CHAPTER TWENTY-TWO: SMALL CLAIMS PROCEDURE

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CHAPTER TWENTY-TWO: SMALL CLAIMS PROCEDURE

I. INTRODUCTION

The Small Claims Division of British Columbia's Provincial Court is designed to accommodate unrepresented litigants. The forms, procedures, and rules are all simplified so people with no legal education can represent themselves. The process seeks, where possible, to resolve claims without the need for a trial before a judge. Depending on the particular court, the type of claim, and the quantity of damages sought, this goal may be pursued by way of a settlement conference, mediation, or a simplified trial before a justice of the peace.

The Small Claims Division has no inherent jurisdiction (i.e. it does not have the power to make laws at its own discretion). All of its authority is derived from the Small Claims Act, R.S.B.C. 1996, c. 430 and the Small Claims Rules, B.C. Reg. 261/93. Students must review these Acts thoroughly. Both are available on the Provincial Court web site (see **Section I.B.1: Legislation**, below).

A. Pilot Project at the Vancouver (Robson Square) and Richmond Registries

On January 1st, 2008, small claims procedures at the Vancouver (Robson Square) and Richmond courts underwent changes as part of a pilot project aimed at streamlining the small claims process. The project will run for a period of two years while it undergoes evaluation.

All claims filed at the Robson Square registry will proceed differently than claims filed at other registries. Students assisting with claims filed in Vancouver (Robson Square) should review Rules 7.4, 7.5, 9.1, and 9.2 of the Small Claims Rules. The most significant changes at Robson Square are as follows:

- Claims of less than $5,000, other than claims for personal injury or financial debt, will be set for a simplified trial before a justice of the peace (Rule 9.1);
- All financial debt claims (i.e. one of the parties is an institution in the business of lending money) will be set for summary trial (Rule 9.2);
- There is now mandatory mediation for most personal injury claims, and for most claims between $5,000 and $25,000, except financial debt claims (Rule 7.4);
- The settlement conference has been discontinued for all claims;
- For claims between $5,000 and $25,000, except financial debt claims, and for all personal injury claims, the settlement conference has been replaced by a 'trial conference' (Rule 7.5); and
- New rules of disclosure require filing all relevant documents with the registry at least 14 days in advance and serving the other side at least 7 days in advance.

In Richmond, claims of less than $5,000, other than claims for personal injury are to be set for a simplified trial before a justice of the peace, with no mediation, and no settlement conference (Rule 9.1). The same new rules of disclosure apply to these claims only. All other claims in Richmond still follow the traditional procedures.

B. Governing Legislation, Policy Guidelines, and Resources

1. Legislation

Business Corporations Act, S.B.C. 2002, c. 57.
Web site: www.qp.gov.bc.ca/statreg/stat/B/02057_00.htm

Business Practices and Consumer Protection Act, S.B.C. 2004, c.2.
Web site: www.qp.gov.bc.ca/statreg/reg/B/294_2004.htm

Court Order Enforcement Act, R.S.B.C. 1996, c. 78.
Web site: www.qp.gov.bc.ca/statreg/stat/C/96078_01.htm

Court Order Interest Act, R.S.B.C. 1996, c. 79.
Web site: www.qp.gov.bc.ca/statreg/stat/C/96079_01.htm

Court Rules Act, R.S.B.C. 1996, c.80.
Web site: www.qp.gov.bc.ca/statreg/stat/C/96080_01.htm

Crown Proceeding Act, R.S.B.C. 1996, c. 89.
Web site: www.qp.gov.bc.ca/statreg/stat/C/96089_01.htm

Employment Standards Act, R.S.B.C. 1996, c. 113.
Web site: www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm

Evidence Act, R.S.B.C. l996, c. 124.
Web site: www.qp.gov.bc.ca/statreg/stat/E/96124_01.htm

Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231.
Web site: www.qp.gov.bc.ca/statreg/stat/I/96231_01.htm

Limitation Act, R.S.B.C. 1996 c. 266.
Web site: www.qp.gov.bc.ca/statreg/stat/L/96266_01.htm

Local Government Act, R.S.B.C. 1996, c. 323.
Web site: www.qp.gov.bc.ca/statreg/stat/L/96323_00.htm

Motor Vehicle Act, R.S.B.C. 1996, c. 318.
Web site: www.qp.gov.bc.ca/statreg/stat/M/96318_00.htm

Personal Property Security Act, R.S.B.C. 1996, c.359.
Web site: www.qp.gov.bc.ca/statreg/stat/P/96359_01.htm

Residential Tenancy Act, S.B.C. 2002, c. 78.
Web site: www.qp.gov.bc.ca/statreg/stat/R/02078_01.htm

Sale of Goods Act, R.S.B.C. 1996, c. 410.
Web site: www.qp.gov.bc.ca/statreg/stat/S/96410_01.htm

Small Claims Act, R.S.B.C. 1996, c. 430.
Web site: www.qp.gov.bc.ca/statreg/stat/S/96430_01.htm

Small Claims Rules, B.C. Reg. 261/93.
Web site: www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93_00.htm

Supreme Court Rules, B.C. Reg. 221/90.
Web site: www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules221_90/221_90_00.htm

Strata Property Act, S.B.C. 1998, c. 43.
Web site: www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm

Law and Equity Act, R.S.B.C. 1996, C. 253.

Web site: www.bclaws.ca/Recon/document/freeside/-- L --/Law and Equity Act RSBC 1996 c. 253/00_96253_01.xml

2. Books

Bullen, Leake, Jacob, and Goldrein. Bullen and Leake and Jacob's Precedents of Pleadings, 15th ed. (London: Sweet and Maxwell, 2004).

Burdett, E. (Ed.). Small Claims Act and Rules—Annotated. (Vancouver, B.C.: The Continuing Legal Education Society of British Columbia, July 1997).

Celap, M. and Larmondin, P.J. Small Claims Court for the Everyday Canadian. (North Vancouver, B.C.: Self-Counsel Press, 2000).

Fraser and Horn. The Conduct of Civil Litigation in British Columbia. (Vancouver, B.C.: Butterworths, 1978).

Keating, M. Small Claims Court Guide for British Columbia. (North Vancouver, B.C.: Self-Counsel Press, 1992).

Martinson, D.J. (Manual Coordinator). Small Claims Court—1994. (Vancouver, B.C.: The Continuing Society of British Columbia, April 1994).

Mauet, Casswell, and MacDonald. Fundamentals of Trial Techniques. 2d Canadian ed. (Toronto: Little Brown, 1995).

McLachlin and Taylor, British Columbia Court Forms. (Markham, Ont.: LexisNexis Canada, 2005).

Ministry of the Attorney General, Court Services Branch, B.C. Small Claims Manual
Web site: www.ag.gov.bc.ca/courts/manuals/small_claims/index.html

Moore Publishing. (Ed.) Small Claims Practice Manual, 3rd Ed. (Richmond, B.C.: Moore Publishing Ltd, 1999).

UBC Law Review Society. (Eds.) Table of Statutory Limitations for the Province of British Columbia, Revised and Consolidated. (Vancouver, B.C.: University of British Columbia Law Review Publication, 2006).

Vogt, J. (Ed.). Provincial Court Small Claims Handbook. (Vancouver, B.C.: The Continuing Legal Education Society of British Columbia, January 1997).

Wineberg, H.S. The Annotated British Columbia Limitation Act. (Vancouver, B.C.: Carswell, 1995).

3. Web Sites

Provincial Court Judgment Database
Web site: www.provincialcourt.bc.ca/judgmentdatabase/index.html

- Contains selected decisions from 1999 to the present.

Provincial Courthouses Directory
Web site: www.provincialcourt.bc.ca/judicialadministration/courtlocationsmap/index.html

- Contains Small Claims Court locations

British Columbia Court of Appeal and Supreme Court Judgment Database
Website: www.courts.gov.bc.ca/search_judgments.aspx

Small Claims Court
Web site: www.ag.gov.bc.ca/courts/civil/smallclaims/

- Provides general information on court procedure and the full text of the Small Claims Rules.

Small Claims Fees
Web site:
www.qp.gov.bc.ca/statreg/reg/C/CourtRules/CourtRules261_93/261_93_05.htm#ScheduleA

Small Claims Forms
Web site: www.ag.gov.bc.ca/courts/forms/forms_smcl.htm

Small Claims Pilot Project
Web site: www.smallclaimsbc.ca

C. Other Resources

1. UBC Law Library

Most of the books listed above are available in the Law Library. The Small Claims Acts and Rules Annotated and the Provincial Court Small Claims Handbook, published by the Continuing Legal Education Society (CLE), are recent publications written by Small Claims Court judges. They include the Act, Rules, and copies of all of the forms. Students can access an online edition of the Provincial Court Small Claims Handbook on the UBC Law Library website: www.library.ubc.ca/law.

For additional help with forms or letters, see the Supervising Lawyer's precedents.

2. Court Registry

The Small Claims Court registry staff does not provide legal advice, but they are experienced with the rules and procedures and are generally very helpful. See **Appendix C: Small Claims Registries**.

3. DIAL-A-LAW

DIAL-A-LAW ((604) 687-4680) is a library of pre-recorded messages on a variety of legal topics available by telephone 24 hours a day, seven days a week. Lawyers under the supervision of the Canadian Bar Association, B.C. Branch, prepare the tapes. Several tapes deal with Small Claims Court. The content of the tapes is also available online: www.cba.org/BC/Public_Media/dal

4. B.C. Supreme Court Self-Help Information Centre

274 – 800 Hornby Street
Vancouver, BC V6Z 2C5
Website: www.supremecourtselfhelp.bc.ca

D. Jurisdiction

1. Matters Over Which the Court has Jurisdiction

The Small Claims Division has jurisdiction over most civil disputes involving claims to a maximum of $25,000 (plus court filing fees, interest and reasonable expenses). The jurisdiction of the court is set out in the Small Claims Act (s. 3) and includes 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.

NOTE: On September 1, 2005, the small claim monetary jurisdiction was raised from $10,000 to $25,000 (B.C. Reg. 179/2005). The amendment allows the Lieutenant Governor in Council to make regulations that prescribe the monetary jurisdiction of Small Claims Court, to a maximum of $50,000 eventually.

2. Matters Falling Outside the Court's Jurisdiction

Jurisdiction over matters of debt, damages, and personal property is not absolute. The Small Claims Act explicitly denies jurisdiction over claims for libel, slander, or malicious prosecution (s. 3(2)). The court's jurisdiction is further curtailed by the operation of statutes such as the Residential Tenancy Act, S.B.C. 2002, c. 78, the Employment Standards Act, R.S.B.C. 1996, c. 113 and the Strata Property Act, S.B.C. 1998, c. 43. Thus the court has very limited jurisdiction in residential landlord/tenancy matters, employer/employee matters, human rights, and strata property matters.

For cases outlining the subtle differences that determine whether a case can or cannot be heard in the Provincial Small Claims Division as opposed to the Supreme Court or the Residential Tenancy Branch see *Belanger v. AT&T Canada Inc.*, [1994] B.C.J. No. 2792, *Beck v. Andrews Realty Ltd. (c.o.b. RE/Max Real Estate Services)*, [1994] B.C.J. No. 2796, *Seller v. Singla Bros. Holdings Ltd.*, [1995] B.C.J. No. 2826, *Strata Plan LMS2064 v. Biamonte*, [1999] B.C.J. No. 1267, *David v. Vancouver Condominium Services Ltd.*, [1999] B.C.J. No. 1869, *McNeill v. Strata Plan – KAS1099,* [1996] B.C.J. No. 2553, H*eliker v. Strata Plan VR 1395*, [2005] B.C.J. No. 2424, *Valana v. Law*, [2005] B.C.J. No. 2820, and *Frechette v. Crosby Property Management Ltd.*, [2007] B.C.J. No. 1162.

For a discussion of when a case can be heard in civil court as opposed to the Employment Standards Branch see *Macaraeg v. E. Care Contact Centers Ltd.*, [2008] BCCA 182.

Other noteworthy areas of law falling outside the jurisdiction of the Small Claims Division are divorce, trusts, wills (i.e. probate), prerogative writs, and bankruptcy. However, when approached with legal issues involving these matters, clinicians should not be too quick to assume that the Small Claims Division does not have jurisdiction. The court may have jurisdiction over cases where these areas of law are involved only circumstantially – where the pith and substance of the case does fall within the court's jurisdiction. See e.g. *AMEX Bank of Canada v. Golovatcheva* 2007 B.C.P.C. 0369. In that case the claimant alleged that the defendant had committed fraud by running up a debt that she knew she would escape by declaring bankruptcy. The Small Claims court exerted jurisdiction over the issue of fraud.

An excellent source for determining the jurisdiction of a client's matter is the Small Claims Act and Rules - Annotated and Provincial Court Small Claims Handbook, published by the Continuing Legal Education Society of British Columbia.

NOTE: A court will generally not enforce illegal contracts or dishonest transactions (see *Faraguna v. Storoz*, [1993] B.C.J. No. 2114). However, *Eba v. Genge*, [2007] B.C.J. No. 1021 states that a court may enforce legal portions of a contract – thus effectively severing the illegal portion. A common example involves contracts purporting to

charge excessive interest rates. Under s. 347 of the Criminal Code it is an offence to enter into an agreement with a criminal rate of interest, which is an annual rate that exceeds 60 percent. The court will not enforce a term in a contract purporting to charge such a rate. (However, section 347.1 exempts payday loans from criminal sanctions, provided that certain conditions are met; see **Section V.G: Regulation of Payday Lenders and Criminal Rate of Interest** in **Chapter 9: Consumer Protection**).

If a client's claim is for more than $25,000, he or she may still proceed in Small Claims Court, but must abandon the excess amount. For example, if a client has a claim for $30,000, but does not wish to proceed in the Supreme Court, that person may reduce the claim to $25,000 and specifically abandon the claim for the extra $5,000 in the pleadings (Small Claims Rules, Rule 1(5)). Interest and court costs (e.g. filing fees) may also be claimed, because they are not included within the monetary limit. **The monetary restriction can be circumvented if the "claim" in question in fact represents multiple claims. The claims can then be split into separate notices of claim as separate occurrences** (see **Section IV.A.6.b: Claims Over $25,000,** below. For case law involving multiple claims see *Wah Loong Ltd. v. Fortune Garden Restaurant (Richmond) Ltd.,* [2000] B.C.J. No. 1581.

E. Filing

Registry filing fees are:

- $100 to file a Notice of Claim for claims up to and including $3,000;
- $156 to file a Notice of Claim for claims over $3,000;
- $26 to file a Reply for claims up to and including $3,000;
- $50 to file a Reply for claims over $3,000;
- $100 to file a counterclaim for claims up to and including $3,000;
- $156 to file a counterclaim for claims over $3,000;
- $25 to file a third party notice;
- $25 to file an application for a default order;
- $31 for taking/swearing an affidavit;
- $30 for a certificate of judgment;
- $40 for issuing a garnishing order; and
- $100 for resetting a trial or hearing with less than 30 days notice.

However, if a client's financial resources are limited, the student can apply to the Registrar (Small Claims Rules, Rule 16(3)) for an order exempting the client from payment of fees (Rule 20(1)).

There are no settlement/trial conference or trial scheduling fees, unless an adjournment is requested. If a trial date is reset less than 30 days before the date of the proceeding, the party adjourning the trial must pay $100 to the court. This fee does not apply if the matter must be reset due to the unavailability of a judge, or if the party requesting the change was not notified of the trial date at least 45 days in advance (Rule 17(5.2)).There are no fees for making an "interlocutory" application. There

are fees for some collection orders (e.g., seizure and sale of assets). Filing fees, interest, disbursements and, in most cases, reasonable expenses may be recovered from the other party (Rule 20(2)). Legal fees are not recoverable.

