

DUE DILIGENCE DESKBOOK
EXCERPT FROM CHAPTER 18

Due Diligence Court Registry Searches

Why Search Court Registries in a Business Transaction? [§18.1]

How to Search Court Registries [§18.2]

Determining Which Court Registries to Search [§18.3]

Scope of Court Registry Searches [§18.4]

Scope of Supreme Court Registry Searches [§18.5]

Scope of Court of Appeal Registry Searches [§18.6]

Scope of Federal Court Registry Searches [§18.7]

Scope of Provincial Court Registry Searches [§18.8]

Conducting the Court Registry Search [§18.9]

How to Search the Supreme Court Registry [§18.10]

How to Search the Court of Appeal Registry [§18.11]

How to Search the Federal Court Registry [§18.12]

How to Search the Provincial Court Registry [§18.13]

Fees for Searching Civil Court Records [§18.14]

Court Registry Search Results [§18.15]

Limits to Court Registry Searches [§18.16]

Conducting Out-of-Province Court Registry Searches [§18.17]

[§18.18] has been deleted.

Sample Letter to Agent to Search Court Records Concerning a Company [§18.19]

Information Sheet for Court Registry Searches [§18.20]

Why Search Court Registries in a Business Transaction? [§18.1]

The primary reasons for a registry search in a business acquisition are to determine whether there is actual or pending litigation that could either affect the vendor's ability to sell or transfer title in assets or shares to a purchaser, and to reveal the existence, nature, and history of any claims against the target business. If the litigation is confirmed, court registry searches are useful in determining the value and extent of the claims against, or in favour of, the vendor or target company whose assets or shares are being acquired.

Court registry searches will reveal the status of any actions to which the vendor or target company is a party, thereby allowing the purchaser to assess the likelihood of any risk that the vendor will be unable to complete the transaction or of inheriting any judgments or liens that will affect the target assets or shares. Court registry searches are also useful to the extent that they disclose the nature of any claims a vendor may be making against third parties, as well as the general litigation history of the business (in terms of both type and frequency of claims).

Any ongoing litigation or outstanding judgments identified through these searches will not in themselves create liens against the assets or shares of a business. In order for liens to attach in this way, execution proceedings must first be taken. Whether execution proceedings have been taken on a judgment will normally be revealed in the court registry file, as part of the court registry search. To determine the status of any outstanding writs of execution against assets or shares, see the procedures described in chapter 19 (Bailiffs).

All of the information obtained through court registry searches can be useful to a potential purchaser in determining the price it is willing to pay for the shares or assets and, in some cases, whether it is willing to enter into a contractual relationship with a particular vendor.

Court registry searches are usually conducted early in the due diligence process to determine the nature of any claims against the vendor or target company and the types of litigants making them. Court registry searches are particularly important in share purchase transactions, where the purchaser will inherit all of the assets and liabilities of the business of the company being acquired.

How to Search Court Registries [§18.2]

DETERMINING WHICH COURT REGISTRIES TO SEARCH [§18.3]

There are 29 Supreme Court registries in British Columbia and, in theory, actions could be commenced in any of these registries.

It is necessary at an early stage to determine and obtain clients' instructions as to where the vendor carries on business, and in which registries searches should be performed. It is the usual practice to search at least those registries located in the region where the vendor carries on business, owns assets, or has its registered office. Most transactions in British Columbia will warrant searches of the Vancouver and New Westminster registries, and often the Victoria registry as well, because these registries are the most likely places in which an action will be commenced. The risk involved in any limitation on the scope of a search must be explained to the client. Normally, searches are conducted to disclose information from the past five to seven years.

It is also important to conduct searches under previous names of a corporate vendor or target company in each registry reviewed. If the individual principals of a vendor are involved in the proposed transaction, consider whether the nature of the transaction and the participation (if any) of the principals after completion (for example, as consultants, managers, or due to important indemnity provisions) warrants a litigation search for those parties as well.

Although a determination about which registries to search in relation to actions in the Supreme Court of British Columbia is the starting point for litigation due diligence, searches of the Court of Appeal Registry, Federal Court Registry, and Provincial Court Registry must also be considered.

SCOPE OF COURT REGISTRY SEARCHES [§18.4]

All registry searches involve the following two stages:

- (1) an initial investigation of the registry indexes under the name of the vendor, in order to determine whether the vendor is a party to an action in that court, as either a plaintiff or a defendant. The search results will include all actions registered during the requested search period notwithstanding some actions that may have been dismissed, settled, or adjudicated; and
- (2) a review of the contents of any file in which the vendor is a defendant or a plaintiff in order to determine the status of the action.

Scope of Supreme Court Registry Searches [§18.5]

There are 29 Supreme Court registries in the province. Because an action can be commenced in any one of these, it is necessary to obtain instructions as to where the vendor or target company carries on business and which registries should be searched.

Most of the province's registries have an electronic management system for court records so that court files may be searched using that system. Before computerized record management, some registries maintained separate filing codes and indexes for different types of actions (for example, Civil, Divorce). If your search commencement date is prior to the existence of the particular registry's records system, a review of each individual index may be required (see §18.10 and §18.11).

