Proving Your Case in Supreme Court

A guide to gathering and using evidence in civil trials

October 2005

Legal Services Society
British Columbia
www.lss.bc.ca

Acknowledgements

Writer: Linda Rainaldi
Editor: Kathryn Spracklin
Legal reviewer: David Morrison
Content reviewer: Allan Parker
Contributor: Raman Johal

This booklet is a publication of the Legal Services Society (LSS). LSS is a non-government organization that provides legal aid and legal information to low-income British Columbians. LSS is funded by the provincial government, the Law Foundation, the Notary Foundation, and indirectly, the federal government.

This booklet provides general information about the law. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help.

Contents

Introduction **1**

Part 1: General Principles of Evidence **3**

The rules of evidence 3

Where the rules come from 3

Admissibility 4

Material facts 4

Relevance 5

Rules to exclude evidence 5

Burden of proof 5

Standard of proof 5

Is proof necessary? 6
- Judicial notice 6
- Admissions 6

Weight 7

Part 2: How to Introduce Evidence into Court **9**

Evidence given by witnesses 9
- Preparing your witnesses for trial 9
- Oral testimony 10
- Telling the truth 11
- Competence 11
- Requirement to give evidence 12
- Direct examination 12
- Giving evidence yourself 13
- Cross-examination 13
- Inconsistent statements 14

Re-examination 16
Hearsay 16
Opinion evidence 18

Documents as evidence 19
The discovery process 20
Discovery of documents 20
Privilege 21
Proving documents at trial 22
Entering documents into evidence 23
Written sworn statements as evidence 24

Part 3: Types of Court Hearings 29

Pre-trial hearings 29
Interlocutory chambers applications 29
Pre-trial and settlement conferences 30
Judicial case conferences 31

Default judgment 31
Evidence at a default judgment application 32

Summary judgment — Rule 18 33
Evidence at a summary judgment application 33

Summary trials — Rule 18A 34
Evidence at summary trial 35

Hearing of a petition 35
Evidence at a hearing of a petition 36

Trials 36
Evidence at trial 36

Fast track litigation — Rule 66 37
Evidence at a fast track trial 37

Expedited litigation — Rule 68 38
Evidence at an expedited trial 38

Appeals to the Supreme Court 39
Appeals from Small Claims Court 39
Appeals from family cases in Provincial Court 40
Appeals from tribunals 41

Judicial review 41
Evidence at a judicial review hearing 42

Introduction

There are many rules about how you can bring evidence into Supreme Court. These rules mean that you can't just tell your story to a judge as if you were having a conversation with a friend. It's important to have a basic understanding of the rules before you go to court.

This book explains the general principles of evidence for cases in Supreme Court and the kind of evidence you will need in pre-trial court hearings and the trial itself.

The Supreme Court Self-Help Information Centre provides resources and support to people who are representing themselves in Supreme Court. You can visit the centre at 274 – 800 Hornby Street in Vancouver or online at www.supremecourtselfhelp.bc.ca/index.htm.

In this booklet, legal terms are defined the first time they're used. For more definitions of common legal terms, go to the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Part 1

General Principles of Evidence

Evidence is what you present to the court to prove your claim or your defence. It can include oral (spoken) testimony from witnesses or documents such as affidavits (sworn written statements), contracts, or medical records. It's not enough to make a claim that you are right — you have to prove that you are right.

The rules of evidence

The rules of evidence set out what facts can be presented to the court and the procedures for introducing the facts to the court. For example, the rules set out what documents will be admitted into evidence, whether they must be served on the other party, and the time limits for doing so.

The rules of evidence help the trial run smoothly and efficiently because testimony (the oral evidence of witnesses) and documents are presented to the court in a predictable way. The rules also make sure that the trial procedure is fair to both parties. For example, the court will not allow a party to raise irrelevant issues in support of his or her claim or defence.

Where the rules come from

The rules of evidence come from three sources:

- the Supreme Court Rules,
- provincial statutes (legislation), and
- case law.

The Supreme Court Rules (usually called the Rules of Court or the Rules) are the main source for the rules of evidence that apply in proceedings in the Supreme Court of BC. It is important to read the Rules and understand how the rules of evidence apply to your case. For example, you may need to know how you can see documents that the other party does not want to disclose to you. The Rules will tell you how to do that.

You can find the Rules on the BC Courthouse Library Society's website at www.bccls.bc.ca (click on Court Rules) or on the Court Services website at www.ag.gov.bc.ca/courts (click on Civil Courts, then scroll down to Supreme Court and click on Supreme Court Rules).

Statutes (or legislation) are laws made by the provincial and federal governments. For example, the Evidence Act of British Columbia sets out the principles of evidence that apply to civil and family cases being heard in the BC Supreme Court and BC Court of Appeal. (The Court of Appeal has its own set of rules called the Court of Appeal Rules.)

Case law is the decisions made by other judges in the large collection of earlier cases similar to yours. The judge will apply the laws of evidence, in part, according to these decisions. The Supreme Court of BC will apply the law from cases previously decided by the Supreme Court of BC, the BC Court of Appeal, and the Supreme Court of Canada, then cases decided by courts in other Canadian provinces and territories. Applying the law from previous court decisions is also called common law.

Admissibility

A judge can consider your evidence only if it is admissible, which means that it is relevant to a material fact in the case and not excluded by any rule set out in case law, the Evidence Act, or the Supreme Court Rules

Material facts

A material fact is one that is important or essential to the case. What is material is often determined by the pleadings (written statements of fact, such as the statement of claim, statement of defence, and/or third party notice, which are used to start and respond to a case), because the pleadings set out what is being disputed.

For example, if the dispute is about a broken contract for the sale of a boat, the contract itself is a material piece of evidence. But a contract with the same person for the sale of a different boat three years earlier is probably not material to the present dispute.

Relevance

Evidence is relevant if it is related to the facts of the case in some logical or important way. To decide whether evidence is relevant, ask yourself whether the evidence helps you prove the facts of your case.

To give an extreme example, the fact that the roads were icy on the day of the car accident is probably relevant to your case. The fact that the driver of the other car was wearing a blue sweater is not relevant.

Rules to exclude evidence

The judge may not allow evidence into court if:

- the evidence is privileged; that is, if you have the right to keep that document confidential (see Privilege, on page 21), or
- it is in the interest of procedural fairness to exclude it (for example, if the other party wanted to rely on a document that he or she had not disclosed to you).

Burden of proof

The person who is asking the court for a remedy has the burden (responsibility or obligation) of proving the facts that support his or her case.

For example, if the plaintiff (the person who starts a lawsuit) claims that the defendant (the person sued in a lawsuit) agreed to buy the plaintiff's equipment for $115,000, the plaintiff must prove that the parties entered into a clear agreement about the purchase and sale of the equipment.

