

14. Trademarks [§3.61]
15. Utilities Commission [§3.62]

I. SECTION 3—CLAIMS THE COURT MAY HEAR [§3.1]

3. (1) The Provincial Court has jurisdiction in a claim for
- (a) debt or damages,
 - (b) recovery of personal property,
 - (c) specific performance of an agreement relating to personal property or services, or
 - (d) relief from opposing claims to personal property
- if the amount claimed or the value of the personal property or services is equal to or less than an amount that is prescribed by regulation, excluding interest and costs.
- (2) The Provincial Court does not have jurisdiction in a claim for libel, slander or malicious prosecution.
- (3) This section is subject to sections 16.4 and 56.3 of the *Civil Resolution Tribunal Act*.

[am. to 2018-49-17, effective January 1, 2019.]

A. ANNOTATIONS TO SECTION 3(1)—GENERAL JURISDICTION [§3.2]

Note:

The *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 (the “CRTA”) has undergone substantial amendments since 2018. Ensure that you have the current version of the CRTA when reviewing any of these sections.

Effective April 1, 2019, the Civil Resolution Tribunal (the “Tribunal”) was given jurisdiction to hear motor vehicle injury disputes involving up to \$50,000, including accident benefits and minor injury determinations. The CRTA was upheld as constitutional following a challenge to its scheme alleging that the grant of jurisdiction to the Tribunal offended s. 96 of the *Constitution Act, 1867* (*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2022 BCCA 163, leave to appeal refused 2022 CanLII 121522 (SCC)).

In accordance with s. 3 of the Tribunal Small Claims Regulation, B.C. Reg. 232/2018, the maximum jurisdiction over small claims amounts is \$5,000,

exclusive of interest and expenses. See Part 10 of the *CRTA* for information on the Tribunal's jurisdiction. See ss. 113 to 114 of the *CRTA*, which limits the jurisdiction of the Tribunal (no constitutional questions; limited jurisdiction and discretion to decline to hear claims under the *Human Rights Code*, R.S.B.C. 1996, c. 210). See ss. 118 to 119 for jurisdiction over small claims matters, ss. 120 to 123 for strata property matters, and ss. 128 to 131 for matters under the *Societies Act*, S.B.C. 2015, c. 18.

Pursuant to s. 133(2)(a) of the *CRTA*, the Tribunal has exclusive jurisdiction over the following claims:

- (1) determinations by insurers of entitlement to benefits paid or payable under the *Insurance (Vehicle) Act* (s. 133(1)(a)); and
- (2) determinations of whether an injury is a “minor injury” under the *Insurance (Vehicle) Act* (s. 133(1)(b)).

Pursuant to s. 16.1 of the *CRTA*, proceedings in the Tribunal's exclusive jurisdiction that are brought to the courts must be stayed or dismissed by the court (subject to s. 16.1(2) of the *CRTA*).

The Tribunal has “specialized expertise” in respect of claims regarding:

- (1) liability and damages including loss or damage to property related to the accident less than or equal to the Tribunal limit amount (s. 133(1)(c));
- (2) determinations by ICBC or a prescribed insurer of the extent to which the initiating party is responsible for the accident (s. 133(1)(d)).

Section 16.1(1)(b) of the *CRTA* provides that courts must dismiss proceedings in respect of which the Tribunal is considered to have “specialized expertise”, unless it is not in the interests of justice and fairness for the Tribunal to adjudicate the claim.

However, s. 16.1(2) provides that the court must stay a proceeding that relates to a minor injury within the Tribunal's jurisdiction (s. 133(1)(b) or 133(1)(c)) until the Tribunal makes a determination.

Section 16.2 provides authority for the Provincial Court to order that the Tribunal not adjudicate a “tribunal small claim” (as defined) if the Tribunal lacks jurisdiction (and the Provincial Court has jurisdiction over the claim), or if it is not in the interests of justice and fairness for the tribunal to adjudicate the claim.

Section 16.3 sets out factors the court may consider in deciding whether it is in the interests of justice and fairness for the Tribunal to adjudicate a claim. See also s. 16.4, which summarizes the circumstances under which a claim within the jurisdiction of the Tribunal may be brought or continued in Provincial Small Claims Court.