F. How Long Will it Take?

The length of time it will take to resolve a claim depends on:

1. how busy the court is (to find out how far ahead dates are being set at your location, ask at the court registry or the trial coordinator);

2. how much time the trial is expected to take (a matter requiring a full day trial will often be scheduled later than a simpler matter);

3. whether the documents can be served without delay; and

4. whether the claim is disputed.

Generally, there is a backlog of cases, and it is likely that there could be more than one year from the time the claim is filed until the trial. In Vancouver (Robson Square), from the time the Notice of Claim is filed, it generally takes about six to eight months to progress to trial, three to four months in the case of a simplified or summary trial. The backlog in Richmond is comparable. In Surrey, the time delay will be from three to six months. Other court registries have variable backlogs. Phone the registries to check. See **Appendix C: Small Claims Registries**.

G. Limitation Periods

In general, time limitations are the same as in Supreme Court and begin to run from the date of the breach (when all of the elements of the cause of action came into existence). However, there are specific deadlines for filing documents in the Small Claims Registry. Time limits for the more common causes of action are:

- damages for the injury of person or property (including economic loss arising from the injury), whether based on contract, tort, or statutory duty: two years. (Limitation Act, s. 3(2)(a));

- breach of contract: two years (insurance: one year); generally notice period required;

- debt: six years (from the date of the last acknowledgment of the debt, with some exceptions); and

- suing a municipality: six months (Local Government Act, R.S.B.C. 1996, c.323, s.285); notice period required is 60 days from the cause of action (Local Government Act, R.S.B.C. 1996, c. 323, s. 286(1)).

In most cases, the action lapses when the time limit expires. The Notice of Claim must be **filed** before the limitation period expires (Limitation Act, s. 3). If a notice of claim has not been **served** within 12 months after it was filed, it expires, but the claimant may apply to have it renewed (Small Claims Rules, Rule 16 (3)).

In some circumstances, s. 6 of the Limitation Act allows for the running of time to be postponed. Notably, this is the case for actions for personal injury, damage to property, professional negligence, and any action based on fraud or deceit. In these circumstances the running of time does not begin until such time as the identity of the defendant is known to the plaintiff, and a reasonable person, making normal and appropriate inquiries would have discovered a cause of action to exist. See *Shah v. Governor and Co. of Adventurers of England Trading into Hudson's Bay Co. (c.o.b. Hudson's Bay Co.)* [2008] B.C.J. No. 479, 2008 BCCA 114.

NOTE: See the **Introduction and Student Guidelines Chapter** of this Manual, and the Table of Statutory Limitations published by the UBC Law Review. Certain Acts will overrule the Limitation Act. The Vancouver Charter, S.B.C. 1953, c. 55; the Police Act, R.S.B.C. 1996, c. 367; and the RCMP Act, R.S. 1985, c. R-10. have their own limitation periods as well as provisions involving notice, and must therefore be consulted before bringing an action against a party covered by one of these statutes.

H. How LSLAP Students May Help with Small Claims Problems

A student may:

- interview the client to determine his or her goals. Explain the pros and cons of all available options;
- make an offer to settle or refer the client to the CoRe clinic (see **Section VIII.F: Conflict Resolution Clinic (CoRe Clinic)**, below);
- draft a Notice of Claim (for the claimant) or Reply and/or Counterclaim (for the defendant);
- prepare and attend a Small Claims Court Mediation;
- prepare and attend a settlement/trial conference; and
- prepare for and attend trial.

All files should be closed after the Notice of Claim and after the settlement/trial conference, and re-opened when the client returns to a clinic with dates for the settlement/trial conference or the trial.

NOTE: Legal counsel is duty-bound to the court to discourage all frivolous or vexatious actions. In such circumstances, a client should be informed that his or her case is without legal merit. Rules permit a penalty to be imposed on a claimant or defendant who takes a case to court with no reasonable chance of success (Small Claims Rules, Rule 20 (5)).

II. INITIAL INTERVIEW

A. Client-centered

Law students are not the primary decision makers nor should a student do all the legwork for the claim or defence. Students should advise the client of the legal procedures, the legal implications, and the options arising from the particular situation. Keep all contact with the client "client-centred" (i.e. ask "How can I help you to solve your problem?" instead of "What's the problem?"). Remember that lawyers take instructions and give advice.

B. Things to Keep in Mind at the Interview

- Listen carefully. Give the client an opportunity to explain the problem. Assess how the client will be able to give evidence.
- Ask questions to eliminate ambiguities in the client's story.
- Be sure to ask the client where the claim arose, when it arose, and who was involved (i.e. who the other party is).

- Plan a course of action with (not for) the client. Examine all possible options along a win/lose continuum. You might advise which option you think is best and why, but leave the final decision to the client.

- Check limitation dates.

- If the other party is a business, the client must do a company search to ensure the correct name is on the Notice of Claim.

- Photocopy all of the client's documents and record all names, addresses, and telephone numbers, including potential witnesses and the other party's legal counsel.

- Arrange your next interview, giving ample time for each of you to gather any necessary information.

III. SETTLEMENT LETTER

The first step is to consider sending a letter (usually known as a "Demand Letter") to the other side to see if a settlement can be reached before a Small Claims action is initiated or proceeds any further.

A. Drafting the Demand Letter

- Refer to the precedent letter provided in **Appendix A**.

- If you are trying to negotiate a settlement and your letter contains an offer, include the words "WITHOUT PREJUDICE". This may prevent the letter from being put before a trial judge. If no settlement is reached, the client can still demand the full amount of the claim: see *Schetky v. Cochrane,* [1918] 1 W.W.R. 821 (B.C.C.A.), and *Greenwood v. Fitts* (1961), 29 D.L.R. (2d) 260 (B.C.C.A.). A letter marked "WITHOUT PREJUDICE" is privileged **only** if it contains a settlement offer.

- Letters should be brief, informative, to the point, and preferably only one page long.

- Mention the full amount owing even if the amount exceeds the $25,000 Small Claims maximum.

- Consider the defendant's reaction and the response you hope to evoke.

- Do not threaten criminal penalties. **Extortion is a criminal offence**.

B. Specific LSLAP Procedures

- All letters must be approved by LSLAP's Supervising Lawyer and printed on LSLAP letterhead by the office administrator. Hand in a typed copy to the Supervising Lawyer's inbox and email a copy to the office administrator. Keep a copy of the approved rough draft and the typed letter for your file.

- Send the letter to the opposing party and a copy of the same letter to your client by leaving it in LSLAP's "outgoing mail" box by the secretary's desk in the main office.

- All payments must be made to the client, ensure cheques are in the client's name. However, all payments are to be mailed to the LSLAP office:

UBC Law Students' Legal Advice Program
University of British Columbia
Faculty of Law, Room 158
1822 East Mall
Vancouver, BC V6T 1Z1

IV. NOTICE OF CLAIM

If the deadline specified in the settlement letter passes, the next step in the process of starting an action is to fill out a Notice of Claim form. Students should submit a draft form to LSLAP's Supervising Lawyer for approval and then e-mail the approved draft to LSLAP's office administrator for final formatting and transfer into an electronic form. Using LSLAP mail, send your client the final copy, ensuring the standard covering letter that explains the procedures for filing and service is enclosed.

Once the Notice of Claim has been sent to the client, students should close the file, and the client should be told that if he or she wants further help with their Small Claims Court matter, they might have to obtain another student.

The Notice of Claim must be filed in the correct registry. This is either the registry closest to where the defendant lives or carries on business, or the registry where the transaction or event that resulted in the claim took place. The client must do the actual filing and pay the filing fees. The form will be stamped with a registry action number. The registry will keep the original and the claimant must then arrange for service of all other copies.

Under Rule 22 (Small Claims Rules), registered users may file a Notice of Claim electronically. The rules governing e-filing of Notice of Claims are the same as the rules for e-filing at the Supreme Court of B.C. (Rules of Court, Rule 69). The only difference is the numbering of the forms used. In particular, a registered user may electronically transmit a document to the registry for filing if the document is accompanied by payment (Rule 69(4)), subject to certain exceptions for particular documents. Affidavits that are electronically filed must clearly identify the signatory and must contain a statement attesting to their veracity (Rule 69(6)). For further details, consult the B.C. Supreme Court Rules of Court.

NOTE: A client who "cannot afford the fees" may apply to have the filing fees waived (Small Claims Rules, Rule 20(1)).

Once the Notice of Claim is served, the defendant has **14 days** (30 days if served outside B.C.) to file a **Reply** at the same registry where the Notice of Claim was filed. If no Reply is filed, the claimant may apply for a default order.

The defendant may also file a Counterclaim when filing the Reply. A Counterclaim may be filed by the defendant if he or she has reasons to make a claim for damages against the claimant (Small Claims Rules, Rules 3(1)(e) and 4), in addition to opposing the Notice of Claim (see **Section V.A.4: Counterclaim**, below, for more details).

If the defendant who has filed a Reply believes that another person or legal entity should pay all or part of the claim, he or she may make a claim against that other party by completing a Third Party Notice (Form 3). If neither a settlement conference, nor a mediation session, nor a trial conference has been held, leave of the court is not required, but if a settlement conference, mediation session, or trial conference has already been held, the defendant must apply to the court for an order permitting the counterclaim to be filed against the third party (Rule 5(1)(a) and (b)).

If the claim is for a specific amount of debt, the claimant may apply for a default order to the Registrar (Rule 6(4)). If the claim is for anything other than a specific amount of debt, there must be a hearing before a judge (Rule 6(5)).

If a Reply is filed, a settlement conference date will be set in most cases. Some exceptions apply, such as motor vehicle cases where liability is in issue, and cases filed under the pilot project at the Vancouver (Robson Square) registry. Mediation is available in Surrey, North Vancouver and Robson Square, Vancouver. LSLAP students may assist at settlement conferences, trial conferences, and mediations.

A claim of personal injury requires an additional step by the claimant. Within six months of serving the Notice of Claim, and before a settlement conference, the claimant must file a certificate of readiness (Form 7). It must include copies of all medical reports and receipts for all expenses or losses either incurred or expected (Rule 7(9); pilot project Rule 7.4(12)). If more time is needed, an application for an extension must be sought (Rule 7(10), pilot project Rule 7.4(13)).

NOTE: LSLAP **does not** assist clients with personal injury claims. Students may provide general summary advice relating to procedure only. The client should be advised that should such claims be brought to court, the Health Care Costs Recovery Act, S.B.C. 2008, c. 27 imposes a number of requirements and restrictions and should be thoroughly consulted prior to the filing of the Notice of Claim. This Act, however, does not apply to claims involving ICBC.

A. Drafting a Notice of Claim Form

The Notice of Claim is the document that starts an action in the Small Claims Division of the Provincial Court (see **Appendix B**). It names the parties, describes the claim, and informs the defendant of the nature of the claim against him or her. **Students must be very careful when drafting pleadings.** You must be sure to name the correct parties, analyze the issues, plead the necessary elements in the cause of action, and plead the full relief sought.

During your analysis, you should consider whether the action is worth pursuing in court. The defendant may not have any assets or the ability to pay even if the claim is allowed.

On the Notice of Claim, students must fill out:

1. "From"

Enter the claimant's full legal name, address and telephone number. Be sure to provide the correct address and phone number. This is where the court and the defendant will mail notices. If there is an address change, each party must notify the registry.

2. "To"

It is important to name each and every defendant correctly, especially if it is a business. An incorrect name could result in a dismissal of the claim, and it may be too late to re-file.

a) Individuals

Do not use Mr., Mrs. or Ms. Use full names, not initials (i.e. "Mrs. D. Smith" should be "Doris Smith").

You may sue more than one defendant if the claim against each defendant is related. Divide the "To" space in half and use one half for the name and address of each defendant.

b) Businesses

If the defendant operates an unincorporated business, you should sue both the person and the business (e.g. "Hall Tent Rentals and Sarah Hall, carrying on

business as Hall Tent Rentals"). To determine if the business is or is not incorporated, contact the Registrar of Companies and do a company search (see **Section IV.A.2.c: Companies** below). If you have confirmed that the business is unincorporated, contact the local business license office and ask for the correct name of the business and the correct name of the owner. This can be done over the phone and is free of charge. Naming both the business and the owner will ensure that you have named and sued the correct individual.

City of Vancouver Licence Office
2nd Floor, East Wing, City Hall
453 W 12th Ave, Vancouver, B.C.,
Telephone: (604) 873-7568
Website: www.vancouver.ca/commsvcs/licandinsp/index.htm

c) Companies

If the defendant is an incorporated company, you must be careful to use the exact name. It will have one of the following words or abbreviations in its name: Limited, Ltd., Incorporated, Inc., Corporation, Corp., Company or Co.

The client must request a company search (Rule 5(2.1)). This search will contain the correct legal name, the address of the company's registered office, the names and addresses of the directors, officers or trustees and whether the company is in good standing.

To search for a **provincially** regulated company, the client may request a company or society search in person:

Surrey Board of Trade
101 – 14439 104thAve. Telephone: (604) 581-7130
Surrey, B.C. V3R 1M1 Toll-free: 1-866-848-7130

Small Business B.C.
82 - 601 West Cordova Street Telephone: (604) 775-5525
Vancouver, B.C. V6B 1G1 Toll-free in B.C.: 1-800-667-2272

Registrar of Companies
940 Blanshard Street Telephone: (250) 387-5101
Victoria, B.C. V8W 2H3 Telephone (Vancouver): (604) 660-2421
Toll-free in B.C.: 1-800-663-7867

The client may also write to:

Registrar of Companies
P.O. Box 9431
Station Provincial Government
Victoria, B.C. V8W 9V3

For more information about searching for provincial companies, refer to www.fin.gov.bc.ca/registries/corppg/crsearch.htm.

See also www.bconline.gov.bc.ca (The online search feature is not currently available to individuals however).

Partnerships and non-profit societies are also registered in the company directory and would come up in a search. In cases that involve franchises, it is important to do a company search to determine how the other party is registered; it may be

possible to sue the parent company as well as the individual who owns the franchise rights. The search costs $10 and cheques should be made payable to the Minister of Finance.

To search for a **federally** regulated company, refer to:

Industry Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

Website: www.ic.gc.ca

A collection of useful company directories can be found on the Industry Canada website under the "Programs and Services" heading. Federal corporations can be searched free of charge online.

NOTE: If the defendant is a business, it may be worth checking if that defendant has declared bankruptcy. To do so contact Industry Canada's Head Office of the Superintendent of Bankruptcy at (613) 941-2863. This service is free.

d) Motor Vehicle Accident Cases

Although LSLAP students are not to be involved in claims regarding motor vehicle accidents, we can offer summary advice. If the client is suing for the deductible portion of his or her collision insurance, the client must name both the driver and the registered owner of the vehicle as defendants. If the client only has the license number of the vehicle he or she can obtain the owner's name by writing a letter to ICBC's Vehicle Records Office.

ICBC Insurance Enquiries
151 West Esplanade
North Vancouver, B.C. V7M 3H9
Telephone: (604) 661-2233

e) Provincial Government

Effective September 1, 2005, the Crown Proceeding Act, R.S.B.C. 1996, c. 89 was amended to allow for proceedings to be brought against the provincial government in the Provincial Court in accordance with the Small Claims Act and the Small Claims Rules. The government should be designated "Her Majesty the Queen in right of the Province of British Columbia".

3. Pleadings: "What Happened?"

In this section, you must set out the facts that give rise to the cause of action, and the loss or damage that resulted. This description should be brief, but must inform the opposing party of the case to be met and give the judge an outline of what will be argued. The Notice of Claim (Form 1) has a very small space for the facts, but the facts can continue on to another piece of paper. The additional facts must be attached to each copy of the Notice of Claim.

In general, the pleadings should be brief, complete and as accurate as possible.

The Notice of Claim begins, "The claimant's claim is for <a specific cause of action>".

The facts as alleged must give rise to a legal cause of action. If there is more than one claim for damages from the same facts, put each claim in a separate paragraph. Set out only the facts. Save evidence and legal arguments for the trial (unless pleading statutory breach or remedy).

