

# Civil Litigation

## Civil Litigation Basics

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## What is Civil Litigation?

Litigation is the process of going to court to settle a dispute. Civil law deals with relationships between individuals. In law, an individual can be a person, a company or an organization. Civil law cases involve one individual filing a claim against another individual, based on either federal or provincial laws. Examples include contract disputes, landlord-tenant disputes, employment disputes, and divorce.

If someone says that they are going to “sue” someone, that means they are planning civil litigation. In addition to “suing someone”, a civil litigation case can be called:

- An action
- A matter
- A lawsuit
- A proceeding
- A case

Proof in civil litigation is on a “Balance of probabilities”. This means that a judge must be satisfied something probably happened. This is a lower standard than in criminal litigation. There, facts must be proven “Beyond a reasonable doubt”.

Much civil litigation is concerned with contracts or torts. If you cause someone damage or breach a contract, you can be sued and forced to pay to compensate for the harm done, or made to complete the contract. For example, if a store owner lets their stairs become slippery and someone slips and hurts themselves, that may be the tort of negligence and the store owner may have to pay for the injury.

## Key Terms



A “**tort**” is an action that can lead to civil liability. In general, a tort occurs when someone intentionally or negligently causes damage to another person or their property. Tort law is mostly concerned with providing a victim with damages as compensation for their loss, rather than punishing the wrongdoer as in criminal law. Examples of torts include battery, sexual harassment, trespass, defamation, and negligence.

## Learn More



The British Columbia Supreme Court has helpful information for self-represented litigants including resources on getting help, learning about the law and understanding court procedures. Find it [here](#).

## Before you Sue

### 1. Try to settle out of court

Perhaps the most important thing to consider when thinking about litigation is whether litigation can be avoided by settling the dispute. That is, can the people involved in the dispute come to an agreement?

Settlement can happen at any time – before a lawsuit has been started, or after the proceedings have begun. Fewer than 3% of cases that are filed with the court actually proceed all the way to the trial stage because most cases settle without going to trial.

Be sure to read [Alternatives to Going to Court](#) to find out how you can settle your lawsuit before going to trial.

### 2. Learn about the Law

The more you know and understand about the litigation process, the fewer difficulties you will have. Knowledge will also help you anticipate, prepare for and

deal with the cost of the proceedings, the amount of time the proceedings take, and the complicated and personal questions you might have to answer.

It is important to remember that the court cannot resolve all disputes. The law determines whether a claim you believe you have against another party is one that can properly be brought to the court for resolution.

### 3. Decide if you can and will hire a lawyer

A good lawyer will make any litigation easier and more likely to be successful. See **Get Help**. At the very least you should get legal advice about the strength of your case and the steps you need to take.

### 4. Get organized

It is critical that you start organizing your case very early in the litigation process. Being organized can help keep costs down and increase your chances of reaching an early settlement. You cannot succeed at trial unless your case is well organized. While the judge may help you with simple procedural matters, they will not help you understand the law, advise you on evidence you need to prove your case, or organize your evidence for you. You must:

- Think about how you will prove your case. See **Evidence Basics**.
- Learn the law that applies to your case. See **Legal Research Basics**
- Start gathering important documents as soon as possible
- Keep your documents in a safe place and organize your documents in a logical way (e.g., in date order)

### 5. Determine which Court or Tribunal should hear the matter.

Your matter may not need to be in British Columbia Supreme Court. Any claims for less than \$5,000 are resolved by the Civil Resolution Tribunal. Claims for between \$5,000 and \$35,000 are heard by the Small Claims Court (which is a separate entity from the BC Supreme Court). Claims concerning federal taxes are heard in the Tax Court of Canada. Claims about immigration matters are heard in Federal Court.

This is just a sample of the cases that do not go to BC Supreme Court. For more information on picking the right court to resolve your dispute, see **Where to file**.

If you start your case in the wrong court it can lead to delay and expense. In a worst-case scenario, it could cause you to miss a “Limitation period” for starting in the right forum. For more information on limitation periods, see **Limitation Periods**. On the other hand, if you are responding to litigation started by someone else, you should consider whether they have made a mistake in where the case was brought.

## 6. Determine the Limitation Period

If a case is started too late, the Court may not be able to hear the matter. When a court case must be started is determined by the “Limitation period”.

Limitation periods are created by legislation, most notably the **Limitation Act**.

