5. Fees and Expenses Recoverable by the Successful Provincial Court Litigant [§2.21]
B. Reasons to Litigate in the Provincial Court [§2.22]
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2. Trial Conferences [§2.24]
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6. Waiting Times for Court Time [§2.28]
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8. Predictability in the Litigation [§2.30]
9. Containing the Cost of Counsel by Limiting the Retainer [§2.31]
C. Reasons to Litigate in the Supreme Court [§2.32]
1. Possibility That the Claim Is over $35,000 [§2.33]
2. Need for Traditional Pre-trial Procedures [§2.34]
3. Availability of Summary Trial under Supreme Court Civil Rules [§2.35]
4. Unavailability of Remedies [§2.36]
5. Entitlement to Costs [§2.37]
6. Geographical Considerations [§2.38]

I. PRELIMINARY CONSIDERATIONS WHEN CHOOSING PROVINCIAL COURT [§2.1]

When considering the choice between Provincial Court and Supreme Court, the litigant or lawyer must first ask whether a choice of courts exists. For example, does the claim come within the monetary jurisdiction of the Provincial Court, and does that court have jurisdiction to address the type of remedy requested by the claimant? If the claim may exceed $35,000, will a Provincial Court proceeding be transferred to the Supreme Court under Small Claims Rules, B.C. Reg. 261/93, Rule 7.1(1)? On the other hand, if the matter falls within the jurisdiction of the Provincial Court, is the Supreme Court in fact an option, or will a Supreme Court proceeding likely be transferred to Provincial Court under s. 15 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443?

The relevant time at which to consider whether a client has sufficient reason to commence an action in Supreme Court (as opposed to Provincial Court) is when the litigation is initiated. There is no ongoing obligation on a plaintiff to assess quantum and transfer a case from the Supreme Court to the Provincial Court if it appears that the likely recoverable amount is within the jurisdiction of the Provincial Court (*Reimann v. Aziz*, 2007 BCCA 448; *Grenier v. Williams*, 2020 BCSC 1827). For a discussion of these cases and the implications for Supreme Court cost awards if the plaintiff recovers an award within the monetary jurisdiction of the Provincial Court, see "Fees and Expenses Recoverable by the Successful Provincial Court Litigant" in this chapter.

After the litigant or lawyer has confirmed that a choice of courts is available, practical questions arise. Typical considerations include:

- the cost of litigating in each court;
- the discovery options;
- the available interlocutory procedures and remedies;
- whether costs are recoverable following a successful judgment (as under no circumstances can a party recover any fees paid to a lawyer with respect to a Small Claims Court proceeding (*Small Claims Act*, R.S.B.C. 1996, c. 430, s. 19(4)); and
- the likely speed of a satisfactory resolution.

II. MANDATE OF THE CIVIL RESOLUTION TRIBUNAL [§2.2]

Commencing June 1, 2017, British Columbia's *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 (the "*CRT Act*") established a dispute resolution body called the Civil Resolution Tribunal (the "CRT"). The CRT is designed to act as a specialized tribunal dealing primarily with small claims up to $5,000 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, as well as some strata property, cooperative association and society disputes, and some portions of motor vehicle accident claims (*CRT Act*, s. 118(1), 121(1), 125(1), 129(1) and 133, respectively; Tribunal Small Claims Regulation, B.C. Reg. 232/2018, s. 3; see also Accident Claims Regulation, B.C. Reg. 233/2018, s. 7).

The CRT can also hear claims against municipal governments and the Provincial Government for matters that fall within its statutory jurisdiction (*Crown Proceeding Act*, R.S.B.C. 1996, c. 89, s. 5.1).

The Provincial Court will only hear cases that fall within the monetary jurisdiction of the CRT if:

(1) the CRT refuses to resolve the claim;

(2) the subject matter of the claim is not within the exclusive jurisdiction of the CRT and the party is granted an exemption from the court to have the matter proceed in Provincial Court;

(3) the CRT gives a final decision and one of the parties files an objection to the decision;

(4) the CRT declines to give an initiating notice under s. 6 or otherwise refuses to resolve the claim; or

(5) the claim is a counterclaim to a notice of claim or notice of civil claim, as applicable, filed in the court (*CRT Act*, ss. 11, 16.1, 16.2, 16.3, and 16.4, respectively; Rules 1.1(2) and 16.1 of the Small Claims Rules).

If the CRT refuses to issue an initiating notice or resolve the claim because the CRT finds that the request for resolution does not appear, on its face, to disclose a reasonable claim, or is an abuse of process, the filing party must seek judicial review of the CRT decision before it may file notice of the same claim in Provincial Court (*CRT Act*, ss. 16.4(3) and 11(1)(b)).

Note that certain accident claims within the jurisdiction of the CRT may be brought in Supreme Court if all parties consent (*CRT Act*, s. 16.4(2)(b)).

For more information on the CRT, see chapter 12 (The Civil Resolution Tribunal) and visit www.civilresolutionbc.ca.

III. JURISDICTIONAL ISSUES WHEN COMMENCING A SMALL CLAIMS ACTION [§2.3]

A. REMEDIES AVAILABLE IN PROVINCIAL COURT [§2.4]

In civil matters, the Provincial Court derives its jurisdiction from the *Provincial Court Act*, R.S.B.C. 1996, c. 379, the *Small Claims Act*, R.S.B.C. 1996, c. 430, the Small Claims Rules, and other statutes such

as the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, in which "judge" is defined as including a Provincial Court judge.

A general statement of the jurisdiction of the Provincial Court under the *Small Claims Act* appears in s. 3(1) of the Act:

> (1) The Provincial Court has jurisdiction in a claim for
>
> (a) debt or damages,
>
> (b) recovery of personal property,
>
> (c) specific performance of an agreement relating to personal property or services, or
>
> (d) relief from opposing claims to personal property
>
> if the amount claimed or the value of the personal property or services is equal to or less than an amount that is prescribed by regulation, excluding interest and costs.

The Provincial Court has no express authority to grant equitable remedies. Nevertheless, under the *Law and Equity Act*, R.S.B.C. 1996, c. 253, the court has limited jurisdiction arising from "necessary implication" to deal with matters of procedure to ensure that justice is done (*R.K. v. McBride*, [1994] B.C.J. No. 2791 (QL) (Prov. Ct.); *Cantronic Systems Inc. v. Pavan*, 2017 BCPC 341). For further discussion of this issue, see "No Inherent Jurisdiction in Provincial Court" in this chapter.

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 that are outside of the CRT's jurisdiction. It also has jurisdiction over claims against the provincial government that are outside of the CRT's jurisdiction