The pleadings should describe:

a) the geographical jurisdiction;

b) the relationship of the parties (e.g. buyer and seller); and

c) dates, places, and some of the details of amounts, services, or practices involved.

Your client will usually be bound by the facts in the pleadings. In the Small Claims Division of the Provincial Court, there is considerable leniency to allow amendments for errors or omissions, but a separate application must be made and permission or consent given. In particular, any party (claimant or defendant) can amend its documentation **without** the court's permission **if** it is still before the settlement/trial conference. If the parties wish to amend the documents **after** the settlement/trial conference, the party is required to make an application to a judge for permission to amend (see **Section VII.B: Amendments**, below, for more details).

LSLAP's Supervising Lawyer has many examples of Notice of Claim forms for different types of claims that are available on request (see **Appendix B**, below, for an example of a completed Notice of Claim).

If there are two or more causes of action, the Notice of Claim should be pleaded in the alternative. For example, in a claim for a car repair, a client can sue for breach of contract and negligence. A pleading might read: "In addition, or in the alternative, the claimant claims damages as a result of the defendant's negligent repair of the automobile".

When several parties are named as defendants, you must make it clear whether their liability is joint, several, or joint and several. This distinction affects execution and any subsequent actions arising out of the same cause. Liability stated as joint and several is more inclusive. Where liability is joint, the defendants must be sued as a group. Where liability is several, each defendant is obligated to repay only their own portion of the debt. Where liability is joint and several, the claimant may recover the full amount from any one debtor. The debtors can then litigate among themselves to apportion the debt between them.

The following are a few sample pleadings:

a) Claims in Debt

Claims in debt are quantified. Usually, the parties can agree on the amount owing.

SAMPLE: The claimant's claim is for a debt in the amount owing to the claimant on account for (or, for the price of) goods sold and delivered (or services rendered) by the claimant to the defendant at their request. The goods sold (or services rendered) were: (description of goods or services) and were delivered (or rendered) on or about the 29th day of July 2007 at 3875 Point Grey Road in the City of Vancouver, B.C. The claimant has demanded payment of this sum by the defendant but the defendant has refused or neglected to pay.

If the defendant has partially paid the original amount owing, this should be detailed in the Notice of Claim.

b) Claims for Damages

Damages are a claim for a loss where the parties do not agree on an amount owed. These claims often refer to breach of contract, misrepresentation, or negligence.

SAMPLE: The claimant's claim is against the defendant(s) (and each of them jointly and severally) for the sum of $3,000 for damages to the claimant's house resulting from a roof installed on or about the 10th day of June, 2007, at (or near) 2120 West 2nd Avenue in the City of Vancouver, British Columbia, due to the roof being negligently installed by the defendant... causing damages of the above amount. The defendant's said negligence consisted of... (e.g. improper installation or materials).

SAMPLE: The claimant had a contract with the defendants to paint the claimant's house for $3,000. The defendants never painted the house. The claimant had to pay XYZ Painters $3,950 to paint the house. This happened in Coquitlam, British Columbia, in May of 2007.

In a claim for damages, the claimant may not know what the amount should be. In such cases, the claimant should claim a figure that he or she would accept in settlement, or if doubtful of the amount, $25,000 should be claimed and the court will determine the appropriate amount of damages.

c) Other Remedies

The Notice of Claim is designed for claims in debt and for damages, but other claims are available, such as specific performance of a contract, *quantum meruit* or return (recovery) of an item.

SAMPLE: The claim is against the defendant for the return of their lawn mower, which was borrowed by the defendant who refused to return it. This happened in Surrey, British Columbia, in July of 2007.

In cases such as this, ignore the dollar amount for the "How Much" section. Indicate instead what the claimant seeks, e.g. "The claimant asks for an order that her lawn mower be returned to her". The client should consider the possible condition of the goods when deciding whether or not to ask for damages instead.

4. "Where?"

You may have already answered this question in the "What Happened?" section; nevertheless you still must fill in this section. You do not need a street address; the city or town and the province where it happened will be sufficient.

In addition, the rules require that you file your claim either:

a) where the defendant lives or carries on business; or

b) where the event that resulted in the claim happened. (In debt, this is where the defendant failed to make the payment, which is often the claimant's place of business.)

A corporate client "lives" either at the place it carries on business or where it is registered and records are kept. This information is available in the company search.

For case law pertaining to the jurisdiction of the court over e-contracts, see *Rudder v. Microsoft Corp.* [1999] O.J. No. 3778.

Appendix C, below, contains a list of Small Claims Registries in the Lower Mainland.

5. "When?"

Describe when the event happened. Give the exact date, but if you are uncertain you may say "on or about" and estimate.

6. "How Much?"

This is where you describe the remedy. In most cases, this will be an amount of money, but a claimant may request an alternative remedy. In the example of the lawn mower, the claimant could request the return of the lawn mower, or the value of it, as damages. However, if your client wants the goods returned, he or she should consider what condition they will be in, and whether he or she really wants them back.

a) Interest

If there is no mention of interest in a contract between the parties, the Court Order Interest Act requires the court to award interest to the successful claimant, from the date the matter arose until the date of judgment (Court Order Interest Act, s. 1(1), also see *Red Back Mining Inc. v. Geyser Ltd.*, [2006] B.C.J. No. 3264 for a discussion of pre-judgement date of interest). This is called "pre-judgment interest". The Notice of Claim should indicate a claim for Court Order interest but leave the amount area blank, and the registry will calculate the amount based on the current rate of interest pursuant to Regulations under the Court Order Interest Act.

If the payment is not made immediately after judgment, interest until the payment is made may be awarded. This is called the post-judgment interest. The court has the discretion to vary the rate of interest or to set a different date from which the interest commences (Court Order Interest Act, s. 8).

A claim in debt would calculate interest from the date the debt first became due, and a claim for damages would calculate from the date the damages arose.

If there is a clause in an agreement about a rate of interest to be charged upon breach of a contractual interest, the Notice of Claim should state that interest is claimed at that rate. Such a claim would require a calculation of interest up to the date of filing, plus a claim for daily interest until judgment (see **Appendix B**, below, for an example).

b) Claims Over $25,000

For claims exceeding $25,000, the claimant must "abandon the excess." if the claim is to be heard in small claims court (Small Claims Rules, Rule 1(4)). The Notice of Claim should state the original amount of the claim, and then state that the excess (the amount over $25,000) is abandoned (Rule 1(5)). For example: "The claimant abandons the excess amount to bring this claim within the jurisdiction of this court". In the recent case *Der v. Giles*, 2003 BCSC 623, an abandonment of the amount in excess of $25,000 was deemed to not be irrevocable. However, the abandonment in question was being examined before trial, thus a client should be warned that once a case is tried in the Small Claims Court, it is unlikely he or she will recover the amount in excess of $25, 000.

There is an exception to the $25,000 limit with multiple claims. If more than one claimant has filed a Notice of Claim against the same defendant(s) concerning the same event, or, if one claimant has filed notices of claim against more than one defendant concerning the same event, the judge may decide each claim separately, even though the total of all the claims (not including interest and expenses) exceeds $25,000 (Rule 7.1(4)). Such claims often have a trial at the same time, although the claimant(s) must request this.

c) Other Expenses and Penalties

The registry staff will fill in the claim sections labelled 'FILING FEES' and 'SERVICE FEES'. Under Rule 20(2) of the Small Claims Rules, unless a judge or the Registrar orders otherwise, an unsuccessful litigant must pay any filing fees to the successful litigant, reasonable amounts the party paid for serving documents, and any other reasonable expenses directly related to the proceedings. Legal fees and payment for time spent preparing or attending a trial will not be included.

Your client may be entitled to additional expenses as they arise during the course of the proceedings, for example if the defendant comes unprepared to the settlement conference and your client misses a day of work to attend. Your client should ask for these expenses either at the settlement conference (or trial conference under the pilot project) or at trial (Rule 20(6)).

A judge may impose penalties on an unsuccessful litigant. Under Rule 20(5), a litigant may be ordered to pay up to 10 percent of the amount claimed if he or she continues to trial with no reasonable basis for success. Further, if the claimant or defendant rejects a "formal" offer to settle, and the award at trial, including interest and all expenses, is less than or equal to that offer, the judge may impose a penalty of up to 20 percent of the offer to settle (Rules 10.1(5) and (7)).

B. Filing the Notice of Claim

When the Notice of Claim is completed, it is ready to be filed in the appropriate registry, that is, **either the one closest to where the cause of action arose or closest to where the defendant lives or carries on business** (Small Claims Rules, Rule 1(2)). If there is a choice, the claim should be filed where most convenient for both parties. If the defendant disputes the location, he or she must prove that the convenience lies elsewhere. **Appendix C** has a list of the Vancouver-area Small Claims Registries.

If the client is unable to pay the filing fees because of limited finances, the client may apply to the Registrar to set aside the fees (Rule 20(1)).

C. Serving the Notice of Claim

A copy of the Notice of Claim and a **blank Reply** form must be served on each defendant (Small Claims Rules, Rule 2(1)). The registry should provide a blank Reply form when the claimant files.

1. How to Serve the Notice of Claim

NOTE: The rules change for a summons to a payment hearing or summons to a default hearing.

Whether a defendant is an individual, a limited company, an unincorporated company, association or trade union, a partnership, an infant, a municipal or local government, a

society, or a company registered outside the province of British Columbia determines how they must be served.

If the defendant is an individual, the client must serve the Notice of Claim by leaving a copy of it with the defendant, or mailing a copy of it by registered mail to the defendant (Small Claims Rules, Rule 2(2)).

If it is difficult to find a defendant or a defendant is evading service, your client may apply for permission to serve the documents by some alternative method (Rule 18(8) - (10)). In order to do this, an Application to the Registrar, Form 16, documenting how the serving party attempted to serve the Notice of Claim must be registered (Rule 16(3)).

If the defendant is a company incorporated under the Business Corporations Act, the Notice of Claim must be served by mailing a copy of it by registered mail to the registered office of the company, or by leaving a copy of it at the registered office of the company, at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there, or with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company (Rule 2(3)).

If the defendant is a partnership, the Notice of Claim must be served by mailing a copy of it by registered mail to a partner, or by leaving a copy of it with a partner, at a place of business of the partnership, with a person who appears to manage or control the partnership business there, or with a receptionist who works at a place of business of the partnership (Rule 2(5)).

If the defendant is an extraprovincial company, partnership, a municipality, a person under 19, a society, an extraprovincial society, or an unincorporated association including a trade union, see the Small Claims Rules for details.

If the claim involves a motor vehicle accident, the other driver and ICBC must be served, even though ICBC may not be named as a defendant.

The rules (see Rules 2 and 18) and Form 4 (on the back of the Notice of Claim or the Reply) are clear, but ensure that your client understands which process to follow for each defendant.

2. When to Serve the Notice of Claim

Your client has one year after filing the Notice of Claim to serve it on all defendants. It is possible to get an extension of time to serve, but permission is not easily granted (Small Claims Rules, Rules 2(7), 16(6)(l) and 17(12)).

3. Proof of Service

Your client must be able to prove that each defendant was served with the Notice of Claim. Proof of service is possible in several ways (Small Claims Rules, Rule 18(14)). All are listed on Form 4 (printed on the back of the Notice of Claim and the Reply forms). Once service is complete, the Certificate of Service, Form 4, must be filed in the same registry as the Notice of Claim. A judge may allow sworn evidence that documents were served, but such situations are unusual (Rule 18(15)).

There is room on Form 4 to list and describe what was served and copies of the documents served are generally attached to the proof of service. Your client should check the rules carefully before adding up the number of copies required for service and proof of service. **Example: Have the original for court, one for the Claimant, one for each defendant, and one for each service**.

a) Personal Service

Most defendants may be served personally with the Notice of Claim. Your client or someone acting on your client's behalf must simply hand the document to the defendant. If the defendant refuses to take it, your client may drop it on the floor at the defendant's feet.

Review Rule 2 of the Small Claims Rules before you encourage your client to personally serve the defendant with the Notice of Claim. In some cases, a process server should be hired to avoid further disputes.

b) Registered Mail

If service is by registered mail, the client needs to acquire a copy of the signature given at the time of delivery by calling Canada Post at 1-888-550-6333, or obtain a delivery confirmation form available online at www.canadapost.ca. Either confirmation should then be attached to Form 4 and filed.

c) Service on a Lawyer or Articling Student (including the ICBC Legal Department)

Personal service is required, and two copies of the documents are required. One will be stamped or have written on it:

> Service acknowledged this _____day of _____, 2000
> by _____,
> Counsel/agent for defendant _____.

A covering letter would look like:

> RE: Small Claims Court Action #_____ Vancouver Registry
> Please accept service of this Notice of Claim and return the copy marked for acknowledgement of service to the address provided for delivery.
>
> Thank you.

The acknowledgement may be signed by the lawyer or the articling student it is addressed to or by a partner or employee of the firm. The copy with the acknowledgement is then attached to Form 4, and both are filed in the registry.

V. THE REPLY

A. Defendant's Options

It is important to remember that a claim can be settled at any time prior to trial. A defendant who receives a Notice of Claim has five options (Small Claims Rules, Rule 3(1)). Most must be completed within 14 days (Rule 3(3)). **Failure to reply may result in the claimant receiving a Default Order.**

1. Agree to Pay the Amount Claimed

A defendant can pay the entire amount of the claim directly to the claimant (Small Claims Rules, Rule 3(1)(a)) and, if so, need not file a Reply. The defendant should make sure he or she retains a receipt as proof of payment and request that the claimant withdraw the claim.

Only the claimant may withdraw a claim and if a withdrawal is filed, all parties who were served with the Notice of Claim must be served with a copy of the withdrawal. Notice of Withdrawal forms are available from the registry.

2. Oppose All or Part of the Claim

A defendant may oppose all or part of the claim (Small Claims Rules, Rule 3(1)(d)), but then must file a Reply (Form 2) detailing what is admitted, what is opposed, and listing reasons why those parts are opposed. If the defendant disputes the entire claim, the Reply may state something like "the money is not owed" or "the defendant denies each and every allegation made by the claimant". The defendant will often be required to provide more details later.

3. Admit All or Part of the Claim and Propose a Payment Schedule

If part of a claim is admitted (Small Claims Rules, Rule 3(1)(b) or (c)), the defendant must file a Reply (Form 2) but may also propose a payment schedule for what is admitted. The payment schedule must detail how the amount will be paid back. The Registrar can ratify the proposal if the claimant consents to it (Rule 11(10)(b)). If the claimant does not consent to the proposal or no payment schedule is proposed, the claimant may ask the registrar to issue a summons to the defendant to attend a payment hearing (Rule 11(10)(c)). A payment hearing involves evidence of income and expenses as well as a determination of how much and when payments should be made (Rules 12(12) and 12(13)).

4. Counterclaim

A defendant may think he or she has reason to make a claim for damages against the claimant (Small Claims Rules, Rules 3(1)(e) and 4), in addition to opposing the Notice of Claim. In such circumstances and as long as the claim involves the same parties, the defendant may file a counterclaim. The defendant may also commence a separate action, but if the parties and witnesses are the same, or the issues to be decided are similar, and the amount of damages in the counterclaim are less than $25,000, it may be preferable to have all disputes settled in one trial. The Reply (Form 2) is used to make a counterclaim.

NOTE: The relationship between a counterclaim and a set-off should be noted. A counterclaim is a claim brought by the defendant, which is related to the claim made by the claimant. For example, the defendant (customer) may make a counterclaim against claimant (shopkeeper) for having sold him defective goods. A set-off is a defence that a defendant may use to reduce the amount of money the claimant is suing him for. For example, a claimant may be claiming against a defendant a sum of $1,000. However, if the defendant can prove that the claimant owes him $200, the court may order that the $200 be set-off against the $1,000, should both the claimant's cause of action and the defendant's set-off defence be successful. For cases outlining the subtle distinctions between a counterclaim and a set-off see *Gwil Industries Inc. v. Sovereign Yachts (Canada) Inc.,* [2002] B.C.J. No.1001; *Lui v. West Granville Manor Ltd.*, [1985] B.C.J. No.2364 (C.A.); and *Johnny Walker Bulldozing Co. v. Foundation Co. of Canada Ltd.*, [1997] B.C.J. No. 988.

