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Guide to Litigation in Canada

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INTRODUCTION: LITIGATING IN CANADA

Canada has a population of 35 million people which is less than the population of California. It is approximately 3.88 million square miles which makes it the second largest country in the world. It is divided into ten provinces and three territories. Each province and territory has its own government. The capital of Canada is the City of Ottawa where the federal House of Commons and Senate create legislation which applies to the entire country. Each province has its own capital where their legislatures exist and pass laws for their particular province.

Canada is a constitutional democracy however, its constitution is made up of a number of statutes, orders-in-council and judicial decisions which interpret these documents. One of the most significant is The Constitution Act, 1867. This act divides different powers between the federal and provincial governments.

The Constitution Act, 1867 provides the provinces with the power to administer justice in their own provinces. As such, each province will have its own unique court system and administration to carry out the laws of the land. It is because of these procedural differences that lawyers will typically practice within their own province. While the courts are operated by the province, the judges in civil courts are appointed by the federal government.

LITIGATING IN ALBERTA

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The two most populous centres in Alberta are Edmonton, the capital of the province, and Calgary which is seen as the corporate epicentre of the province. Both cities are very close in population both hovering around the 1.4 million mark. There are two levels of court in Alberta dealing with civil litigation: The Court of Queen's Bench and Provincial Court Civil Division. Appeals from Provincial Court are to Queen's Bench and appeals from Queen's Bench are to the Alberta Court of Appeal.

The Court of Queen's Bench

Step One: The Pleadings

A civil action for an amount in excess of $50,000 is commenced in the Court of Queen's Bench by way of Statement of Claim within 2 years of a date of loss. The Statement of Claim delineates the nature of the claim, the facts establishing the claim, the allegations against the defendant respecting liability to the plaintiff and the amounts being sought for all heads of damage being claimed. Once filed, the plaintiff has 12 months to serve it on the defendant.

Once the defendant is served he has 20 days to file a Statement of Defence or a Demand of Notice if he is served within Alberta; 1 month if he is served outside Alberta, but within Canada; and 2 months if served outside Canada. If the defendant has a counterclaim against the plaintiff it is filed concurrently with the Statement of Defence. A defendant by counterclaim has the same time requirements to file a Statement of Defence to Counterclaim.

If there is a co-defendant from whom a defendant is seeking contribution and indemnity, then the defendant has 20 days to file and serve a Notice of Claim Against Co-Defendant. If there is another party the defendant seeks to add to the litigation, a Third Party Claim must be filed and served within 6 months of the Statement of Defence is filed. The Statement of Defence to Third Party Claim has the same timelines for filing as a Statement of Defence. A plaintiff may file a Reply to a Statement of Defence and has 10 days to do so after being served with the Statement of Defence. Similarly, the plaintiff may file a Reply to Third Party Statement of Defence within 10 days of being served with the Statement of Defence to Third Party Claim. All of these documents are collectively referred to as the Pleadings.

Within 4 months of filing the Statement of Defence, the parties must determine if the case is a standard case or a complex case. If the parties do not agree within this time frame and the court does not otherwise order, the case is deemed to be a standard case. If there are delays, one party can serve on another a Litigation Plan setting out timelines and if no agreement is reached an application may be made for an Order setting timelines. For a complex case, the parties must, within 4 months of determining the case is complex, agree to a Complex Litigation Plan. Once the plan is agreed, the plaintiff must file and serve it on all parties.

Step Two: Disclosure

Within 3 months from being served with the Statement of Defence a plaintiff must serve an Affidavit of Records. Once served with the Affidavit of Records of the plaintiff, the defendant has 2 months to serve his Affidavit of Records. A third party has 3 months from being added to an action to serve an Affidavit of Records. An Affidavit of Records consists of 3 Schedules. Schedule 1 is a list of documents which are not privileged. Schedule 2 is a list of documents which are privileged. Schedule 3 is a list of documents which may be relevant, but are no longer within the control of the party swearing the Affidavit of Records. On application the Court may order a record not previously produced be produced if a record has been improperly omitted or if it has been improperly claimed as privileged.

Once documents are exchanged the parties will proceed to Questioning. During this process all parties adverse in interest have a right to examine the opposing party(s) to discover all of the facts and evidence the other party has which is not disclosed in the records. The right to Question extends to questions about the records as well. During this process a party being Questioned may be asked to search for additional records or information not previously disclosed. These requests are called Undertakings. The Undertakings given must be answered within a reasonable period of time after Questioning is completed. The party giving the Undertaking may be required to re-attend for Questioning on the Undertakings given.

Step Three: Settlement

The *Rules of Court* in Alberta do not provide for mandatory ADR. Still, ADR is used extensively.

The options for ADR in Alberta include Arbitration (binding or non-binding), Mediation (binding or non-binding), or Judicial Dispute Resolution (JDR) (binding or non-binding). The JDR is a more formal mediation before a Justice of the Court of Queen's Bench. The parties are required to submit written briefs of their respective positions for the Justice in advance followed by oral submissions during the course of the JDR. The process is "informal", typically in a boardroom at the Courthouse. No documents are filed with the Court during this process and the written submissions are not kept on the Court file. If the matter does not settle during the JDR process, the Justice makes a note on the file a JDR happened, but failed and the JDR Justice is precluded from hearing the Trial.

Step Four

If parties decide Trial is necessary they must file a Form 37 with the Court advising they are ready for Trial. Form 37 outlines for the Court how long of trial, how many witnesses, administrative requirements as well as which Justices are precluded from hearing the matter due to conflicts. A party may also bring an application in Form 38 to request the Court order a Trial be set. Three months prior to the Trial date the parties must file a Form 39 confirming the parties are ready to proceed to Trial and modify any information respecting witnesses or needs during the Trial. Failure to confirm readiness for Trial will result in the Trial being canceled. Once the date is confirmed, the cost for setting the matter for Trial is $600.00 plus $250.00 per day of Trial exceeding 5 days.

Jury Applications may be made at any time from the commencement of the matter through to prior to making application to the Court for a Trial date. On application, the Court will determine whether the matter is appropriate to be heard before a jury or not. A Jury consists of six members of the public. A decision need not be unanimous – it can be rendered with an agreement of five out of six jurors agreeing. It should be noted few civil cases are tried by jury and the Court is reluctant to Order jury trials.

Appeals are heard by the Alberta Court of Appeal which sits in both Edmonton and Calgary.

The Provincial Court Civil Division

In Alberta there are no formal *Rules of Court* governing litigation. It operates pursuant to the *Provincial Court Act* and the *Provincial Court Civil Division Regulation*. Jurisdiction for the Provincial Court Civil Division is $50,000.00 or less and they have authority to hear any civil litigation matter with a few exceptions.

