

PROVINCIAL COURT SMALL CLAIMS HANDBOOK

EXCERPT FROM CHAPTER 2

Provincial Court Versus Supreme Court

III. Jurisdictional Issues When Commencing a Small Claims Action [§2.3]

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B. Remedies Not Available in Provincial Court [§2.5]

C. Monetary Jurisdiction of Provincial Court [§2.6]

1. Availability of Multiple Claims in Provincial Court [§2.7]

B. REMEDIES NOT AVAILABLE IN PROVINCIAL COURT [§2.5]

Several statutory provisions limit the Provincial Court's jurisdiction in small claims litigation. For example, the Provincial Court appears to have no jurisdiction over the following types of claims as a result of either explicit statutory provision or judicial interpretation of the Provincial Court's jurisdiction.

- (1) An action against the federal government (*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 21). Such an action must be commenced in Supreme Court or Federal Court. Claims against servants of the federal Crown, however, may be brought if the Crown is not named as a defendant (*Emond v. Michell*, 2008 BCSC 111). The Provincial Court has jurisdiction over claims against municipal or local governments. It also has jurisdiction over claims against the Provincial Government (see *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 5; Small Claims Monetary Limit Regulation, B.C. Reg. 179/2005). The proceedings must (a) be within the jurisdiction of s. 3 of the *Small Claims Act*; (b) not be a matter for which notice under s. 8 of the *Constitutional Question Act*, R.S.B.C. 1996, c. 68, is required; and (c) not involve the Canadian Charter of Rights and Freedoms.
- (2) A claim that seeks certain types of injunctive relief. The court, however, has limited inherent jurisdiction arising from “necessary implication” to deal with matters of procedure to ensure that justice is done (for further discussion, see “No Inherent Jurisdiction in Provincial Court” in this chapter). The jurisdiction encompasses relief such as an order concerning non-publication of court proceedings (*R.K. v. McBride*, [1994] B.C.J. No. 2791 (QL) (Prov. Ct.)).
- (3) A claim that seeks a declaratory order, unless the order is incidental to a claim for relief in which the court has jurisdiction, such as specific performance (see *Stenerson v. Insurance Corp. of British Columbia* (1992), 12 C.C.L.I. (2d) 111 (B.C. Prov. Ct.); *Evans v. Campbell*, 1993 CanLII 2600 (BC CA); and *Immaculate Confection Ltd. v. Insurance Corp. of British Columbia*, 2011 BCPC 427).
- (4) A proceeding to reciprocally enforce a Canadian or foreign civil judgment (*Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s. 29 and *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29) (for a discussion of territorial jurisdiction, see “Territorial Jurisdiction of Provincial Court” in this chapter).
- (5) A claim under the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 or the *Trustee Act*, R.S.B.C. 1996, c. 464 (see the definition of “court” in s. 1 of each Act; see also *Bhatti v. Mann Estate*, [1994] B.C.J. No. 2801 (QL) (Prov. Ct.)).
- (6) A remedy under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 for recovery of personal property (*First City Trust Co. v. 282674 B.C. Ltd.*, 1993 CanLII 1568 (BC SC); *Ensign Pacific Lease Ltd. v. Picard* (1995), 10 P.P.S.A.C. (2d) 48 (B.C. Prov. Ct.); *Hassell v. Regency Motor Cars Inc.*, 1996 CanLII 3378 (BC SC) (Chambers); *Accent Leasing & Sales Ltd. v. Parsons*, 2004 BCPC 140; *Gord Hill Log Homes Ltd. v. Cancedar*