NOTE: The defendant should mention on the Reply (Form 2) if any claims involving the same matter between the defendant and the claimant have been filed in any other court's jurisdiction or in any administrative tribunal.

a) Amount of the Counterclaim

A counterclaim cannot exceed $25,000. The defendant can either abandon the excess or begin an action in the Supreme Court (note: LSLAP does **not** go to

Supreme Court). If the excess is abandoned, the counterclaim must state that "the amount of the counterclaim over $25,000 is abandoned", and the amount abandoned cannot be sued for at any other time (Small Claims Rules, Rules 4(4), (5) and (6)).

b) Filing and Service

A counterclaim is filed at the same time as the Reply (Small Claims Rules, Rule 4(1) and (2)) - within the time allowed for filing a Reply (Rule 3(4)) and at the same registry as the Notice of Claim (Rule 3(3)).

Within 21 days of the Reply (and counterclaim) being filed, the registry must serve the claimant (Rules 3(5) and 4(2)). The claimant must then file a Reply to the counterclaim (Form 2) within 14 days of being served (Rule 4(3.1)(b)).

5. Making a Third Party Claim

If a defendant believes that someone else should reimburse them if they are found liable, he or she may start a third party claim against that other person or entity (Small Claims Rules, Rule 5). If this occurs after a settlement conference, mediation session, or trial conference has been held, the judge's approval is needed (Rule 5(1)(b)). See also Rule 8 for more information about changing a claim and the steps to follow.

NOTE: A third party claim is different from a claim against the incorrect defendant. A third party claim is made when a defendant believes that a third party should reimburse them if they are found liable to the claimant. For example, the defendant endorsed and delivered a check to the claimant that he received from a third party. If the check is returned for lack of funds, the defendant is still liable for the debt he owes to the claimant. However, the defendant may make a third party claim because the third party should reimburse them.

a) Filing and Service

To start a third party claim, the defendant must complete a Form 3 and file it in the same registry where the Notice of Claim was filed (Small Claims Rules, Rule 5(2)). The defendant must then serve the third party (Rule 5(4)). The defendant must serve the third party with a copy of the filed Form 3, a blank Reply form, a copy of the original Notice of Claim, a copy of the original Reply to the Notice of Claim, and all of the documents the other party would have received (Rule 5(3)). A defendant has only 30 days to serve the third party and file a certificate of service (Form 4) (Rule 5(5)), otherwise the third party notice expires, unless it is renewed (Rule 5(5.1)). The defendant does not have to serve the claimant - the registry will do so within 21 days of filing (Rule 5(6)). Be certain to check what the limitation period is in the given circumstance and determine whether the claim is still valid. If an expired limitation date would bar the claim against the third party from being brought directly against that party, then the limitation date will also bar the third party claim from being attached to another claim already in progress. Rule 5 cannot be used to "piggy back" an expired claim onto a live one.

b) Replying to a Third Party Notice

In a reply to a third party notice, the person named must follow the same rules as replying to a claim (Small Claims Rules, Rule 5(7)). That is, the same form is used for a reply to a third party notice (Rule 3(2)), the Reply must be filed at the same registry as the Notice of Claim, and a filing fee must be paid.

B. Time for Filing a Reply

Time limits are the same for filing a Reply whether your client is:

- the defendant served with a Notice of Claim (Small Claims Rules, Rule 3(4)(a));
- the claimant served with a counterclaim (Rule 4(3.1)(b)); or
- a third party served with a third party notice (Rule 5(7)).

If served inside British Columbia, a Reply must be filed within **14 days**.

NOTE: The rules are silent about the possibility of a claimant replying to a counterclaim while residing outside British Columbia (see Rule 4(3.1)). You should advise that type of client to reply within 14 days, but the third party or defendant, if outside British Columbia, would have 30 days to reply.

The Reply must be filed in the same registry where the Notice of Claim was filed (Rule 3(3)), and there is a filing fee - except where the defendant admits and agrees to pay the entire claim.

Generally, a Reply cannot be filed after 14 or 30 days, but in practice the registry may allow a Reply to be filed late as long as a default order has not been taken or a hearing date set (Rule 3(4)(b)).

C. Serving the Reply

The registry must serve a Reply on the opposing parties within 21 days of filing (Small Claims Rules, Rules 3(5) and 5(6)).

D. Remunerations for Real Estate Services

Where the claim is for remuneration in relation to real estate services, the Real Estate Services Act, S.B.C. 2004, c. 42, s.4 states that the plaintiff must have either been licensed when the services were rendered or have been exempt from the requirement to be licensed.

The first step in replying to a claim by an entity such as a real estate management company is to make inquiries with the Real Estate Board to establish whether the plaintiff was licensed.

VI. DEFAULT ORDERS

A. Requesting a Default Order

Where a Reply is not filed or not filed on time, the claimant may ask the Registrar or a judge for a default order. In counting the days since service, do **not** include the date of service. A certificate of service (Form 4) must be in the file and Form 5 must be completed (Small Claims Rules, Rule 6(3)).

If the claim is for a debt, the Registrar may immediately issue a default order (Rule 6(4)). The default order will order the defendant to pay the amount claimed plus interest and expenses.

If the claim is for anything other than debt, there must be a hearing by a judge (Rule 6(5)). Once a hearing date is set, a defendant may not file a Reply without a judge's permission (Rule 6(8)). If at least one of the defendants has filed a Reply, the hearing will be held at the same time as the settlement conference, trial conference (pilot project), or trial (Rule 6(6)).

A default order is not automatic. The claimant must be prepared to give evidence and produce documents to prove the amount owing, and that the default order should be granted (Rule 6(9)). While there may be an assumption that a defendant who has not filed a Reply is not contesting the claim, that assumption is frequently later contested.

B. Setting Aside Default Orders and Reinstating Claims

If a default order is issued or if a hearing for assessment of damages is scheduled, the defendant may apply to a judge to set aside the default order and file a Reply (Form 17 and Small Claims Rules, Rules 6(8), 16(6)(d) and (j), 16(7) and 17). The defendant will have to swear an affidavit in which the following issues should be addressed (Rule 17(2)(b)):

1. reasonable explanation for not filing a Reply (or attending a settlement conference or a trial);

2. reasonable time after knowledge of the default order and whether the application to set aside the order was made at the first opportunity; and

3. reasonable defence to an action and that the defence is worthy of investigation. A defendant is not required to prove his or her case in this application, but he or she must show that it merits having a trial.

The claimant is notified of and may oppose the application or seek a penalty if the order is set aside: see *Miracle Feeds v. D & H Enterprises Ltd.* [1979] B.C.J. No. 1965.

VII. ONCE AN ACTION HAS STARTED

A. Negotiations

Negotiation is encouraged at all times. Any contact between the parties should be used to attempt to negotiate a settlement. You should start or continue this process by contacting the other party. The following should be considered in settlement negotiations:

1. You must first receive instructions to attempt settlement, and also authorization for any disclosures to the other side.

2. You should clearly explain who you are and that you are phoning on behalf of your client. Ask the other party if he or she is represented by a lawyer. If so, all contacts must go through the lawyer, and you must obtain that lawyer's permission before discussing matters directly with the litigant. If the other party is not represented, ask the litigant if he or she is willing to discuss the claim with you.

3. Telephone technique should be **firm** but **not argumentative**. You must try to negotiate the best offer possible.

4. Work from pre-arranged, written plans and guidelines, and keep detailed notes of the conversation as it occurs. Plan how best to find out the other side's position and how best to put forward your client's position.

5. All offers to settle must be conveyed to the client.

If settlement is reached, a letter should be sent to confirm the agreement. Precedents are available in the LSLAP office for settlement agreements, quitclaims, and releases. If a settlement is reached, a confirmation letter should be sent to the opposing party. Enclose a duplicate copy for the appropriate party to sign and return to confirm the agreement. The letter:

1. should have a reference caption entitled "settlement offer" and the name of the case;

2. should state: "This letter is to confirm our telephone conversation of (date) and your offer and our acceptance of compensation in the amount of $xxx. This will be paid directly to Ms. Y, who upon receipt will sign a release that will stop any further action in her claim for negligent operation of an automobile. Please sign the duplicate copy of this letter to indicate your written confirmation of these terms and return it to me within seven days"; and

3. should include: "Thank you for your speedy resolution of this matter".

B. Amendments

1. Amending Pleadings

If the client has filed his or her own Notice of Claim or Reply, LSLAP should check that the document is legally precise. The procedures to do this vary depending on the timing (Small Claims Rules, Rule 8).

A party may wish to amend some of its documentation. Any party may amend its documentation without obtaining the court's permission, provided that the amendment is made prior to any settlement conference, mediation under rule 7.4 (pilot project), or trial conference (pilot project) (Rule 8(1)(a)). Changes on the document must then be underlined in red and the document itself must be initialled and dated. A copy of the revised documentation must be filed with the registry and a copy of the revised documentation must then be served on each party to the claim (Rule 8(3)).

If the amendments occur after the settlement conference, mediation (pilot project), or trial conference (pilot project) has taken place, a judge's permission is required to make the changes. An application must be made to a judge and an order to amend must be received. The procedure outlined above should then be followed; however the document being amended or revised must make a reference to the judge's order (e.g. "Amended 18 June 2002 by order of his Honour Judge Linden").

NOTE: For a discussion of the rules regarding adding and substituting parties see *Royal Bank of Canada v. Olson*, [1990] 44 B.C.L.R. No. 359.

2. Serving Amended Pleadings

If the amended pleading is a Notice of Claim, counterclaim, or third party notice, it must be served as if it was an original. If the amended pleading is a Reply or some other document, it can be mailed by regular mail to the address of each party to the action (Small Claims Rules, Rule 18(12)(b)). A document served by ordinary mail is presumed served 14 days after it was mailed (Rule 18(13)). Proof of service is not required for amendments, but it is recommended.

3. Response to Amendments

The response to service of amended pleadings will vary. If the amended pleading makes a new claim, but the party served has already filed a Reply, he or she may want to change the Reply (Small Claims Rules, Rule 8(3.1)), but no default order will follow from such a new claim if the party decides not to reply (Rule 8(3.2)).

C. Withdrawing a Claim, Counterclaim, Reply, or Third Party Notice

A party may withdraw a pleading at any time (Small Claims Rules, Rule 8(4)). To do so, a party must file a Notice of Withdrawal at the registry (Rule 8(4)(a)) and then promptly serve the notice on all

parties who had been previously served with any pleading (Rule 8(4)(b)). A Notice of Withdrawal may be served by ordinary mail or personal service (Rule 18(12)). Once a pleading is withdrawn, that party may **not** proceed with the original claim or start a new action for the same claim without permission of a judge (Rule 8(6)).

NOTE: Withdrawing a claim does not result in the dismissal of a counterclaim. The counterclaim may still proceed, unless that counterclaimant also files a notice of withdrawal.

D. Adjournments

Once a date for a hearing, settlement conference, or trial has been set, any party can apply for an adjournment (Small Claims Rules, Rule 17(5.1)). If seeking an adjournment, try to obtain consent of the opposing party prior to applying. Form 17 must be filed in the registry as soon as possible. A trial will only be adjourned if a judge is satisfied that it is unavoidable and if an injustice will result to one of the parties if the trial proceeds (Rules 17(5.1) and 17(5.1)(b)). There is a $100 fee for adjournments where the application is made less than 30 days before a trial and notice of the trial was sent 45 days before the date of the trial (Rule 17(5.2)). That fee must be paid within 14 days (Rule 17(5.3)) or else a judge may dismiss the claim, strike out the reply, or make any other order he or she deems fair (Rule 17(5.4)).

E. Garnishment Before Judgment

If the claim is for debt, a "garnishing order before judgment" may be issued at the same time a Notice of Claim is filed. Except for wages and interest, almost any debt can be garnished. Since grave injustice can sometimes occur from the procedure, few garnishing orders are issued before judgment. Practically, judges will grant a garnishing order before judgment in certain circumstances, for instance where the claimants will get a dry judgment if they succeed. See *Webster v. Webster,* [1979] B.C.J. No. 918; *Affinity International Inc. v. Alliance International Inc.,* [1994] M.J. No. 471; *Intrawest Corp. v. Gottschalk,* [2004] B.C.J. No. 2119; and *Silver Standard Resources Inc. v. Joint Stock Co. Geolog,* [1998] B.C.J. No. 2887 for more details.

The Court Order Enforcement Act governs the process. To get pre-judgment garnishing orders, the claimant must ensure that a writ of summons has been filed before proceeding (Court Order Enforcement Act, ss. 3(2)(d)(i) and 3(3)), that the claim is for a liquidated amount and that he or she does not attempt to garnish a joint bank account or other joint property unless all co-owners are defendants. The claimant must prepare and file an affidavit in support of the garnishment and also prepare a draft order. An affidavit must be sworn before a lawyer/notary or may be sworn at the registry.

The registry may grant the order, and then the claimant must serve both the garnishee and the defendant. If the garnishee is a bank, garnishing order must be served on the branch where account is located. If the garnishee is a credit union, the order must be served on its head office. A separate order must be obtained for each garnishee.

Normally, 70 percent of any wages due by an employer to an employee are exempt from seizure or attachment under a garnishing order issued by a judge or the Registrar (Court Order Enforcement Act, s. 3(5)). However, a creditor who has proceeded by way of seizure or attachment of wages of a person, or a debtor affected by the proceedings, may apply for an increase or reduction of the amount of exemption allowed (Court Order Enforcement Act, s. 4(1)). After an order confirming, increasing or reducing the amount of exemption is made, a person affected by the order may apply, no later than 14 days from the date of the order, to have the order set aside. (Court Order Enforcement Act, s. 4(5)).

In certain cases the plaintiff may want to ask for a Mareva Injunction, an order freezing the defendant's assets so that they cannot be disposed of or moved outside the jurisdiction of the court

(*Aetna Financial Services v. Feigelman*, [1985] 1 S.C.R. 2). However, this injunction can only be granted at the B.C. Supreme Court level.

For detailed information, see the Continuing Legal Education Provincial Court Small Claims Handbook, on reserve in the UBC Law Library.

VIII. MEDIATION

As a legal advisor, a student's job is to prevent and, where necessary, manage disputes between parties. Sometimes litigation is the best process. However, there are times when other processes might better suit your client and his or her dispute. There is a wide range of dispute resolution options available to your client. The most common of these is mediation.

A. What Is Mediation?

Mediation is a voluntary settlement process. A mediator meets with the parties in an informal setting and uses specific skills and techniques to facilitate constructive discussion and negotiation between the parties. While the mediator plays an active role in ensuring discussion remains productive, the ultimate responsibility for resolving the dispute rests with the parties. The purpose of mediation is not to determine who wins and loses, but to find solutions that meet the needs of the people involved.

B. Why is Mediation Useful?

A fundamental shift in how legal disputes are resolved is taking place in B.C. in response to complaints about the adversarial system. Mediation is useful because it is efficient, inexpensive, confidential, informal, flexible, and parties have control over the outcome. Mediation may be helpful in many different types of disputes. For example, the client may not wish to undergo the stress of litigation, or take time off work to attend the settlement conference, pretrial conference, and trial. The client may be unable to wait up to two years for a judgment. Even if he or she obtains a judgment, there is no guarantee that he or she will be able to collect on it.

The client may wish to preserve or continue his or her relationship with the defendant: neighbours, business partners, and friends can often benefit from mediation. Find out what the client hopes to achieve with a Small Claims action. For some clients, acknowledgement of the consequences of the other party's actions or an apology can go a long way to resolving a dispute and are unlikely to be addressed in a trial. **Always explore the option of mediation with a client who is considering a Small Claims action.**

C. Getting to Mediation

1. Claims up to $10,000 – Rule 7.2

The Dispute Resolution Practicum Society operates the Court Mediation Program in several Provincial Court Registries in B.C. It provides mediation services without a fee for claims $10,000 and under. The only potential cost to the claimant and defendant is the expense of hiring an interpreter or signer, if required.