Step One: The Pleadings

A civil action is commenced in the Provincial Court Civil Division by way of Civil Claim in the prescribed form within 2 years of a date of loss. Once a claim is filed, the plaintiff has 12 months to serve it on the defendant. If service is not completed within that time frame, it is no longer valid. Once the defendant is served he has 20 days to file a Dispute Note in the prescribed form if he is served within Alberta and 30 days if he is served outside Alberta. If the defendant has a counterclaim against the plaintiff it is filed concurrently with the Dispute Note. A defendant by counterclaim has the same time requirements to file a Dispute Note to Counterclaim. Service of the Dispute Note is deemed service of the Counterclaim when filed together. There is no specific direction respecting claims for contribution and indemnity between defendants; however, the usual practice is to follow the Court of Queen's Bench Rules in this regard allowing the defendant 20 days to file and serve a Notice of Claim Against Co-Defendant. If there is another party the defendant seeks to add to the litigation, a Third Party Notice must be filed and served. There is no specific time line set in the *Provincial Court Act* or *Provincial Court Civil Claims Forms Regulation*, but the usual practice is to do so as quickly as possible due to the fact the litigation proceeds much more quickly in Provincial Court. The Dispute Note to Third Party Notice has the same timelines for filing as a Dispute Note. All of these documents are collectively the Pleadings.

Step Two: Disclosure

In Provincial Court Civil Division there are no specific rules outlining when documents are to be disclosed. There is no Affidavit of Records setting out the documents the parties intend to rely on. There is no Questioning procedure in Provincial Court. Applications can be made to have the Court of Queen's Bench *Rules of Court* apply to set a Questioning, but the Court frowns on the process as it sees itself as a court of practicality with the view to expeditious litigation. The Court tends to see the application of the *Rules of Court* as cumbersome and contrary to the rationale of the Court.

Step Three: Litigation Process

Once the Pleadings are complete, the Provincial Court Civil Division Trial Coordinator will determine, based on the Pleadings, how the litigation will proceed. Notice will be sent to the parties to advise:

1. The matter is set for Pre-Trial Conference. This is a meeting with one of the Judges of the Provincial Court to go over the details of the case, deal with any requests for disclosure if documents have not been exchanged by this point, or directing the matter in some form. The Judges often use the Pre-Trial Conference to try to effect settlement. It can be an opportunity to hear what the Court may think of the case and give an indication of likelihood of success of either party. The actual parties are required to attend even when counsel are involved. The matter may be directed to Trial following the Pre-Trial if settlement is not effected. The Pre-Trial Conference Judge is precluded from being the Trial Judge unless he decides to seize himself with the matter.

2. The matter is set for Mediation. This is a mandatory Mediation. The parties are expected to attend. If the process fails, the mediator will sign off on a certificate indicating the Mediation proceeded and the matter can be directed to Trial. Following this process and before Trial, the parties can request a Pre-Trial Conference to sort out outstanding issues with the assistance of the Judge.

3. No procedure will be set with the Court until a request is made by one of the parties. This is typically the case where counsel is involved for all parties. If negotiations break down, one of the parties can request the matter be set for Pre-Trial Conference, Mediation, or Trial.

4. The matter is immediately directed to Trial. In this circumstance, which is rare, the parties can request the matter be sent to Pre-Trial or Mediation in advance. The Trial date set can also be adjourned with the consent of all parties. For the purposes of Trial, the Court

   (a) is not bound by the laws of evidence applicable to judicial proceedings, and

   (b) may admit any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not.

Step Four: Judgment

Once a Judgment is obtained it is filed in the Provincial Court Civil Division. If the Judgment is not immediately satisfied, the successful party has the option of filing the Judgment in the Court of Queen's Bench. Once filed in Queen's Bench, the successful party is at liberty to issue a Writ of Enforcement and proceed with collections.

Appeals from Provincial Court Civil Division are heard in the Court of Queen's Bench. Notices of Appeal are to be filed in the Judicial Centre closest to the Provincial Court at which the Judgment was obtained.

LITIGATING IN BRITISH COLUMBIA

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The **British Columbia Supreme Court Civil Rules** govern the procedures relating to almost all aspects of civil litigation in the Supreme Court of British Columbia. Below is a useful summary of some of these rules however, please note that this summary is by no means intended to be an exhaustive check list or guideline.

The summary below relates to actions in the BC Supreme Court commencing by way of a Notice of Civil Claim. Other actions can be commenced by way of petitions and requisition or in Small Claims court.

Limitation Periods

Unless stated otherwise, the *Limitation Act* governs the limitation period for commencing an action in British Columbia. Generally speaking, for most causes of action, an individual has 2 years from the date the action is discovered to commence legal proceedings. Different discovery rules and limitations period apply depending on the type of action and the proposed parties subject to the action.

Notice of Civil Claim

A Notice of Civil Claim must be filed with the Court within the proper time limit as prescribed by the *Limitation Act*.

Service of Notice of Civil Claim

Once a Notice of Civil Claim has been filed the plaintiff has to serve it on the defendants within 12 months of the date of filing. If the Notice of Civil Claim is not served by that time, the plaintiff may apply to have the court renew the Notice of Civil Claim for a period of not more than 12 months.

Response to Civil Claim

Once a party has been served with a Notice of Civil Claim, he or she has to file and serve a Response to Civil Claim within the following prescribed timeline:

- If the party was served anywhere in Canada, within 21 days after that service; If the party was served anywhere in the United Stated, within 35 days after that service; or
- If the party was served anywhere else, within 49 days after that service.

Default Judgment

A party may proceed with an application to obtain default judgment when the defendant has failed to file and serve a Response to Civil Claim within the time allowed under the rules or if the defendant has withdrawn its Response to Civil Claim. The default judgment process varies depending on the type of claim a plaintiff has advanced.

For example, if the claim is for a specific amount of money, the plaintiff can file a default judgment for the amount owed plus interest payable under the *Court Order Interest Act* and costs. If the claim is for an amount that is neither specified nor ascertainable (for example for personal injury cases), the court will grant a judgment with a caveat that the damages are be assessed at a later hearing. The plaintiff will then schedule a further application to have a court decide on the assessment of damages.

Third Party Proceedings

In order to add a party to the proceedings a Third Party Notice must be filed. A third party can be added by a defendant without leave from the court if the Third Party Notice is filed within 42 days of being served with the Notice of Civil Claim. If a defendant wishes to add a third party to the proceedings after 42 days, they must go through a chambers application and seek leave. A party who files a Third Party Notice must within 60 days after the date on which it is filed, serve on the third party:

(1) a copy of the Third Party Notice; and,

(2) a copy of any filed pleading that has previously been served by any party to the action. The party who files a Third Party Notice must also promptly serve the filed Third Party Notice on all other parties of record.