- Log Homes (B.C.) Ltd.*, 2006 BCPC 480; *Kelowna Auto Mall Leasing v. Karras*, 2007 BCPC 339; and *Accent Leasing & Sales Ltd. v. Babic*, 2007 BCSC 1481, supplementary reasons on costs 2008 BCSC 58)). But if a lease is found to be a true lease, it is not subject to the limitations of Part 5 of the *PPSA* and contractual or common-law remedies remain available to the lessor in Provincial Court (see *DaimlerChrysler Services Canada Inc. v. Cameron*, 2007 BCCA 144, where the court considered whether the lease at issue was a “true lease” or a “security lease”).
- (7) A remedy that affects any interest in land. Provincial statutes confer this jurisdiction on the Supreme Court (see, for example, the *Property Law Act*, R.S.B.C. 1996, c. 377, ss. 3, 13, and 35, *Law and Equity Act*, s. 21, and the sections of the *Strata Property Act*, *Residential Tenancy Act*, and *Builders Lien Act* discussed in the following paragraphs). However, the Provincial Court has jurisdiction to consider claims in which interests in land are at issue, insofar as the interests relate to a claim for debt or damages (for example, for breach of a contract relating to land), as long as no statute precludes that consideration, and as long as the remedy does not affect title or any interest in land (*Lou Guidi Construction Ltd. v. Fedick*, [1994] B.C.J. No. 2409 (QL) (Prov. Ct.)).
- (8) Certain forms of relief under the *Strata Property Act*, S.B.C. 1998, c. 43 such as those related to strata governance, over which the Supreme Court has jurisdiction (see *Grantbam v. Strata Plan VIS 4116*, 2013 BCPC 146; *Frechette v. Crosby Property Management Ltd.*, 2007 BCPC 174; *Matthews v. Strata Plan NW1874*, 2009 BCPC 66; and *Armanowski v. Strata Corp., Strata Plan LMS 2151*, 2011 BCPC 271). Additionally, the CRT has jurisdiction over certain strata property claims as set out in s. 3.6 of the *Civil Resolution Tribunal Act*, some of which were previously within the jurisdiction of the Small Claims Court.
- (9) Virtually all categories of claims between residential landlords and tenants. These claims generally lie within the exclusive jurisdiction of the Residential Tenancy Branch. The *Residential Tenancy Act*, S.B.C. 2002, c. 78, s. 58 removes any jurisdiction of the Provincial Court to deal with actions for debts or damages arising from tenancy agreements (see also *Fok v. Metro Personal Care Homes (Vancouver) Ltd.*, [1993] B.C.J. No. 2746 (QL) (Prov. Ct.); *Pirro v. Li*, [1994] B.C.J. No. 1572 (QL) (Prov. Ct.); *Knight v. Nacel Properties Ltd.*, 2003 BCPC 171; and *Standfield v. Sebal*, 2004 BCPC 418). The Provincial Court does not have the authority to order the Residential Tenancy Branch to release its file regarding a residential tenancy dispute (*Harron Enterprises Inc. v. Von Pfahlenburg*, 2004 BCPC 264). However, orders made under the Residential Tenancy Act and within the monetary jurisdiction of the Provincial Court can be enforced in Provincial Court (see *Residential Tenancy Act*, s. 85; and *Harron Enterprises, Inc.*). The Provincial Court has no jurisdiction to set aside residential tenancy orders; judicial review by the Supreme Court of British Columbia is the only form of recourse.
- (10) Most relief under the *Builders Lien Act* (see s. 1, definition of “court”). However, a debt claim based on the trust provisions of the Act may be brought in Provincial Court (*Valley Rite-Mix v. Storré*, 1993 CanLII 535 (BC SC); *Action Concrete Ltd. v. Caliber Construction Ltd.*, [1996] B.C.J. No. 2295 (QL) (Prov. Ct.)). A building contractor can also seek personal judgment in Provincial Court even though a builders’ lien has been filed in Supreme Court. Note that personal judgment cannot be claimed in both Provincial Court and Supreme Court actions (*Hatami v. Vanbots Construction Corp.*, [1999] B.C.J. No. 2431 (QL) (Prov. Ct.)).
- (11) A wrongful dismissal claim from a unionized workplace, because the *Labour Relations Code*, R.S.B.C. 1996, c. 244 dictates that arbitration is the exclusive dispute resolution vehicle (see *Elam v. Newnes Machine Ltd.*, [1996] B.C.J. No. 2290 (QL) (Prov. Ct.)). Similarly, the court lacked jurisdiction to hear a claim for denial of a claimant’s long term disability benefits because the dispute arose out of the collective agreement governing the claimant’s employment: *Maruniak v. Teamsters National Benefit Plan*, 2015 BCPC 44. Also, a wrongful dismissal claim in which the claimant has already received a “determination” by an industrial relations officer of the *Employment Standards Branch* (*Robinson v. Tale’Awt:cv Aboriginal Capital Corp.*, 1996 CanLII 1545 (BC SC)). If a claimant has already had his or her claim pursuant to an employment contract decided through an application to the Employment Standards Branch, a subsequent claim to the Provincial Court for compensation pursuant to the same contract of employment (even when the provisions of the contract are contrary to the statutory minimum wage payable) will be dismissed under the principles of issue estoppel and *res judicata* (*Burke v. Podollan Construction Ltd.*, [1996] B.C.J. No. 343 (QL) (Prov. Ct.)). However, it is important to note that where the initial claim to the Employment Standards Branch arose from a breach of a statutory requirement, an action on the same employment

