it need only be established that the case is more probable than the other.

CAUSE OF ACTION
Legal cause for which an action may be brought. The legal theory giving basis to a lawsuit.

CIVIL LAW
The system of law concerned with relations between individual parties, rather than criminal affairs.

COMMON LAW
Law derived from custom and judicial decisions rather than statutes.

COMPLETE DEFENCE
An argument, which, if proven, will effectively end the litigation in favour of the defendant.

CONTINGENCY
In legal circles, is commonly used to refer to a *contingent fee*, which is a fee for legal services provided only if the legal action is settled favourably or out of court.

CONTRIBUTORY NEGLIGENCE
Negligent behaviour of the plaintiff that contributes to the harm resulting from the defendant's negligence.

COUNTERCLAIM/COUNTERCLAIMANT
A claim by a defendant seeking relief from the plaintiff. Generally made as a response to the same facts that make up the issue the plaintiff originally claimed for.

CROWN
Generally a reference to the government or state acting as a party in legal proceedings.

DEBTOR
A person judged to owe money after the resolution of a civil case.

DEDUCTIBLE
In an insurance policy, the amount that must be paid out-of-pocket before an insurer will pay any expenses. Generally, a clause used by insurance companies as a threshold for policy payments.

DEFAULT
Often used in legal contexts as a verb meaning to fail to fulfill an obligation, generally referring to failure to pay a loan or make a court appearance.

DISBURSEMENT
Money paid to cover expenses for goods and services that may be currently tax-deductible. Commonly used in the context of business expenses.

DISGORGEMENT
Stolen money that must be repaid to victims of theft, fraud, or other financial crime.

DISMISS
1. The discharge of an individual or corporation from employment.
2. Judgment in a civil or criminal proceeding denying the relief sought by the action.

EQUITY
Can mean different things in different contexts. The most common definitions for equity include:
1. The broad concept of fairness
2. An alternative legal system that originated in the English courts as a response to the common-law system

ESTATE
The degree, quantity, or nature of interest that a person has in real or personal property.

EX PARTE
In the interests of one side only or an interested outside party.

EXECUTOR/EXECUTRIX
A person specifically appointed by a will to carry out its wishes. Some of the administrative responsibilities typically added to executor's duties include:
- Gathering up and protecting the assets of the estate;
- Locating beneficiaries named in the will and/or potential heirs;
- Collecting and arranging for payments of debts to the estate;
- Approving or disapproving creditors' claims; and/or
- Making sure estate taxes are calculated.

EXTRAPROVINCIAL CORPORATION
A corporate body which is not incorporated in the province where action has been started.

GARNISHEE
A third party ordered to surrender money or property lost by a defendant. The third party must possess the money or property but the defendant must own it.

HEARSAY
A statement made out of court that is offered in court as evidence to prove the truth of the matter asserted. Hearsay evidence is generally inadmissible but there are many exceptions to the hearsay rule.

IN FORCE
Commonly refers to when a law becomes legally applicable.

INDEMNIFY
Contract with a third party to perform another's obligations if called upon to do so by the third party, whether the other has defaulted or not.

INDIGENT
Used in legal contexts to identify a person with no reasonable ability to pay; often used to identify those deserving of legal aid or waived filing fees.

INJUNCTION (MANDATORY, PROHIBITORY, MAREVA, ANTON PILLER)
A court order requiring an individual to either perform or not perform a particular act.

JUDGMENT PROOF
Commonly used to refer to defendants or potential defendants who are financially insolvent.

JUDICIAL REVIEW
A process where a court of law is asked to rule on the appropriateness of a decision of an administrative agency, tribunal, or legislative body.

LEAVE
Commonly used in the context of *leave of the court*. Generally refers to permission to perform an action or make a statement.

LITIGANT
Any party involved in a lawsuit.

MALICIOUS PROSECUTION
A cause of action relating to a civil suit or criminal proceeding that has been unsuccessfully committed without probable cause and for a purpose other than bringing the alleged wrongdoer to justice.

MISNOMER
An inaccurate use of a word or term.

PARTNERSHIP
An association of two or more persons engaged in a business enterprise in which the profits and losses are shared proportionally.

PRIMA FACIE
Based on first glance; presumed as true until proven otherwise.

PROPRIETORSHIP
An unincorporated business owned by a single person who is responsible for its liabilities and entitled to its profits.

QUANTUM MERUIT
Latin for "what one has earned." The amount to be paid for services where no agreement exists.

QUANTUM VALEBAT
Latin for "what it was worth." When goods are sold without a price specified, the law generally implies that the seller will pay the buyer what they were worth.

REGULATION
A law on some point of detail, supported by an enabling statute, and issued not by a legislative body but by an executive branch of government.

RELIEF
A legal remedy – the enforcement of a right, imposition of a penalty, or some other kind of court order – that will be granted by courts in response to a specific action.

ROYAL ASSENT
In Canada, where the Lieutenant Governor signs a bill to bring it into law. New legislation can exist as a bill but not as binding law if it has not received Royal Assent.

SET-OFF
A claim by a defendant in a lawsuit that the plaintiff owes the defendant money which should be subtracted from the amount of damages claimed.

SPECIFIC PERFORMANCE

A legal remedy that compels a party to complete their specific duty in a contract rather than compensate the claimant with damages. Often used when a unique remedy is at issue.

STAND DOWN
In court, when a matter is postponed for a short period of the time. Differs from adjournment in being less formal; to stand a matter down is usually to postpone it for a short, indefinite period, while adjournments are often for longer fixed periods.

STATUTE
A written law passed by a legislative body.

STAY OF PROCEEDINGS
Stoppage of an entire case or a specific proceeding within a case.

SUBROGATE
To substitute one party for another in a legal proceeding. The facts of each case determine whether subrogation is applicable.