It is important whenever you think about bringing litigation to consider if a limitation period applies. If so, you need to be certain that you start the claim before the limitation period passes.

If you have any doubt as to whether a limitation period may affect your claim, you should seek legal advice. If the limitation period is ending soon, you may want to file a claim as soon as possible. Just because you start a claim does not mean that you have to pursue it. Rather, all you have to do is ensure that you serve it on the other side within a year. Having started the claim will allow you to attempt to settle the claim without worry that you may be barred from later going to court.

For more information on limitation periods, see **Limitation Periods**.

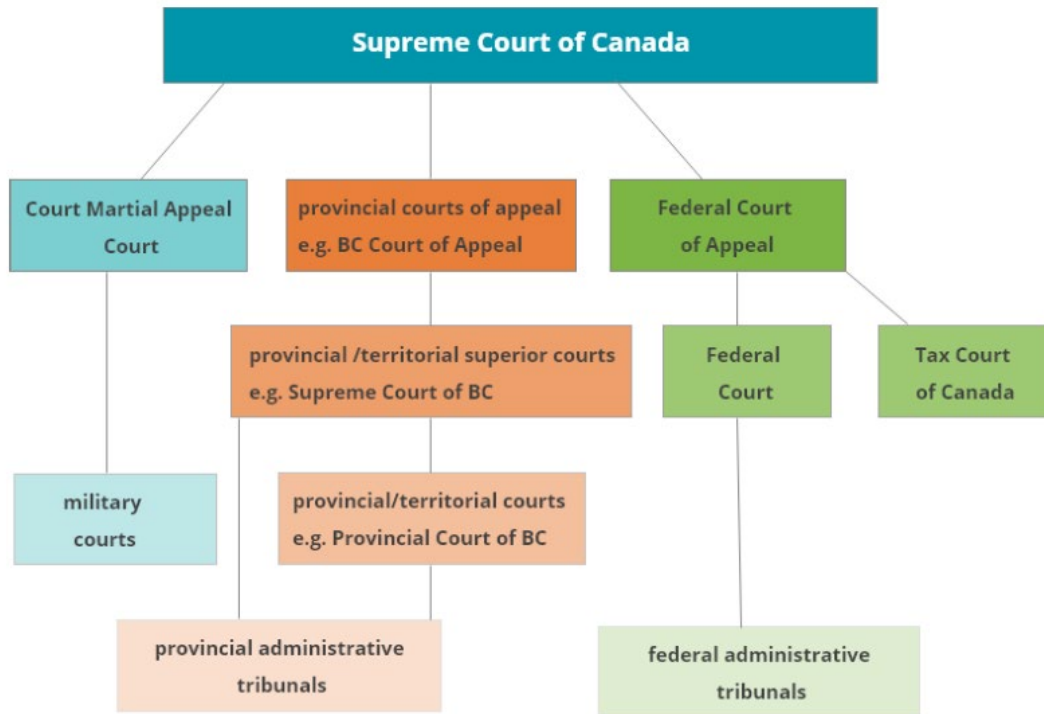
## Courts of BC

The Court system in British Columbia has three levels:

**Provincial Court:** The lower level trial Court, which deals with Small Claims up to \$35,000, family, youth criminal offenders, criminal, and traffic matters.

**Supreme Court:** The higher level trial Court. The Supreme Court also hears appeals from the Provincial Court, and sometimes reviews the decisions of certain provincial tribunals and public decision-making bodies.

**Court of Appeal:** The province’s highest Court. This Court hears appeals from the Supreme Court. Appeals from the BC Court of Appeal go to the Supreme Court of Canada.



The **Federal Court** system is separate from the provincial court system. Federal Courts can only hear cases that are specified in legislation. For example, the Federal Court can hear cases about disputes between provinces and territories, taxation issues, or cases involving federal Crown corporations (e.g., the Post Office). Appeals from the Federal Court go to the Federal Court of Appeal, then to the Supreme Court of Canada.

The **Supreme Court of Canada**, located in Ottawa, is the highest-level Court in Canada. It hears appeals from every Court of appeal in the provinces and territories across Canada, the Federal Court of Appeal, and the Court Martial Appeal Court. There is no appeal from a decision made by the Supreme Court of Canada.