Discovery

Generally, the rules of civil procedure mandate broad disclosure during the discovery process to reduce surprise and allow the parties to evaluate the claim and make informed decisions. Within 35 days after the pleadings period, each party must prepare a list of documents that lists all documents that are, or have been, in the party's possession or control, and that could, if available, be used by any party of record at trial to prove or disprove a material fact and all other documents to which the party intends to refer at trial. The list of documents must be served on all parties of record within the 35 days after the pleadings have closed.

In addition to documentary discovery, each party in an action must make himself or herself available for examinations for discovery by the other parties who are adverse in interest to the party subject to examinations. If the party is represented, at least 7 days notice is necessary. It should be noted that, generally speaking, these discoveries cannot exceed 7 hours.

Setting Trial

In order to set a proceeding for trial, a party must file a Notice of Trial which includes the trial date. Trial dates are either set at a Case Planning Conference or obtained by the registry. The place of trial must be the place named in the Notice of Civil Claim but the court may order that the place of trial be changed. The Notice of Trial must be filed in the registry where the Notice of Civil Claim was filed unless it has been transferred to another registry. Additionally, the Notice of Trial must be "served promptly" after it was filed.

If a party whom a Notice of Trial is served objects to the trial date set out, the party must within 21 days after service of the notice, request a case planning conference, or make an application to the court to have the trial rescheduled. The party who files a Notice of Trial must file a Trial Record for the court. This must be filed at least 14 days before but no more than 28 days before the scheduled trial date and must be promptly served on all parties of record. In addition to the trial record, each party must file a Trial Certificate in the registry where the trial is to be held at least 14 days but not more than 28 days before the scheduled trial date. This must also be served promptly on all parties of record.

The Trial Certificate must include:

Trial Management Conference

A Trial Management Conference must be scheduled at least 28 days before the scheduled trial date. All counsel are required to attend and in some instances the parties must attend as well. A Trial Brief must be filed 28 days in advance of the Trial Management Conference. Other parties must file and serve a trial brief at least 21 days before the date of the trial management conference.

Settlement Conferences

If at any stage of an action the parties of record jointly request a Settlement Conference by filing a requisition or a judge or master directs that the parties attend a Settlement Conference, then the parties must attend before a judge or master who must, in private and without hearing witnesses, explore all possibilities of settlement. Since the primary objective of a Settlement Conference is to facilitate settlement its format and procedure are rather flexible. That being said, the conference must be recorded. All aspects of the Settlement Conference are without prejudice and the judge or master who conducts the settlement conference will not hear the trial.

Summary Judgment

Summary Judgments are a form of Chambers application that can be initiated if a party can prove that a claim, as articulated in a Notice of Civil Claim or Third Party Notice, and the corresponding response has no merit and is bound to fail should the matter proceed to trial. These applications are made only in instances where it is clear that the other party cannot succeed because he or she has no case or defence. The main question that the court considers on these applications is whether there is any genuine issue between the parties that requires a trial to resolve.

All evidence in support of such applications is admitted through affidavits. That being said, the applicant is entitled to seek an order requiring the deponent of an affidavit to attend for cross-examination.

Summary Trial

A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following instances:

- an action in which a response to civil claim has been filed;
- a third party proceeding in which a response to third party notice has been filed;
- an action by way of counterclaim in which a response to counterclaim has been filed.

The application must be heard at least 42 days before the scheduled trial date.

A court may order that the deponent of an affidavit submit to a cross-examination.

On the hearing of a summary trial application, the court may grant judgment in favour of any party, either on an issue or generally, unless the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or the court is of the opinion that it would be unjust to decide the issues on the application.

On the hearing of a summary trial application the court may also impose terms respecting enforcement of the judgment, including a stay of execution, and award costs.

LITIGATING IN MANITOBA

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With 647,000 square kilometres and a population of 1.3 million, Manitoba is a small and truly 'civil' jurisdiction. The bar of insurance litigation lawyers is small and collegial with resulting efficiencies. Much of litigation takes place in the capital city of Winnipeg which has a diverse population of 727,000. However, there are twelve other Judicial Centres located throughout Manitoba, including the north.

Manitoba is a common law jurisdiction and its Court of Queen's Bench Rules structure the required steps in the litigation processes, which processes are similar to those of other provinces. Case management is not mandatory in Manitoba and access to it is limited although forthcoming legislation may improve that situation.

Step One: The Pleadings

There are three levels of civil courts; small claims court (claims up to $10,000), Expedited Actions (claims up to $100,000) and regular civil actions (claims over $100,000). An action is commenced by either a notice of application or, more commonly, a statement of claim. Statements of claim do not typically state the amount at issue unless it is a liquidated sum, but are required to contain sufficient facts and allegations to set out a cause of action against the defendant. Once a statement of claim is filed in the Court of Queen's Bench, the plaintiff has 6 months to serve it on the defendant. The defendant is then required to file its statement of defence within 20 days of being served with the statement of claim. However, that timeframe is rarely followed. The statement of defence responds with the facts giving rise to the defence and why the defendant is not liable for the claim. The plaintiff may then serve a reply on the defendant within 10 days which responds to the statement of defence. These documents collectively are called the pleadings.

Limitation Periods

Limitation periods in Manitoba generally begin from the date the cause of action arises. There are few limitation periods based on discoverability. Limitation periods in Manitoba are often two years, but occasionally six years for more equitable causes of action.

Step Two: Documentary Disclosure

Within twenty days of the close of pleadings, the parties are supposed to exchange affidavit of documents. These affidavits set out all of the documents which are relevant to the issues in the action and are divided into three schedules.Schedule A contains a list of documents which are relevant and not privileged. Schedule B lists those relevant documents which are privileged, and are not being disclosed. Schedule C lists those documents which are no longer in the control of the party.The parties will have access to each other's schedule A documents and can seek an order to see another party's schedule B document if it is believed it is not privileged.

Once the documents are exchanged, the parties will engage in examinations for discovery. In this process, each party is questioned by the opposite party's lawyer to discover all of the facts and evidence the other party has in its possession and which is not contained in the documents. The parties can also ask questions about the documents themselves.

Step Three: Settlement

There are no mandatory mediations in Manitoba. If the parties are in agreement, they can request a Judicially Assisted Dispute Resolution, which is a mediation convened by a judge. These have typically been quite successful.

Step Four: Pre-Trial Conference

Upon the filing of the appropriate materials, including a brief containing a statement of the facts, list of legal issues, case law, and certain required documents such as expert reports, either party can then contact the court to schedule a pre-trial conference.

