

Preliminary Matters – Before Getting Judgment

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Small Claims & Collections Boot Camp

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1. INTRODUCTION

In Alberta, a court has been created to deal with small claims matters on an expedited basis and although is commonly referred to as the “Small Claims Court”. This court is properly named the Provincial Court of Alberta, Civil Division, and will be referred to as the Provincial Court throughout this paper.

The Provincial Court has some significant differences from the Court of Queen’s Bench in both procedure and benefits. Litigants should be well aware of benefits, drawbacks, and the procedure of the Provincial Court.

2. CHOICE OF COURT

There are a variety of reasons for choosing the Provincial Court over the Court of Queen’s Bench, or *vice versa*. Below are a few factors to consider when deciding which court to use:

- a) Jurisdiction - whether the particular court has jurisdiction, or not;
- b) Filing fees;
- c) Cost consequences;
- d) The procedure and expense; and
- e) Representation - whether by lawyer, agent, or self.

a) JURISDICTION

In deciding which court to use, one must ensure, as a necessity, that it has jurisdiction to hear the matter.

The Court of Queen’s Bench has plenary jurisdiction to hear almost all matters.¹

The Provincial Court is a s.92 of the *Constitution 1867 Act* court, whose jurisdiction is defined in part by the *Provincial Court Act*.² The *Provincial Court Act* enumerates grounds for which the Provincial Court does not have jurisdiction and includes claims in which the title to land or the validity of a will are brought into question, malicious prosecution, defamation, replevin, actions against Judge or Justices, or by local authorities for the recovery of taxes.³

¹ *Judicature Act*, R.S.A. 2000, c. J-2, ss. 2, 3, 4, and 5.

² *Provincial Court Act*, R.S.A. 2000, c. P-31, s. 9.6.

³ *Ibid*, s. 9.6 (2).

The monetary limit for the Provincial Court is not to exceed \$25,000.00.¹

In addition to these jurisdictional limitations, there are other statutory limitations including enforcement under the *Builder's Lien Act*, R.S.A. 2000, c. B-7, *Civil Enforcement Act*, R.S.A. 2000 c. C-15, and *Copyright Act*, R.S.C. 1985, c. C-42, and other similar legislation in which the court is defined as the Court of Queen's Bench, the Court of Appeal, and/or the Federal Court.

b) FILING FEE

Filing fees in the Court of Queen's Bench are set out by regulation and are currently \$200.00 for civil matters. Filing fees for the Provincial Court are also set out by regulation and are currently \$100.00 for claims equal to or less than \$7,500.00 and \$200.00 for claims greater than \$7,500.00.²

c) COST CONSEQUENCES

Costs are discretionary in both the Provincial Court³ and the Court of Queen's Bench.⁴ Guidelines, however, do exist in both jurisdictions: the "10% Rule" in the Provincial Court, and the Schedule "C" to the Alberta *Rules of Court* in the Court of Queen's Bench.⁵

When considering costs, one should consider that any claim in the Court of Queen's Bench under \$25,000.00 would be 75% of Column I⁶ and therefore may not net the litigant more than an order for costs on a \$25,000.00 Judgment in Provincial Court using the 10% Rule.

d) PROCEDURE AND EXPENSE

Generally speaking, the more complex a matter is – the more expensive it becomes. The converse is also true, the less procedure – the less expensive it is for the litigants. The Provincial Court is not mired in the complex procedure that governs the Queen's Bench which can be a tedious and expensive means to achieve litigation.

Summary judgment, however, in Provincial Court versus summary judgment in the Court of Queen's Bench may not be significantly different as far as the involvement from a lawyer. (The costs may not be significantly different either.)

¹ *Provincial Court Act*, R.S.A. 2000, c. P-31, s. 9.6(1)(a)(i), and *Provincial Court Civil Division Regulation*, 329/89.

² *Provincial Court Fees and Cost Regulations*, 18/91.

³ *Supra* note 1, s.9.8.

⁴ *Court of Queen's Bench Act*, R.S.A. 2000, c. C-31, s. 21.

⁵ This is discussed further under the heading COSTS.

⁶ *The Alberta Rules of Court*, 390/1968, r. 605 (7).