Tribunal orders may be enforced by filing the order in Provincial Court, and have the same force and effect as if they were judgments in Provincial Court (ss. 58 and 58.1, *CRTA*).

Rule 1.1 of the Small Claims Rules, B.C. Reg. 261/93, applies to proceedings previously initiated before the Tribunal and later transferred to the Provincial Court, and governs the process including how to commence and reply to a claim in Small Claims Court.

A cohabitation agreement that ousts the application of Part 5 (Property Division) of the *Family Law Act*, S.B.C. 2011, c. 25 and specifically provides that each party forgoes any claims arising if they no longer cohabit, including under s. 93 the *Family Law Act* or the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 can be enforced in Small Claims Court based on a breach of an express provision in the agreement. The application to dismiss on the basis that the Supreme Court of British Columbia has exclusive jurisdiction was dismissed.

Smith v. MacLean, 2021 BCPC 141, Janzen J.

There is no common law claim for breach of privacy. The tort relating to invasion of privacy (to the extent it exists) is found in s. 1(1) of the *Privacy Act*, R.S.B.C. 1996, c. 373, which provides that such an action must be commenced in the Supreme Court of British Columbia (*Privacy Act*, s. 4). An allegation of the intentional tort of misfeasance of public office must be more than a bare assertion—there must be some allegation that would support such a claim. The public officer must have engaged in deliberate and unlawful conduct in their capacity as a public officer and must have been aware both that the conduct was unlawful and was likely to harm the plaintiff (*Odhavji Estate v. Woodhouse*, 2003 SCC 69 at para. 23). The claimant's pleadings, including the proposed amendments, did not give rise to a cause of action over which the court had any jurisdiction or one that had any prospect of success at trial and the claim was dismissed.

Brown v. Howard, 2021 BCPC 34, Mrozinski J.

A claimant may bring multiple claims to the Civil Resolution Tribunal against the same defendant, even if the total amount is above the Tribunal's monetary limit, as long as the claims are sufficiently distinct as to be considered "different and separate" claims. The tribunal member refers to and relies on several decisions of the Provincial Court in which this issue is discussed.

De Bayer v. Yang, 2019 BCCRT 298, Regehr, Tribunal Member.

The defendants applied for an order, *inter alia*, to consolidate two actions brought against them by the husband, in one, and by the wife, in the other. In *obiter*, the court concluded that more than one claim, if each is a separate claim, may be advanced in a single action and a successful claimant may be entitled to recover more than the amount prescribed by regulation (currently \$35,000). The pleadings did not allow the court to determine whether the claims were

distinct. The claimants were ordered to amend their notices of claim and the defendants' applications were adjourned generally.

Dowe v. Hogaboam, 2019 BCPC 85, Gouge PCJ.

The three defendants—the Northern Health Authority (NHA), BC College of Nursing Professionals, and HMTQ as represented by the Ministry of Health—applied for a dismissal of each claim against them which arose from alleged misconduct by a nurse who was named executor of the estate of the claimant's deceased sister. The claimant's complaint to the College of Registered Nurses of BC (CRNBC) (now called BC College of Nursing Professionals) was considered by the CRNBC inquiry committee under the *Health Professions Act*, R.S.B.C. 1996, c. 183 (the "HPA") and on appeal by the Health Professions Review Board. The claimant did not seek judicial review and instead started an action in Small Claims Court. Citing the HPA and the *Disciplinary Authority Protection Act*, R.S.B.C. 1996 c. 98 (the "DAPA"), the court held that it had no jurisdiction to declare the inquiry committee decision to be unreasonable. Furthermore, the DAPA applies to protect the CRNBC from any legal action. The court dismissed the claim against the CRNBC. The claim against the NHA was also dismissed as it was a collateral attack and an abuse of process. It was also barred by the *Limitation Act*, S.B.C. 2012, c. 13. With respect to the Ministry of Health, the court noted that the Small Claims Court "is not a court of inherent jurisdiction ... [and] only has the powers granted to it by legislation." The court therefore had no jurisdiction to determine the appropriateness of the Minister's exercise of discretion under the HPA and the claim against the Ministry was dismissed.

Schiller v. Northern Health Authority, 2019 BCPC 60, Lee PCJ.