Standard of proof

In a civil case, the person submitting the evidence (providing the evidence to the court) must prove that it is true "on a balance of probabilities." This means that it is "more likely than not."

For example, if a party claims that he or she has paid a debt and provides evidence to prove that payment, the judge will decide on a balance of probabilities whether that debt was in fact paid.

Is proof necessary?

It is not always necessary to prove every fact that you want to submit as evidence in your case. Some facts are so commonly known that they do not need to be proved, and in a few situations, facts are accepted into evidence on the basis of legal principles, as in judicial notice and admissions.

Judicial notice

A judge can acknowledge that a fact has been proven without you having to prove it if the community commonly knows the fact. This is called judicial notice. For example, it would not be necessary to prove that in the year 2004, Christmas was on December 25. A judge takes judicial notice of facts only occasionally.

A judge must also take judicial notice of provincial and federal statutes, as well as provincial regulations. You would not need to prove, for example, that the Motor Vehicle Act of British Columbia was a validly enacted law of the province.

Admissions

A party can admit that certain facts or issues are not in dispute. Also, you and the other party can tell the court that you agree on certain facts in the case; this is called an agreed set of facts. It will speed up the trial process because those facts do not need to be proved in court.

For example, in a motor vehicle accident case, the defendant will often admit liability (that he or she was responsible for the accident), but will dispute the amount of personal injury damages the plaintiff is claiming (called quantum of damages).

If one party admits a fact in this formal way, it is binding on that party. That means that once the defendant, for example, admits liability for the accident, he or she cannot argue against that later.

Formal admissions can be made:

- in the pleadings,
- in a notice to admit (see Supreme Court Rule 31 and Form 23), or
- in an agreed statement of facts.

Weight

The judge will decide the weight (importance) of a piece of evidence in light of all the evidence that has been admitted by the judge into court. Just because evidence has been admitted into court, it does not mean that it will be given the same weight as other evidence or any weight at all.

For example, if a witness to a fight in a bar had been drinking all day and gives evidence that contradicts the evidence of a police officer who was called to stop the fight, the judge will probably give more weight to the police officer's evidence.

Similarly, the judge will decide if the witness's evidence is credible (believable). If it is not credible, the judge will not attach much, or any, importance to the evidence. For example, the judge may conclude that the evidence of the wife of someone involved in the fight was biased

Part 2

How to Introduce Evidence into Court

Evidence given by witnesses

A witness is a person who gives evidence to the court orally under oath or affirmation (see below) or by affidavit (a sworn written statement). Witnesses are a critical part of the trial process, whether they are giving evidence about what they saw happen or confirming that a document is authentic. A witness must be prepared to answer questions and give good information to the court.

Preparing your witnesses for trial

Preparing your witness before trial involves meeting with your witness to review the evidence that he or she will provide, including facts and documents.

If you have more than one witness, you should review the case with each witness individually. These are the most important matters to review:

- Evidence that the witness will be giving in court
- Documents that you will be showing the witness in court
- Types of questions you will be asking in your direct examination
- Types of questions the other party will be asking in cross-examination
- How to answer questions clearly (in other words, just give the facts)
- Courtroom etiquette

While you should prepare your witness to give evidence in court, your witness should not give "scripted" answers to your questions. You should not try to influence your witness to change his or her evidence. He or she should be straightforward and honest at all times.

Refreshing the witness's memory

Trials are often held several years after the event that led to the dispute. Not surprisingly, witnesses may have trouble remembering the details that they are asked to provide to the court. You can help "refresh" your witness's memory before and during trial.

Before trial, it is reasonable for witnesses to refresh their memories on information and events that they will be asked about. You may talk to a witness about the issues in dispute and the type of questions you will be asking. You may also want the witness to review documents that will be introduced into evidence.

Remember that how you prepare your witness may affect the weight the judge gives to the witness's testimony. For example, if your witness sounds like he or she is reading from a script you have written, the judge may not believe that his or her answers are genuine and not give much weight to the evidence.

During trial and with permission from the judge, a witness can refresh his or her memory by referring to notes or documents that were made closer to the time of the event in dispute. The witness can do this if:

- the document was made near the time of the event, while the witness's memory was fresh; or
- the witness created or reviewed the document around the time it was made and confirmed that it was accurate.

The document does not have to be notes or a description of the event in dispute. A witness will often be asked to look at a signature on a document, such as a contract, and verify that this contract is the same one in dispute. Seeing someone's signature on the document may remind the witness that he or she saw the document being signed.

Oral testimony

Most evidence is introduced to the court through witnesses giving oral testimony (spoken evidence given under oath).

Supreme Court Rule 40(2) says that unless another statute or Rule says something different, a witness at a trial shall testify:

- in open court, and

- orally (unless the parties agree otherwise).

Witnesses can be the parties themselves or others who have particular knowledge or information about the dispute.

It is usually a good idea to ask the judge to exclude witnesses during the trial. This means that they have to wait outside the courtroom until it is their time to give evidence. It prevents the witnesses from hearing each other's testimony and changing their evidence in response to what they've heard.

Telling the truth

Before a witness gives evidence to the court, he or she must agree to tell the truth.

Witnesses can take an oath to tell the truth by placing a hand on a religious text (like the Bible) and swearing that the evidence they give will be true. Or, witnesses can make a solemn affirmation that they will tell the truth. In this case, there is no religious meaning to the commitment to tell the truth.

The judge will give the same amount of weight to the evidence given whether the witness takes an oath to tell the truth or affirms to tell the truth.

Competence

A witness must be competent to give evidence. This means that they must have the mental ability (called capacity) to give accurate evidence.

Except in the most extreme circumstances (for example, a witness with a mental illness or Alzheimer's disease), anyone can be called as a witness in your case. Remember, however, that the evidence must be relevant and material to the case. If your witness cannot give accurate and believable information to the court, the judge will not attach much importance to it.

The evidence of children is an exception to this general principle. The Evidence Act (section 5) states that children over the age of 14 are presumed to be competent to testify in court. The other party can challenge that presumption, and it will be up to the court to decide whether the child is capable of giving good evidence.

The court must make a decision on whether to allow evidence from children under 14. In general, young children must be able to understand the nature of an oath or solemn affirmation and to communicate the evidence to the court.

Requirement to give evidence

Witnesses who do not want to testify or cannot be relied upon to come to court can be compelled (required) to give evidence at trial by serving them (formally giving them a legal document at their home or place of work) with a subpoena. A subpoena is a legal document that tells a witness that he or she is required to attend court to give evidence. If witnesses under subpoena do not appear in court to give evidence, a warrant can be issued for their arrest and they can be brought to court to testify.

