

Practice in the Provincial Court - Civil

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Small Claims & Collections Boot Camp

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PRACTICE IN THE PROVINCIAL COURT CIVIL

(Note - references are to the Provincial Court Act)

The court is designed and intended to provide affordable expeditious access to civil justice. The challenge is to maintain such access and achieve results which are just and fair and in accordance with substantive law and the requirements of procedural due process. Litigants may be unrepresented, represented by agents or by lawyers (section 62). The processes are marked by informality, a lack of strictness and a degree of uncertainty. The basic rules of procedure are set out in Part 4 of the Act and the court may apply or modify the Alberta Rules of Court as needed to ensure an expeditious and inexpensive resolution of a matter (section 8).

JURISDICTION

Under section 9.6 of the Act the court may hear and adjudicate on any claim or counterclaim for damages, if the amount claimed or counterclaimed does not exceed the amount prescribed by the regulations. The court also has jurisdiction to adjudicate on claims for unjust enrichment, for determination of title to and the right of possession of personal property and for specific performance or rescission. In conjunction with that jurisdiction, the court has the ability to grant equitable remedies. The current limit is \$25,000. The limit appears to apply to each claim. One would expect that the same considerations as to joinder of parties and causes of action would be applied in Provincial Court as are called for under the Rules of Court.

Where the Contributory Negligence Act applies, the limit applies to the amount reflecting the Defendant's fault. Where the Plaintiff has damages in excess of \$25,000, the Judge may assess the Plaintiff's damages, the degree of fault of the Defendant, and give judgment for an amount not exceeding the limit. For instance, a Plaintiff may, in the civil claim, allege a loss greater than \$25,000 but claim only \$25,000 and abandon any excess under subsection (4) of section 9.6. Following trial the Judge might assess the Plaintiff's damages at, for the sake of illustration, \$40,000, and the fault of the Defendant at 50%. The resulting judgment would be for \$20,000 (one half of \$40,000, not \$12,500, one half of \$25,000). See: *Kondro v. Parker*, [1983] 6 W.W.R.380.

The laws of merger and res judicata apply to judgments of the court. All claims arising out of the matter sued upon merge in the judgment and the judgment is final and binding subject only to appeal.

A Judge may appoint a guardian ad litem where it appears to be in the best interests of a minor (section 9.601).

UNDEFENDED CLAIMS - ASSESSMENTS

Default judgments may be obtained in claims for debts or liquidated demands or proof of service. In other claims, where a Defendant fails to defend within the time limited for doing so, the usual practice is that upon the Plaintiff filing proof of service of the claim, the clerk arranges a time for an ex parte application for

assessment (section 40(1)(2)(a)(i). The Plaintiff appears before a Judge and the damages are assessed on the basis of the Plaintiff's evidence. Alternatively, the Plaintiff may file an affidavit proving the damages and request that the matter be referred to a Judge for a "desktop" assessment. If the material is in order the Judge may grant the judgment, interest (if claimed) and costs which the Judge will then determine. The practice in Calgary differs from that in Edmonton, to the extent that only claims for property damage arising from motor vehicle accidents are dealt with on a desktop basis. On either a viva voce or a desktop application for assessment, the Judge may adjourn and direct that the Defendant be given notice, or that the Plaintiff produce additional evidence of the damages claimed.

In motor vehicle accident claims, the affidavit should exhibit copies of repair, car rental, or other claimed accounts, confirmation that all repairs relate to damages caused in the accident, and such other matters as may be appropriate; e.g., appraisal of a written off vehicle. The following memorandum is issued to persons filing desktop applications for assessments in motor vehicle accident claims in Edmonton.

"All desktop applications for assessments in motor vehicle accident claims must show that all claims of the Plaintiff arising out of the accident in question are included in the judgment or that merger has been waived by all interested parties. The concern this requirement addresses is that some parties have applied to assess property damaged claims in the belief that personal injury claims of the Plaintiff arising out of the accident may be dealt with in separate proceedings. With respect to merger see: *Zukowski v. Royal Insurance* 2000 ABCA 165."

DEFENDED CLAIMS

MEDIATION

All defended claims are reviewed by the court's mediation office which selects the actions to be mediated. At present this amounts to roughly one third of all defended claims. Mediation is compulsory unless an order is obtained from a Judge granting an exemption. Roughly 65% of mediated claims are settled by this process. The Mediation Rules of the Provincial Court are contained in Alberta Regulation 271/97 and can be found in the Provincial Court section of the Supplement to the Alberta Rules of Court. The mediation process is non-evaluative; mediators should not be expected to express opinions on matters such as liability or contributory negligence or the assessment of general damages. However, if parties or their own solicitors are able to carry out their own evaluations and are willing to settle but have not been able to do so, mediation may be useful and would be made available if requested.