The claimant alleged that she had previously paid in cash for which the defendant failed to credit her account, and therefore she was subsequently overcharged property taxes and penalties. She sought relief in the nature of an injunction to prevent collection of the money and a declaration that certain taxes were paid. The court held that the Provincial Court is a statutory court and has no inherent jurisdiction beyond what may be reasonably inferred from the Act and Rules. Injunctive relief is beyond the court's jurisdiction. Declaratory relief is available only as being incidental for relief within the court's jurisdiction. Reversing penalties and interests on a municipal tax account is beyond the jurisdiction of the court. The claimant was at liberty to reframe and amend her claim to assert her claim within the court's jurisdiction.

Dalla Rosa v. Town of Ladysmith, 2017 BCPC 178, MacCarthy PCJ.

The practice by those who conduct construction projects of not paying subtrades, in the hopes that small businesses will go away, settle for a lesser amount, or have payment delayed until they sue, is one that must be discouraged. The court held that Rule 20(5) applied and awarded an additional penalty of 10 per cent of the claim. The court also held that the monetary limit on its jurisdiction does not render the issue of interest moot. Under s. 3(1) of the *Small Claims Act*, R.S.B.C. 1996, c. 430, the court has jurisdiction for claims up to the prescribed

limit, which excludes interest and costs, and therefore interest may be awarded on top of a judgment for \$25,000 (the court's monetary limit at the date of judgment).

Wiens Electrical Services Ltd. v. 273134 BC Ltd., 2017 BCPC 4, Skilnick PCJ.

This case concerned a pre-trial motion by the defendant to strike and dismiss, as outside the court's jurisdiction, the two claimants' respective claims regarding alleged contravention of a statutory building scheme and a s. 219 covenant under the *Land Title Act*, R.S.B.C. 1996, c. 250. The court found that the claimants, who were owners in the same subdivision as the defendant, lacked standing to enforce any legally recognized right based on the defendant's alleged failure to abide by a "Design Code" or the development approval process, or based on their unhappiness with any constructed improvements including a retaining wall visible from the claimants' properties. Under s. 3(1) of the *Small Claims Act*, the court has no express authority to grant equitable remedies; and under the *Law and Equity Act*, it has limited jurisdiction arising from "necessary implication" to deal with matters of procedure to ensure justice is done, citing the *Provincial Court Small Claims Handbook* (CLEBC, 1997–); *K. (R.) v. McBride*, [1994] B.C.J. No. 2791 (QL) (Prov. Ct.); and *Craig v. Gidyk*, [1994] B.C.J. No. 1591 (QL) (Prov. Ct.). If the City wished to enforce the s. 219 covenant, the court would not have jurisdiction to do so as it does not have the power to grant declaratory or injunctive relief.

Mort and Power v. Le, 2016 BCPC 287, MacCarthy PCJ.

Note: The court's monetary limit was increased to \$35,000 effective June 1, 2017. The following case was decided when the limit was \$25,000.

On an application for default judgment, the claimant was owed \$95,379.26 and abandoned the excess to bring it within the court's jurisdiction of \$25,000 plus expenses of \$176. The claimant also sought interest under the contract in the amount of \$18,324, relying on s. 3(1) of the Act, which states the court has jurisdiction in a claim if the claim is within the amount prescribed by regulation, "excluding interest and costs." The court held it has no jurisdiction to award interest under a contract that would exceed the monetary jurisdiction prescribed by s. 3 of the *Small Claims Act* or the Small Claims Court Monetary Limit Regulation, BC Reg. 179/2005. The wording of s. 3 must be taken to refer to interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (the "COIA"). However, as s. 2(b) of the COIA excludes court order interest if there was a contractual agreement about interest, as here there was, the claimant is not entitled to it.

Telus Services Inc. v. Hussey, 2016 BCPC 41, McKimm PCJ.

The Provincial Court has jurisdiction over its own process. This jurisdiction is found in the *Small Claims Act* and Rules which allow provincial court judges to make orders consistent with the intent and spirit of the legislation. Furthermore, the court also has jurisdiction to ensure that legal matters and cases proceed in an expeditious, orderly, just, and dignified manner. Were it otherwise, the court