

SMALL CLAIMS ACT**CHAPTER 38***Assented to June 28, 1989.***Contents****PART 1****INTERPRETATION, PURPOSE AND CLAIMS****Section**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1**INTERPRETATION, PURPOSE AND CLAIMS****Interpretation****1. In this Act**

"Chief Judge" means the Chief Judge of the Provincial Court;
"claim" includes a counterclaim made by a defendant against a claimant;
"costs" means the fees, charges and expenses that are listed in the rules;
"Provincial Court" means the Provincial Court of British Columbia;
"proceeding" means an application, claim or other matter;
"rules" means the Small Claims Rules prescribed under the *Court Rules Act*.

Purpose

2. (1) The purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.

(2) Subject to this Act and the rules, in conducting a hearing the Provincial Court may make any order or give any direction it thinks necessary to achieve the purpose of this Act and the rules.

Claims the court may hear

3. (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 \$5 000 or less, excluding interest and costs.

(2) The Provincial Court does not have jurisdiction in a claim for libel, slander or malicious prosecution.

Making or defending a claim

4. The procedure to be followed in making or defending a claim or enforcing an order of the Provincial Court on a claim is in the rules.

PART 2

APPEAL

Right of appeal

5. Any party to a proceeding under this Act may appeal an order of the Provincial Court allowing or dismissing a claim to the County Court that is nearest to the location of the Provincial Court where the order was made.

Time limit for appeal

6. An appeal must be started within 40 days, beginning on the day after the date the Provincial Court made the order being appealed.

Notice of appeal

7. (1) A person starts an appeal by filing a notice of appeal in the registry of the County Court.

(2) On the day the notice of appeal is filed in the registry of the County Court, the person appealing must file a copy of the notice of appeal in the registry of the Provincial Court where the order being appealed was made.

Deposit

8. (1) When the notice of appeal is filed, the person appealing must deposit \$200 with the registrar of the County Court as security for costs that the court may order that person to pay if that person loses the appeal.

(2) If the order being appealed requires the person appealing to pay a sum of money, the person must deposit that sum with the security for costs.

(3) Before depositing the amount required under this section, the person appealing may apply to the County Court to reduce that amount.

(4) The application must be filed in the registry of the County Court within the time limit for starting the appeal.

(5) The person appealing is not required to serve notice of the application on any person.

(6) The County Court may by order reduce the amount a person is required to deposit under this section, and, if the amount is reduced, that person must serve notice of the order on the other parties to the appeal.

Suspension of proceedings

9. (1) When the person appealing deposits the amount required under section 8 (1) and the amount, if any, required under section 8 (2) or deposits the amount the County Court orders under section 8 (6), the order being appealed and any proceeding to enforce the order are suspended.

(2) On application by a party to the appeal, the County Court may order that the order being appealed or a proceeding to enforce that order is not suspended and may attach conditions to the order.

Date of hearing

10. (1) On filing a notice of appeal, the person appealing must apply to the registrar of the County Court to fix a date for hearing the appeal.

(2) The hearing date fixed by the registrar must be at least 21 days after the date of the application to fix the hearing date.

Service of notice

11. (1) The person appealing must serve the notice of appeal and notice of the hearing date on each person who was a party to the proceeding in which the order being appealed was made, but need not serve notice on a person who is not affected by what the person appealing requests of the County Court in the appeal.

(2) The notice of appeal must be served not later than 7 days after the notice of appeal was filed in the registry of the County Court.

(3) The notice of hearing must be served not later than 7 days after the date of the application to fix the hearing date.

(4) The person appealing must file in the registry of the County Court an affidavit stating when, where, how, by whom and on whom the notice of appeal and notice of the hearing date were served.

Hearing of appeal

12. The appeal shall consist of a new trial.

Decision

13. (1) On an appeal, the County Court may

(a) make any order that could be made by the Provincial Court,

(b) impose reasonable terms and conditions in an order,

(c) make any additional order that it considers just, and

(d) by order award costs to any party to the appeal in accordance with the Supreme Court Rules.

(2) There is no appeal from an order made by the County Court under this section.

Recording of appeal

14. (1) After the County Court decides the appeal, the registrar of the County Court shall record the order and send a copy of the recorded order to the registrar of the Provincial Court for filing.

(2) After a copy of the recorded order is filed in the Provincial Court, all subsequent proceedings shall be in that court unless the County Court orders otherwise.

Extensions of time

15. (1) On application, a judge of the County Court may by order shorten or extend the time for doing anything under this Part.

(2) A time limit may be extended even if the application for the extension, or the order granting it, is made after the time limit has expired.

PART 3

EVIDENCE, PROCEDURE AND ADMINISTRATION

Evidence

16. (1) The Provincial Court may admit as evidence in a proceeding under this Act or the rules any oral or written testimony, record or other thing that the court considers is credible or trustworthy and is relevant to the matter being heard, even though the testimony, record or other thing is not admissible as evidence in any other court under the laws of evidence.

(2) The Provincial Court may not admit as evidence in a proceeding under this Act or the rules anything that is privileged under the laws of evidence.

Directions of Chief Judge

17. (1) The Chief Judge may give directions, not inconsistent with the rules, respecting matters of practice and procedure in the Provincial Court.

(2) In accordance with the directions of the Chief Judge, a registrar of the Provincial Court may give a direction respecting the practice or procedure to be followed by the parties in a proceeding under this Act or the rules.

Forms

18. After consulting with the Chief Judge, the Attorney General may authorize forms for use in the Provincial Court on any matter or proceeding under this Act or the rules for which forms are not prescribed under the *Court Rules Act*.

Costs

19. (1) The Provincial Court may determine, in accordance with the rules, the amount of costs that are payable by one party in a proceeding under this Act or the rules to another party in the proceeding or it may direct a registrar of the court to determine the amount.