- contract can proceed in the courts if it is based on a separate breach (such as breach of contract) and relates to a time period separate from the Employment Standards Branch claim (*Wilkes v. McLaren Electric (1975) Ltd.*, [2013] B.C.J. No. 1464 (QL) (Prov. Ct.)).
- (12) A claim of harassment or other issue addressed by the *Human Rights Code*, R.S.B.C. 1996, c. 210 (see *Cohen v. Wilder*, [1996] B.C.J. No. 856 (QL) (Prov. Ct.); and *Byrnes v. Cambridge Properties Ltd.*, 2008 BCPC 96).
 - (13) A bankruptcy claim (*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 183(1)). Also, a claim against a director of a bankrupt corporate employer (for which the only remedy is a claim to the Director of Employment Standards) (*Adcock v. Dukes*, [1996] B.C.J. No. 2226 (QL) (Prov. Ct.)). But see *AMEX Bank of Canada v. Golovatcheva*, 2007 BCPC 369, where the Provincial Court was found to have jurisdiction because the case was not one of bankruptcy and insolvency. Rather, if the claimant could establish that the defendant committed a fraud, the related debt would survive bankruptcy and discharge and would accordingly not be classified as a debt recoverable only in bankruptcy court. See also *Thiessen v. Antifaev*, 2003 BCSC 197, where the creditor was allowed to proceed with an action to recover a debt after the discharge of the bankruptcy trustee.
 - (14) A trade-mark claim, which must be taken to the British Columbia Supreme Court or the Federal Court, although the Provincial Court has jurisdiction in copyright (*Belanger v. AT & T Canada Inc.*, [1994] B.C.J. No. 2792 (QL) (Prov. Ct.)).
 - (15) A claim in libel, slander, or malicious prosecution (*Small Claims Act*, s. 3(2); *Knight v. Nacel Properties Ltd.*, 2003 BCPC 171).
 - (16) Relief under the *Privacy Act*, R.S.B.C. 1996, c. 373 (see s. 4 of that Act). Previous authority left open the possibility that an action in Provincial Court might be maintained based on a common law tort of invasion of privacy (*Corlett-Lockyer v. Next! Services Inc.*, [1996] B.C.J. No. 857 (QL) (Prov. Ct.)). However, the British Columbia Court of Appeal has since clarified that there is no common law cause of action for breach of privacy in British Columbia (*Ari v. Insurance Corp. of British Columbia*, 2015 BCCA 468 at para. 9).
 - (17) A stay of proceedings issued pursuant to s. 15 of the *Arbitration Act*, R.S.B.C. 1996, c. 55, as any such application must be brought before the British Columbia Supreme Court. *Sumitomo Canada Ltd. v. Saga Forest Carriers*, 2007 BCPC 373 and *Jeffries v. Henderson*, 2009 BCPC 101 appear to discuss applications for stays of proceedings but neither case considered the definition of “court” in the *Arbitration Act*. However, a stay of a small claims proceeding was granted in favour of arbitration in *Royal Vancouver v. Elavon*, 2011 BCPC 225, pursuant to s. 2 of the *Small Claims Act*. Note that the definition of “court” in s. 2 of the *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233, is more expansive.
 - (18) Relief under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 (*Stone v. Insurance Corp. of British Columbia*, 2009 BCPC 33).

