DOGWOODLAW
CORPORATION

FASThelp: The Litigation Process

British Columbia uses the adversarial process in its court system. This means that it is up to the parties to marshal and present to the court, in accordance with the law and the rules of the court, whatever evidence they chose to prove their cases. By design therefore, this process embodies conflict – move and counter-move. Accordingly this process is highly unpredictable, and for this reason, no lawyer can guarantee any particular outcome. *For this reason too, the cost of litigation is high and can escalate rapidly unless a concerted effort to minimize and focus the issues in dispute is constantly employed.* Put another way, the more issues that are in dispute the more it costs and the longer it takes to obtain a resolution. While it is not always possible to do so, litigants should therefore endeavour to avoid adding to, enlarging or expanding the issues in dispute – if they want to try and minimize both the cost of litigation and the time it takes to achieve resolution.

There are three courts in the province which are used by most people. Small Claims Court (Provincial Court) deals with most disputes having an amount in issue of $25,000 or less. (Some disputes, involving, libel, slander, malicious prosecution, interests in land and some others, cannot be dealt with by provincial court.) The Supreme Court of British Columbia is the primary court available for the resolution of virtually all disputes. It is a trial court, but also acts as an appeal court for Small Claims Court. The Court of Appeal is strictly an appellate court, which hears appeals from decisions made in Supreme Court if they are appealable.

There are generally two types of proceedings in Supreme Court, those started by a Petition to the court and those started by a Notice of Civil Claim. Petitions are used where there are little or no disputed facts and the issues centre upon the interpretation of the written word. The culmination of a *proceeding* (started with a Petition) is a *hearing* in court where witnesses do NOT testify orally. All evidence is given by affidavits sworn and filed with the court. Notices of Civil Claim are used for everything else. The culmination of an *action* (started with a Notice of Civil Claim) is a *trial*, where the parties tender their evidence, including documents, through witnesses who testify orally in open court and are subject to cross-examination.

An *action* can be considered to have 3 phases to it, the *pleadings phase*, the *discovery phase* and the *trial phase*. In the pleadings phase, the parties file and exchange documents prepared by their counsel called pleadings which attempt to delineate and focus the nature and scope of the dispute. In the discovery phase the parties are obliged to disclose to one another the evidence upon which each relies to prove their respective claims and defences. At the trial phase, the parties evidence is heard by the court and put to the test. Generally, there are three potential outcomes: what one or more of the parties contended for; ***part*** of what one or more of the parties contended for; and *nothing any of the parties contended for* –

something else entirely.
Whilst the latter alternative does not often occur, it occurs with such frequency that it must be considered by litigants as a possible outcome.

COSTS

The general rule in the Supreme and Appeal Court is that costs follow the event. This means that the "successful" party usually is awarded his or her costs from the "unsuccessful" party. "Costs" generally refers to an amount specified in the Court Tariffs of costs for various steps taken in a given proceeding and does not usually amount to complete recompense for the amounts paid by the successful party to his counsel. This is by design, so that parties are encouraged (by knowing that they will not recover ALL of their legal expenses form the other parties) to settle their disputes out of court.

Litigation is therefore aptly described as time-consuming, frustrating, inconvenient, expensive and fraught with risk and delay. For this reason, wherever possible, disputes should preferably be resolved outside of court, with a trial being employed as a dispute resolution mechanism only as a last resort.

BUT sometimes, litigation is the ONLY choice available! In the event that you are placed in the situation that you have no choice but to litigate the issues in which you are involved in a dispute, you can rest easy knowing that the lawyers at Dogwoodlaw have over 100 years of combined litigation experience in British Columbia in all kinds of litigation and in all of BC's courts. WE CAN HELP. "Retain us today...... and sleep tonight."

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