In Surrey, North Vancouver, and Nanaimo, any party may apply for mediation on a voluntary basis by filing a Notice to Mediate for Claims up to $10,000 (Form 21) in the registry (Rule 7.2). The application will almost always be granted, but see Schedule E of the Small Claims Rules for a list of excluded cases. Once a mediation session is scheduled, the other party **must** attend (Rule 7.2(17)). If the parties are involved in a construction dispute they must undergo mandatory court-ordered mediation. Construction disputes will be automatically referred to the Mediation Program. Once on track for mediation, the Mediation Coordinator will serve the parties with a Notice of Mediation (Form 27)

informing them of the date, time and place of the mediation session (Small Claims Rules, Rule 7.2(8)).

Parties must attend the session as scheduled unless an application is filed for adjournment (Rules 7.2(11), (11.1), and (12)), for a teleconference (Rule 7.2(14)), or for an exemption (Rule 7.2(9)). If a party fails to attend the mediation session, the party in attendance will receive a verification of non-attendance (Form 22), which he or she can file with the Registrar (Rule 7.2(22)). After filing Form 22, the party in attendance can file a request for judgment or dismissal (Form 23), which dismisses the claim if the party not attending is the claimant or gives a default order if the party not attending is the defendant (Rule 7.2(24)). The mediation process within the Small Claims Court can speed up the court process, as it can lead to settlements that the parties are committed to carrying out.

NOTE: Students attending a mediation session under the Court Mediation Program in February or March must advise the Court Mediation Program that an LSLAP student will be attending as counsel. During those months, other UBC law students may be involved with mediations as part of their training in the faculty's Mediation Clinic course. It is essential to avoid even the appearance of bias.

2. Claims Between $10,000 and $25,000 – Rule 7.3

In all small claims registries except Vancouver (Robson Square), any party may apply for mediation on a voluntary basis by filling out a Notice to Mediate for Claims Between $10,000 and $25,000 (Form 29) (Rule 7.3). The application will almost always be granted, but see Rule 7.3(3) for a list of excluded cases. Once a mediation session is scheduled, the other party **must** attend (Rule 7.3(17)). Unlike claims set for mediation under the Court Mediation Program (Rule 7.2) and pilot project (Rule 7.4), parties to a mediation under Rule 7.3 must jointly select a mediator and split the cost. Clients pursuing mediation under Rule 7.3 should consider taking advantage of the Conflict Resolution Clinic (CoRe). See **Section VIII.E: CoRE** below. If parties cannot jointly appoint a mutually acceptable mediator, the B.C. Mediator Roster Society may be requested to appoint an appropriate mediator (Rules 7.3(10) and (11)). Parties must still split the cost of hiring the mediator (Rules 7.3(33)-(36)).

Parties must attend the session as scheduled unless an application is filed for adjournment (Rule 7.3(30)), for a teleconference (Rule 7.3(25)), or for an exemption (Rule 7.3(28)). If a party fails to attend as required, the mediator will fill out a verification of default (Form 31) and provide it to the party in attendance. After filing Form 31, the party in attendance can file a request for judgment or dismissal (Form 23), which dismisses the claim if the party not attending is the claimant or gives a default order if the party not attending is the defendant (Rules 7.3(38)-(40)).

3. Mediation under the Pilot Project in Vancouver (Robson Square) – Rule 7.4

Recognizing the value of mediation in efficiently resolving disputes, the pilot project at the Robson Square registry schedules a mandatory two-hour mediation session for claims between $5,000 and $25,000, and for personal injury claims of any amount (Rule 7.4(2)). There are some exceptions to this general rule, notably for claims in financial debt (Rule 7.4(3)). A mediator is assigned from the Dispute Resolution Practicum Society roster at no cost to the parties. The Registrar will serve the parties with a Notice of Mediation (Form 27) informing them of the date, time and place of the mediation session (Small Claims Rules, Rule 7.4(17)).

Parties must attend the session as scheduled unless an application is filed for adjournment (Rules 7.4(18), (19), and (20)), for a teleconference (Rule 7.4(23)), or unless an exemption is granted (Rules 7.4(5) and (6)). If a party fails to attend the mediation session, the party in

attendance will receive a verification of non-attendance (Form 22), which he or she can file with the Registrar (Rule 7.4(22)). After filing Form 22, the party in attendance can file a request for judgment or dismissal (Form 23), which dismisses the claim if the party not attending is the claimant or gives a default order if the party not attending is the defendant (Rules 7.4(32) and (33)). If neither party attends the mediation session the Registrar must make an order dismissing both the claim, and any counterclaim (Rule 7.4(35)).

4. Other Claims

Even if a claim does not fit within Rule 7.2, 7.3, or 7.4 it is possible that mediation might still play a valuable role. While the court will have no hand in compelling attendance, if both parties agree to engage in mediation it may be possible to arrive at a satisfactory settlement agreement well before the trial or settlement conference.

D. Preparation

Preparation is essential in order to achieve the most from mediation. If you are representing a client in a mediation session, you should prepare any documents and provide copies for the other party. It is also useful to talk with your client about alternatives to taking the dispute to trial. You and your client should discuss being open to creative possibilities for settlement that solve the problem. Encourage your client to listen to the other party expressing his or her interests and allow the mediator to help the parties resolve the dispute.

Although it is important as a lawyer and a negotiator to be aware of your client's legal position and settlement range, the mediator will be concerned about the interests of each party rather than the legal issues in the dispute. Learning what your client values as important for resolution of the dispute is more helpful preparation than being positional about his or her legal rights. Ultimately, both clients and advocates should be prepared to be cooperative and participate in good faith to reach resolution.

E. Procedure

Mediation within the Court Mediation Program is a flexible process that allows each mediator or group of mediators to use their individual style to help parties achieve a settlement. A mediator is not necessarily a lawyer, but is a skilled, experienced professional. Although mediation sessions can vary with respect to process, there are generally some standard steps that are followed.

All parties and representatives will be seated at a table with one to three mediators. The mediators will describe the mediation process, and ask each person attending to sign an Agreement to Mediate. This must be signed in order for the mediation process to proceed. The Agreement to Mediate form includes a confidentiality clause (any information disclosed in the session that is not otherwise discoverable is inadmissible and mediators cannot be called to testify in later proceedings), and ensures that the parties present have full authority to settle the case.

After signing the Agreement to Mediate, both parties will have a short time to tell their story related to the dispute. The mediator will summarize the key points in dispute. Once the main issues are identified, the mediator will look for common interests in an attempt to assist parties to resolve the dispute. The mediator will assist the parties to negotiate and reach an amicable resolution. During the process, it is not uncommon for a mediator to have a private conference with each party.

If the parties agree to a resolution, the mediator will draft an Agreement setting out terms of the resolution. It may include monetary and non-monetary terms, and will include a non-compliance clause setting out consequences for failing to fulfill the obligations set out in the Agreement. If there is no non-compliance clause, the default amount will be the original amount claimed in the action. The mediator will file the agreement in the Small Claims Court registry after each party signs the agreement.

F. Conflict Resolution Clinic (CoRe Clinic)

The CoRe Clinic provides mediation services on a flexible payment scale. Sessions are run by a professional mentor mediator paired with a trained student mediator. The mentors are often the same mediators available through the B.C. Mediator Roster Society – available at greatly reduced rates while volunteering with CoRe. All mentors have extensive Small Claims mediation experience, and significant expertise in other areas of the law as well. Students working with CoRe have undergone training through the UBC Faculty of Law Mediation Clinic and Practicum courses. Consider using the CoRe clinic for mediations under Rule 7.3. CoRe may also be particularly useful where parties have not yet filed a court action. Mediations with CoRe are voluntary, and both parties must agree to mediate in order for CoRe to assist. CoRe offers a flexible process that can be designed to accommodate the individual needs of parties to a dispute. Where requested, mediation sessions can be held in a range of locations, or by teleconference. In some cases the process will run more smoothly if parties to a dispute are kept separate. Mediation in general and CoRe in particular can provide a faster, less expensive alternative to court. For more information, refer to CoRe's website: http://faculty.law.ubc.ca/coreclinic/index.html.

IX. SETTLEMENT CONFERENCE/TRIAL CONFERENCE

Settlement conferences are extremely important (Small Claims Rules, Rule 7). Approximately 60 percent of all cases are settled during or after the settlement conference. Settlement conferences are mandatory in all non-pilot project registries, for all cases except motor vehicle accident cases in which only liability for property damage is disputed (Rule 7(2)).

NOTE: No 'settlement conferences' are held for claims filed under the pilot project (See **Section I.A Pilot Project**). In Vancouver (Robson Square), for claims between $5,000 and $25,000, except financial debt claims, and for all personal injury claims, the aims of the settlement conference are now addressed by way of mandatory mediation and a 'trial conference'. A review of Rule 7.5 reveals the trial conference to be similar to the settlement conference (Rule 7), and this section of the manual will assist clinicians in preparing for both – but students should be careful not to confuse the two. Each operates under its own rule, and they are not identical.

Typically, a settlement/trial conference is scheduled for half an hour before a judge in a conference room at the courthouse. The judge at the settlement/trial conference will not be the judge at trial, if a trial is necessary.

At the settlement/trial conference, the parties will sit at a table with a judge. The judge will say a few words and ask each party to give a brief summary of their case. The judge may then lead both the claimant and defendant into a discussion on what, if anything, the parties can agree on. If the parties agree on the final result, the judge will make the order. However, the parties may agree on some issues and leave issues in dispute to be resolved at trial. The judge will assess how much time is required for trial.

The student must spend considerable time preparing – much the same as he or she would prepare for a trial. **Appendix D**, below, provides a checklist that will help in the preparation.

A. Who Must Attend?

All parties, with or without legal representation, must attend the settlement conference (Small Claims Rules, Rule 7(4)). If a party is not an individual, for example where one of the parties is a company, someone who has authority to settle the claim for the company must attend: see *Kamloops Dental Centre v. McMillan,* [1996] B.C.J. No. 2628. If a party is acting on behalf of a child, the public trustee must approve any settlement. The settlement conference may be held via conference call; however an application must be made to the Registrar prior to the date set for the conference (in such circumstances all legal counsel should still attend in person).

NOTE: At a trial conference, only the person responsible for presenting the case at trial need attend; a lawyer or articling student may appear in place of an individual party (Rule 7.5(11)).

The Registrar will serve the parties by mail with a Notice of Settlement Conference (Form 6) at least 14 days in advance (Rule 7(3)). The Registrar must serve a Notice of Trial Conference (Form 32) at least 30 days prior to the date set for the conference (Rule 7.5(3)).Witnesses are prohibited from attending settlement/trial conferences, except in unusual and exceptional cases. A witness who does attend the settlement/trial conference will usually be asked to wait outside while the conference is in process. If a party does not attend a settlement/trial conference or a trial, a claim can be dismissed or a default order imposed (Rules 7(17), 7.5(17) and (18), 10(9) and (10)). In the case of a non-appearance the court may also impose a penalty. At a settlement conference, a penalty may also be imposed if one of the parties is not authorized to settle the claim or arrives at the hearing unprepared (Rule 7(6)).

B. What to Bring

Each party must bring **all relevant documents and reports** to a settlement conference (Small Claims Rules, Rule 7(5)), whether the party intends to use them at trial or not. Documents include the contract, invoices, bill of sale, summaries of what the witnesses would say if they came to court, business records, and photographs. Rule 7(6) allows a judge to postpone a settlement conference and order the party responsible to pay expenses if the party comes unprepared.

NOTE: At least 14 days before a trial conference, each party is required to complete a Trial Statement (Form 33) and file it, along with all relevant documents, at the registry (Rule 7.5(9)). Each party must serve the other parties to the claim with a copy of the Trial Statement and attachments at least 7 days before the trial conference (Rule 7.5(10)).

Advise your client to prepare a brief, clear, and chronological summary of his case, with supporting evidence on hand. He will likely be asked to summarize his case for the judge at the settlement conference.

In addition, advise your client to break down his case into each of its elements and to bring documents to prove each element of the case. The Ministry of Attorney General guide, which can be accessed at: www.ag.gov.bc.ca/courts/civil/smallclaims/guides/getting_ready/index.htm, provides this example: if your client hired ZC Roofing to put a new roof on his house but the roofing company did not complete its job properly, then the client must provide as much evidence as possible for each of the facts of his case,

Fact A: *ZC Roofing* put the roof on the client's house
Evidence A: Signed contract with *ZC Roofing* and invoice marked "PAID"

Fact B: The roof leaks.
Evidence B: Photos taken by the claimant.

Fact C: The leak was caused by ZC's poor workmanship.
Evidence C: Evidence of the building inspector.

Fact D: It will cost $1,250 to repair the roof.
Evidence D: Estimates from several other roofing companies.

A claimant should bring more than one written estimate or quote, if the sum of money involved is large.

C. What a Judge May Do at a Settlement/Trial Conference

Rule 7(14) of the Small Claims Rules gives a judge wide powers at a settlement conference to:

a) mediate any disputed issues;

b) decide on any issues that do not require evidence;

c) make a payment order or other appropriate order in the terms agreed to by the parties;

d) set a trial date, if a trial is necessary;

e) discuss any evidence that will be required and the procedure that will be followed if a trial is necessary;

f) order a party to produce any information at the settlement conference or anything as evidence at trial;

g) order a party, by a specific date to:

- give another party copies of documents and records, or
- allow another party to inspect and copy documents and records;

h) if damage to property is involved in the dispute, order one party to permit examination of the damage by a person chosen by the other party;

i) dismiss a claim, counterclaim, reply, or third party notice if, after discussion with the parties and reviewing the filed documents, a judge determines that it:

- is without reasonable grounds,
- discloses no triable issue, or
- is frivolous or an abuse of the court's process;

NOTE: A judge can also dismiss a case if it is outside the court's jurisdiction, the claimant presents no evidence, or if the limitation period at the date of filing the Notice of Claim has expired. A judge cannot dismiss a case at the settlement conference on the basis of issues relating to the credibility of witnesses or evidence. For case law explaining when the judge has the power to dismiss a claim at the settlement conference see *Belanger v. AT&T Canada Inc.,* [1994] B.C.J. No. 2792.

2. before dismissing a claim, counterclaim, reply, or third party notice, order a party to file an affidavit setting out information; and

3. make any other order for the just, speedy and inexpensive resolution of the claim.

NOTE: Refer to Rule 7.5(14) for a list of judge's powers at a pilot project trial conference. The list is similar. Notably however there is no mention of mediation – most claims proceeding to a trial conference will have already undergone mandatory mediation under rule 7.4. Also noteworthy is the addition of 7.5(14)(j): a judge may "give a non-binding opinion on the probable outcome of the trial".

D. Using the Settlement/Trial Conference for Trial Preparation

If the parties cannot reach a settlement, the focus will turn to trial preparation.

To be well prepared for trial, a client must know the case he or she has to meet. Therefore, you want full disclosure from the other side well in advance of the trial. The judge at a settlement conference has the power to order production of documents and you can assist with a list of what you believe is in the possession of the other parties.

1. Disclosure of Witnesses

At both a settlement and a trial conference, each party must be prepared to disclose the number of witnesses that party intends to call, indicate what evidence each witness will give, and provide an estimate of time required. If expert evidence will be used, it is helpful if a written report (or at least a draft copy) is available for the settlement conference. Often, the "threat" of an expert report provides the impetus for a settlement proposal. If an expert report is not available, parties will be ordered to exchange those reports prior to trial. At a trial conference, parties may be required to secure the opinion of a jointly-retained expert (Rule 7.5(14)(e)(ii)). There is a minimum deadline of 30 days before trial set out in Rules 10(3) and (4), but the judge at the settlement/trial conference can be asked to change the time limits.