Where the initial investigation reveals that the party searched is named as a defendant, the file should be reviewed in order to determine whether those actions have been dismissed, settled, or adjudicated.

Where the initial investigation reveals that the party is named only as a plaintiff, further review may be required since a counterclaim may be pending. It is prudent to obtain further instructions from the client before proceeding with a review of each of these files. If the files are not reviewed, it should be reported to the client that a counterclaim may be pending which may give rise to a judgment or lien.

Scope of Court of Appeal Registry Searches [§18.6]

Since your search will identify any action registered during the specified period, a search at the Court of Appeal registry should be performed for any actions in which a judgment has been entered in the Supreme Court. You may, however, limit this search if the relevant appeal period has expired.

Scope of Federal Court Registry Searches [§18.7]

A search may also be performed for any actions being commenced or appealed under the *Federal Courts Act*, including claims by or against the Government of Canada, civil suits in federally regulated areas and challenges to the decisions of federal tribunals. When this search is requested, the staff member at the registry will also conduct a search of actions commenced by or against the name of the party being searched in Admiralty Court. Searches at the Federal Court registry may be conducted from 1971 to the present.

Scope of Provincial Court Registry Searches [§18.8]

Because the limit for small claims actions in British Columbia is \$25,000, a search with the relevant Provincial Court registries in the province may be advisable. The decision to perform these small claims searches will generally be a discretionary one for the client and will depend on a number of factors including the character and size (that is, value) of the transaction and the nature and geographic limits of the business involved.

CONDUCTING THE COURT REGISTRY SEARCH [§18.9]

The Court Services Branch of the Ministry of Justice has made the civil registries of the Provincial Court, the Supreme Court, and the Court of Appeal searchable on the Court Services Online website as well as the traffic and criminal registries of the Provincial Court and the Court of Appeal. A general description of this service can be found online at <https://justice.gov.bc.ca/cso/about/index.do>.

The database is substantially similar to that offered at the self-serve terminals in Vancouver, Victoria, and New Westminster (see §18.10). Searching for a record using Court Services Online is free, and searches can be conducted using party names, file numbers, or any relevant information about the file. (See §18.14 for other fee information.)

Court Services Online includes Court of Appeal cases filed after January 2004 only. Most Supreme Court and Provincial Court registries are searchable back to 1989. Victoria Supreme Court files are searchable back to 2002.

How to Search the Supreme Court Registry [§18.10]

Once the geographical parameters of a search have been determined, the appropriate registries must be searched. Addresses and telephone and fax numbers for Supreme Court registries in British Columbia are on the British Columbia Superior Court's website at www.courts.gov.bc.ca and listed in the Canadian Bar Association's *BC Lawyers Directory*.

As noted above, searches in the relevant registry may be performed in person, through Court Services Online, through agents (either a search agency or a local law firm), or, in some of the smaller registries, by the local registry staff. For registries located outside Vancouver, New Westminster, and Victoria, the most cost-effective method of conducting searches is often to contact the registry staff directly.

In the Vancouver, Victoria, and New Westminster Supreme Court registries, court records are accessed through self-serve terminals. The Vancouver registry system contains records from January 1, 1990, and is updated nightly. The Victoria registry contains records from January 1989. Note that the records accessible at the Victoria self-serve terminals date back to 2002 but registry staff can search back to 1989. The New Westminster system contains records from January 1992. Both the Vancouver and New Westminster registry systems amalgamated the records for files that were coded following the former filing system (corresponding with the Act under which the action was commenced) and the current file numbering system used by the Supreme Court, so that only one search is required.

For actions commenced before records management systems were introduced, the registry has alphabetical lists of actions catalogued according to year and indexed by the name of both the plaintiff and defendant. Each volume of actions must be searched manually under the name of the party being searched.

How to Search the Court of Appeal Registry [§18.11]

The Court of Appeal registry, located in Vancouver, has an electronic records system that allows records to be searched back to 1986. Files prior to 1986 must be searched manually. The Court of Appeal registry is on the British Columbia Superior Court's website at www.courts.gov.bc.ca and listed in the Canadian Bar Association's *BC Lawyers Directory*.

How to Search the Federal Court and the Federal Court of Appeal Registry [§18.12]

You may search the Federal Court and the Federal Court of Appeal electronic records at http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Court_Index. You may search by last name of person, name of corporation, name of ship, court file number, intellectual property name, or related case names. All Federal Court registries access the same database, so a search of one registry will reveal past and ongoing actions in Federal Courts across Canada. Files can be obtained by calling or faxing the Federal Court Registry with the information provided in your search result. A particular file can be photocopied immediately if the Federal Court registry in Vancouver has a copy of the file. If the file is located in another registry, the staff at the Vancouver registry will arrange to have the file photocopied and forwarded to Vancouver, where it will be made available for viewing. A request to transfer files must be made in person or by fax. All Federal Court registries are on the Federal Court website at www.fct-cf.gc.ca. The British Columbia Federal Court registry is also listed in the Canadian Bar Association's *BC Lawyers Directory*.