At the pre-trial conference, a judge will assess whether the matter is ready for trial and may set trial dates. If the matter is not ready for trial, the judge takes on a pseudo-Case management role issuing directions to the parties for completion of outstanding tasks. Sometimes two pre-trial conferences may occur before trial dates are set. The pre-trial conference judge may also make comments on settlement. Such discussions at a pre-trial conference are without prejudice. Once ready for trial, the judge will set dates for the trial. Trial dates are likely to be 1 to 2 years in the future.

Step Five: Trial

Trials are heard before a Court of Queen's Bench Judge. Civil jury trials are rare in Manitoba. They occur only for defamation, malicious prosecution, and wrongful imprisonment.

Step Six: Court of Appeal

Following a decision on a motion or a trial by a judge, parties may appeal to the Manitoba Court of Appeal. There are varying standards of review depending on the legal issues.

LITIGATING IN NEW BRUNSWICK

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The difference is a great relationship

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New Brunswick has a population of about 756,800 ranking it the third smallest province in Canada. It covers 28,355 square miles, the approximate equivalent of New Jersey, New Hampshire and Vermont combined. New Brunswick is divided by the St. John River into north and south portions. The river flows directly through Fredericton, New Brunswick's capital and third largest city, which is located in the heart of the province. Its most populated city, Moncton, is located on the eastern side of New Brunswick.

Step One: The Initiation of Legal Actions and Issuance of Pleadings

An action is typically commenced by a plaintiff filing a Notice of Action with Statement of Claim Attached, which is filed with the Court of Queen's Bench of New Brunswick by paying a fee and registering the claim with the Court. There are three divisions of Civil Court in New Brunswick; i) Trial division, which hears cases involving unlimited damage claims; ii) Simplified Procedure actions, (otherwise known as Rules of Court - Rule 79 actions), which involve consideration of claims up to $75,000.00 on an expedited timeline basis; and iii) Small Claims Court, which will consider claims up to $12,500.00.

The pleadings process in New Brunswick is almost identical to the process in Ontario. Once a Statement of Claim is issued, the plaintiff has 6 months to serve it on the defendant(s). A defendant must then serve and file its Statement of Defence within 20 days of being served with the Statement of Claim. Thereafter, the plaintiff may then serve a Reply on the defendant within 10 days, which addresses any additional issues raised in the Statement of Defence. These documents collectively are called the 'pleadings'.

In New Brunswick's Civil Courts, jury trials are reserved only for actions involving libel, slander, breach of promise of marriage, malicious arrest, malicious prosecution or false imprisonment. In these instances, a party may serve on the parties and file with the Clerk of the Court a Jury Notice thereby requiring trial by jury. In effect, the vast majority of all civil trials in New Brunswick are heard by a single trial judge.

Limitation Period

With very few exceptions, the general limitation period for commencing an action in New Brunswick is 2 years.

Step Two: Discovery/Examination of Documents and Parties

The Civil procedure *Rules of Court* in New Brunswick promote the early resolution of claims by mandating pre-Trial discovery of firstly, documentary disclosure and secondly, discovery of parties.

Documentary disclosure occurs via the mandatory production by each party of an Affidavit of Documents, (or 'AOD'), which lists all relevant documents to be disclosed, as well as a schedule of documents which will not be disclosed on the basis of privilege or other legal basis. A party may serve a Notice Requiring Affidavit of Documents on any another party to the proceeding, which then obliges the answering party to file and serve within 10 days an AOD to the requesting party. The Rule is slightly different for Simplified Procedure proceedings where, following the close of pleadings, the parties to an action must serve an AOD within 30 days on all other parties.

All AODs must reflect all of the documents which are relevant to the issues in the action, and the affidavit must include a signed certification by the lawyer for the party confirming that the lawyer is not aware of any document not disclosed in the AOD, which should have been disclosed. It is worthy to note that the disclosure of documents does not imply that such documents will automatically be admissible in Court. A party receiving an AOD is entitled to receive only copies of the non-privileged documents referred to therein.

Once the documents are exchanged, any party is entitled to an Examination for Discovery of an opposite party, which examination is conducted under oath. This is similar to the deposition or discovery process in the USA; however, only the parties to an action are examined. There is no automatic right to examine, (depose), experts or non-party witnesses, without an order of the Court. However, a party is entitled to examine an opposing party and obtain answers/details concerning the findings, opinions and conclusions of any expert consulted by the party being examined.

In the discovery process, each party is examined/questioned verbally by the opposite party's lawyer for the purpose of "discovering" all of the facts and evidence the adverse party (ies), has in its possession and which are not otherwise contained in the documents. The parties may also question on the documents themselves.

Step Three: Other Pretrial Procedures to Prepare a Case for Trial

Following the completion of Examinations for Discovery of the parties and documents, and the satisfaction of any resulting discovery undertakings, the parties to an action will then usually contemplate the need for calling expert witnesses at trial.

Any party who is of the view that all pre-trial procedures have been completed and that the case is ready to proceed to trial may file with the clerk and serve on all opposing parties a 'Notice of Trial', which then mandates the Clerk of the Court to assign a proposed trial commencement date. Once the Notice of Trial is received by the court, the proposed date will be considered by a presiding Judge at the next monthly motions day, and in the absence of any objections, the proposed trial dates will be confirmed and added to the official court docket.

Step Four: Pre-Trial Court Mandated Settlement Conferences

Again, in order to promote the possibility of settlement, the New Brunswick *Rules of Court* require any action that has been scheduled for trial in excess of two days to be assigned a Settlement Conference Judge, who will conduct a Settlement Conference, (Pre-trial Mediation by a Judge), for the purpose of exploring the potential and possibility of settlement prior to trial. While Settlement Conferences are presided by actual judges of the court, those Judges may be precluded from subsequently hearing the trial of the action in question.

(Note: Although there is no mandated requirement in the New Brunswick *Rules of Court* obligating the parties to engage in, or participate prior to trial in Alternative Dispute Resolution procedures, including private mediation, voluntary mediations of claims by the parties before a private mediator do often occur and are essentially the norm in New Brunswick.)

The time and place for conducting a Settlement Conference will be set by the Clerk of the Court and the parties and their respective lawyers will then prepare and file briefs with the Court. The parties with their lawyers will subsequently appear at the appointed place and time before the Appointed Settlement Conference Judge. A Settlement conference is typically scheduled 1 to 2 months prior to the actual trial date. The Settlement Conference, and associated procedures, occur under the direction of the Settlement Conference Judge, and the possibilities of settlement are discussed, along with the strengths and weaknesses of each party's case. All records disclosed and discussions occurring during a Settlement Conference are privileged and confidential and non-admissible at trial.