SUBSTITUTIONAL SERVICE
Under court authorization, serving an alternate person when the originally named party cannot be reached.

TORT
A private, civil action stemming from an injury or other wrongful act that causes damage to person or property.

UBERRIMAE FIDEI
Utmost good faith; commonly used as the standard for dealing in insurance contracts.

WITHOUT PREJUDICE
A reservation made on a statement that it cannot be used against in future dealings or litigation.

F. Appendix F: Limitation Periods

1. Small Claims

The *Limitation Act*, SBC 2012, c 13 [*Limitation Act*] came into effect on June 1, 2013. A claim is governed by this Act if the claim was discovered after this date, unless the facts underlying the claim arose before the effective date and the limitation period under the old *Limitation Act*, RSBC 1996, c 266 has expired (s 30 (3-4).

Under the *Limitation Act*, the basic limitation period for most causes of action is 2 years from the date of **discovery** of the claim. Discovery is defined as the day on which the claimant knew or reasonably ought to have known all of the following:

a) That injury, loss or damage had occurred;
b) That the injury, loss or damage was caused by or contributed to by an act or omission;
c) That the act or omission was that of the person against whom the claim is or may be made;
d) That, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage (*Limitation Act*, s 8).

Other limitations include:

- Enforcement of civil judgements (s 7): 10 years from date of judgement;
- Debts owed to government (s 38): 6 years;
- Maximum limitation period (s 21(1)): 15 years after the original act or omission giving rise to the claim occurs. Applies to all claims falling under the (new) *Limitation Act*.

Under the *Limitation Act*, the running of both the basic and ultimate limitation periods may be delayed for minors (s 18), persons while under disability (ss 19, 25), and for fraud or wilful concealment of facts on the part of the defendant (ss 12, 21(3)). Both the basic 2 year limitation period and the 15-year ultimate limitation period are renewed if the defendant gives written and signed acknowledgement of liability (s 24). A counterclaim may be brought even though the limitation period has expired if the counterclaim relates to the claim to which it responds and that claim is within its applicable limitation periods (s 22). The Act generally does not apply to sexual assault claims, child or spousal support claims, or fines under the *Offence Act* (s 3). The Act also does not apply to limitation periods established under other legislation.

The Notice of Claim must be **filed** before the limitation period expires. If a notice of claim has not been **served** within 12 months after it was filed, it expires, but the claimant may apply to have it renewed (*SCR*, Rules 16(2)(a), 16(2)(a.1) and 16(3)).

2. Civil Resolution Tribunal

The *Limitation Act* applies to the CRT; however, for claims brought under the CRT, the limitation period does not run after a party asks the tribunal to resolve a claim. A party has 28 days following the tribunal's decision, the date on the court order, or the date the tribunal certifies that the parties have completed the tribunal's process to bring or continue a claim in court.

3. Other Legislation:

Certain Acts will overrule the *Limitation Act*. The *Vancouver Charter*, SBC 1953, c 55; the *Police Act*, RSBC 1996, c 367; and the *RCMP Act*, RS 1985, c. R-10, all have their

own limitation periods and notice provisions, and must, therefore, be consulted before bringing an action against a party covered by one of these statutes. For limitation dates pertaining to employment, human rights complaints or residential/tenancy disputes, see the corresponding chapters of this manual.

The *Local Government Act*, RSBC 1996, c 323, sets a limitation date for claims against a municipality in BC(s 285) of 6 months after the cause of action arose. Notice of damages must be delivered to the municipality within 2 months from the date on which the damage was sustained unless the damage resulted in death, the claimant has a reasonable excuse, or the municipality is not unfairly prejudiced by the lack of notice (s 286(1-3)).

	Limitation Act:
Application:	Applies if discovery occurred after June 1, 2013
Basic Limitation Period:	2 years after discovery**
Damages to Personal Injury or Property:	2 years after discovery
Debts owed to government:	6 years, including ICBC claims for vehicle indebtedness, student loans and medical fees
Counterclaims:	Not barred by expiry of limitation period if counterclaim connected to the claim to which it responds and the limitation period for that claim has not expired.
Ultimate Limitation Period:	15 years after original events occurred
Enforcement of Judgements:	10 years after judgment

* See *Limitation Act*, SBC 2012 c 13 for exceptions

G. Appendix G: Causes of Action

The cause of action is the claimant's reason for bringing a suit against the defendant. While there must always be a cause of action, in Small Claims it is generally sufficient to cite the facts; Small Claims judges and CRT tribunal members will take a liberal view of pleadings and allow litigants to assert claims in non-legalistic language. However, the judge must still be able to find a cause of action in the facts the claimant alleges. Potential claimants should, therefore, review the following, non-exhaustive list of causes of action to determine if they have a valid claim. Claimants may claim for more than one cause of action on a notice of claim and are advised to do so if they believe more than one cause of action applies or are not sure which one is valid; it is easier to name superfluous causes of action on the notice of claim than to get the claim amended after filing it. The following causes of action may be brought in Small Claims unless the amount claimed is over $35 000 or it states otherwise in the list. They are organized into 3 categories: (1) common; (2) rare; (3) see a lawyer.

Defences

For each cause of action there are usually a number of possible defences. Both Claimants and Defendants should be aware of the defences. Below are defences to some of the more common causes of action

1. Common Causes of Action

a) Breach of Contract

Contract law governs voluntary relationships between parties. It is a complicated and nuanced area of the law. To bring a claim for breach of contract, a party must demonstrate that the other party failed to perform a contractual obligation. Depending on the type of term that is breached, the other party may be able to "terminate" the contract. Terms that go to the heart of a contract are usually called "conditions". Breach of a condition by one party entitles the other party to terminate the contract and end their obligations. A party is also able to terminate the contract in the event of a fundamental breach, which is a breach so significant that it deprives the innocent party of the entire benefit of the contract (*Svenson v. Powell*, 2021 BCCRT 318). Less important terms are called "warranties". Breach of a warranty does not give the other party a right to terminate. However, the party not in breach can still sue the other party for breach of contract (Ketchum v. Nordblad, 2022 BCCRT 223).