2. Disclosure of Documents

All relevant documents and reports must be brought to the settlement conference (Small Claims Rules, Rule 7(5)) and a judge will order the parties to exchange copies of all documents or allow for their inspection before trial (Rule 7(14)(g)). Disclosure must be timely: see *Golden Capital Securities Ltd. v. Holmes,* [2002] B.C.J. No. 884.

NOTE: At least 14 days before a trial conference, each party is required to complete a Trial Statement (Form 33) and file it, along with all relevant documents, at the registry (Rule 7.5(9)). Each party must serve the other parties to the claim with a copy of the trial statement and attachments at least 7 days before the trial conference (Rule 7.5(10)).

If a party does not comply with a disclosure order, a judge may adjourn the trial or settlement/trial conference and order that party to pay expenses, order the trial to proceed without allowing that evidence to be used, or dismiss the action. For case law relating to the disclosure of medical documents and ethical obligations of physicians to their patients see *Halliday v. McCulloch,* [1986] B.C.J. No. 223, *Hope v. Brown,* [1990] B.C.J. No. 2586, *Davies v. Milne,* [1999] B.C.J. No. 550, and *Cunningham v. Slubowski,* [2003] B.C.J. No. 2996.

Consider writing to the other side after the settlement conference to confirm the deadline, the documents you require and which remedy you will pursue if there is no disclosure. When you send documents, it is important to include a list or outline of what material is enclosed.

A judge may also order the exchange of all case law prior to the trial date.

NOTE: For case law on obtaining Crown disclosure documents (e.g. from a related criminal case) in a civil case see *Huang (litigation guardian of) v. Sadler,* [2006] B.C.J. No. 758 and *Wong v. Antunes,* [2008] BCSC 1739. For case law pertaining to the admissibility of evidence obtained through electronic surveillance (e.g. recording telephone conversations and videotaping) and whether it will be considered a violation of the Privacy Act, R.S.B.C. 1996, c. 373 see *Watts v. Klaemt,* [2007] B.C.J. no. 980 and *Cam v. Hood,* [2006] B.C.J. No. 1255. For case law on obtaining evidence from third parties see *Lewis v. Frye,* [2007] B.C.J. No. 94.

3. Judge's Summary of the Issues

The settlement/trial conference judge will often include a summary on the record sheet of the issues in dispute or agreed facts for the information of the trial judge. If it is clear that some issues are not contentious, you should seek admissions at the settlement/trial conference, so you will not require proof at trial. That may reduce the number of witnesses required. Also, you may be in a position to offer admissions. This will save time and allow the trial to focus only on the points in issue.

To save trial time, you might suggest compiling an agreed statement of facts by a certain deadline.

4. Agreement Reached

If an agreement reached at a settlement conference includes payment, and if a party does not comply, the agreement can be cancelled. For case law relating to when a judge can set aside a settlement agreement at a settlement conference see *Harvey v. British Columbia Corps of Commissionaires,* [2002] B.C.J. No. 475. After filing an affidavit describing the non-compliance, the person entitled to payment may file a payment order for either the amount agreed to by the parties as the default amount and noted on the record as the default amount endorsed by the judge at the settlement conference or the full amount of the original claim if there was no default amount endorsed by the judge (Small Claims Rules, Rule 7(20)(b)).

E. Offer to Settle

There is an incentive for parties to formalize an offer to settle. The trial judge may order a party who rejected an offer to settle to pay a penalty of up to 20 percent of the offer. This can happen in one of two ways. If the defendant makes an offer that the claimant rejects, and at trial the claimant is awarded an amount that is equal to or less than the offer, the penalty is deducted (Small Claims Rules, Rule 10.1(5)). If the claimant makes an offer the defendant rejects, and the claimant is awarded a sum that equals or exceeds the claimant's offer, the penalty is added onto the award (Rule 10.1(6)).

NOTE: If the settlement pertains to an action against a lawyer for which a complaint has been filed with the Law Society, one cannot use complaint withdrawal as a bargaining technique; it is improper during settlement negotiations to offer to withdraw a complaint against a lawyer as a part of the settlement (see *Gord Hill Log Homes Ltd. v. Cancedar Log Homes (B.C.) Ltd.,* [2006] B.C.J. No. 2944). It is also inappropriate for a lawyer to threaten to initiate or proceed with a criminal charge, make a complaint to a regulatory body or threaten disciplinary procedures with the Law Society to further a client's civil claim against another (Law Society of B.C. Professional Conduct Handbook, Chapter 4, Rule 2 and Chapter 13, Rule 4).

A formal offer must be made within 30 days of the end of the settlement conference unless a judge allows a time extension (Rule 10.1(2)).

NOTE: A penalty of up to 10 percent of the value of the claim may be imposed if a party proceeds to trial without any reasonable basis for success (Rule 20(5)).

F. Transfer to Supreme Court

A judge at the settlement/trial conference, at trial, or after application by a party at any time, **must** transfer a claim to Supreme Court if he or she is satisfied that the monetary outcome of a claim (not including interest and expenses) may exceed $25,000 (Small Claims Rules, Rule 7.1(1)). However, there may be exceptions. A claim will remain in the Small Claims Division if the claimant expressly chooses to abandon the amount over $25,000 (Rule 7.1(2)). For personal injury claims, a judge must

consider medical or other reports filed or brought to the settlement conference by the parties before transferring the claim to Supreme Court (Rule 7.1(3)).

X. THE TRIAL

A trial is often very difficult and stressful. If possible, it is generally in the best interests of all parties to settle. However, if the matter cannot be resolved at the settlement/trial conference, a trial will be scheduled (Small Claims Rules, Rule 10). The notice of trial will be sent by mail to the parties' last known address. So, it is extremely important for the client to ensure that the address on file at the court registry is correct. If a claimant does not attend the trial, the claim will be dismissed. If a defendant or third party does not attend, the claim will be allowed and a judgment granted against the absent party.

Be certain to acquire a record of the settlement conference, which should outline all the issues of the case, all admissions, the number of witnesses, the anticipated length of trial, and anything that must be disclosed.

Statements made by the claimants or the defendants at the settlement/trial conference **cannot be used at trial**. Any statement made during the settlement/trial conference is not admissible in cross-examination. In addition, the judge at the settlement/trial conference will not be the trial judge. In this manner, the court strives to preserve the integrity of the settlement/trial conferences, to maintain the impartiality of the trial process, and to encourage claimants to settle their cases. Claimants may discuss all issues without fear that their statements will be used against them at trial. Think of the settlement/trial conference as comparable to a "without prejudice" letter.

NOTE: Not all claims filed at the pilot project registries, Vancouver (Robson Square) and Richmond, will proceed to a traditional trial under Rule 10.

Rule 9.1: At the Vancouver (Robson Square) registry, claims of less than $5,000, other than claims for personal injury or for financial debt will be set for a one-hour simplified trial before an adjudicator during evening hours. At the Richmond registry, claims of less than $5,000, other than claims for personal injury will be set for a one-hour simplified trial before an adjudicator during regular business hours. An adjudicator is an experienced civil lawyer with a justice of the peace commission. Rule 9.1(2) stipulates that the trial will be conducted without complying with the formal rules of procedure and evidence. Generally, an adjudicator will swear everybody in at the beginning of the trial and the adjudicator will play a more active, inquisitorial role than would a trial judge. Note the rules requiring early disclosure of all relevant documents (Rules 9.1(17) and (18)).

Rule 9.2: At the Vancouver (Robson Square) registry, financial debt claims will be set for a half-hour summary trial before a judge. Financial debt claims are claims in which one of the parties is in the business of loaning money or extending credit. Often, little in the way of defence can be offered in situations of financial debt, and the summary trial may in some ways come to resemble a payment hearing. Where a defence with some merit is advanced, the judge may send the claim to mediation, order a trial conference, or order a traditional trial (Rule 9.2(13)). The judge may conduct the trial without complying with the formal rules of evidence or procedure (Rule 9.2(9)). Note the rules requiring early disclosure of all relevant documents (Rules 9.2(7) and (8)).

A. Trial Preparation

The student must be thoroughly prepared well in advance of the trial date. An extremely good reference for trial preparation is the Fundamentals of Trial Techniques by Mauet, Casswell, and MacDonald (2nd Canadian Edition).

NOTE: All students must see LSLAP's Supervising Lawyer for trial preparation.

In Small Claims Court, the judge is not required to apply the strict rules of evidence or procedure and may receive evidence in any matter that he or she thinks appropriate (Small Claims Rules, Rule 10(1)). Consider what your client needs to prove to establish the claim or defence and what evidence is

available to do that. It is imperative that you ensure that you or the client has disclosed all evidence prior to the trial.

B. Pre-trial Preparation

1. Trial Book

A student who intends to act for a client at trial must prepare a trial book and have the Supervising Lawyer check it **at least one week before the trial**. Trial book organization is a matter of personal choice, but LSLAP recommends:

Tab l: Opening Statement: a brief summary of the issues in the case.

Tab 2: Pleadings: all filed documents in chronological order with a list or index.

Tab 3: Claimant's Case: anticipated evidence of the claimant and claimant's witnesses, including reminders for introduction of exhibits, and blank pages for taking notes of the cross-examination.

Tab 4: Defendant's Case: blank pages for notes of the direct examination of defendant and defendant's witnesses, and anticipated cross-examination questions.

Tab 5: Closing Arguments/Submissions: brief review of highlights of the evidence, suggested ways to reconcile conflicts in the evidence, a review of only the most persuasive case law and its application to the facts.

Tab 6: Case Law: prepare three copies of each case relied on (for you, the judge, and the opposing party). Carefully scrutinize the need for multiple cases to support your argument and limit yourself to as few as possible.

Tab 7: Exhibits: you will need the original (the exhibit) and three copies (for you, the judge, and the opposing party). You need to be able to prove when, why, and by whom the exhibit was created, and also be able to argue why it is relevant (i.e. document plan or photograph).

Tab 8: Miscellaneous: any additional documents, notes, lists, and correspondence.

2. Client Preparation

When you understand the nature of the issues for trial you need to advise your client of the strengths and weaknesses of his or her claim or defence. You should discuss the range of possible results and emphasize that a guarantee of success at trial is impossible. You need to emphasize and clarify what evidence is essential, and help your client focus on presenting evidence as well as he or she can.

3. Expert Witnesses

An expert witness, although not a witness to the actual event, is allowed to give an opinion about what happened – if expertise is required to help the court better understand the issues (for case law on the admissibility of expert evidence see *R. v. Mohan* (1994), 89 C.C.C. (3d)). The expert testimony cannot include the expert's assessment of the credibility of either the claimant or the defendant: see *Movahed v. Leung,* [1998] B.C.J. No. 1210; *Brough v. Richmond*, [2003] B.C.J. No 748, 2003 BCSC 512; *Campbell v. Sveinungsen*, [2008] B.C.J. No. 539, 2008 BCSC 381. Evidence may be given by an expert at trial or through a written report (note: expert reports must be the opinion of **one** person). Written reports or notice of expert

testimony must be served at least 30 days before trial (Small Claims Rules, Rules 10(3) and (4)). Furthermore expert witness testimony is inadmissible if it is used merely to lay out possible scenarios or to advance arguments in relation to commonplace issues that the court is able to analyze itself: see *Senghusch v. Priest*, [1987] B.C.J. No. 973.

LSLAP students rarely call expert witnesses, but if you do, be aware of what is needed to qualify as an expert witness. An expert witness report should include the resume/qualifications of the expert, a brief discussion of the facts of the case supporting the opinion/conclusion, the opinion or conclusion itself, and what was done to arrive at that conclusion. Also, be aware of Rule 10(7), which states that if it is deemed that an expert witness was called unnecessarily, the judge may require the party who requested the expert to pay the expert's expenses and perhaps assess a penalty.

An exception to the "in person" rule for expert witnesses is permitted for estimates and quotes. The claimant may bring a written estimate for the repair of damage or a written estimate of the value of the property and present it as evidence at trial without calling the person who gave the estimate or quote. Estimates of repairs or value of goods are not considered to be expert evidence (Rule 10(8)), but must be served on all other parties before trial.

If the claimant is going to use a written estimate or quote, they must serve all other parties with a copy, at least 14 days before the trial. If the claimant does not do so, they can ask the trial judge for permission to present the estimate anyway at trial. The claimant may or may not get permission to do so. The other party may ask for a trial adjournment to obtain his own estimate or quote. If the adjournment is ordered, the claimant could be penalized for unnecessarily compelling the other party to return to court for a second day of trial. The claimant would then be ordered to pay the other side's expenses.

A claimant should be advised to obtain more than one estimate or quote, especially if the sum of money involved is large.

4. Witness Preparation

If a witness will voluntarily attend court, a summons (Form 8) is not usually necessary (Small Claims Rules, Rule 9(3)). Give clear instructions to such witnesses so that they will show up at the appropriate time and place.

If there is the slightest doubt about whether or not a witness will attend, fill out a Summons to Witness (Form 8) and serve a copy on the witness at least seven days before the trial (Rule 9(1)). You must provide for reasonable travel expenses (Rule 9(2)). Reasonable travel expenses will vary according to the distance or length of the trip, but usually means "economy" fare and does not include lost salary or other incurred expenses. If a witness who has been served with a summons does not appear at trial, you may ask the judge for an adjournment or a warrant of arrest (Form 9) (Rules 9(7) and 14).

You must meet with your witnesses no later than one week before the trial to review their evidence at trial. In the meeting you should:

a) explain the conduct of a trial: who goes first, the role of the judge, whether witnesses can wait inside the court, etc.;

b) discuss whether or not each witness chooses to take an oath or solemnly affirm. Once you know which method the witness prefers, tell the clerk when you call the witness;

NOTE: If the witness chooses to take an oath, the witness will swear to the truth by placing their right hand on a Bible. This can be accomplished by the clerk asking the witness: "Do you swear that the evidence you are about to give the court in this

case shall be the truth, the whole truth and nothing but the truth, so help you God?". There are other oaths for other religions. If the witness does not wish to take an oath or is not religious, the law allows the witness to solemnly affirm the truth of their evidence. The witness will be asked something like: "Do you solemnly affirm that the evidence you are about to give the court in this case shall be the truth, the whole truth and nothing but the truth?" to which the witness must answer in the affirmative.

c) advise the witness to speak loud enough for the judge to hear, and to speak clearly and slowly so that the judge can take notes;

d) request that the witness wear appropriate business attire;

e) emphasize that the witness should never guess or assume and never argue with the judge or one of the lawyers;

f) explain what happens if they hear one of the lawyers say "objection" (stop testifying and wait for instructions); and

g) explain why a witness should answer fully on direct examination, and as briefly and succinctly as possible on cross-examination.

NOTE: If your client or witness requires an interpreter, go to the registry. They will provide the appropriate reference. If the case is won, the costs of an interpreter are covered in the judgment. However, if the case is lost, costs will be assessed against your client. A fine will also be assessed if you arrive without having arranged for a **court approved** interpreter when one is required.

a) Direct Examination

All witnesses' evidence should be reviewed before the trial to prepare the witness for direct examination. The student may suggest ways for the witness to phrase his or her evidence, but should also be careful to limit suggestions to choice of verbs, etc. The evidence will be tested for accuracy and truthfulness and the client should be told when there are potential problems. Thorough preparation will help you to predict what evidence will be given at trial, thus lessening the effect of surprise testimony. You can help by organizing your questions and calling only relevant evidence to prove or defend your case.

b) Cross-Examination

Your client must understand when the opposing questioner is trying to put words in his or her mouth, the client should be aware of his or her right to ask for clarification if a question is unclear. Your client must also understand that he or she should only answer the question asked and not volunteer extra information.

You may re-examine your witness to allow him the opportunity to explain or otherwise qualify any damaging testimony brought out by the opposing party during cross-examination. In redirect examination, you may only question on those areas that were brought out afresh on cross-examination or where clarification of the witness's answers is required. It is not a second "kick at the cat".