In addition to Settlement Conferences, the Rules of Court also provide for the possibility of a Pre-Trial Conference, where a judge, (usually the appointed trial judge), is put to the task of considering items, issues and procedures, which may facilitate the hearing of the trial in the most expeditious and least expensive manner, such as the consideration of scheduling of key witnesses, and pre-trial agreements on the admissibility of documents and exhibits. At the conclusion of a Pre-Trial Conference, the parties may complete a memorandum outlining the results of their agreements achieved at the conference, or the court may, of its own initiative, make an order or give directions to the parties on all relevant procedural issues. The memorandum and order are thereafter binding on the parties, in connection with the subsequent conduct of the trial. It should be noted that, unlike the Rules in other Canadian jurisdictions, the New Brunswick Rules of Court do not contain any provision for the possibility in civil proceedings of obtaining pre-trial rulings on the admissibility of evidence. All issues related to the admissibility of evidence are left to the discretion of the trial judge and such discretion may not be usurped.

Step Five: Trials and subsequent Appeal Procedures

As stated previously, civil trials in New Brunswick are almost always heard by a single judge of the Court of Queen's Bench. If the action falls within the few enumerated exceptions, which justify the participation of a jury, the jury panel will consist of seven members of the public, summoned by the Sheriff following direction of the judge who confirmed the trial date. Following trial, if a party chooses to appeal the trial decision, it may issue and file with the New Brunswick Court of Appeal, usually within 30 days of the lower court decision, a 'Notice of Appeal'. Appeals are then heard, usually by a panel of three judges of the New Brunswick Court of Appeal, situated in the Provincial Capital City of Fredericton.

LITIGATING IN NEWFOUNDLAND AND LABRADOR

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Newfoundland and Labrador (NL) has a population of about 528,448 ranking it the second smallest province in Canada. It covers approximately 156,453 square miles, almost the equivalent of California. About 92% of the provinces inhabitants live on the island of Newfoundland, with the remainder living in Labrador which is a part of mainland Canada. The province's capital is St. Johns, Canada's 20th largest metropolitan area.

Step One: The Initiation of Legal Actions

There are two courts in NL where civil actions may be commenced:

1. Supreme Court Trial Division – hears unlimited damage claims, family cases, estate cases, criminal cases and appeals from the Small Claims Court; and
2. Small Claims Court (Provincial Court) – hears claims up to $25,000.00.

There is also the availability of Summary Trial and Expedited Trial Applications (*Rules of Court* - Rule 17A actions) in the Supreme Court Trial Division. These are for claims the court deems justifiable to expedite.

The following relates to the process leading to the trial of a civil action in the Supreme Court Trial Division.

An action is typically commenced by a plaintiff filing a Statement of Claim or Originating Application with attached Notice to Defendants with the General Division of the Supreme Court of NL. Once the originating documents are filed with the court the documents are deemed to be issued. The cost of filing originating documents is $120.00.

Once a Statement of Claim is issued, the plaintiff has 1 year to serve it on the defendant unless the court has granted a six-month renewal to serve the claim on grounds presented by the plaintiff. A maximum of four such renewals may be granted.

A Defendant must serve and file its Statement of Defence 10 days after being served with a Statement of Claim. If the defendant is outside the province residing in Canada they must serve their Statement of Defence in 30 days. If they are residing in the United States they have 45 days. If they are residing elsewhere they have 60 days. A claim and a defence are collectively referred to as the "pleadings" and they must comply with Rule 14 of the *Rules of Court*.

Jury trials are as of right only for actions involving defamation, malicious prosecution or false imprisonment. The plaintiff and/or defendant may request in a certificate of readiness filed under the Rules of Court to have issues of fact to be tried by jury and judge. In causes of action other than where a jury trial may be requested by right, the party seeking a jury trial must show there is an alleged breach of standards of community morality to justify a liability and damages assessment by a jury.

Limitation Period

The limitation period for commencing an action in NL for damages in respect of injury to a person not under disability or in respect to property, including economic injury, arising from tort or contract, trespass causing damage to property, defamation, malicious prosecution or false imprisonment, is 2 years subject to discoverability principles. Other causes of action can have a limitation period of 6 or ten years. The limitation period for recovering on a civil judgment is ten years.

Step Two: Discovery/Examination of Documents and Parties

The *Rules of Court* in NL promote the early resolution of claims by mandating pretrial disclosure of documents and deposition of parties.

Documentary disclosure occurs via the mandatory production by each party of a List of Documents, (or 'LOD'), which lists all documents to be disclosed, as well as a list of documents which will not be disclosed on the basis of privilege or other legal basis. All LODs must reflect all of the documents which are related (which can result in an obligation to disclose more than relevant documents) to the issues in the action, and the list must include a signed certification by the lawyer for the party confirming that the lawyer is not aware of any document not disclosed which should have been disclosed. LODs must be issued 10 days after the close of pleadings, or 7 days after the receipt of an originating document if there are no pleadings.

Examination for Discovery can occur without an order from the Court any time after the pleadings have closed, and generally happen after the disclosure of documents described above. Any person may be orally examined on oath or affirmation by any party regarding any matter that is relevant to the subject matter of the proceeding and is not privileged.

In the Discovery process, a person being examined is questioned verbally by lawyers for the purpose of "discovering" all of the facts and evidence the adverse party has in its possession and which are not otherwise contained in the documents. A person being examined shall answer any question relevant to their knowledge and the subject matter, even if it is outside the scope of the pleadings. The parties may also question on the documents themselves.

Parties also have the option of serving "interrogatories" on opposing parties. "Interrogatories" are questions that must relate to the same matters that are dealt with examinations for Discovery. They must be answered by the receiving party, within ten days of their receipt. The answers to these questions may be used at trial to the same extent as evidence from an examination for Discovery.

For Summary/Expedited Trial, if the proceeding is ordered to move ahead towards a trial, the Court may order that Discovery be limited to matters not covered by affidavits filed on the application or cross examination of them. The Court may also order that the discovery be completed in a certain time frame that it be dispensed with or limited in scope and nature.

Step Three: Pre-Trial Procedures/Settlement Conferences

Following the completion of Examinations for Discovery of the parties and documents the parties to an action will then usually contemplate the need for calling expert witnesses at trial. Should a party retain an expert witness, they must give the other party the report of the expert witness at least 4 days prior to a pre-trial conference if available or 10 days prior to the start of the trial. Expert reports not provided at least 10 days prior to the start of trial will not be admissible without leave.