Most commonly, jurisdiction-based dismissals are ordered at settlement conferences pursuant to Rule 7(14)(i). However, the court may hear applications brought pursuant to Rule 16(6)(o) to dismiss a claim, counterclaim, reply, or third party notice on jurisdictional grounds before a settlement conference if the jurisdictional deficiency is “clear on the face of the notice of claim”. On such applications, the applicant should serve the other party with a summary of its written argument and copies of any legal authorities relied upon (*Wong v. Eastside Residents’ Assoc.*, [1997] B.C.J. No. 1339 (QL) (Prov. Ct.)).

Defendants wishing to challenge the jurisdiction of the Small Claims Court should be cautious not to unintentionally attorn by addressing the merits of the claim or taking other steps beyond contesting jurisdiction. Any reply should be limited to the jurisdictional challenge. Pleading the merits in the alternative and attending a settlement conference has been considered sufficient for attornment (*Farough v. Financial Control Industries Inc.*, 2007 BCPC 351). Refusing to respond at all could result in a default judgment. In *Tobacco Plains Indian Band v. Coleman*, 2000 BCSC 522, the defendants lost their appeal to overturn the default judgment. The court found that it is not open to a defendant to fail to respond to a claim and then take the position that there has been a jurisdictional error when the court grants default judgment. In dismissing the appeal the court did not have to determine the jurisdictional issue.

C. MONETARY JURISDICTION OF PROVINCIAL COURT [§2.6]

The CRT has jurisdiction over small claims matters of \$5,000 or less for: debt or damages; recovery of personal property; specific performance of an agreement relating to personal property or services; and relief from opposing claims to personal property (*Civil Resolution Tribunal Act*, s. 3.1; Civil Resolution Tribunal Small Claims Regulation). Further details regarding the CRT's jurisdiction are included in chapter 12 (The Civil Resolution Tribunal).

As of June 1, 2017, the amount claimed in a notice of claim, or the value of the personal property or services, must be \$35,000 or less, excluding interest and costs (*Small Claims Act*, s. 3(1); Small Claims Court Monetary Limit Regulation, as amended by B.C. Reg. 120/2017).

While the Small Claims monetary limit is \$35,000 “excluding interest and costs”, a Provincial Court judge has held that contractual interest is not an excluded amount. In *Telus Services Inc. v. Hussey*, 2016 BCPC 41, the judge held that the claimant could not recover \$18,324 in contractual interest in addition to its claim for \$25,000 (the monetary limit at the time). Interestingly, in that case the claimant was also denied prejudgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. The judge noted that under s. 2 of that Act, interest is not available in cases where the parties agreed to contractual interest. As a result, the claimant was awarded only \$25,000 plus filing and service fees. It remains to be seen if this reasoning will be applied in future cases.

Where a claim is for an amount exceeding \$35,000 and the litigant wishes to pursue the claim in Provincial Court, the litigant may abandon the excess to bring his or her claim within the court's jurisdiction (Rule 1(4)). The notice of claim must set out the original amount of the claim, before abandonment, and then state that the excess, over \$35,000, is abandoned (Rule 1(5)). The following is suggested wording:

The Claimant abandons the sum of \$ [amount] to bring this claim within the jurisdiction of this Honourable Court.

Once abandoned, a claim may not be pursued for the excess over \$35,000, unless the entire claim is withdrawn under Rule 4(9) and then pursued in Supreme Court, the matter is transferred to Supreme Court under Rule 7.1, or the claim (or counterclaim) was filed before June 1, 2017, and the amount claimed is increased to an amount that is more than \$25,000 and not more than \$35,000, not including interest and expenses (Rule 8(7) and 8(8)).