Direct examination

When your own witness has taken the stand to give evidence and been sworn in, you will "examine" or ask him or her questions first. This is called direct examination or examination in chief. After your direct examination, the other party will be allowed to cross-examine that witness.

Witnesses provide critical evidence at trial, but they do not take the stand and simply talk about issues in the case. It is your responsibility to structure questions for the witness to answer so that the evidence is presented to the court in a logical way.

Questioning your witnesses

Ask questions that allow your witnesses to tell their stories in their own words. This makes their evidence more credible. Some examples of appropriate questions are:

- What happened when you reached the intersection?
- What did the other driver say to you after the accident?
- Where were you looking?
- Why did you go there?

Leading questions

Generally, you can't ask "leading" questions when you're examining your own witnesses. A leading question suggests the answer to the witness. For example, "The car was speeding, wasn't it?" is a leading question. "How fast was the car going?" asks the same question in a way that is not leading.

Note that you *can* ask leading questions when you are cross-examining the other party's witness.

There are some exceptions to the general rule that you can't ask your own witness leading questions. It is appropriate to ask your witness leading questions when:

- the information is introductory (for example, the time, date, and location of the accident);
- people or things are being identified (for example, name and occupation of witness);
- the matter is not disputed (for example, ownership of the car); or
- the court gives permission to ask a leading question (for example, when your own witness is "hostile" or having difficulty answering a question; a witness is considered hostile when he or she is withholding evidence or not telling the truth).

Giving evidence yourself

If you are representing yourself in court, you will not have anyone to ask you questions when you give evidence (tell the court your version of the dispute). You will simply get in the witness stand and talk about the facts that you want the court to know. As you are doing this, imagining that you are asking yourself questions can help you to give your evidence in a clear and logical way.

For example, if you are telling the court what happened when you were in a car accident, present your story by "answering" imaginary questions such as:

- What day was it?
- What time was it?
- What was the weather like?
- Was it light or dark outside?
- Where were you going?
- Were you in a hurry?
- What was your route?

Cross-examination

Cross-examination is when you ask the other party and his or her witnesses questions, and when the other party's lawyer asks you and your witnesses questions.

The purpose of cross-examination is:

- to get testimony from the other party's witness that supports your own case, and
- to discredit the witness (make the witness's evidence look less believable).

The scope of questions in cross-examination is broad; you can ask any questions that are relevant to the case, as long as you do not harass the witness. Unlike direct examination of your own witness, you will often ask the witness leading questions.

When a witness takes the stand to give evidence, his or her credibility is on the line. Therefore, in cross-examination, you can ask questions intended to make the witness look less credible. For example, a witness may have testified under direct examination that he or she drove straight home after work on the day in question. Your cross-examination may focus on your knowledge that, in fact, he or she was seen drinking at the bar for three hours after work.

Your cross-examination can focus on the following areas:

- Showing that the witness favours the other party (he or she is biased)
- Showing that the witness has contradicted himself or herself in previous statements
- Challenging the witness's memory on certain points
- Challenging the witness's version of events

You are not required to cross-examine every witness, but if you do not cross-examine a witness, his or her evidence may be accepted because nothing has been introduced to contradict it.

During cross-examination, the witness should have a chance to explain things that are being introduced as evidence against him or her. It is not appropriate "ambush" the witness by bringing in unexpected evidence that he or she cannot explain or disagree with. For example, if you want to bring evidence to the court that the plaintiff was intoxicated during a child access visit, you must ask the plaintiff about his behaviour during the access visit before introducing a witness to give evidence of the intoxication.

It is not easy to cross-examine a witness effectively. This section only outlines a few of the basics of cross-examination. A judge may give you some direction when you are conducting a cross-examination.

Inconsistent statements

A witness may say something at trial that contradicts something he or she said before trial. For example, the witness may have stated in a motor vehicle accident report immediately after an accident that he or she heard a crash and turned to see the two cars touching bumpers. Then at trial, the witness may say that he or she saw the defendant's car crash into the rear of the plaintiff's car.

A witness's earlier statement may be oral or written, sworn (for example, in an examination for discovery — see page 25 — or in an affidavit) or unsworn (for example, a statement to an accident investigator).

You will want to bring these inconsistent statements to the court's attention to challenge the credibility of the witness. While you may not be able to prove the truth of either statement (unless the witness concedes that one statement is true), you will show that the witness's evidence is probably not reliable.

Sections 13 and 14 of the Evidence Act tell you how you can challenge a witness's credibility on written or spoken statements, but the technique is basically the same for challenging all previous statements made by the witness: you get the witness to confirm that he or she made the previous statement before showing that it is inconsistent with his or her present testimony.

In your cross-examination, ask the witness if he or she made the earlier statement. If the witness does not distinctly admit making that statement, you must prove that he or she did so by calling evidence of your own to show that the statement was made.

Written statements

If a witness made a previous statement in writing, you can cross-examine that witness about the written statement (see section 13 of the Evidence Act). While you do not have to show the document to the witness (unless the judge asks you to), you must point out the specific parts of the document that are contradictory.

For example, if you were cross-examining the witness about the accident report in the example above, you would ask the witness if he or she made and signed that written statement. When that is acknowledged, you would have the witness read the contradictory parts of the written statement to the court.

If the witness denies making the earlier statement, you must prove that he or she did so by calling another witness, such as the police officer or insurance adjuster who took the statement, to confirm that the statement was made.

You would use the same technique if the witness's inconsistent statement were made in an earlier examination for discovery (see page 25). In that case, you would ask the witness if he or she attended an examination for discovery on a certain day and remind the witness that he or she gave certain answers to certain questions under oath or affirmation. You would then read the specific questions and answers from the examination for discovery transcript and have the witness confirm that he she was asked those questions and gave those answers.

Verbal statements

You can cross-examine a witness about a prior inconsistent oral statement. In the example above, a written accident report may not have been prepared — the witness may have told a police officer what she saw.

You would begin your cross-examination by asking the witness if he or she made that statement to the police officer. If the witness denies making that statement, you must prove that he or she did so by calling the police officer to confirm that the statement was made (see section 14 of the Evidence Act).

Re-examination

You can re-examine your own witness if the cross-examination raised an issue that you did not deal with in your direct examination.

The judge may also give you permission to cross-examine a witness for a second time. This may happen if the other party raised new issues with the witness on the re-examination.

Hearsay

Hearsay is an oral or written statement that was made by someone else earlier, out of court, that the witness repeats (or produces) in court in an effort to prove that what was said or written is true.