**Learn More**

**[CourtsofBC.ca](https://www.courtsofbc.ca)** Your guide to the BC court system.

## The Law

Generally speaking, there are three broad sources of law that you must consider when deciding whether to start a lawsuit. Together they govern the litigation process. They are:

- Statutes (Also called Legislation or Acts), which set out the basic laws
- Regulations, which provide more details
- Case law, which interprets legislation

In addition, there are rules of Court, which are a type of regulation. They govern the litigation process.

The law can be complicated and for that reason, it is a good idea to consult with a lawyer about what law applies to your case. This could save you time and energy and will help to ensure that your case is presented in the most efficient way. Lawyers have spent years researching the law and can tell you where you can find the law that applies to your case.

## Statutes

Statutes (Which often have “Act” in the title – such as the Family Law Act) are brought into law by the Parliament of Canada and the Provincial Legislature. They give a general framework for the law in a specific topic area (For example, motor vehicle insurance or retirement homes). You can find copies of the federal or provincial statutes at most public libraries.

### Read the Rules



The quickest way to find BC laws is at a website called BC Laws at **BC Laws**.

A collection of current Federal legislation (That is, laws passed by the Canadian government and in force throughout Canada) is available at the **Justice Laws Website**.

The statutes on these websites may not be up to date (Check the date noted on the website).

## Regulations

Regulations usually set out practical information or procedures relating to particular statutes. They provide specific instructions about the implementation of the statute and tend to change more often than the statute itself. For example, the **Motor Vehicle Act** sets out broad requirements for cars in the Province. The **Motor Vehicle Act Regulations** deals with details, like precise guidance on minimum braking standards.

## Case law

It is crucial to understand the case law that relates to your case. Our Court system works by making decisions that are based on decisions made in earlier cases – precedent – and because of this, you will need to understand those cases similar to yours that the court has already decided.

Reviewing case law is complicated and time-consuming. There may be hundreds (Or even thousands) of cases that seem similar to yours and you may have trouble knowing which cases you should refer to in Court. It is a good idea to consult a lawyer about the law that applies to your case. However, it is possible to research case law on your own.

It is important to keep in mind that British Columbia Supreme Court judges and masters must follow the law as set out in cases that have been decided by higher Courts, meaning the British Columbia Court of Appeal and the Supreme Court of Canada. Although a judge in the British Columbia Supreme Court is not strictly bound to follow cases decided by other judges in the same Court, a case with similar facts from the same court will usually be persuasive because it benefits everyone to have consistent decisions from the Court on the same point of law. Decisions made by trial or appeal Courts in other provinces will generally not be helpful unless the Courts in British Columbia have not made a decision on the point of law which is relevant to your case.

One thing that complicates “case law” is that some are decisions that are no longer followed. This happens when a decision is appealed, and the higher Court decides that the decision was a mistake. This is called “overturning” a decision. Once this happens, the BC Supreme Court will no longer “follow” that decision.

If you are researching case law for your own case, the two best, free places to start are at your courthouse library and Canlii, an online database of Canadian Court cases. There are also paid databases, such as Quicklaw and Westlaw. These have more cases than CanLII, and can tell you easily whether a decision has been overturned. It is very expensive to get access to these databases on your own. However, if you go to a Courthouse library they have computers which can access these databases. See [Legal Research Basics](#) to learn more.

### Get Help



**Courthouse Libraries** Digital tools to help solve legal problems. Courthouse library staff is trained in research and can help you with the practical aspects of your search.



### DIY Tools

**Canlii.org** Free search tool for case law and legislation



### Learn More

**The Canlii Primer: Legal Research Principles and Canlii Navigation for Self-Represented Litigants**

## Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court. They are a road map for steering your case through trial and beyond. The Rules are very important because they provide guidelines for each step in the litigation process and also set time limits for when certain steps must be completed. You can find answers to many of your questions about the litigation process by referring to the Rules.





## Read the Rules

### Supreme Court Civil Rules

The Court rules also set out the fees payable to the Crown (On behalf of the Court), to the sheriff, and to witnesses. These are contained in **Appendix C** of the Rules of Court. You can find it with all the other Rules at the Court website. These fees change from time to time, so you should check with the court registry, at the Courthouse library or on the Court website for the current fees payable in each case.

## Practice Directions

The Chief Justice issues Practice Directions to provide clarification and guidance to Court users on procedural matters, and also issues Notices to advise the legal profession and the public of Court-related matters.



## Read the Rules

### Practice Directions - Civil