NOTE: Counsel are not permitted to speak to their witnesses after cross-examination and before or during re-examination about the evidence or issues in the case without the leave of the court in a civil case (see *R. v. Montgomery*, 38 W.C.B. (2d) 506).

5. Documentary Evidence

A student should have the original and three copies of each document that will be entered as an exhibit. The original will be marked as an exhibit and the other three are for the judge, the opposing party, and you to work from during the trial.

Keep track of the exhibits and always refer to them by the correct number.

To have an item marked as an exhibit, you need to establish when and how it was created. The witness must have some personal knowledge of the item. First show the item to the other side and then the witness and ask the witness to identify it: "I'm showing you a letter dated…", "Do you recognize it?", "Is this your signature?" or "Is it addressed to you?" When the witness has identified its origins and there are no objections, ask the judge to accept it as an exhibit: "May this be marked exhibit #1?" Hand the original to the clerk.

C. The Pretrial Conference

Beginning in 2006, all Small Claims Courts required claimants and defendants to attend a pretrial conference if their trials were longer than one half-day, or if the parties had previously been in court-ordered mediation. Claims filed under the new pilot project rules however now either proceed directly to a simplified or summary trial, or proceed directly from a trial conference to a trial.

The introduction of the pretrial conference was a purely procedural change; it did not amend any aspect of the Small Claims Act. The judge at the pretrial conference will usually be the same judge who presides at the trial. The claimant and defendant have 30 days after the settlement conference to make a formal offer to settle at the pretrial conference. The conference generally will be held no later than 30 days after the settlement conference. In addition, claimants and defendants must exchange all documents prior to the pretrial conference.

At the pretrial conference, the judge will attempt to settle all pretrial issues in order to reduce the length of the trial and the number of the issues. In particular, the judge will want to confirm that all witnesses (material and expert) have made arrangements to attend the trial. The judge will try to narrow the number of witnesses to reduce court time. In addition, the judge will review the admissibility of documentary evidence, particularly that of written evidence. The judge will also ensure that the matter falls within the jurisdictional limits of the Small Claims Court, and that the claim file is not beyond its limitation period. Finally, even at this late date, the judge will encourage the claimants and defendants to settle the matter. The parties have yet another 30 days after the pretrial conference to serve a formal settlement offer to the opposing party. The offer to settle must be made in writing and the usual penalties apply to parties who refuse the formal offer to settle. For example, if the trial grants the claimant a sum substantially less than the defendant's settlement offer, the claimant can be ordered to pay the defendant a penalty of an additional 20 percent of the settlement offer.

D. The Trial

NOTE: **The law student and the client should attend court to observe correct procedure before the law student conducts his or her first trial.**

A courtroom consists of five areas: the judge's table, the litigants' table, the witness box, the court clerk's table, and the public seating.

The judge's bench is usually elevated above the rest of the court so the judge has a good view of the proceedings. The litigants' table is in front of the judge, and the parties will come and sit there when their case is called. Often there is a raised lectern to hold papers when a litigant stands to ask questions. The court clerk's table is between the litigants' table and the judge and beside the witness box. The witness box will be on either the judge's left or right. The public seating will fill up the remaining part of the courtroom. This is where the client will wait until the case is called.

You and your client should be ready in the correct courtroom at the time specified in the notice of hearing. Trial lists are posted in the court hallway and will indicate where the case will be heard. Take a seat in the public gallery until the proceedings begin.

The court clerk will sometimes ask ahead of time for the names of the parties and their lawyers. When the clerk has everyone organized, the judge will be called in. The clerk will announce "order in court" and everyone will be asked to rise. There is a tradition in our courts that the judge bows first to the public before sitting. Next, the court clerk will call out the name of a case, at which time all parties in that case will come to the front and identify themselves to the judge.

Note that the microphones in the courtroom do not amplify your voice. They are merely present to allow the court clerk to record your voice clearly. **Remember to speak at a moderate speed and project your voice.**

You must tell the court clerk or the judge as soon as possible if there are any preliminary motions or applications that should be heard first, whether there are any problems with witnesses and possible delays, and whether the number of witnesses or issues has changed from the settlement conference. This will help to determine the schedule of cases for the day and avoid as many delays as possible.

Often, if all matters are proceeding to trial, there will be a problem with "double booking" and you will be asked to comment on whether your trial is urgent. If you are not heard first, you may be given a choice of waiting to see if another judge becomes available or adjourning to another date. If you state that the trial has been previously adjourned or that expert witnesses or out of town witnesses are present, your trial will likely be given priority.

1. Order of Proceedings at Trial

Once a trial is ready to proceed and the court clerk calls the parties to the litigants' table, most trials are conducted as follows:

a) opening statement by claimant;

b) one of the counsel should be sure to ask for an order excluding all witnesses who are to be called in the case, excepting the parties involved;

c) direct and cross-examination of claimant;

d) direct and cross-examination of claimant's witnesses;

e) claimant has a right to re-examine their witness, but only if something new arises from cross-examination;

f) opening statement by defendant;

g) direct and cross-examination of defendant;

h) direct and cross-examination of defendant's witnesses;

i) defendant has a right to re-examine their witnesses, but only if something new arises during cross-examination;

j) claimant's closing argument;

k) defendant's closing argument;

l) claimant has a right of reply; and

m) judgment.

Objections may arise at any point during the trial.

2. Conduct During the Trial

- Be on time. If you are late, apologize and be prepared to give an excellent explanation.

- Introduce yourself and state your name clearly. Remember to spell your surname for the record. Indicate that you are a LSLAP student and ask the court for permission to appear on behalf of the client.

- Use plain language. It is difficult for your client to understand all that is happening during a trial and you must do all you can to assist. Do not use "legalese".

- Do not argue directly with opposing counsel. Make submissions only to the judge and have him or her ask questions to opposing counsel.

- Never call a witness by his or her given name. Use Mr., Ms., Miss, or Mrs. and his or her last name.

- While you may be trying to get a witness to relax, courtrooms are not casual settings and most judges will try to maintain considerable decorum. It will not help you to relax if you are reprimanded for being too casual in addressing a witness.

- A judge of the Provincial Court is referred to as "Your Honour" and opposing counsel as "my friend". The clerk is referred to as "Madame Clerk" or "Mr. Clerk".

- Focus on the main issues in the trial and what evidence on each issue you expect from each witness. You should be able to predict the weaknesses in your opponent's case and also how he or she might try to correct those problems. That will help you choose your battles and your objections should focus mostly on those issues. There may be other reasons for objecting, but generally you should limit objections. If you have an objection, stand up quickly and make sure you are heard. If you do not want the witness to hear the question or the judge to hear the answer you must act quickly and effectively - then fumble, if you must, with articulating your reasons.

a) Opening Statement

Your opening statement is important; it gives you the opportunity to inform the judge about the issues in the case and your client's position. It may help the judge focus on the significance of the evidence to be called. You should always make an opening statement, no matter how brief.

b) Direct Examination

Cases are won or lost in direct examination, so prepare well.

- Begin by leading the witness on matters that are not in issue. Consider how to relax the witness, but do not give the witness a sense that you will do all the talking.

- The witness must be able to tell the judge his or her side of the facts. You must not ask leading questions about any significant matters in issue. Clarity

and logic in relating events, often chronologically, is usually the most helpful. The witness should be prepared to answer any questions from the judge on any points the judge thinks are unclear.

- Listen carefully. You should know exactly what the witness will say and if the witness omits anything, ask questions to get the relevant information into evidence.

- When documents are presented to the witness, go slowly. Pass two to the court clerk, the original and one for the judge. Pass a third to the other party or opposing counsel. Pause to see if there is an objection. All documents should have been exchanged with the opposing parties prior to the trial and there should be no surprises; this provision can be waived in Small Claims Court but you should provide the court with a good reason to do so. Ask to have the original passed to the witness and when it is identified, ask to have it marked as an exhibit.

- Take good notes of the direct examination of the other party's witnesses for cross-examination and for closing arguments.

c) Cross-Examination

- Once a witness has concluded his or her evidence in chief, the other party has a right of cross-examination. There are two main purposes of cross-examination: to point out inconsistencies and omissions; and to introduce facts or conclusions. Some questions can make the situation worse. You should never ask a question that invites the witness to repeat what he or she said in "chief". This only emphasizes the point and allows the witness to clarify or minimize weaknesses. Consider whether it is necessary to cross-examine all witnesses.

- At some point in cross-examination, you should put the opposing version of the facts to witnesses and allow them to comment. This is known as the *Browne v. Dunn* rule, which if not followed, can result in less weight being placed on a witness's evidence or the recall of adverse witnesses. This is a rule of practice and the applicability of the rule depends on the importance of the evidence. A student is well advised to follow the rule: see *Budnark v. Sun Life Assurance Co. of Canada* [1996] B.C.J. No. 521.

- Take careful notes of your witnesses' cross-examinations for your final summation, or if a dispute arises about the evidence.

d) Re-examination

- If new evidence is introduced upon cross-examination that was not available to you during direct, your client may respond and add to their earlier testimony, but only with leave of the trial judge.

e) Closing Argument

- The closing argument should persuade the judge to accept your client's view of the case. Persuasive arguments generally should start and end with a strong point and have weaknesses discussed in the middle. You must consider if it is necessary to review all the evidence or whether you need only highlight the

important points. Do not ignore weaknesses, but consider the best possible (and plausible) angle to present one's case.

- Summarize the evidence and organize it according to what issue it relates to, and what supports your client's version. Make your best efforts to be fair, but remember that you are an advocate. You may comment on the credibility of witnesses, conflicts in testimony, and (in)sufficiency of proof, but always in the context of a submission to the judge – not as your opinion or your conclusion.

- Include, at the very least, an outline of the governing legal principles and have supporting statute and case law available. If you intend to quote the law, you must provide copies for the judge and the opposing party. Pause before reading the case to ensure that the judge has found the reference. Case law you intend to rely upon must be given to the opposing party well in advance of the trial, especially if the other party is unrepresented.

- Compare and distinguish the evidence in your case from the governing case law and discuss how and why the judge can accept your interpretation of the law.

- Do **not** try to introduce new evidence. If you have forgotten something, you must get permission to re-open your case and have the evidence provided under oath.

3. The Court's Decision

When the evidence, submissions and arguments are finished, the judge must give a decision. The judge may give a decision in court orally at the end of the trial, at a later date, or in writing (Small Claims Rules, Rule 10(11)). The Registrar will notify the parties of the date to come back to court for reasons (Rule 10(12)), or if the decision is in writing, when it was filed in the registry (Rule 10(13)).

The client will be motivated to listen carefully, but it is very difficult for litigants to hear and understand all of what is said. The amount of an award, court costs, and other orders may be all they hear. The court clerk will prepare a record of the decision, or a transcript will be made if your client asks and pays the required fees. A copy of written reasons will be provided to the parties.

The unsuccessful party must pay expenses (Rule 20(2)). Any reasonable expenses directly related to the proceedings may be claimed, including filing fees, costs for document reproduction etc. Expenses should be calculated during the trial preparation process and can include expenses incurred due to the lateness, unpreparedness or general misconduct of a party (Rule 20(6)) as long as money was actually spent by the party seeking expenses (*Weeks v. Ford Credit Canada Ltd.*, [1994] B.C.J. No. 1737). Furthermore full costs can be awarded to the unsuccessful party if information such as jurisdictional issues were withheld by the opposing party (*Tilbert v. Jack,* [1995] B.C.J. No. 938). Loss of wages for attending court is not an expense incurred (i.e. it is not actually spent) and should not be included in cost calculations (*McIntosh v. De Cotiis Properties Ltd.*, [2002] B.C.J. No. 413).

NOTE: Counsel fees are **not** "expenses" for the purposes of Rule 20 and cannot be claimed Small Claims Act, s.19. See also *Weeks v. Ford Credit Canada Ltd.*, above.

In addition, a judge has the discretion to order a penalty of up to 10 percent of the amount claimed or the value of the counterclaim if the party proceeded through trial with no reasonable basis for success (Rule 20(5)). If there has been a formal offer to settle that was

not accepted, a penalty, in addition to any other expenses or penalties – up to 20 percent of the amount of the offer to settle – may be imposed.

When payment from one party to another is part of the judgment, the court must make a payment order at the end of the trial (Rule 11(1)).

The judge is required to ask the debtor whether he or she needs time to pay (Rule 11(2)). If the debtor does not require time to pay, the judgment must be paid immediately (Rule 11(7)). If time to pay is needed, the debtor may propose a payment schedule (Rule 11(2)(b)), and if the successful party agrees, the judge may order payment by a certain date or by instalments (Rule 11(4)). If the creditor does not agree to the debtor's proposal, the judge may order a payment schedule or a payment hearing (Rule 11(5)).

If a creditor consents to a payment schedule, he or she may not take any additional steps to collect the debt as long as the scheduled payments are made (Rule 11(6)). **If the debtor defaults on the payment schedule, the balance becomes due immediately and the creditor may then take other steps to collect the balance (Rule 11(14)).** If a payment schedule is not ordered, the debt is payable immediately and the creditor is free to start collection proceedings (Rule 11(7)).

If a payment hearing is ordered (Rule 12), the creditor may not take any steps to collect the debt before the hearing (Rule 11(8)).

XI. ENFORCEMENT OF JUDGMENTS

A judgment is valid for 10 years (Limitation Act, s. 3(2)(f)). During that time, a creditor may use whatever means permitted by law to enforce the order. First, the successful party must fill out a Form 10 and file it in the registry. Interest and expenses need to be included, and a plain piece of paper showing those calculations should be attached. Although it is called a "payment order", Form 10 is used even if no payment of money is ordered. There is space at the bottom of the form for a description of a non-monetary order. The registry will compare it with the court record for accuracy and it will then be signed and ready for pick-up or mailed within a day or two. The creditor should send a copy of the payment order with a demand letter to the debtor. If immediate payment is ordered, the demand letter should warn that if payment is not received by a certain date (i.e. 10 days later), other enforcement proceedings would be pursued.

To enforce payment, a creditor may use any of the following methods (Rule 11(a)-(e)):

A. Order for Seizure and Sale

An order for seizure and sale allows for personal property belonging to the debtor to be seized and sold at public auction. The net proceeds are given to the creditor. The Registrar can give such an order if there is no payment schedule or if the debtor has not complied with a payment schedule (Rules 11(11)(a) and 11(14)(b)). Form 11 starts this process. The debtor is not notified of the order prior to seizure. A seizure and sale is not carried out by the creditor, and must be done by private bailiffs. Before an order is issued, the creditor must deposit enough for the fees and expenses of the bailiffs. An order for seizure and sale is valid for one year.

B. Payment Hearing

A payment hearing may be scheduled before a judge, the Registrar, or justice of the peace (Small Claims Rules, Rule 12). It will determine the debtor's ability to pay and whether a payment schedule should be ordered (Rule 12(1)). Such a hearing may be requested by a creditor or debtor or ordered by a judge (Rule 12(2)). However, if a creditor has an order for seizure and sale, he or she must get the permission of a judge to also have a payment hearing. The debtor must bring records and provide evidence of income and assets, debts owed to and by the debtor, any assets the debtor has disposed of

since the claim arose and the means that the debtor has, or may have in the future, of paying the amount (Rule 12(12)). Costs to the applicant in such a proceeding are added onto the sum of the judgment.

A creditor who requests a hearing must fill out and file a summons to a payment hearing (Form 12). The registry will set a date on the form and the person named in the summons **must be served personally** at least seven days before the date of the hearing (Rule 12(7)). Service by mail is not permitted (Rule 18(12)(b)).

If the debtor is having difficulty paying, he or she can request a hearing by filling out and filing Form 13. Form 13 must be served on the creditor at least seven days before the date of the hearing (Rule 12(11), but may be served by mail as long as it is mailed at least 21 days in advance of the hearing date (Rules 18(12)(b) and 18(13)).