If the claim is transferred to Supreme Court, the claimant may sue for the whole amount to which he or she may be entitled whether or not part of the claim was abandoned in Provincial Court (Rule 1(7)). In *Lloyd Investments Ltd. v. Weatherby*, 2002 BCSC 650, Smith J. upheld the decision of the trial judge who awarded damages of \$10,000 (the Small Claims monetary limit at the time) rather than return of the boat (the subject matter of the action), which was worth more than \$10,000. She found the judge correct when he determined he lacked jurisdiction to return the boat to the claimant, which was an alternate claim, because its value was greater than the amount that could be awarded by the Small Claims Court.

I. AVAILABILITY OF MULTIPLE CLAIMS IN PROVINCIAL COURT [§2.7]

A claimant is not permitted to “split the claim”. For example, if the sum of \$38,000 is owed, the claimant cannot bring one action for \$35,000 and another for the balance. The claimant must either abandon the excess over \$35,000 or sue in Supreme Court.

When the total amount sought in multiple actions exceeds the \$35,000 limit, but is owed under separate obligations or instruments, separate claims can be brought on each obligation so long as each claim is below the monetary limit. In *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.*, 2000 BCPC 163, the court found the claims for over \$70,000 filed in eight separate actions all brought by the same claimant against the same defendant were “stand-alone statements of debt ... the breach of which [gave] rise to a claim under that invoice”. It should be noted that it appeared to the court in this case that the defendant was clearly indebted to the claimant for the global amount claimed. See also *Jeffries v. Henderson*, 2009 BCPC 101.

However, when separate claims are brought relating to the same event or loss, the court may consolidate the claims. The claimant must then abandon the excess above the monetary limit. See, for example, *Kids Only Market v. Chan*, [1993] B.C.J. No. 2728 (QL) (Prov. Ct.), in which both claims, one for damages and one for debt, related to the termination of a lease (*Schab v. Active Bailiff Service Ltd.*, [1993] B.C.J. No. 2936 (QL) (Prov. Ct.); *Bishop v. Lamb*, 2001 BCPC 376; *Babich v. Babich*, 2015 BCPC 175).

A claimant may file multiple notices of claim with respect to a single event if there are multiple defendants. The total of all claims may exceed \$35,000 so long as no single claim exceeds \$35,000. A judge may hear the evidence relating to all claims at one time and apply that evidence to all claims (Rule 7.1(4)). The same Rule applies if there are multiple claimants with respect to a single event.

However, the court may also determine that claims by multiple claimants in reality amount to a single claim. For example, in *Weddell Horn & Company v. Kiran*, [1996] B.C.J. No. 853 (QL) (Prov. Ct.), in which a law firm brought a claim against four family members for legal services in relation to a single transaction, the four defendants were not entitled to counterclaim individually for a total exceeding \$10,000 (the limit at the time).

In a counterclaim, the monetary outcome cannot exceed the \$35,000 limit. Thus, for example, if a plaintiff succeeds in a claim for \$35,000, and the defendants succeed in a counterclaim for \$70,000, the defendants may be awarded \$35,000 after set-off (*Weddell Horn & Company v. Kiran*). Equally, a claimant who anticipates a potential liability split, or a finding of contributory negligence, may seek damages in excess of \$35,000, provided the monetary outcome does not exceed \$35,000. The claimant must eventually abandon any recoverable amount above \$35,000 (*Ruttan v. Paterson*, [1996] B.C.J. No. 354 (QL) (Prov. Ct.)).

If a trial judge hears multiple claims consolidated for the purpose of trial, the judge must allocate the global amount awarded, especially if it exceeds \$35,000, to each respective action. In *Brown v. Ferris (Guardian ad litem of)*, 2000 BCSC 852, the defendant's appeal was allowed as the appeal judge found that the \$20,000 global amount should have been allocated \$15,000 to one claim and \$5,000 to the other. The \$20,000 award was reduced to comply with the \$10,000 Small Claims Court limit for damages at that time.

Applications to consolidate claims may be brought by an application to a judge. The issue may also be raised at a settlement or pre-trial conference.

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