How to Search the Provincial Court Registry [§18.13]

Searches of the Provincial Court civil and traffic/criminal registries may be conducted online, in person, by agents, or by registry staff. Provincial Court registries are listed on the Provincial Court website at www.provincialcourt.bc.ca and in the Canadian Bar Association's *BC Lawyers Directory*.

Fees for Searching Civil Court Records [§18.14]

Searching civil and traffic/criminal records is free at all of the court registries. If the contents of a Supreme Court, Court of Appeal, or Provincial Court file needs to be reviewed, an \$8 fee per file is charged to those not listed as counsel on file. There is no charge to review Federal Court files.

Charges will be levied by each registry for any documents photocopied (the Supreme Court, Court of Appeal, and Provincial Court charge \$1 per page; the Federal Court charges \$0.40 per page).

The Court Services Online search is substantially similar to that offered at the self-serve terminals in Vancouver, Victoria, and New Westminster (see §18.10). There is a \$6 fee to view a file, a \$6 fee per file to view and print electronic documents (if available), and a \$6 fee for a File Summary Report. Some documents can then be purchased and delivered for a charge of \$10. Not all documents are available to be purchased online. Fees for Court Services Online can be found at <https://justice.gov.bc.ca/cso/feeSchedule/index.do>.

Court Registry Search Results [§18.15]

Whether searched in person, through agents, or by registry staff, the search results will generally reveal the same initial information: court file number, the parties' names, when an action has been commenced, or "nil" when no relevant information is on file with that registry. When an action is identified, determine what, if any, further information should be obtained (for example, copies of statement of claim, notice of civil claim, defence, orders granted, and so on).

Take particular care to confirm with each registry the currency date of each search. Search results can be a few days (in some cases, weeks) out of date, and the search results should be qualified with this information.

Limits to Court Registry Searches [§18.16]

Any limitation on the geographic scope of a search will limit the comprehensiveness of searches of the Supreme Court and Provincial Court registries. As well, it may be difficult to obtain results that are current up to and including the date of the search in major British Columbia Supreme Court registries, the Federal Court, and the Provincial Court. It is therefore important to determine the location of the vendor's assets and business as precisely and as early in the due diligence process as possible, and to update the searches closer to closing, if the size of the transaction warrants this additional precaution. Any limitations on the extent or currency of any searches should be clearly reviewed with the client.

Conducting Out-of-Province Court Registry Searches [§18.17]

If the vendor carries on business outside British Columbia, it may be prudent to arrange for either a search agency or a law firm located in the other province to conduct court registry searches in that jurisdiction.

[§18.18] has been deleted.

Sample Letter to Agent to Search Court Records Concerning a Company [§0.1]**[FP 19]**

[month, day, year]

[agent's name and address]

Dear Sir or Madam:

Re: Search Request for *[name of target company]* (the "Company")

Please conduct searches of the *[specify registries]* for litigation commenced by or against the Company during the past *[specify number]* years.

Please obtain copies of the statement of claim, notice of civil claim, or other initiating documents, and orders granted in any actions.

[Optional:]

As this information is required for a transaction that is scheduled to close on *[month, day, year]*, please fax your report to us at *[fax number]* (Attention: *[name]*), and then forward the original by regular mail. Please note in your fax the date to which your search is current.

If you require additional information, please call *[name]* at *[number]*.

Yours truly,

[name of law firm]

Information Sheet for Court Registry Searches [§18.20]

Address	<p>For British Columbia Court of Appeal, Supreme Court, and Provincial Court registries, consult the Canadian Bar Association's BC Lawyers Directory or check the websites listed below.</p> <p>The Vancouver office of the Federal Court of Canada is:</p> <p>Federal Court of Canada 701 W. Georgia Street P.O. Box 10065 Vancouver, BC V7Y 1B6</p>
Telephone	(604) 666-3232
Fax	(604) 666-8181
Websites	<p>www.courts.gov.bc.ca www.provincialcourt.bc.ca www.fct-cf.gc.ca https://justice.gov.bc.ca/cso/index.do</p>
Delivery Time	For British Columbia court registries, delivery time depends on the method used to conduct the search. Federal Court registry searches are usually completed within a day.
Search Fee	The Court Services Online search is substantially similar to that offered at the self-serve terminals in Vancouver, Victoria, and New Westminster (see §18.10). There is a \$6 fee to view a document online. Some documents can then be purchased and delivered for a charge of \$10. Not all documents are available to be purchased online. Court Services Online can be found at https://justice.gov.bc.ca/cso/index.do
Form of Request	Searches are conducted in person, through agents or, in some registries (such as the Federal Court registry, the Provincial Court registries, and some smaller Supreme Court registries), by contacting the local registry staff.
Electronic Search	In addition to Court Services Online, most registries have electronic records management systems. Note, however, that all Federal Court registries access the same database (no self-serve terminals at Federal Court registry).
Consent Required	No

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