Defences:

1) **No consideration**: In order for a promise or any other contractual obligation to be enforceable by courts, there must be consideration. Consideration is what is given in exchange for a promise that makes the promise binding. If there is no consideration for a promise, the promise will not be enforced by the courts, even if the parties have an otherwise valid contract.

2) **Void contract**: A contract can be void and therefore unenforceable for several reasons, including lack of mental capacity, uncertainty of terms, illegality.

3) **Unconscionability**: A contract is said to be unconscionable and therefore unenforceable where the circumstances surrounding the creation of the contract gave rise to a grave inequality in bargaining power between parties. This is a complicated area of contract law, and legal advice should be sought.

4) **Misrepresentation**: If the other party made a statement to you before the contract came into existence that you relied on in entering the contract and that turned out to be false, you may be able to have the contract set aside.

5) **Frustration**: frustration occurs when an unforeseen event renders contractual obligations impossible or radically changes the primary purpose of the contract. Frustration is also another complicated area in contract law. Legal advice should be sought.

6) **Undue Influence**: If one of the parties to a contract was unduly influenced by someone else (either the other party of the contract or a third party), the contract can be set aside on the grounds that the unduly influenced party had their consent vitiated due to an inability to exercise their independent will. This is a complicated area of contract law, and legal advice should be sought.

b) Breach of Employment Contract (implied terms)

The courts cannot enforce statutory rights such as those found in the *Employment Standards Act*, as the Employment Standards Branch was created to rule on these types of claims and has exclusive jurisdiction over them. However, many parallel rights exist at common law and may be enforced by the courts. At common law, employment contracts contain numerous implied terms that are actionable through Small Claims, such as the requirement to give reasonable notice or payment in lieu upon termination of an employee. Many employment contracts include express terms regarding notice which can override common law implied terms.

The fact that no written employment contract was signed does not disqualify an employee or former employee from claiming for breach of these terms. This is because an employee who is an "employee" under employment standards legislation will be entitled to the benefit of the statutory minimum notice provisions (*Suleman v. British Columbia Research Council* (1989), 38 B.C.L.R. (2d) 208 (B.C. S.C.); reversed on other grounds (1990), 52 B.C.L.R. (2d) 138 (B.C. C.A.). See **Chapter 9: Employment Law** for more details.

Defences:

1) **Just cause**: If an employer terminates an employee for just cause the employer is not required to give the terminated employee reasonable notice or pay in lieu. The onus to prove just cause is on the employer, and the standard is generally hard to meet. See **Chapter 9: Employment Law** for more details.

c) Debt

Debt claims arise where the defendant owes the complainant a specific sum of money, often for a loan or for unpaid goods or services. There may be some overlap between debt and breach of contract.

Defences: As there likely will be some overlap between debt and breach of contract, see the defences above under breach of contract.

2. Rare Causes of Action

a) Breach of Confidence

Breach of confidence occurs when the defendant makes an unauthorized use of information that has a quality of confidence about it and was entrusted to them by the claimant in circumstances giving rise to an obligation of confidence.

b) Nuisance

Nuisance may be private or public. Private nuisance is defined as interference with a landowner or occupier's enjoyment of their land that is both substantial and unreasonable. It can include obnoxious sounds or smells or escaping substances but does not usually arise from the defendant's normal use of their own property. An interference with the enjoyment of land is "substantial" if it is not trivial; that is, it amounts to something more than a slight annoyance or trifling interference. Whether the interference is "unreasonable" depends on the circumstances. Factors that courts will consider (but are not bound to) in assessing reasonableness include the seriousness of the interference, the neighbourhood and surrounding area, and sensitivity of the plaintiff.

Public nuisance may be thought of as a nuisance that occurs on public property or one that affects a sufficient number of individuals that litigating to prevent it becomes the responsibility of the community at large.

c) Trespass to Chattels

Where the defendant interferes with the claimant's goods without converting them to the defendant's personal use.

d) Trespass to Land

Trespass to land is actionable even where it occurred by the defendant's mistake. The claimant does not need to show a loss, although their award may be reduced commensurately if the trespass does not cost them anything.

e) Conversion

Conversion is defined as wrongful interference with the goods of another in a manner inconsistent with the owner's right of possession. This includes theft; it also includes instances where the defendant genuinely believes the goods belong to them, even if they purchased them innocently from a third party that stole them. It also applies when the defendant has sold the goods or otherwise disposed of them. The remedy is usually damages for the value of the goods and possibly for losses incurred by the detention of the goods. The value of the goods is assessed from the time of the conversion.

f) Unjust Enrichment

Where the defendant was enriched by committing a wrong against the claimant, the claimant suffered a corresponding loss, and there was no juristic reason for the enrichment.

3. Causes of action to see a lawyer about

a) Assault

Contrary to its criminal law equivalent, civil assault is defined as intentionally causing the claimant to have reasonable grounds to fear immediate physical harm. Mere words or verbal threats are not sufficient; there must be some sort of act or display that suggests the defendant intends to carry through with their threat; banging on a door or raising a fist may suffice.

b) Battery

Battery is defined as any intentional and unwanted touching, including hitting, spitting on the claimant or cutting their hair.