Hearsay is generally not admissible as evidence in trial, but may be admissible in some other court hearings (see Evidence at an interlocutory chambers application, on page 30). For example, if you are the plaintiff in a car accident and a witness to the accident told you that he saw the defendant drive through a red light, you would have to call that witness to give that evidence in court. It is not good enough to tell the court that someone who witnessed the accident told you what happened. The defendant must have the opportunity to hear that witness's evidence in court and to cross-examine that witness about his statement.

A statement made out of court is admissible if it is *not* given for the purpose of showing that the content of the statement is true. The statement may be told to the court simply as proof that the statement was made. For example, a witness may have heard someone he did not know tell a shop owner that the sidewalk in front of his store was icy. A person later falls down in front of the store. The witness may repeat that unknown person's statement in court to show that such a statement was made to the shop owner, but not to show that the sidewalk was icy and slippery. This may be important evidence in the case to prove that the shop owner knew earlier in the day that the sidewalk was slippery. The witness's statement may be admitted into evidence.

Double hearsay is not admissible in any type of court hearing. Double hearsay is when the source of the information is two people away from the person who gives the evidence to the court. For example, if A comes to court and says that she saw B hit her child, that is direct evidence and clearly admissible. If A comes to court and says that C told him or her that she saw B hit her child, that is hearsay evidence and is admissible in some court hearings.

However, if A comes to court and says that D told her that C told her that B hit her child, that is "double hearsay" and is not admissible in any court hearing.

Exceptions to the hearsay rule

There are exceptions to the rule against hearsay. If the hearsay falls into one of these categories, it may be accepted into evidence during trial. The following are two of the most common types of exceptions.

- **Verbal statements**. Some verbal statements made by others may be admitted into court at trial:
    - A statement made by someone, who is no longer living, against his or her own interest. For example, if a deceased person was heard to say that he or she owed someone money, the court may assume that he or she would not have made such a statement unless it were true.
    - A spontaneous statement or an excited utterance made when doing something (sometimes called "res gestae"). For example, a person cries out in pain when picking up a heavy object. A witness who saw that person cry out in pain can give evidence that the person experienced pain.
    - Testimony in a former proceeding. (See Supreme Court Rule, section 40(4)). Transcript evidence given by a witness in a previous court proceeding is admissible if the witness is not available for this trial.
- **Documents.** The general rule is that statements of fact contained in a document are not evidence of those facts unless the document falls within one of the exceptions to the hearsay rule, such as the exception for business records under section 42 of the Evidence Act.

For more information about how to admit specific documents into evidence and exceptions to the hearsay rule for documents, see Documents as evidence, on page 19.

Opinion evidence

A witness's role is to tell the facts to the court, and the judge's role is to draw a conclusion based on those facts. The opinion of a witness is generally not admissible, although there are many exceptions to this rule.

Lay witnesses

A "lay" witness is an ordinary witness who has been called to give evidence only on the facts that he or she observed, not to offer a professional or "expert" opinion on an issue at trial. Most witnesses are lay witnesses.

An opinion of a lay witness is admissible if it is based on personal observation of something that is commonly known. The judge will decide whether the opinion is an assessment that ordinary people with ordinary experience and common knowledge would be able to make.

For example, a lay witness may be able to give an opinion about the speed of a car that he or she saw driving down the street, but not the speed of an airplane that was flying overhead. Similarly, a lay witness may be able to give an opinion on things like distance, the identity or emotional state of a person, recognition of handwriting, and other things that people generally know about.

Expert witnesses

An expert is someone qualified with special knowledge, skill, training, and experience, like an engineer or a doctor. An expert can express an opinion based on information that he or she has personally observed, or information that was provided by others.

For example, an expert in motor vehicle accident analysis could go to the scene of an accident, measure skid marks, and give the court an expert opinion about the speed of the cars involved in the accident. Or, the expert might be able to give an opinion based on photographs of the accident scene.

An expert witness's opinion is admissible if:

- it is relevant,
- it helps the judge make a decision,
- the expert is properly qualified, and
- there is no other reason to exclude the evidence.

If you have hired an expert to give evidence to support your case, you must get the expert to give his or her opinion during your direct examination.

The expert must explain:

- his or her professional qualifications (why he or she is especially qualified to give an opinion on a particular issue),
- his or her opinion,
- the facts considered in reaching this opinion, and
- tests or experiments performed.

During cross-examination, the other party will try to find reasons why the court should not accept the expert's opinion. For example, the other party may question the expert's qualifications and experience or the facts on which the expert's opinion was based.

If the expert witness does not have personal knowledge of the facts of the case, the expert will be asked to consider a hypothetical question or situation where certain facts are assumed to be true. The expert will give an opinion based on those facts. Note, however, that you will have to prove those facts through other evidence.

For example, you may give facts to an expert about a hypothetical person of a certain age, sex, and weight, as well as the amount of food and alcohol the person consumed. The expert can give an opinion, based on that information, of the blood alcohol reading of that person within a certain time period. The expert's opinion will be useful if you can prove that the description of this hypothetical person matches the actual description of the person you are trying to prove was impaired by alcohol at the time of the accident.

You can enter an expert report as evidence instead of calling the actual expert witness to testify in court, provided the report is delivered to all parties at least 60 days before trial. Supreme Court Rule 40A sets out important information you need to know about using experts' reports in court.

Documents as evidence

Documents can also be evidence in court. "Document" has a broad meaning under Supreme Court Rule 1(8). In general, a document is any physical or electronic record of information recorded or stored by means of any device, and includes photographs, film, and sound recordings.

When thinking about what type of evidence you can use to prove your case, remember that a document is anything that contains information, such as a memo, invoice, letter, drawing, transcript, or information on a computer hard drive, floppy disk, or CD.

The discovery process

The discovery process is how you and the other party gather information about the case and find out what happened during the dispute that led to your lawsuit. The discovery process is only used in actions started by a writ of summons and statement of claim. It is not used in originating applications (actions started with a petition — see Hearing of a petition, on page 35).

The discovery process includes the discovery of documents as well as examinations for discovery, interrogatories, and pre-trial examination of witnesses (see pages 25 to 26).

Discovery of documents

In general, you (and the other party) must disclose (reveal) all your documents to all parties in the action, whether you believe the documents hurt your case or not. This is called "discovery of documents." Supreme Court Rule 26 — Discovery and Inspection of Documents — sets out the rules and guidelines for the parties to share their documents before trial.

A document must be disclosed if it relates to a "matter in question" in the case, whether or not the document would be admissible in a trial. For example, a document that contains hearsay must be disclosed even though it may not be admitted at trial.

A matter in question is an issue that a party has raised in the pleadings (in the statement of claim, statement of defence, and/or third party notice). You must search all your files — paper and electronic —to find everything that relates to your case.