At any point pre-trial, parties may make application to court by motion for the court to decide on questions of law, fact, or admissibility of evidence or to generally weigh in on the direction of the proceedings moving forward.

Pre-trial conferences are used for the parties to get together and attempt to simplify the issues by amending pleadings, admitting certain facts, limiting the number of witnesses at trial, etc. At least 5 days before a pre-trial conference each party shall provide to the opposing party and the judge a brief containing a summary of facts and the issues of law. At a pre-trial conference, the judge may order the parties attend a settlement conference.

The purpose for a settlement conference is to allow the parties to gather before a judge, without the hearing of witnesses, and explore all possibilities of settlement. The settlement conference typically occurs 1 to 2 months prior to the actual trial date. At least ten days before the settlement conference, each party shall file a brief. All communication during a settlement conference is privileged. The parties may settle the action at the settlement conference, or if not, the judge may rule, amongst other things, that the settlement conference be converted to a pre-trial conference.

Step Four: Setting Down for Trial, Trials and Appeal Procedures

Unless otherwise ordered, a trial will take place where the judicial proceedings were commenced.

A party can make an application for a trial within 90 days after close of pleadings if the trial is expected to take less than 5 days.

Also, both parties may jointly initiate the procedures for setting down a case for trial by filing a Certificate of Readiness. If one party refuses to sign a Certificate of Readiness, or fails within 10 days of receiving one to complete or sign, then the opposing party may apply for an order that the case by placed on the pre-trial list.

Once a proceeding has been placed on the pre-trial list, all parties are considered to be ready for trial.

A trial in NL is always heard by a single judge, unless there is an exception as discussed above to it being held before a jury. In such cases juries consist of 6 members. Any 5 jurors may return a verdict.

A party can appeal an application to the Newfoundland Court of Appeal from a decision of the Supreme Court of NL Trial Division. A Notice of Appeal must be brought within 30 days of the filing of the order appealed from. A Notice of Appeal will be served on any party in a proceeding who may be affected by the appeal as soon as practicable after the filing.

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There are three different types of civil claims in Nova Scotia: Small Claims Court, Supreme Court – application, and Supreme Court – action. The key steps for each type are discussed below.

Small Claims Court

The Small Claims Court has jurisdiction over claims up to $25,000, but only allows general damages up to $100. To initiate a Small Claims Court action, a notice of claim must be filed and then served on the defendant. The defendant then has 20 days to file a notice of defence. There is no pre-hearing disclosure. The parties simply attend a hearing before an adjudicator, provide their evidence, and then make arguments. The adjudicator then makes a decision, which may be appealed to the Supreme Court of Nova Scotia.

Supreme Court - Application

Applications involve a hearing, not a trial, with a judge sitting alone. Evidence is largely provided by way of affidavit, with limited use of oral testimony at the hearing. As such, applications are typically used when less time is needed to prepare, the matter is not overly complex, there are fewer disputed facts, and credibility is less of an issue. Applications are commenced by filing a notice of application that has an affidavit supporting the claim attached. Once the plaintiff serves the defendant, the defendant has 15 days to file a notice of contest. The notice of contest typically also includes an affidavit. Parties to a contested application must also deliver a book of documents enclosing all relevant documents to the opposing party. After the hearing, the judge will issue a decision, which can be appealed to the Nova Scotia Court of Appeal.

Supreme Court – Action

Actions are the most formal type of proceeding, although there is a simplified procedure for actions involving claims under $100,000. To commence an action, the plaintiff must file a notice of action and statement of claim, and then serve those documents on the defendants. The defendant may then file a notice of defence. If served within Nova Scotia, the defendant has 15 days to file a notice of defence; if served elsewhere in Canada the defendant has 30 days, and if served outside of Canada, the defendant has 45 days. If the defendant does not choose to defend the action, the defendant may still file a demand of notice, which requires the plaintiff to notify the defendant before obtaining an order for the relief claimed and entitles the defendant to notice of each other step in the action. If a jury trial is desirable, a jury notice would be filed at this stage of the proceedings.

As for pre-trial disclosure, the parties must exchange affidavits of documents within 45 days of the close of pleadings. These affidavits set out all of the documents which are relevant to the issues in the action. Once the documents are exchanged, the parties will engage in discovery examinations.

The trial will take place before a judge or, if a jury notice was filed, a jury of nine members of the public. For a jury, a decision must be unanimous if delivered within four hours. After four hours only five jurors are necessary. Appeals are heard by the Nova Scotia Court of Appeal.

Limitation Period

Generally speaking the limitation period in Nova Scotia is 2 years, and this applies to each type of proceeding.

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Ontario has 13.6 million people making it the highest populated province in Canada. It is more than 415,000 square miles or approximately the size of Texas and Montana combined. Most of its population is located in the southern part of the province centered around its capital, the city of Toronto. The next largest populated city in Ontario is the country's capital of Ottawa which is east of Toronto.

Step One: The Pleadings

A plaintiff will have a statement of claim issued by the Superior Court of Ontario by issuing the claim with the court. There are three levels of civil court; small claims court (claims up to $25,000), simplified procedure (claims up to $100,000) and ordinary rules (claims over $100,000). The statement of claim sets out the amount of the claim and the facts and allegations which make the defendant liable for that amount. Once a statement of claim is issued, the plaintiff has 6 months to serve it on the defendant. The defendant must then serve and file its statement of defence within 20 days of being served with the statement of claim. The statement of defence will set out the facts as to why the defendant is not liable for the amounts claimed. The plaintiff may then serve a reply on the defendant within 10 days which responds to the statement of defence. These documents collectively are called the pleadings. If a jury trial is desirable, a jury notice would be filed at this stage of the proceedings.

Limitation Period

Generally speaking the limitation period in Ontario is 2 years.

Step Two: Disclosure

Within twenty days of the close of pleadings, the parties must exchange affidavit of documents. These affidavits set out all of the documents which are relevant to the issues in the action and it is divided into up to four schedules. Schedule A is a list of documents which are not privileged, Schedule B lists those documents which are privileged, Schedule C lists those documents which may be relevant but are no longer in the control of the party swearing the affidavit and Schedule D, which is only for simplified proceedings, is a list of all witnesses with relevant information to the action.

The parties will have access to each other's schedule A documents and can seek an order to see another party's schedule B document if it is believed it is not privileged.

Once the documents are exchanged, the parties will engage in examinations for discovery. In this process, each party is questioned by the opposite party's lawyer to discover all of the facts and evidence the other party has in its possession and which is not contained in the documents. The parties can also ask questions about the documents themselves.

