

An aerial photograph of a winding asphalt road that curves through a dense, vibrant green forest. The road starts from the top left, curves right, then left, then right again, and finally loops back to the left. The surrounding terrain is hilly and covered in thick vegetation. The overall scene is peaceful and scenic.

CLYDE & CO

Alternative Dispute Resolution: Litigation, Arbitration, Mediation

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CIVL 402

Why?

To Court, or not to Court

- Professional liability claim
- Tendering dispute
- Delay claim
- Lien claim
- Breach of contract
- Employment



Litigation

To Court, or not to Court

- Should you hire a lawyer?
- Consider:
 - whether the other parties have lawyers
 - the complexity of the claim
 - the amount of the claim
 - applicable insurance
- It is always prudent to have an initial consult with a lawyer to find out your rights and liabilities, and to help you navigate the beginning stages of the litigation process



Litigation basics

To Court, or not to Court

- Parties
- Pleadings
- Process
- Trial



Litigation basics

To Court, or not to Court

Choose your Forum



SMALL CLAIMS

(<\$35,000)

Advantages:

- inexpensive
- fast
- mechanisms are in place to encourage the settlement of the claim in advance of trial

Disadvantages:

- you may have to abandon part of your claim to fit within the <\$35,000 jurisdiction
- many remedies are not available such as actions for builders liens, specific performance
- fewer processes in place for fact-finding

B.C. Supreme Court

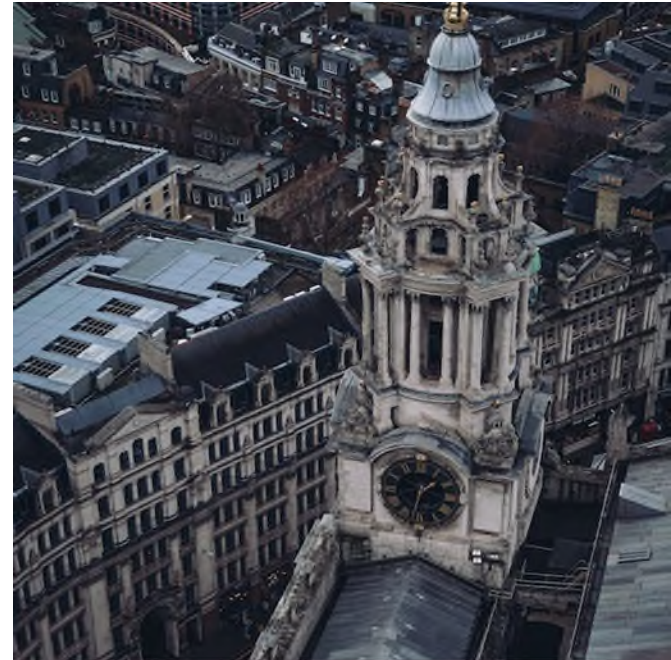
(>\$35,000)

Advantages:

- very comprehensive discovery process
- wider range of judicial discretion and remedies

Disadvantages:

- very slow
- can be very expensive



Civil resolution tribunal

- **The CRT is Canada's first online tribunal. The CRT resolves:**

- small claims disputes up to \$5,000
- motor vehicle accidents/injuries up to \$50,000
- strata property (condominium) disputes of any amount
- societies and cooperative associations disputes of any amount
- shared accommodation and some housing disputes up to \$5,000
- The CRT helps people to resolve their disputes quickly and affordably, and encourages a collaborative approach to dispute resolution
- CRT decisions are public and searchable



Civil Resolution Tribunal

Alternative Dispute Resolution

As costs of litigation continue to climb, there is an increasing push towards methods of alternative dispute resolution



Arbitration

A method of dispute resolution involving one or more neutral third parties, usually agreed to by the disputing parties, whose decision is binding.

Like a mini-trial, you both lead evidence before an **Impartial Arbitrator**

Pros:

- avoids litigation
- Binding
- hard to appeal
- Confidential
- efficient, flexible

Cons:

- arbitrators can be expensive
- you must adhere to their ruling
- not mandatory

Mediation

A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. It is like sitting around a table and talking, airing grievances and trying to settle on a mutually agreed outcome.

Pros: inexpensive, therapeutic, early resolution, control over outcome, flexible relief

Cons: may not be taken seriously, need a genuine interest to resolve the issues from both parties.



Expert evidence

Rule 11-2 of the Supreme Court Civil Rules:

- Duty of expert witness
 - (1) In giving an opinion to the court, an expert appointed under this Part by one or more parties or by the court has a duty to assist the court and is not to be an advocate for any party.



Court Rules Act
SUPREME COURT CIVIL RULES
B.C. Reg. 168/2009

Deposited July 7, 2009 and effective July 1, 2010
Last amended March 2, 2021 by B.C. Reg. 53/2021

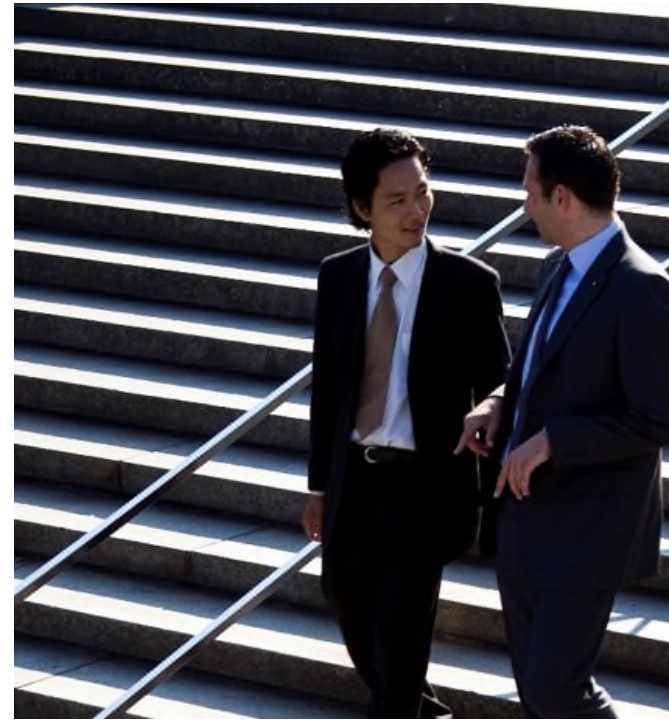
Consolidated Regulations of British Columbia

Expert evidence

Advice and certification

(2) If an expert is appointed under this Part by one or more parties or by the court, the expert must, in any report he or she prepares under this Part, certify that he or she

- (a) is aware of the duty referred to in subrule (1),
- (b) has made the report in conformity with that duty, and
- (c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.



Who can be an expert?

Requires skill, expertise, training and experience

Pros:

- sharing expertise
- good for business
- intellectually challenging
- Money/\$\$\$

Cons:

- work-intensive
- Stressful
- scrutiny



480

Partners

2,400

Lawyers

5,000

Total staff

3,200

Legal professionals

60+

Offices worldwide*

www.clydeco.com

*includes associated offices

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