Defences:

1) **Lack of Intent**: Battery is an intentional tort which means that the plaintiff must prove the defendant acted with intent in committing battery. The defendant need not intend to cause the plaintiff harm. Rather intent refers to the desire to engage in whatever act amounts to battery. If the defendant can show that they did not act with intent, the claim for battery will unlikely be successful. For example, if the physical contact was involuntary or an accident

2) **Self-defence**: The defendant can defeat a battery claim if they can show that the battery was an act of self-defence. There are three basic elements to self-defence which the defendant must prove:

i) You honestly and reasonably believed that you were being or about to be subject to battery;
ii) There was no reasonable alternative to the use of force; and
iii) The use of force was proportional to the actual or perceived threat.

c) Breach of Privacy

Privacy rights are governed by the *Privacy Act*, RSBC 1996, c 373. Two common law causes of action are codified under this act:

- **Intrusion upon seclusion**: includes spying upon, observing or recording a person where they have a reasonable expectation of privacy.
- **Appropriation of likeness**: where a person's personal image, including portraits, caricatures, photos or video footage, are used for commercial gain without their consent.

Breach of Privacy is outside the jurisdiction of Small Claims Court.

d) Defamation

Defamation, libel and slander are outside the jurisdiction of Small Claims Court.

e) Detinue

Detinue occurs when the defendant possesses goods belonging to the claimant and refuses to return them. There is some overlap between detinue and conversion, but conversion still applies where the defendant no longer has goods, while detinue generally does not. The remedy for detinue may be the return of the goods or damages for the value of the goods and possibly for losses incurred by the detention of the goods. The value of the goods is assessed at the time of the trial.

f) False Imprisonment/False Arrest

Where a person is illegally detained against their will. Peace officers have broad authority to arrest. Private citizens, including security guards, have limited authority to arrest in relation to a criminal offence or in defence of property. Usually, a party who is detained and is not convicted of the offence for which they

are detained has grounds for a claim in false imprisonment/arrest unless the defendant is a peace officer or was assisting a peace officer in making the arrest.

g) Negligence

Negligence is a complicated but frequently litigated area of law. Put very simply, it is based on the careless conduct of the defendant resulting in a loss to the claimant. Claims in negligence may be for personal injury or for economic loss. Claimants are advised to consult a lawyer before bringing a claim in negligence. Negligence consists of the following components:

1. **Duty of Care** – the claimant must prove that the defendant owed them a duty of care arising from some relationship between them. Many duties of care have been recognized, including but by no means limited to the following:
    a. Duty towards the intoxicated
    b. Peace officer's duty to prevent crime and protect others
    c. Negligent Infliction of Psychiatric Harm/Nervous Shock
    d. Manufacturer's and Supplier's Duty to Warn
    e. Negligent Performance of a Service
    f. Negligent Supply of Shoddy Goods or Structures
    g. Negligence of Public Authority

2. **Standard of Care** – Once a duty of care is established, the level of care that the defendant owed to the claimant must be determined. This is usually based on the standard of care that a reasonable person would exercise, such as avoiding acts or omissions that one could reasonably foresee might cause the claimant a loss or injury. The level of care expected of professionals in the exercise of their duties is usually higher.

3. **Causation** – The claimant must show that the defendant's carelessness actually caused the claimant loss or injury. The basic test is whether the claimant's loss would not have occurred without the defendant's action and no second, intervening act occurred that contributed to the loss.

4. **Remoteness** – Remoteness is a consideration of whether the loss caused by the defendant's actions was too remote to be foreseeable as a result of the defendant's negligence. If so, the court may not award damages for the loss even though it was a direct result of the defendant's carelessness.

5. **Harm –** Unlike some causes of action, negligence requires the claimant to prove that the defendant's carelessness caused them harm, whether it is personal injury, pure economic loss or otherwise.

h) Misrepresentation

Misrepresentation applies where a claimant was induced to enter a contract on the basis of facts cited by the defendant that turned out to be untrue. Misrepresentation can be claimed in contract law or in torts generally, or in both concurrently. In contract law, the remedy is a declaration that the contract is void (rescission). In torts, the remedy may be damages for the claimant's consequential losses. If the claim is brought in contracts, a distinction must be made between representations, which are statements that induce one to enter a contract, and the terms of the contract, the violation of which gives rise to a claim in breach of contract but not in negligence. There are three specific categories of misrepresentation:

- **Fraudulent misrepresentation** – where the defendant made the statement knowing it was untrue. This is the hardest category of misrepresentation to prove, as the claimant must prove the defendant's state of mind prior to the formation of the contract.

- **Negligent misrepresentation** – where the defendant made the untrue statement carelessly, without regard to whether it was true. This category of misrepresentation is more easily proved than fraudulent misrepresentation. See the section on Negligence below for the basic principles.

- **Innocent misrepresentation** – where the defendant made the untrue statement in the genuine belief that it was true. This form of misrepresentation is the easiest to prove, but it may only be claimed in contract law, so the remedy for a successful claim is always the setting aside of the contract (rescission).

4. Excluded Causes of Action

Certain causes of action are outside the jurisdiction of Small Claims, including:

- Claims for malicious prosecution,
- Claims involving residential tenancy agreements,
- Claims for statutory rights in employment law (i.e., overtime and statutory holiday pay),
- Claims in divorce, trusts, wills or bankruptcy,
- Claims for breach of privacy, intrusion upon seclusion, or appropriation of likeness,
- Human rights complaints (discrimination), and
- Most disputes between strata lot owners and strata corporations

Not all claims that are barred from Small Claims must be brought in Supreme Court. Administrative tribunals such as the Employment Standards Branch, Residential Tenancy Branch, and BC Human Rights Tribunal have exclusive jurisdiction over many types of claims. Claimants should consider the nature of their claim and review the corresponding chapter of the LSLAP Manual to determine the proper forum for their complaint.