If the debtor does not answer a properly served summons or order to attend, an arrest warrant may be issued (Rule 12(15)).

If a creditor does not appear, the hearing may proceed, or be cancelled or postponed (Rule 12(14)).

C. Default Hearing

If the debtor misses one or more payments, the creditor may request a default hearing by filing Form 14. The creditor may demand to see the defendant's records or items such as: bank records, financial statements, tax returns, and a list of receivables. The summons must be served personally and by a sheriff (not the creditor) at least seven days before the hearing (Rule 13(5)). The judge at the hearing may confirm or change the amount awarded in any manner that is fair to both parties (Rule 13(7)), warn the creditor of contempt of court or arrest and imprison the debtor if the reason for failing to obey a payment hearing amounts to contempt of court (Rule 13(8) or (9)).

Note that the Registrar's authority to waive fees extends only to registry services and **not** sheriff's services. If a creditor cannot afford the sheriff's services, it is possible to complete an Application to a Judge form. An Application to a Judge may be served by the applicant and allows the creditor to avoid using a sheriff and incurring the related fees. In a typical situation where the debtor ignores a Payment Order, the applicant would indicate that the Application to Judge is to make a contempt of court application against the debtor and to seek a related Warrant of Imprisonment against the debtor for a period of not more than 20 day pursuant to Rule 13(8). No supporting affidavit is required if the applicant is going to be present to confirm that he or she has not received any payment.

NOTE: At a settlement hearing where an agreement is made, the judge will order that if the agreement is broken by a missed payment, the full amount of the claim (as opposed to the lesser amount agreed) becomes immediately due and payable. The creditor may take steps to collect the balance. At a payment hearing, the judge will also have ordered the same consequence should a payment be missed.

D. Execution Against Land

If the debtor owns land in British Columbia, the creditor can register the judgment against the land. This may allow payment of the judgment if there is a sale or transfer of the land. The creditor must get a certificate of judgment from the Registrar, which is then registered at the Land Title Office. Once the judgment is registered, the creditor may apply for an order to sell the property, but only through the Supreme Court of B.C. (see the Continuing Legal Education publication Creditors' Remedies). It is outside the jurisdiction of the Provincial Court to order a lien to be place or removed against property (Land Title Act, s. 197 and 210).

E. Garnishment After Judgment

Garnishment requires a third party, often the debtor's employer, to pay money owing to the debtor into court instead of to the debtor. The Court Order Enforcement Act governs the process. The creditor must file an affidavit that describes the amount of the payment order, the amount still owing and the name and address of the garnishee. The affidavit must be sworn before a notary, a lawyer, or a justice of the peace at the registry. Certain assets such as social assistance payments (welfare, disability) and joint accounts may not be garnished. Only 30 percent of the debtor's salary can be garnished.

The creditor must also fill out a garnishing order identifying the garnishee (the bank or the employer) with its full legal name and address. In the case of a bank, the specific branch must be identified and must be located in British Columbia.

Once the creditor receives a garnishing order, he or she must serve both the garnishee and the debtor either personally, or by registered mail.

Once an order for garnished wages is served on the garnishee, the order is only valid for wages due and owing within **seven** days – it is therefore critical to have some knowledge relating to the debtor's pay schedule. If the garnishee owes money to the debtor, he or she must pay the amount owed into court. All money paid into court is held until further order of the court (see the Court Order Enforcement Act for details).

A creditor may apply for the garnishment of a debtor's bank account and accounts receivable *before* a judgment is reached. This is called a pre-judgment garnishing order (see **Chapter 10: Creditors' Remedies and Debtors' Assistance, Section I.2.c: Garnishment of Bank Accounts and Other Accounts Receivable**).

If damages are a result of a motor vehicle accident and they exceed $400 (MVA, s. 91(1)(b)), the creditor may apply to the Superintendent of Motor Vehicles within 30 days of the judgment to have the debtor's driver's license suspended. The Superintendent must suspend the license upon receiving the judgment.

F. Warrants of Arrest and Warrants of Imprisonment

A warrant of arrest may be issued for failure to attend a payment hearing, a default hearing, or for failure of a witness to obey a summons. If a witness disobeys a summons, the court may issue a warrant (Small Claims Rules, Rule 9(7)), or if a debtor fails to attend a payment or default hearing, the creditor may request a warrant. A warrant is prepared and served by the registry (Rule 14(1)).

First, the witness or debtor is notified that there is a warrant and that if he or she does not attend court in the following seven days (21 days if it is mailed) to explain his or her absence, a sheriff or police officer may arrest him or her (Rule 14(3)). Assuming the defendant does answer the notice of warrant of arrest and comes to court, the judge will usually order him or her to return on another day with documents for evidence or a payment hearing.

Imprisonment will not be used to enforce a judgment except in extreme circumstances. A warrant of imprisonment (Form 15) may be issued against a debtor if he or she fails to follow a payment schedule and his or her explanation amounts to contempt of court (Rule 13(8)). Rule 19(1) also allows a judge at a hearing to order a person into custody for up to three days if that person refuses to be sworn or affirm, refuses to answer a question, refuses to provide a record or other evidence, disobeys a direction from a judge, or repeatedly fails to attend court without adequate reason. The warrant will name a correctional centre where the debtor will be imprisoned (Rule 15(1)) unless the debtor can pay the amount owed. A debtor may be imprisoned for up to 20 days (Rule 13(8)). Whether a debtor is repeatedly imprisoned for 3 days under Rule 19(1) or imprisoned for 20 days under Rule 13(8), the maximum total period for his imprisonment cannot exceed 20 days. Payment will immediately cancel the imprisonment, but imprisonment does not serve to cancel the debt (Rule 15(7)).

XII. APPEALS FROM SMALL CLAIMS COURT

Students **cannot** represent clients on appeal because appeals are heard in the Supreme Court. Section 5 of the Small Claims Act allows a right of appeal. Any party to a proceeding may appeal to allow or dismiss a claim if the judge made the order after a trial. A review of the order under appeal may be on questions of fact or law. An appeal is not heard as a new trial, but will be based on the transcripts of the trial in Small Claims Court. However, the Supreme Court may exercise its discretion to hear an appeal as a new trial (Small Claims Act, s. 12).

If the decision of the claim is appealed to the Supreme Court, that appeal does not serve to bring an appeal of the counterclaim to the Supreme Court, nor vice versa. Each appeal is a separate matter that needs to be filed in the Supreme Court. Both appeals will, of course, be heard together (see *Shaughnessy v. Roth* (2006) B.C.J. 718 (B.C.S.C) for more details).

If your client has questions about filing an appeal in Supreme Court, he or she should phone the civil division of the Supreme Court at (604) 660-2845. Your client may also consult the B.C. Supreme Court Self-Help Centre (see **Section I.B: Resources**, above, for contact information).

A. Filing an Appeal

An appeal must be filed within **40 days** from the date the Provincial Court judge made the order (Small Claims Act, c.430, s. 6). To start an appeal, the client must file a Notice of Appeal in the Supreme Court registry closest to the Provincial Court where the order being appealed was made and on the same day, file a copy of the Notice of Appeal in the Provincial Court registry (s. 7).

When filing, the appellant must deposit $200 with the Supreme Court as security for costs, plus the amount of money, if any, that he or she was ordered to pay in the Provincial Court (s. 8(1) and (2)). In addition, there are fees paid to the Supreme Court registry to file a Notice of Appeal and to file a Notice of Hearing. Before depositing the amount required under s. 8(1) and s. 8(2), the appellant may apply to the Supreme Court to reduce that amount (s. 8(3)). If the Supreme Court does reduce the amount, the appellant must serve notice of the order on the other parties to the appeal (s. 8(6)).

When the Notice of Appeal is filed, the appellant must ask for the date the appeal will be heard (s. 10(1)). The Supreme Court registry will decide the date for hearing, which must be at least 21 days after the appeal is filed (s. 10(2)), and no later than six months after the appeal is filed. A copy of the Notice of Appeal and a copy of the Notice of Hearing must be served on every party affected by the appeal (s. 11(1)). Fourteen days after filing the Notice of Appeal, the appellant must provide the Registrar with proof that the Notice of Appeal and the Notice of Hearing have been served on the respondents.

B. The Decision of the Supreme Court

On hearing an appeal, the Supreme Court may make any order that could be made by the Provincial Court, impose reasonable terms and conditions on an order, make any additional order it considers just, and award costs to any party under the B.C. Supreme Court Rules of Court.

There is no further appeal from a Supreme Court order (Small Claims Act, s. 13(2)).

XIII. APPENDIX INDEX

A. SAMPLE DEMAND LETTER

B. NOTICE OF CLAIM EXAMPLE

C. SMALL CLAIMS REGISTRIES

D. SETTLEMENT CONFERENCE PREPARATION CHECKLIST

APPENDIX A: SAMPLE DEMAND LETTER

Law Students' Legal Advice Program
Room 158, Faculty of Law
University of British Columbia
Vancouver, B.C. V6T 1Z1

18 June 2007

WITHOUT PREJUDICE

Mr. Ben Stiller
1210 Sunset Dr.
Vancouver, B.C.
V1M 2Y5

Attention : Mr. Ben Stiller

Dear Sir:

Re: Contract with Lavery Painting & Restoration. Dated January 5, 2000 and amended by way of an oral contract.

Mr. Lavery has consulted us with respect to his difficulties arising out of the work he did for you at 1210 Sunset Drive.

On January 5, 2000 you signed a detailed Contract outlining the work that was to be completed for $6000.00. In addition, in August 2000 you asked Mr. Lavery to repair some damage that a moving company had created and to pressure wash the house. At that time Mr. Lavery informed you that this additional work would cost $1400.00.

On or about January 5, 2000 you issued Mr. Lavery a $2500 cheque as a deposit for the work to be completed on the home and garage at 1210 Sunset Drive. Mr. Lavery advised me there were problems with the work that was done. He corrected the problems you listed and on March 10, 2000 he notified you that there was $4900.00 due. This amount has not yet been paid.

Please note that, Mr. Lavery is considering starting a legal action in the Small Claims Division of the Provincial Court for debt. Such action could result in a judgment in the amount of $4900.00 plus all disbursements, costs, and interest.

Mr. Lavery does not want to litigate and will forgo further action upon receipt of $4,900 in the form of a certified cheque or money order made payable to Mr. Lavery but mailed to the Law Students' Legal Advice Program at Room 158, Faculty of Law, University of British Columbia, Vancouver, British Columbia, V6T 1Z1. Non-payment within 14 days of the receipt of this letter will result in the commencement of action without further notice. Correspondence should be directed to my attention at our offices. If you have any questions or comments do not hesitate to call.
Yours truly,

Brian Higgins
Law Student

Cc: Mr. Duke Lavery

APPENDIX B: NOTICE OF CLAIM EXAMPLE

NOTICE OF CLAIM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER	
REGISTRY LOCATION	RICHMOND

FROM:

NAME: Indiana Jones — **CLAIMANT(S)**

ADDRESS: 123 Adventure Way

CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia | POSTAL CODE: V6K 1H6 | TEL #: (604) 555-5785

TO:

NAME: Luke Skywalker — **DEFENDANT(S)**

ADDRESS: 321 Jedi Drive

CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia | POSTAL CODE: V1K 5L2 | TEL #: (604) 967-1111

WHAT HAPPENED?

The Claimant claims against the Defendant in debt. The particulars of the claim are as follows

a) Between the dates of 1 January, 2007 and 30 July, 2007 the Claimant advanced sums Totalling $12,000 to the Defendant at the Defendant's request.

b) On 3 August 2007, the Defendant acknowledged the aforesaid debt and entered into a promissory note providing for $200/month payments to commence 12 September, 2007 with an agreed upon interest rate of 9% per annum.

c) The Defendant has failed to make any payments pursuant to the promissory note or at all.

d) The Claimant has demanded payment of the said debt, but the defendant has refused or neglected to do so.

☐ If this box is checked the "what happened" section is continued on another page. Be sure you have been given a copy of it.

WHERE? CITY, TOWN, MUNICIPALITY: Richmond | PROV.: British Columbia

WHEN? 1 January, 2007

HOW MUCH?

a	Amount owing on promissory note	$ 12,000.00
b	Interest at 9% per annum to date of filing	$ 90.00
c	Daily interest from the date of filing of judgment	$

TIME LIMIT FOR A DEFENDANT TO REPLY

The defendant **must complete and file the attached reply within 14 days from being served** with this notice, unless the defendant settles this claim directly with the claimant. **If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant.** Then the defendant will have to pay the amount claimed plus interest and further expenses.

Total	$12090.00
+FILING FEES	(Registry will fill in)
+SERVICE FEES	
=TOTAL CLAIMED	$

X DEBT

☐ OTHER THAN DEBT

The Court Address for filing documents is:

6931 Granville Ave

Richmond, BC
V7C 4M9

APPENDIX C: SMALL CLAIMS REGISTRIES

ABBOTSFORD
32203 South Fraser Way
Abbotsford, B.C. V2T 1W6
Telephone: (604) 855-3200
Fax: (604) 855-3232

CHILLIWACK
46085 Yale Rd.
Chilliwack, B.C. V2P 2L8
Telephone: (604) 795-8350
Fax (Civil): (604) 795-8345

COQUITLAM / PORT COQUITLAM / PORT MOODY
2620 Mary Hill Road
Port Coquitlam, B.C. V3C 3B2
Telephone: (604) 927-2100
Fax: (604) 927-2222

NEW WESTMINISTER
651 Carnarvon Street
Begbie Square
New Westminster, B.C. V3M 1C9
Telephone: (604) 660-8503
Fax: (604) 660-1937

NORTH VANCOUVER
200 East 23rd Street
North Vancouver, B.C. V7L 4R4
Telephone: (604) 981-0200
Fax: (604) 981-0234

RICHMOND/DELTA
7577 Elmbridge Way
Richmond, B.C. V6X 2Z8
Telephone: (604) 660-6900
Fax: (604) 660-1797

SURREY
14340 57th Avenue
Surrey, B.C. V3X 1B2
Telephone: (604) 572-2200
Fax: (604) 572-2280

VANCOUVER (ROBSON SQUARE)
Box 21, 800 Hornby Street
Vancouver, B.C. V6Z 2C5
Telephone: (604) 660-8989
Fax: (604) 660-8950

VICTORIA
2 - 850 Burdett Avenue,
Victoria, B.C. V8W 1B4
Telephone: (250) 356-6634
Fax: (250) 387-3061

APPENDIX D: SETTLEMENT CONFERENCE PREPARATION CHECKLIST

1. Be prepared to define the issues
2. List who will attend settlement conference
3. Authority to settle: obtain instructions and ensure a representative with authority to settle is in attendance
4. List who will speak to what issues
5. Witnesses: how many and names/evidence
6. Expert witnesses: bring report or summary of opinion expected
7. Expected schedule for delivery of expert reports
8. Documents to be sought and schedule for delivery
9. List documents to bring
10. Consider admissions or seek agreed facts, or alternative methods of proof
11. Time estimate for trial, available dates for counsel and witnesses
12. Other orders: in advance of trial, consider if a separate hearing will be required for one or more of the following:
    a) summary judgment or dismissal
    b) production of other documents or evidence
    c) addition of parties or amendment of pleadings
    d) change of venue
    e) consolidation of claims, joining trials
    f) inspection or preservation of property
    g) independent medical examination
13. Ask the judge to review the prospect of the penalties in Rules 10.1, 20(5) and 20(6)

SOURCE: Small Claims Court - 1994, Continuing Legal Education Society Manual.

NOTE: For **trial conferences** under the pilot project in Vancouver (Robson Square), at least 14 days in advance of the conference, each party is required to complete a Trial Statement (Form 33) and file it, along with **all relevant documents**, at the registry (Rule 7.5(9)). Each party must serve the other parties to the claim with a copy of the trial statement and attachments at least 7 days before the trial conference (Rule 7.5(10)).