(2) If a registrar of the Provincial Court determines the amount of costs, any party to the proceeding may ask the court to review the registrar's decision on costs.

(3) If the rules provide for a reasonable fee, charge or other expense, the Provincial Court or a registrar of the court, as the case may be, may determine what amount is reasonable.

(4) The Provincial Court shall not order that one party in a proceeding under this Act or the rules pay counsel or solicitor's fees to another party to the proceeding.

Registrars

20. (1) The Attorney General may appoint a person to be a registrar of the Provincial Court for a designated area of the Province.

(2) The registrar is an officer of the Provincial Court and has, in respect of that court, all the powers and duties of a registrar of a County Court.

(3) After consulting with the Chief Judge, the Attorney General may, by regulation, add to or change the powers and duties of a registrar of the Provincial Court.

Regulations

21. The Lieutenant Governor in Council may make regulations.

Repeal

22. The *Small Claim Act*, R.S.B.C. 1979, c. 387, is repealed.

Consequential Amendments*Court Order Enforcement Act*

23. The definition of "registrar" in section 1 of the *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, is amended by striking out everything after "Supreme Court," and substituting "and

(a) for proceedings in a County Court, includes the registrar and deputy registrar of a County Court, and

(b) for proceedings in the Provincial Court under the *Small Claims Act*, a registrar appointed under section 20 (1) of that Act;"

24. Section 11 is amended by adding the following subsection:

(2.1) A copy of a garnishing order issued out of the Provincial Court in respect of a proceeding under the *Small Claims Act* may be served by mailing a copy to the person to be served by double registered mail to the last known post office address of that person.

25. Section 15 is amended by adding the following subsection:

(2.1) Notice of an intended payment out under subsection (1) (a) of money paid into court under a garnishing order issued out of the Provincial Court in respect of a proceeding under the *Small Claims Act* may be served by mailing a copy to the person to be served by double registered mail to the last known post office address of that person.

26. The definition of "writ of execution" in section 42 is amended by adding "order for seizure and sale" after "a warrant".

Creditor Assistance Act

27. Section 1 of the *Creditor Assistance Act*, R.S.B.C. 1979, c. 80, is amended by adding the following definition:

"writ of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Family Maintenance Enforcement Act

28. Section 24 (2) (b) of the *Family Maintenance Enforcement Act*, S.B.C. 1988, c. 3 is amended by striking out "as an execution under the *Small Claim Act*" and substituting "as a judgment of the Provincial Court given under the *Small Claims Act*".

Hydro and Power Authority Act

29. Section 52 (3) of the *Hydro and Power Authority Act*, R.S.B.C. 1979, c. 188, is amended
- (a) by striking out "or the *Small Claim Act*", and
 - (b) by striking out "those Acts apply" and substituting "that Act applies".

Law and Equity Act

30. Section 31 of the *Law and Equity Act*, R.S.B.C. 1979, c. 224, is amended by renumbering it as subsection (1) and adding the following subsection:
- (2) In this section "writ of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Limitation Act

31. Section 1 of the *Limitation Act*, R.S.B.C. 1979, c. 236, is amended by adding the following definition:
- "writ of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Offence Act

32. Section 72 (1) of the *Offence Act*, R.S.B.C. 1979, c. 305, is amended by striking out "*Small Claim Act*," and substituting "*Small Claims Act*,".

Partnership Act

33. Section 1 of the *Partnership Act*, R.S.B.C. 1979, c. 312, is amended by adding the following definition:
- "writ of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Provincial Court Act

34. Section 2 (3) of the *Provincial Court Act*, R.S.B.C. 1979, c. 341, is amended by striking out ", as a court of record,".
35. Section 25 (2) is amended by striking out "*Small Claim Act*" and substituting "*Small Claims Act*".

Residential Tenancy Act

36. Section 50 (2) (a) of the *Residential Tenancy Act*, S.B.C. 1984, c. 15, is amended by striking out "*Small Claim Act*" and substituting "*Small Claims Act*".

Sheriff Act

37. Section 1 of the *Sheriff Act*, R.S.B.C. 1979, c. 386, is amended by adding the following definition:
"warrant of execution" includes an order for seizure and sale issued under the Small Claims Rules.

Supreme Court Act

38. Section 63 (1) of the *Supreme Court Act*, R.S.B.C. 1979, c. 397, is amended by striking out "*Small Claim Act*," and substituting "*Small Claims Act*,".

Trade Practice Act

39. Sections 22 (2) and 25.1 (1) and (2) of the *Trade Practice Act*, R.S.B.C. 1979, c. 406, is amended by striking out "*Small Claim Act*" and substituting "*Small Claims Act*".

**Amendments to this Act Consequential
to the *Supreme Court Act***

40. Section 5 is amended by striking out everything after "claim to the" and substituting "Supreme Court."
41. Section 7 (1) is amended by striking out "County Court." and substituting "Supreme Court that is nearest to the court where the order being appealed was made."
42. Sections 8 (1) and 10 (1) are amended by striking out "the registrar of the County Court" and substituting "a registrar of the Supreme Court".
43. Sections 7 (2), 8 (3), (4) and (6), 9 (1) and (2), 11 (1), (2) and (4), 13 (1) and (2) are amended by striking out "County Court" and substituting "Supreme Court".
44. Section 14 (1) is amended by striking out "County Court" wherever it appears and "the registrar" and substituting "Supreme Court" and "a registrar" respectively.
45. Sections 14 (2), 15 (1) and 20 (2) are amended by striking out "County Court" and substituting "Supreme Court".

Commencement

46. (1) This Act, except sections 40 to 45, comes into force by regulation of the Lieutenant Governor in Council.
(2) Sections 40 to 45 come into force on July 1, 1990.