H. Appendix H: Small Claims Court Fees

1. Fee Waiver

There are no settlement, trial conference or trial scheduling fees unless an adjournment is requested. If a trial date is reset less than 30 days before the date of the proceeding, the party adjourning the trial must pay $100 to the court. This fee does not apply if the matter must be reset due to the unavailability of a judge, or if the party requesting the change was not notified of the trial date at least 45 days in advance (Rule 17(5.2)). There are no fees for "interlocutory" applications. There are fees for some collection orders. Filing fees, interest, disbursements and, in most cases, reasonable expenses may be recovered from the unsuccessful party (Rule 20(2)). Legal (i.e. a lawyer's) fees are not recoverable. If a party cannot afford the court's fees, they may apply to the registrar to be exempt from paying the fees (Rule 20(1)) by completing a Form 16 (Rule 16(3)).

2. Common Fees

a) For filing a notice of claim

For claims up to and including $3,000:	**$100**
For claims over $3,000:	**$156**

b) For filing a reply, unless the defendant has agreed to pay all of the claim

For claims up to and including $3,000:	**$26**
For claims over $3,000:	**$50**

c) For filing a counterclaim or a revised reply containing new counterclaim

For counterclaims up to and including $3,000:	**$100**
For counterclaims over $3,000:	**$156**

d) For filing a third party notice

$25

e) For resetting a trial or hearing with less than 30 days' notice before the date of the proceedings as set on the trial list, unless the matter must be reset due to the unavailability of a judge

$100

f) For personal service of a sheriff

For receiving, filing, personally serving one person, and returning the document together with a certificate or affidavit of service or attempted service: $100

For each additional person served at the same address:	**$20**
For each additional person served not at the same address:	**$30**

For a full list of fees see the Small Claims Rules Schedule A:
https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/261_93_05#ScheduleA.

I. Appendix I: Civil Resolution Tribunal Fees

1. Fee Waiver

If a tribunal form or rule indicates a fee is required in order to take a step, the fee shown in the CRT Fees must be paid before the step will be completed. A claimant who cannot afford to pay a fee can ask the tribunal to waive payment of fees by completing the steps required by the Fee Waiver Request Form, and providing any other information requested by the tribunal. In deciding a request to waive the payment of fees, the tribunal will consider the person's ability to pay, based on the information about that person's financial situation. If the tribunal decides that a person should not have qualified for a fee waiver, the tribunal may order that person to pay the fees. The Fee Waiver Request Form can be found at the following link: https://civilresolutionbc.ca/resources/forms/#apply-for-crt-dispute-resolution.

If a dispute is not resolved by agreement, and a tribunal member makes a final decision, the unsuccessful party will be required to pay the successful party's tribunal fees and reasonable dispute-related expenses unless the tribunal decides otherwise.

This can include some or all of the following:

- any tribunal fees paid by the other party in relation in the dispute,
- any fees and expenses paid by a party in relation to witness fees and summonses (for a summons fee to qualify for a Fee Waiver, a summons must be reasonably issued. The CRT's processes are relatively informal and flexible, and it is usually unlikely that a party would need to incur a formal expense of a summons), and
- any other reasonable expenses and charges that the tribunal considers directly related to the conduct of the tribunal dispute resolution process.

Except in extraordinary cases, the tribunal will not order one party to pay to another party any fees charged by a lawyer or another representative in the tribunal dispute process.

2. Small Claims Fees

a) Application for Dispute Resolution – Claims of $3,000 or less

Online:	**$75**
Paper:	**$100**

b) Application for Dispute Resolution – Claims of $3,000-5,000

Online:	**$125**
Paper:	**$150**

c) For filing a Dispute Response

Online:	**$0**
Paper:	**$25**

d) For filing a counterclaim or third-party claim – Claims $3,000 or less

Online:	**$75**
Paper:	**$100**

e) For filing a counterclaim or third-party claim – Claims of $3,000-50,00

Online:	**$125**
Paper:	**$150**

f) To request a default decision

Online:	**$25**
Paper:	**$30**

g) Filing for a Consent Resolution Order

Online:	**$25**
Paper:	**$25**

h) Requesting a Tribunal Decision Process (hearing)

Online:	**$50**
Paper:	**$50**

i) Requesting a default decision to be set aside

Online:	**$50**
Paper:	**$50**

3. Motor Vehicle Injury Fees

a) Application for Dispute Resolution (Damages & Liability)

Online:	**$125**
Paper:	**$150**

b) Application for Minor Injury Determination

Online:	**$75**
Paper:	**$100**

c) Application for Accident Benefits claim

Online:	**$75**
Paper:	**$100**

d) Application for Dispute Resolution (Damages & Liability) + Minor Injury Determination and/or Accident Benefits claim

Online:	**$125**
Paper:	**$150**

e) To respond to a claim

Online:	**$25**
Paper:	**$25**

f) Tribunal Decision for Minor Injury Determination

Online:	**Free**
Paper:	**Free**

g) Tribunal Decision for Dispute Resolution (Damages & Liability) + Minor Injury Determination and/or Accident Benefits claim

Online:	**$50**
Paper:	**$50**

J. Appendix J: Settlement Conference Preparation Checklist

1. Be prepared to define the issues.

2. List who will attend settlement conference.

3. Authority to settle: obtain instructions and ensure a representative with authority to settle is in attendance.

4. List who will speak to what issues.

5. Witnesses: how many and names/evidence.

6. Expert witnesses: bring report or summary of opinion expected.

7. Expected schedule for delivery of expert reports.

8. Documents to be sought and schedule for delivery.

9. List documents to bring.

10. Consider admissions or seek agreed facts, or alternative methods of proof.

11. Time estimate for trial, available dates for counsel and witnesses.

12. Other orders: in advance of trial, consider if a separate hearing will be required for one or more of the following:

a) summary judgment or dismissal

b) production of other documents or evidence

c) addition of parties or amendment of pleadings

d) change of venue

e) consolidation of claims, joining trials

f) inspection or preservation of property

g) independent medical examination

13. Ask the judge to review the prospect of the penalties in Rules 10.1, 20(5) and 20(6).

SOURCE: *Small Claims Court - 1994*, Continuing Legal Education Society Manual.