Just because a document has been disclosed does not mean that it automatically gets entered or admitted into the court case (see Entering documents into evidence, on page 23).

List of documents

To see the other party's documents, you must prepare a Demand for Discovery of Documents form (Form 92). This form requires the other party to give you a list of the documents they have that relate to the case. You can ask the other party (and they can ask you) to make copies of all or certain documents for you. For help preparing this form, see the guidebook *The Discovery Process* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

You will also be required to prepare a list of documents for the other party. It is easiest to list documents in chronological (date) order. A numbered list is best. The list will have three parts (see Form 104):

- Part I includes documents that you have and do not object showing to the other party. You should give a short description of the document when you include it in the list (for example, invoice to XYZ Company, dated January 2005).
- Part II includes documents that were in your possession or control, but are not now in your possession or control. For example, you may have sent a letter to someone but didn't keep a copy for yourself. There are often no documents listed in this category.
- Part III includes "privileged" documents (see below). You must provide a general description of each document and explain why you believe it is privileged (for example, letter from Ms. Brown [your lawyer], dated February 2005).

The list of documents must tell the other party where he or she can examine the documents, so make sure your documents are in order and available for inspection.

You must continue to disclose documents right up to the time of trial. If you have forgotten about documents or find documents after you have prepared your list of documents, you must deliver an amended (revised) list of documents to the other party.

When documents are disclosed in a lawsuit, they are confidential and cannot be used for any purpose other than the lawsuit, unless the court or the other party has agreed. You cannot, for example, show the documents to people who are not involved in the lawsuit or use the documents in a different lawsuit.

See Expedited litigation, on page 38, for the special rules that apply to discovery of documents in these types of cases.

Privilege

Privilege means that you have the right to keep a document confidential and you do not have to show it to the other party. In other words, you have to tell the other party that the document exists, but you do not have to let the other party see it.

You can claim that a document is privileged if it is part of your "solicitor-client relationship." These privileged documents include:

- communications between yourself and your lawyer (for example, a letter from your lawyer discussing your case);

- briefs (for example, a research memo) that your lawyer wrote to assist himself or herself in preparing your case;
- if you are representing yourself, documents that you have created during the course of your lawsuit (for example, your diary that records your physical recovery from an accident or notes from witnesses that you have interviewed);
- experts' reports that have not been delivered under Supreme Court Rule 40A.

If you claim that a document is privileged and the other party doesn't agree with you, he or she can make an application in chambers to determine whether the document should be disclosed.

Proving documents at trial

At trial, a document can be put into evidence:

- to prove that it is authentic (real), or
- to prove its contents.

To prove that a document is authentic, the person who created the document can be called as a witness to give evidence about it. Or, the document's authenticity can be admitted, for example, under a notice to admit (see Admissions, on page 6).

If a document is put into evidence to prove its contents, it will be considered hearsay and therefore not admissible, unless it falls within one of the exceptions to the hearsay rule (see Hearsay, on page 16).

The use of documents as evidence is covered by the "best evidence" rule. This means that you generally need to submit the original document if you want to prove its contents. If the original document cannot be produced, you may need to explain to the court why you are submitting a copy — for example, the original may be lost, destroyed, or someone else may have it.

Specific documents

During the course of litigation, you may have to introduce many documents into evidence, including business records (for example, an invoice) or a financial institution record (for example, a bank statement). The Evidence Act will give you information about how these documents can be admitted into evidence.

Business records are discussed in section 42 of the Evidence Act. A statement of a fact in a business record is admissible as evidence of the fact if:

- the document was kept or made in the usual course of business, and

- it was in the usual course of business to record the statement of fact in the record.

You will need to call the person responsible for making and keeping the business records to give evidence that the document is authentic, unless authenticity has been admitted. Medical records fall into the category of business records.

Records from financial institutions (a statement from a bank) are discussed in section 34 of the Evidence Act. A bank manger or accountant can come to court or provide an affidavit confirming that the bank record is authentic.

Government records are discussed in sections 25 and 28 to 33 of the Evidence Act. These sections deal with both proving authenticity and the contents of various types of government records.

The Motor Vehicle Act (sections 82 and 82.1) states that certain Insurance Corporation of BC (ICBC) records are "self-authenticating," meaning that they do not need to be authenticated by a witness or by admission. The act also says that statements of fact contained in these records are admissible as evidence of those facts.

Entering documents into evidence

When evidence has been admitted into court in a trial, it becomes an exhibit. Certain steps must be followed in order to get a piece of evidence marked as an exhibit in the trial.

In this example, you are a plaintiff who wants the court to admit (accept) a signed contract as an important piece of evidence. You are representing yourself and have called a witness to give evidence that you saw the defendant sign the contract. You have disclosed the contract in your list of documents to the defendant.

1. Show the contract to the other party's lawyer. Tell the judge that you have disclosed this document to the other party before trial (or have provided him or her with a copy).
2. Show the contract to the witness.
3. Ask the witness questions, leading him or her to confirm that he or she saw the defendant sign the contract and that the signature is the defendant's.
4. Ask the judge to admit the contract into evidence as an exhibit (by saying, for example, "My Lord, I'd like to offer this contract as the next exhibit."). If the other party does not object to the document being entered into evidence as an exhibit, the judge will confirm that it is an exhibit and give it an exhibit number.

Written sworn statements as evidence

Written sworn statements include affidavits and transcripts from examinations for discovery, interrogatories, and pre-trial examination of witnesses. Note that examinations for discovery, interrogatories, and pre-trial examination of witnesses can only be used in some actions started by a writ of summons or statement of claim (see Part 3: Types of Court Hearings, on page 29).

Affidavits

An affidavit is a written declaration of facts that a person (the deponent) signs under oath (swears that the contents are true) in front of a justice of the peace at the court registry or in front of a lawyer or notary public. You must give a copy of the affidavit to the other party.

Affidavits are primarily used in chambers hearings. Affidavits are rarely used in regular trials because evidence is usually entered in other ways, such as through the evidence of witnesses. A witness who gives evidence in trial must generally do so in person, so that he or she can be cross-examined on the evidence by the other party. In some cases, however, the court will allow evidence to be given by affidavit if the deponent is not able or available to appear in court or if it would be too expensive to bring the deponent to the trial.

Supreme Court Rule 51 (and Form 60) gives information about affidavits. See also the publication *Drafting Affidavits: A Lay Person's Guide* on the Community Legal Assistance Society website at http://www2.povnet.org/publications_clas.

Statements made in the affidavit must be relevant to the case and must contain only facts, not opinions. For example, in your affidavit you can say that you saw the plaintiff's car drive through an intersection without stopping at a red light, because that is a fact. You cannot say that the plaintiff is a bad driver, because that is just your opinion.