Step Three: Settlement

In some jurisdictions, mediation is mandatory; however it is always available to parties interested in participating in this process if they agree. In the jurisdictions in which it is mandatory, the parties will meet with a mediator and attempt to negotiate a settlement of the action. If it is unsuccessful, the mediator will file a report with the court that simply says no resolution was found. Either party can then contact the court to schedule a pre-trial or settlement conference.

At a settlement conference a judge (or master, which is very similar to a judge) will hear the parties positions in a private setting and then suggest a settlement. If a settlement cannot be reached at this hearing, the judge will either provide a date for the trial or send the matter to an assignment court where a date for the trial will be set.

Step Four: Trial

Trials are heard before a Superior Court Justice and, if a jury notice was filed, a jury of six members of the public. A decision does not have to be unanimous; it can be rendered with an agreement of five out of the six jurors agreeing. Appeals are heard by the Ontario Court of Appeal sitting in Toronto.

LITIGATING IN PRINCE EDWARD ISLAND

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Prince Edward Island (PEI) has a population of approximately 149,000 people. It is Canada's smallest province measuring only 2,185 square miles, slightly smaller than the state of Delaware. Almost half of its population is centered in the city of Charlottetown and surrounding area. PEI can only be accessed via the Confederation Bridge from New Brunswick, and in the summer by ferry from Nova Scotia.

PEI's Rules of Civil Procedure are largely modeled on those of Ontario, with only a few unique differences. Accordingly, the litigation process is very similar to how it has been described for Ontario.

Step One : The Pleadings

A plaintiff will have a statement of claim issued by the registrar of the Supreme Court of Prince Edward Island. There are three sets of procedures available: small claims court (claims up to $16,000); simplified procedure (claims up to $25,000 subject to exclusions); and ordinary procedure (claims over $25,000 and those excluded from simplified procedure). The statement of claim sets out the alleged facts that would render the defendant liable at law for the plaintiff's damages. Once a statement of claim is issued, the plaintiff has 6 months to serve it on the defendant. The defendant must then file a statement of defence denying the allegations of the plaintiff and/or setting out additional or alternative facts as to why the defendant isnot liable to the plaintiff. The statement of defence must be served and filed within 20 days if served in PEI, 40 daysif served in another province or in the United States, or 60 days if served internationally. The defendant may also choose to counterclaim or add additional parties. Upon receipt of the statement of defence, the plaintiff may then serve a reply within 10 days. These documents are collectively called the pleadings and frame the issues for the subsequent stages of the litigation. If a jury trial is desired, then a jury notice would be filed at the close of pleadings.

The close of pleadings also triggers case management by a court administrator. Case management typically takes the form of telephone calls between counsel and the court administrator to discuss advancing the matter and any procedural issues that arise.

Limitation Period

The general limitation period is 6 years unless otherwise prescribed by statute. There are special limitation periods prescribed for a number of actions, notably injuries arising from a motor vehicle accident (2 years) and personal injury arising from negligence (2 years).

Step Two: Documentary and Oral Discovery

Pursuant to the Rules of Civil Procedure, the parties must exchange affidavits of documents within 10 days of the close of pleadings; however, in practice there is rarely compliance with this rule. The timing of production of affidavits of documents is often decided by agreement through the case management process. The affidavits set out all of the documents which are relevant to the issues in the action and is divided into four schedules. Schedule A is a list of documents which are not privileged, Schedule B is a list of documents over which the party claims privilege, Schedule C is a list of those documents which may be relevant but are no longer in the control of the party swearing the affidavit, and Schedule D, which is only for simplified procedure, is a list of all witnesses with information relevant to the action.

The parties will receive copies of each other's Schedule A documents and can seek an order for production of another party's Schedule B documents if they believe privilege does not apply.

Once the parties have exchanged affidavits of documents, examination for discovery will occur. Each named party may be questioned by all opposing parties or their counsel to discover all of the facts and evidence the other party has in its possession which is not contained in its documents. They may also ask questions about the documents themselves. In the case of corporate parties, they must make one person available for discovery but additional witnesses may be discovered either by agreement or with an order of the court.

Step Three: Pre-trial

Although settlement discussions may take place throughout the litigation process, it is following discovery that they are typically most active. Settlement may be achieved by negotiation between the parties, at a pre-trial conference, at mediation, or at a settlement conference. During this phase, parties will also actively be preparing for trial which may include discovery of expert witnesses or preliminary motions.

The pre-trial conference is a court mandated process which is ostensibly for the purpose of discussing the logistics of trial but is often used in practice to discuss settlement prospects. The parties may also agree to hold a settlement conference. A settlement conference is a negotiation facilitated by a judge with the sole goal of settlement. Another option is that the parties may agree to pursue settlement by mediation. Mediation is a purely private process and is not mandatory in PEI.

Step Four: Trial

Trials are heard before a justice of the Supreme Court and, if a jury notice was filed, a jury of seven members of the public. A jury's verdict does not have to be unanimous. It can be rendered by five out of seven jurors agreeing. A civil jury trial is a relative rarity, most trials are heard by a judge presiding alone. Appeals are heard by the Prince Edward Island Court of Appeal.

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The Province of Quebec has 8.326 million people, making it the second highest populated Province in Canada after Ontario. Its size represents three times the area of France and five times the area of Italy. Its largest populated cities are Quebec and Montreal.

Step one: The Pleadings

In Quebec, there are two levels of civil court: the Court of Quebec (claims up to $85,000), which contains the small claims division (claims up to $15,000), and the Superior Court, which is the general jurisdiction (claims over $85,000).. In a contentious case, a judicial application is conducted according to the procedure set out in the *Code of Civil Procedure*. Thus, the plaintiff calls the defendant to justice by means of a summons attached to the application and the defendant must answer the demand within the following 15 days (20 days for a small claim), failing which a default judgment may be rendered and the legal costs awarded against the defendant. The summons also sets out the options available to the defendant in answering the summons by stating his intention to either negotiate a settlement or defend the application. The case protocol has to be filed with the court office within 45 days after service of the summons.

The plaintiff is required to bring the case to trial within six months after the date the case protocol is established by the court.

Limitation Period

In the Province of Quebec is three years, subject to some exceptions.

Step Two: Disclosure

The exhibits in support of a judicial application must be listed in the summons to the defendant; those in support of a pleading must be listed in the pleading. Generally speaking, the parties are duty-bond to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure the relevant evidence is preserved. A party that has failed to disclose evidence cannot file it at trial except with the authorization of the court. Therefore, the parties must at the time prescribed by the *Code of Civil Procedure* or determined in the case protocol, inform one another of the facts on which their contentions are based and of the evidence they intend to administrate. Examinations for discovery are not possible for any proceedings under $25,000.