NOTE: The Small Claims BC website has its own settlement conference checklist which can be found at http://www.smallclaimsbc.ca/sites/default/files/pdf/settlement-conference-checklist.pdf

NOTE: For **trial conferences** under the pilot project in Vancouver (Robson Square), at least 14 days in advance of the conference, each party is required to complete a Trial Statement (Form 33) and file it, along with **all relevant documents**, at the registry (Rule 7.5(9)). Each party must serve the other parties to the claim with a copy of the trial statement and attachments at least 7 days before the trial conference (Rule 7.5(10)).

K. Appendix K: Payment Hearing Checklist

Both the debtor and the creditor can request a payment hearing, or a judge may order one. A creditor may request a payment hearing to ask the debtor about their ability to pay or to disclose the debtor's assets so they may be seized or garnished. Either the creditor or the debtor may request a payment hearing to propose a payment schedule or changes to a payment schedule. Due to COVID-19, the procedure has changed. Please consult https://www.provincialcourt.bc.ca/COVID19 for updates in protocol.

Creditor Checklist:

1. **Before the Payment Hearing:**
   - If you are the party requesting a payment hearing, you must complete and file a summons in Form 12 at the registry: http://www.smallclaimsbc.ca/court-forms.If the debtor is a corporation, you may name an officer, director, or employee to appear and give evidence on behalf of the debtor (Small Claims Rule 12(5)).
   - After you file the summons, you must serve it on the debtor at least 7 days before the date of the payment hearing (Rule 12(7)).

     If the person who serves the summons on the debtor will not be at the hearing to provide oral evidence, you should have them prepare an affidavit of service, available at the website above, and file it at the registry in case the debtor does not show up to the hearing; otherwise, you will not be able to get a warrant for their arrest.

2. **At the Payment Hearing:**
   - Bring a list of questions you wish to ask the debtor about their assets. Lists of the types of questions that may be asked can be found at: http://www.lawsociety.bc.ca/docs/practice/checklists/E-5.pdf (designed for Supreme Court but may be adapted for Small Claims).
   - Be prepared to propose a payment schedule and defend it or argue why one should not be ordered.

3. **After the Payment Hearing:**

   If the debtor misses a payment, the balance of the judgement becomes due immediately and you may proceed to collections. See **Chapter 10: Creditors' Remedies and Debtors' Assistance** for information on collections procedures.

Debtor Checklist:

1. **Before the Payment Hearing:**
   - If you are the party requesting a payment hearing, you must complete and file a notice in Form 13 at the registry: http://www.smallclaimsbc.ca/court-forms.
   - After you file the notice, you must serve it on the creditor at least 7 days before the date of the payment hearing (Rule 12(11)).
   - If the person who serves the summons on the creditor will not be at the hearing to provide oral evidence, you should prepare a certificate of service (Form 4), available at http://www.smallclaimsbc.ca/court-forms, and file it at the registry in case the creditor does not show up to the hearing.

2. **At the Payment Hearing:**
   - Be prepared to answer questions about your finances such as contained in the lists in Creditor Checklist – Section 2 above.
   - Bring financial records and evidence of income and assets, including:
     - Bank records
     - Credit-card statements
     - Tax returns and supporting documents

    - Property, sales of property and mortgages
    - Receipts for insurance, medical bills, utilities
    - RRSP, TSFA and other investment statements
    - Debts you owe and debts that are owed to you (including future debts)
    - Assets you have disposed of since the claim arose
    - Employment and pay-stubs
    - Evidence of means that you have or may have in the future of paying the judgement
- Prepare a statement of finances, available at https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms.
- Be prepared to suggest a payment schedule or changes to the payment schedule that you can manage
- Be prepared to argue why your financial circumstances justify the schedule or changes you are proposing
- If you are on welfare or other income assistance, be sure to bring this to the judge's attention

3. After Judgement:

- If you are having difficulty managing your debts, see **Chapter 10: Creditors' Remedies and Debtors' Assistance**.

L. Appendix L: Small Claims Appeal

NOTE: This information was taken with permission from the Small Claims Factsheet 14 produced by the Law Centre at the University of Victoria Faculty of Law.

There are two main grounds of appeal: an error of fact and an error of law. In order to appeal a decision from the Small Claims Court, one must argue that the Judge made either an error of fact or an error of law. The following provides a step by step guide on how to appeal a decision from Small Claims Court.

Step 1: Obtain a copy of the written Order made by the Small Claims Court Judge which is being appealed.

If you do not already have a copy of the Order that you want to appeal, you should go to the Court Registry in the Court House where the Order was made. Ask the Clerk for a copy. There may be a small photocopying fee which you will have to pay.

Step 2: Obtain and fill in a Notice of Appeal form.

Step 3: File the Notice of Appeal at the Supreme Court Registry closest to the place where the Small Claims Court Order was made.

Step 4: Pay the $200 Filing Fee (*Supreme Court Civil Rules*, BC Reg 168/2009, Appendix C) and $200 Security for Costs (*SCA*, s 8(1)). Also, deposit with the Court Registry the amount of money the Small Claims Court Judge ordered to be paid to the Respondent. Alternatively, bring an application to a Judge to reduce the amounts payable.

If you cannot afford the filing fee, you may want to apply to a Supreme Court Judge to reduce the amount to be paid.