You can attach important documents to your affidavit. These attachments are called exhibits. The affidavit itself must refer to the exhibits and confirm that they are true copies of the originals.

Transcripts

You can also use transcripts (written records) from examinations for discovery, interrogatories, and pre-trial examination of witnesses as evidence.

Examinations for discovery

An examination for discovery is a meeting where one party asks the other party a series of questions. The examination takes place before a court reporter who records the questions and answers and can produce a transcript (written record) of the examination, which can be used as evidence at a trial in certain circumstances (see Use of transcripts at trial, on page 26).

The examination takes place in a meeting room (not a courtroom) and is closed to the public. The only people present are the parties, their lawyers, and the court reporter. Although a judge is not present, an examination for discovery is part of the court process and should be conducted with some degree of formality.

Supreme Court Rule 27(22) gives some guidelines about the scope of your examination for discovery. You can ask a broad range of questions in the examination for discovery, provided they are relevant to your case. Your goal is to find out what happened in your dispute. The party being examined must take an oath or make an affirmation that he or she will tell the truth at the discovery and must answer questions within his or her knowledge, which includes providing the names and addresses of others who might know the answers to the questions. The questions cannot be about privileged information.

The rules of admissibility of evidence are more loosely applied in an examination for discovery. For that reason, questions and answers only have to relate to a matter in question in the dispute. For example, the party who is conducting the examination or the party who is answering questions may refer to things that he or she has been told by others (hearsay).

You might use a transcript from an examination for discovery if a witness gives different evidence at trial than he or she did in the examination. Your purpose will be to show that the witness is not credible because he or she has given two different versions of the story.

For example, the witness may have said under oath in an examination for discovery that he or she went through the intersection when the light was amber. If the witness then states at trial that he or she stopped when the light changed to amber, the witness has given two different versions of the event.

At trial, you can remind the witness that he or she made the prior statement by reading that part of the examination for discovery transcript and having the witness admit that he or she made that previous statement under oath. If the witness cannot explain the inconsistent statements, it will be evidence that the witness is not reliable.

There are limitations on examinations for discovery in fast track litigation (see page 37) and expedited litigation (see page 38).

Interrogatories

Interrogatories are written questions given to the other party to answer under oath. You can deliver a list of questions to the other party and they have to provide answers, in the form of an affidavit, within 21 days. You can use interrogatories at trial in the same way as you would use examination for discovery transcripts.

Interrogatories are useful to get factual information and perhaps help you decide on other important questions for an examination for discovery. You might want to use interrogatories to get information like data, bank account numbers, inventory lists, customer lists, and so on.

Supreme Court Rule 29 sets out the rules about interrogatories. Interrogatories can only be used in fast track cases under Rule 66 with the court's permission, and can't be used at all in expedited cases under Rule 68.

Pre-trial examination of witnesses

In addition to examining another party in the case, you can sometimes examine a witness before trial (see Supreme Court Rule 28). The court must give permission for you to examine a witness before trial, so you will have to make a chambers application and get an order before you do so.

You can use this procedure if you need information from someone who is not a party to the case and you cannot get the information any other way (if the witness will not respond to your request for the information). Pre-trial examination of witnesses is not allowed in expedited litigation cases (see page 38).

Use of transcripts at trial

The court may allow a transcript to be submitted as evidence at trial if a witness:

- is dead;
- is unable to come to court to testify because of illness, age, or imprisonment; or
- cannot be forced to attend by subpoena.

Use of recorded testimony (under oath) at trial is generally described in Supreme Court Rule 40(4)).

If you are using an examination for discovery transcript in a trial, you have to present it to the witness during cross-examination. In other words, if you are examining the defendant at trial and he or she has given evidence that is different from the evidence he or she gave in the examination for discovery, you have to ask the defendant about the evidence he or she gave in discovery.

Part 3

Types of Court Hearings

This section explains different types of court hearings and the kinds of evidence you can use in each type.

Pre-trial hearings

The rules of evidence are less restrictive at pre-trial hearings than at trial because pre-trial hearings deal with matters other than the main issue in the lawsuit, such as procedural issues in the case. For example, you could bring copies of your bank statement to a pre-trial conference without calling the bank manager as a witness to prove they are authentic bank documents. Some common pre-trial hearings are discussed below.

Interlocutory chambers applications

If you start your lawsuit with a writ of summons and statement of claim (for example, in a family law action or a motor vehicle accident claim), you will likely be involved in a chambers application. Chambers applications take place in a public courtroom and are heard by a judge or master (a type of judge who hears only interlocutory applications). In a chambers application, you are asking the judge to resolve an issue (often about procedure) that comes up before trial.

In an interlocutory chambers application, you are asking the court to make an order that is not final. For example, a divorce proceeding may not come to trial for a long time and the wife may need a temporary order from the court for spousal support. This is an interlocutory application because the court is not being asked to make a final decision about the rights of the parties and their claim.

Other hearings happen in chambers, but they are asking the court for final orders (see Summary judgment — Rule 18, Summary trials — Rule 18A, and Hearing of a petition, below).

See the guidebook *Chambers Applications* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm and the publications *Preparing a Chambers Record* and *Contested Chambers Procedures: A Lay Person's Guide* on the Community Legal Assistance Society's website at http://www2.povnet.org/publications_clas.

Evidence at an interlocutory chambers application

Supreme Court Rule 52 gives you information about applications heard in chambers. Evidence is generally given by affidavit, not by the oral testimony of witnesses.

In special circumstances, the court can make an order under Rule 52(8) for other types of evidence to be admitted. For example, the court can order that a deponent of an affidavit (the person who has sworn that the contents of the affidavit are true) come to the chambers application (or appear before another person) so that he or she can be cross-examined. (Note that this is rarely ordered.)

Hearsay evidence is admissible, but the judge may not give it as much weight as other, better evidence. Double hearsay is not admissible (see Hearsay, on page 16).

Pre-trial and settlement conferences

Pre-trial conferences and settlement conferences are private, informal meetings between lawyers, their clients, and a judge or master (a type of judge who hears only interlocutory applications) in which the judge explores pre-trial issues and settlement options with the parties. Pre-trial conferences are discussed in Supreme Court Rule 35.

At a pre-trial conference you would consider:

- simplifying the issues,
- whether the pleadings need to be amended (revised),
- if facts can be admitted to streamline the trial,
- if the parties can agree on the amount of damages,
- the trial date, and
- anything that will help resolve the case.

Before or at the pre-trial conference, the parties must exchange a list of witnesses they intend to call at trial, with time estimates for both direct and cross-examination.