In Quebec, an "affidavit" is also called a "sworn statement" and is required in the case of any interlocutory injunction, a seizure before judgment, a judicial review or in any application in the course of a proceeding that is grounded on facts not supported by evidence filed in the record.

A party that is unable, because of the circumstances or the nature of an exhibit, to deliver a copy to a party that requested one is required to provide some other form of access to the exhibit. If the formalities required to establish the validity of an exhibit or other document are not observed, a party may, not later than at the time of setting down for trial and judgment, ask that the exhibit or document not be admitted in evidence.

Once the documents are exchanged, the parties will engage in the evidence stage of the trial. During this phase, the party on which the burden of proof lies examines its witnesses first; the other party then submits its evidence, after which the first party may submit evidence in rebuttal.

Step Three: Settlement

The *Code of Civil Procedure* imposes an obligation on the parties to consider private mediation and resolution processes before referring their dispute to the courts. Mediation is therefore not mandatory, but the parties have to certify that they considered every private option and resolution processes, like mediation, negotiation or arbitration.

If the parties choose mediation, a mediator is chosen by mutual agreement of the parties. The mediator will be asked to develop with the parties a proposal to prevent or resolve the dispute. A settlement agreement will contain the undertakings of the parties and terminate the dispute.

Once the dispute is brought to the court, a settlement conference may be held in camera before a judge, in the presence of the parties, with or without their lawyers. The conference does not stay the proceeding; it helps the parties to explore solutions that may lead to a mutually satisfactory agreement to resolve the dispute. If a settlement is reached, the judge may approve the transaction. If not, the judge may convert the settlement conference into a case management conference.

Participation in a private dispute resolution process other than arbitration does not entail a waiver of the right to act before the court.

Step Four: Trial

Once the submission of evidence is concluded, the party on which the burden of proof lies presents its arguments first, followed by the other party. The first party may reply and, if the reply raises any new point of law, the other party may answer. No other address to the court may be made without leave of the court.

Trials are heard before one judge of the Court of Quebec or the Superior Court. There are no jury trials in civil courts.

Appeals are heard by the Quebec Court of Appeal sitting in Quebec or in Montreal.

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Saskatchewan is a western prairie province in Canada with a population of approximately 1.1 million people. Saskatchewan's economy is based primarily on natural resource exports and agriculture. It shares its southern border with the States of Montana and North Dakota and is located between the Canadian Provinces of Alberta and Manitoba. Saskatchewan's capital city is Regina, which is the second largest city in the Province, with a population of approximately 240,000 people. Saskatchewan's largest city is Saskatoon, with a population of 295,000 people and is home to the University of Saskatchewan.

Step One: The Pleadings

In Saskatchewan, your first step in preparing your pleading is deciding in which Court you should file your pleading. There are two levels of civil court. The first level is Small Claims Court, which is considered a part of the Provincial Court of Saskatchewan. In Small Claims Court your claim cannot exceed $30,000.00. The second level is the Court of Queen's Bench. If you pursue your claim under this Court, you can either take the usual course or chose to pursue your claim under Expedited Procedure. The latter is limited to claims of up to $100,000.00, questioning of a party is time limited, you must file a joint request for a pre-trial conference within one year of the service of the claim, and you must be able to complete a trial within 3 days.

It should be noted that Small Claims Court in Saskatchewan uses different terminology and has different procedures than our Queen's Bench. We have focused on the latter for this guide.

If you pursue your matter under the Queen's Bench, your Statement of Claim ("Claim") must be issued in the Court and contain all material facts to prove your claim and should outline the damages and remedies you wish to seek from the Court in your Action. After it has been issued, you have 6 months to serve the Defendant with the Claim. After service, the Defendant must serve you with a Statement of Defense ("Defense"). The timing for this depends on the jurisdiction of defendant in relation to the Claim. In the same vein as the Claim, the Defense should contain only material facts. You may wish to consider if you want to make a Third Party Claim, Cross-Claim, Counterclaim, and/or a Request for Particulars at that time. The Plaintiff is also entitled to reply to the Defense, although this is not a common occurrence.

The Limitations Act of Saskatchewan generally requires that Court action is pursued within 2 years of the cause of action arising.

Step Two: Mediation

After pleadings have been closed, the Dispute Resolution Office in Saskatchewan contacts the parties to initiate scheduling dates for a mandatory mediation session. This mandatory mediation must occur before any further applications or steps take place in the Action. The Dispute Resolution Office often requires the named parties (or a person with authority of a corporation) and their lawyers to appear in person. At this stage, the parties will attempt to resolve the dispute with a mediator. If a resolution is not reached at this time, the Dispute Resolution Office will issue a Certificate of Compliance and the Action can be continued.

Step Three: Affidavit of Documents and Questioning

The Queen's Bench Rules suggest the Plaintiff must serve an Affidavit of Documents on the parties 30 days after the last Defense is filed. The Defendant then must serve their Affidavit of Documents 30 days after they have received the Plaintiff's Affidavit. However, it is quite common that parties do not exchange Affidavits of Documents until after mandatory mediation is completed.

Parties are obligated to disclose all documents relevant to any matter in issue in the Action. The form for this has three different schedules. Schedule 1 lists all relevant and material documents in the party's control, custody, or possession for which they have no objection to produce. Schedule 2 lists all relevant documents of which there is an objection to produce, such as those documents which contain solicitor and client privilege. Schedule 3 lists all relevant documents that were previously in possession or control of the party and requires the document's description, the date they were last in control of the party, the manner the document ceased to be in their control, and the present location of the document.

After this, parties will arrange a Questioning, otherwise known as a discovery or deposition. At this stage lawyers will be able to ask questions of the parties to allow them to discover all the relevant facts and evidence of the other party. If a party does not know of an answer to a question, the lawyer may ask a party to undertake to provide them with the answer.

Step Four: Pre-Trial Conference

After Questioning, it is common that parties will agree to proceed with a pre-trial settlement conference. This is obtained by a written joint request, which specifies the parties are ready for trial, they have engaged in settlement efforts, estimates the time required for the pre-trial conference and the trial itself, as well an estimate of the number of witnesses to be called.

This conference is presided over by a Queen's Bench Justice, who will not be the decision maker at trial. The function of this conference is two-fold. First, it allows the parties a further opportunity to settle the matter. Second, it certifies trial readiness, as parties must prepare and file briefs of law prior to the conference.

Step Five: Trial

Trials are typically determined by a Queen's Court Justice without a jury. Unless it is otherwise ordered by the Court, a party may demand that the issues of the Action be determined by a jury. This must occur prior to when the local registrar schedules a date for the trial. Appeals of trial decisions are heard by the Saskatchewan Court of Appeal and must be appealed 30 days from the date of the decision.

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