To succeed in reducing the filing fee, you must be able to prove that you are indigent (see Supreme Court Civil Rule 20-5). The BC Court of Appeal has considered the meaning of that word in a case called *Johnston v. Johnston*. The Court said "indigent" means "a person who has some means but such scanty means that [they are] needy and poor."The Court refused to approve any particular standard for determining whether a person is "indigent", and each case will be looked at individually. However, if you receive social assistance or persons with disabilities benefits and you prove this to the court, you are likely to be declared indigent.

If you cannot afford to pay the security for costs (or the amount required to be paid to the Respondent by the Small Claims Court Order) you may want to apply to a Supreme Court Judge to reduce the amounts to be paid.

It is not clear what test the Court will apply to succeed in an application to reduce these amounts. However, it is clear that evidence of an inability to pay the amount required will be vital.

Step 5: File the Notice of Appeal in Small Claims Court on the same day it was filed in Supreme Court

When you file the Notice of Appeal, be sure to attach the Supreme Court Practice Direction, Standard Directions for Appeals from Provincial Court pursuant to the *Small Claims Act*.

Section 7 of the *Small Claims Act* says that the Notice of Appeal must be filed in the Small Claims Court Registry on the same day that it is filed in the Supreme Court Registry. However, in a case decided in 1993 called *First City Trust v Bridges Café Ltd*, [1993] BCJ No 1353, the court recognized that in certain places in British Columbia the distance between the location of the Supreme Court

Registry and the Small Claims Registry was so great as to make it very difficult to comply with section 7. In that case, the filing took place on the next day. The Court held that the right of appeal would not be lost, even if the filing did not occur on the same day, as long as the Respondent was not prejudiced. Therefore, every reasonable effort should be made to file the Notice of Appeal in the Small Claims Court Registry on the same day or at the latest the day after the Notice of Appeal was filed in Supreme Court Registry.

Step 6: Within 7 days of filing the Notice of Appeal, serve the Notice of Appeal on each person who was a party to the lawsuit in Small Claims Court who will be affected by the Appeal. If you need more time to serve the Notice of Appeal, you must bring an application to a Supreme Court Judge. See Step 4 above.

The Appellant can serve the Notice of Appeal or can have a process server or a friend give the documents to the Respondent. If you decide on using a process server, look in the yellow pages under "Process Servers". To save money you should telephone several process servers to get quotes about how much it will cost to have the documents served because prices vary. You should also confirm that the process server will provide you with a sworn Affidavit of Service. An Affidavit of Service is a document that proves to the Court that the documents were served on the Respondent.

The person who is going to serve the document should be given two copies of the document. They should compare the two copies to ensure that they are the same. This is because one copy will be given to the Respondent to be served and the second copy will be attached to an Affidavit of Service. In the Affidavit of Service the person serving the document will be swearing that they gave a copy of the document to the Respondent. Unless they first compare the documents, they will not know that the copy of the documents attached to the Affidavit of Service is the same as those given to the Respondent.

If the person delivering the documents does not already know the Respondent, they should confirm that the documents are being given to the right person. This can be done simply by asking the name of the person being given the documents.

After leaving a copy of each document with the Respondent to be served, the person serving the document must make a note of the time, date, and place (street address, city, and province) where the documents were served. This information will be needed to prepare an Affidavit of Service.

Step 7: Apply to the Registrar for a date for hearing the Appeal. That date cannot be less than 21 days after applying for the date. Before the Registrar will set a hearing date, the Appellant must prove the money to be deposited in Step 4 has been deposited (or an Order has been obtained which reduces the amount required to be deposited).

Step 8: Serve the Notice of Hearing of Appeal on the Respondent. Also, serve any Order obtained under Step 4. Be sure to act quickly. There is a deadline which must be met (unless a Judge grants an Order extending the time). See Step 10 for instructions on how to serve the documents.

Step 9: The Appellant must order transcripts of the oral evidence given at the Small Claims Court trial and the Judge's reasons for judgment. The Appellant must pay for a copy of the transcript for the Court and one for each party to the appeal. Act quickly.

Transcripts are prepared by Court Reporters. You will have to make arrangements with the Court Reporters who work in your area of the Province to prepare the transcripts that you will need. To find out who may do the work in your area you may wish to speak to the Court Registry staff. Alternatively, you may wish to telephone Court Reporters listed in the yellow pages under "Reporters-Court & Convention".

Step 10: Within 14 days of filing the Notice of Appeal, the Appellant must prove to the Registrar that the transcript has been ordered and that the Notice of Appeal, Notice of Hearing of Appeal, and

the Order reducing the amount of money to be paid under Step 4 (if any) has been served on the Respondent. See the Practice Direction of the Chief Justice regarding Standard Directions for Appeals from Provincial Court Pursuant to the *Small Claims Act,* which can be found at http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/PD%20-%2021%20Standard%20Directions%20for%20Appeals%20from%20Provincial%20Court%20-%20Small%20Claims%20Act.pdf.

To prove that the Notice of Appeal, Notice of Hearing of Appeal and Order (if any) have been served, you will need to file an Affidavit of Service. A process server usually will prepare and have sworn an Affidavit of Service as part of the work they do for you. If you or a friend serve the documents, you will have to prepare your own Affidavit of Service.

Step 11: Prepare a Statement of Argument. Before you can prepare your Statement of Argument you must first pick up the transcript from the Court Reporter. Next, you must carefully read your copy of the transcript. You should make a note of the pages in the evidence or the Judge's reasons for judgment that contain the error in fact or law that you say should result in your appeal being successful. You should also look at copies of any exhibits which were given to the Judge during the Small Claims trial (like contracts, photos, reports, affidavits) to see if the exhibits contain evidence which would help your appeal.

When completing a Statement of Argument, the first step is to decide whether parts of the Small Claims Order are acceptable, or whether you do not agree with the entire Order. Then, on the Statement of Argument, list what you do not agree with.