If the judge orders the parties to attend a settlement conference, the parties and their lawyers will meet with a judge to discuss the options for settling the case.

Evidence at a pre-trial conference

Because the purpose of a pre-trial conference is not to resolve the main dispute set out in the pleadings, you do not have to come to the conference with evidence, affidavits, or witnesses to prove any issues. You must, however, be prepared to discuss the issues in the case, procedural matters, and settlement options.

Judicial case conferences

Pre-trial meetings for family law cases are called judicial case conferences (JCC). A JCC is a confidential and informal hearing where the parties and their lawyers sit at a table with a judge or master (a type of judge who hears only interlocutory applications) and discuss the issues. See Supreme Court Rule 60E for a general discussion of the topic.

A judicial case conference must be held before a party brings an interlocutory (not final) application in a family case started after July 1, 2002. This rule does not apply if the court application is an emergency, such as when one spouse is planning to immediately dispose of a family asset (see Rule 60E (2)).

The overall purpose of the JCC is to help the parties agree on some or all of the matters in dispute. Every effort is made to settle the case. If that cannot be done, the judge or master will discuss with the parties how and when the trial will be heard and how it can be conducted in a cost-efficient manner.

Evidence at a judicial case conference

No evidence is presented at a judicial case conference.

Default judgment

If the defendant is “in default,” it means that he or she has failed to do something, such as file court documents on time. In this situation, you can ask the court to make a default judgment, which means to make a final judgment in your favour.

For example, if a defendant does not file an appearance to your claim, you can apply for default judgment under Supreme Court Rule 17. If a defendant has filed an appearance but has not filed a statement of defence within the time allowed, you can apply for default judgment under Rule 25.

An application for default judgment does not require a court hearing. It is made by submitting documents to the court registry and is called a “desk order.”

You can apply for default judgment if your claim is for:

- liquidated damages (the amount you are claiming can be easily determined by looking at documents or other evidence, such as an unpaid invoice for merchandise);
- unliquidated damages (the amount you are claiming has to be decided by the court, such as a claim for damages for an injury); or
- the return of personal property wrongfully held by the defendant.

If your case does not fall into one of these categories, you will have to make a summary judgment application under Rule 18 if the defendant has not filed an appearance or statement of defence to your claim (such as a claim for an injunction that your neighbour keep his dog off your property).

Evidence at a default judgment application

To apply for a default judgment, you must provide the following information to the court registry:

- An affidavit of service to prove that your writ of summons and/or statement of claim were served on the defendant
- Proof that the defendant has not filed an appearance or a statement of defence (To prove that the defendant has not filed an appearance and/or a statement of defence, you must file a document called a requisition [Form 2] with the court registry. The registry will search the file, and if an appearance has not been filed, the requisition will be marked "nil." You can then file this requisition with your application for default judgment.)
- A requisition (Form 2) that asks the court to grant you judgment because the defendant has failed to file his or her response documents within the allowed time (You can request default judgment on the same requisition as the one submitted to search the file for the defendant's appearance.)
- A draft judgment (use Form 86)
- A bill of costs if you are asking for final judgment in your case (a bill of costs sets out the costs of the action you claim you are entitled to under Appendix B of the Rules)
- A calculation of interest on your claim, if you are claiming interest

For more detail, see the guidebook *Alternatives to Trial* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Summary judgment — Rule 18

"Summary" means "brief." In a summary judgment, the court process is dramatically shortened, so you can save time and money by using this procedure if it is appropriate. Summary judgment applications are made under Supreme Court Rule 18, so they are often referred to as Rule 18 applications. These applications are often used in debt cases.

A summary judgment application can be made in front of a judge or a master when it is clear that either the plaintiff or defendant has no case, such as where a debt has been incurred but not paid. You would only bring such an application if there was clearly no evidence that the other party had a reasonable claim or defence. A summary judgment application is made in chambers, so the rules and procedures governing chambers applications apply (Rule 44 and 51A).

After the defendant in an action has entered an appearance (filed a form indicating that he or she is contesting the lawsuit), the plaintiff can apply to the court for summary judgment on the ground that the defendant has no real defence to the claim. If the court agrees, it will give judgment in favour of the plaintiff.

If the court decides that there is no defence to part of the plaintiff's claim, the plaintiff's action can continue on the remaining part of the claim. For example, if the plaintiff claims that the defendant owes him money, the court may agree that the debt exists, but the plaintiff still has to prove the amount of money owing to him or her. In this case, the action would continue only on the issue of the amount owing to the plaintiff.

The defendant can also bring an application for summary judgment. After the defendant enters an appearance he or she can apply to the court for judgment on the ground that there is no basis for the whole or part of the plaintiff's claim.

For more details, see the guidebook *Summary Judgment and Summary Trials in the Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Evidence at a summary judgment application

The party who brings a summary judgment application (either the plaintiff or the defendant) files an affidavit setting out the facts supporting his or her application in chambers. Witnesses do not normally give evidence at these hearings. Although the hearing is held in chambers, the rules of evidence are stricter than for an interlocutory chambers application because you are asking the court to make a final order.

Your affidavit must be clear, complete, and well drafted because you are asking the court to make a final order based on that affidavit. The court does not allow hearsay evidence in applications for final orders (see Supreme Court Rule 51(10)), so the affidavit can contain only information that you have direct knowledge about. If you do not have direct knowledge of the facts that you need to present to the court, you will have to get separate affidavits from everyone who does.

If you are the plaintiff and you are bringing a summary judgment application, your affidavits must contain:

- the facts that prove your claim; and
- statements declaring that you (or the person swearing the affidavit) do not know of any facts that would provide a defence to your claim, except perhaps as to the amount that you are claiming.

If you are the defendant and you are bringing a summary judgment application, your affidavits must contain:

- the facts that prove that there is no basis for the plaintiff's claim; and
- statements declaring that you (or the person swearing the affidavit) do not know of any facts that would support the plaintiff's claim.

Summary trials — Rule 18A

A summary trial is a brief trial. A Supreme Court Rule 18A summary trial is an alternative to a full trial. It is different than a full trial because:

- it is held in chambers,
- evidence is given by affidavit instead of by witnesses, and
- it is shorter (there is no testimony from witnesses).

You can apply for a summary trial if:

- the defendant has filed a defence,
- a third party has filed a defence, or
- the plaintiff has filed a statement of defence to a counterclaim.

Summary trials are appropriate when affidavits can provide enough evidence for the judge to reach a decision.

In deciding whether a Rule 18A summary trial is the appropriate type of hearing for the case, the judge will consider:

- the amount of the claim involved,
- the complexity of the issues, and
- whether a delay would harm either party's case (waiting for a trial date may cause a delay).