Then, on the Statement of Argument, you should list the evidence and the page and line numbers in the transcript, which will show the Supreme Court Judge where the Small Claims Court Judge made an error. This will become clearer to you if you view the sample and complete your Statement of Argument in the same way. The sample is based on the case described earlier in this Factsheet in which the Judge failed to apply the Limitation Act.

Finally, in the portion of the Statement of Argument dealing with the nature of the Order you are seeking, you should state what you want the Judge to do. For example, if you brought a lawsuit in Small Claims Court and you lost, you may want the Supreme Court Judge to make an Order for what you sued for. So, if you were owed money and you sued for $8,000 and you lost, you would ask in your Statement of Argument for an Order that the Respondent pay you $8,000. On the other hand, if you were the Defendant in the same lawsuit and you lost at the trial, you might want an Order dismissing the claim. It would be very useful to get some legal advice when filling in the Statement of Argument.

Step 12: Within 45 days of filing the Notice of Appeal, the Appellant must:

1. File at the Supreme Court Registry the original copy of the transcript;
2. File a Statement of Argument; and
3. Serve a copy of the transcript and Statement of Argument on the Respondent. See the Practice Direction of the Chief Justice regarding Standard Directions for Appeals from Provincial Court Pursuant to the *Small Claims Act*, which can be found at http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/PD%20-%2021%20Standard%20Directions%20for%20Appeals%20from%20Provincial%20Court%20-%20Small%20Claims%20Act.pdf

After you have prepared the Statement of Argument, make a photocopy for yourself and each Respondent. Take the original and each copy, plus a copy of the transcript to the Supreme Court Registry. The Registry will date stamp the Statement of Argument. You can then serve the Statement of Argument and transcript on the Respondent.

Step 13: At this point, the Respondent will have to prepare a Statement of Argument. The Respondent must file the Statement of Argument and deliver a copy to the Appellant not less than 14 days before the hearing of the appeal. A Respondent's Statement of Argument is a document which sets out:

1. What paragraphs the Respondent disagrees with in the Appellant's argument;
2. Why the Respondent disagrees with the Appellant's argument; and,
3. What Order the Respondent would like to see the Supreme Court Judge make.

The Respondent should start to prepare the Respondent's Statement of Argument by first carefully reading the Appellant's Statement of Argument. Note where you think errors were made. The Respondent should then read the transcript and review all the exhibits and list the page and line on the transcript that supports the Respondent's case. Then fill in the form in a manner similar to that in which the Appellant's Statement of Argument was completed.

It would be very useful to get some legal advice when filling in the Statement of Argument.

Step 14: Prepare for the hearing. The hearing will not be a new trial. A Judge could order a new trial at the end of the hearing, but the trial would occur at a later date. Thus, the hearing will have a different format than what you experienced at the trial. For example, no witnesses will be called to give evidence. Instead, what usually happens is that the Appellant first tells the Judge what the trial was about. The Appellant then tells the Judge what decision(s) made by the Small Claims Court Judge that the Appellant disagrees with and why. The Appellant may go through the Appellant's argument set out in the Statement of Argument. The Judge might read the portions of the transcript and the exhibits which the Appellant refers to in the Statement of Argument. The Judge may also ask the Appellant questions. The Appellant might conclude by noting the Order that the Appellant would like the Judge to make.

It would then be the Respondent's turn. The Respondent might take the Judge through the Respondent's argument as set out in the Respondent's Statement of Argument. The Respondent would answer questions the Judge had. The Respondent would conclude by telling the Judge what Order the Respondent would like the Judge to make. To prepare for this type of hearing you should carefully review your Statement of Argument and any exhibits that you are going to refer to. You might also make notes of what you want to say.

Small Claims appeals do not happen often. However, if you can watch one before your case occurs it will help to give you a good idea of what is likely to happen. To find out if an appeal will happen before your case goes ahead, call the Supreme Court Registry and ask to speak to the Trial Coordinator.

Step 15: Appear in Court. Make sure you bring your copy of the Statement of Argument, transcript, and exhibits to Court with you on the day of your hearing. Arrive earlier than the time appointed for the hearing to begin.

Find the trial list, which will usually be posted somewhere in the Court building. This list tells which cases are to be tried on that date and in which particular Courtroom they will take place. If your case is not on the list, then you should immediately check with the Court Clerk or Registry. Otherwise, go to the proper Courtroom and be seated in the gallery.

When your case is called move forward to the Counsel table. Stand while speaking to the Judge. Introduce yourself to the Court. In Supreme Court, judges are officially called "Justices" and can be referred to as "Justice", "Madam Justice", or "Mr. Justice".

The Judge probably will have read both Statements of Argument and will have some familiarity with the case. The Appellant will then present their case first, followed by the Respondent

M. Appendix M: LSLAP File administration policy – Small Claims

This chapter is specific to LSLAP clinicians. It sets out internal LSLAP practice and policy regarding Small Claims.

1. Representation (LSLAP Assistance)

The general rule is that parties at the CRT are not allowed to have a representative, without asking for CRT permission, unless they are a minor or someone with impaired mental capacity. If a party is wanting to request a representative, they can request one in the online intake system or by filling out a Representation Request Form.

If a party is using a lawyer as their representative, the lawyer will be able to communicate with the CRT on their behalf.

CRT parties can also hire a lawyer and use them as a helper. If they are using a lawyer as a helper, the lawyer will not be able to speak on their behalf. The CRT also won't be able to talk to your helper about your case; the tribunal's communications are with the parties themselves. A helper can help them keep organized, take notes, provide you with emotional support, help you fill out online forms, as well as other tasks. For LSLAP's purposes, we can provide legal advice to the party while the CRT matter is underway. This includes advising how to draft pleadings, corresponding with the other party, advising on settlement offers, and drafting submissions that the party can present on their own to the CRT.