A judge hears a summary trial in chambers, so the rules and procedures governing chambers applications apply (see Rule 44 and 51A). The judge hearing the summary trial application can decide that a full trial is needed. Masters cannot hear summary trial applications.

The summary trial should be as brief as possible, but it will often take more than two hours. In that case, you must follow the rules about lengthy chambers applications (see the guidebook *Chambers Applications* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm). For example you will have to submit a written legal argument and a list of authorities (the case law and legislation that you are relying on when arguing your case).

Evidence at summary trial

Although a summary trial is held in chambers, you are asking the court to make a final order, so the rules of evidence are stricter than an interlocutory chambers application.

Like summary judgment applications, evidence in summary trials is presented by affidavits and not the testimony of witnesses. You may also present other evidence, including:

- answers to interrogatories,
- questions and answers from examination for discovery transcripts,
- admissions made in response to a notice to admit request, and
- expert reports.

Your affidavit must be clear, complete, and well drafted because you are asking the court to make a final order based on that affidavit. The court does not allow hearsay evidence in applications for final orders (see Rule 51(10)), so the affidavit can contain only information that you have direct knowledge about. If you do not have direct knowledge of the facts that you need to present to the court, you will have to get separate affidavits from everyone who does.

For more details, see the guidebook *Summary Judgment and Summary Trials in the Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Hearing of a petition

If you start your lawsuit by an originating application (a petition), the hearing will be in chambers and a judge will make a final decision at that time. For example, to start an action for judicial review, like a review of an arbitrator's decision under the Residential Tenancy Act, you must file a petition.

A judge will hear the petition in chambers, so the rules and procedures governing chambers applications apply. See, for example:

- Rule 10 (originating applications),
- Rule 51A (setting down applications for hearing), and
- Rule 52 (chambers).

Evidence at a hearing of a petition

Although this hearing is in chambers, the rules of evidence are stricter than an interlocutory chambers application because you are asking the court to make a final order. The evidence is given by affidavit, not by witnesses. In proceedings started by petition, there is no discovery of documents or examinations for discovery.

For more information, see the guidebook *Starting a Civil Proceeding in Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Trials

A judge at a trial will hear your case if you do not settle with the other party or you have not chosen to resolve the action by one of the shorter court procedures (for example, a Rule 18A application).

The trial is your opportunity to tell your story to a judge by presenting important and relevant evidence about your dispute. Get familiar with trial procedure by reviewing these Supreme Court Rules:

- Rule 39 (procedural issues about trials),
- Rule 40 (evidence and procedure at trial, such as use of transcripts, failing to prove a material fact; exhibits, examination of witnesses, etc.), and
- Rule 40A (evidence of experts).

The steps taken in a typical trial are set out in the guidebook *Preparing for Trial and Trial in Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Evidence at trial

When preparing for a trial, you need to think about the facts that you need to prove to the court and how you will prove them. It is important to organize all your legal research and all your evidence.

You will probably provide evidence through:

- Lay witnesses,
- expert witnesses and/or experts reports, and
- documents.

The rules about how you can introduce evidence through witnesses and documents are discussed earlier in this booklet. See Part 2: How to Introduce Evidence into Court, on page 9.

Fast track litigation — Rule 66

Fast track litigation is a faster and less expensive option for cases going to trial. Either the plaintiff or the defendant can decide to fast track the process.

You can use the fast track procedure described in Supreme Court Rule 66 if:

- it is not a family law case,
- you started your action with a writ of summons and statement of claim (not a petition), and
- your trial can be heard in two days or less.

Under the fast track procedure, you will do all the same steps as a regular lawsuit, but the process is speeded up because the time limits are shortened. Rule 66 states that:

- the trial must take less than two days and be heard without a jury,
- the list of documents must be delivered very quickly,
- examinations for discovery cannot take longer than two hours per party (unless the court orders or the parties agree otherwise),
- the trial date will be within four months of when you apply for a trial date,
- the parties must file a trial agenda,
- costs cannot exceed a certain amount, and
- interrogatories are not allowed.

If you decide to use the fast track procedure, you must include a "Form 137 — Rule 66 endorsement" with your statement of claim or your statement of defence.

For more details, see the guidebook *Fast Track Litigation in Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm.

Evidence at a fast track trial

The evidence you need to prove your case will be the same whether the trial is "fast tracked" or not. At a fast track trial, however, it is important to be especially careful about estimating the amount of time you need to examine both your witnesses and the other party's witnesses. See Trials, on page 36.

Expedited litigation — Rule 68

Expedited litigation means that the litigation process is speeded up. It is different from a fast track action under Supreme Court Rule 66 because, in an expedited action, the pre-trial procedures and evidence you call at trial are restricted.

Expedited litigation under Rule 68 is a two-year pilot project to reduce the cost of litigation in cases where there is a smaller amount of money in dispute. The project applies only to actions:

- started after September 1, 2005;
- started in the Vancouver, Victoria, Prince George, or Nelson registries;
- started using a writ of summons and statement of claim;
- where the only claim is for money, real property, and/or personal property; and
- where the amount claimed is under $100,000.

Expedited litigation cannot be used in jury trials, family law cases, or class action lawsuits.

For more information, see the guidebook *Expedited Litigation in Supreme Court* on the Supreme Court Self-Help Information Centre website at www.supremecourtselfhelp.bc.ca/self-help.htm

Evidence at an expedited trial

The rules about conducting a trial apply to expedited litigation, except for the rules about discovery of documents, examinations for discovery, interrogatories, and pre-trial examination of witnesses.

Discovery of documents

The procedures (set out in Supreme Court Rule 26) about disclosure of documents in a court case do not apply to expedited litigation. Instead, Rule 68(15) to (22) applies to document discovery. For example, you must deliver a list of documents to the other party (and he or she to you) very quickly — within 15 days after the pleadings close.

The test for what documents have to be included in your list of documents in an expedited trial is also different than in regular court actions. The list of documents in a Rule 68 action must contain:

- all documents referred to in the pleadings,
- all documents you intend to refer to at trial, and
- all documents under your control that could be used by any party at the trial to prove or disprove a material fact.

You must also deliver a copy of every document on the list to the other party. The original documents must be available for the other party to inspect.

You must continue to disclose documents right up to the time of trial. If you have forgotten about documents or find documents after you have prepared your list of documents, you must deliver an amended (revised) list of documents to the other party.

Examinations for discovery

Examinations for discovery will be held only if both parties agree and the court orders the discoveries. They are limited to two hours (unless the court orders or the parties agree to hold them longer).

Supreme Court Rule 68(23) to (30) sets out the procedure for examinations for discovery in an expedited litigation case. You cannot use interrogatories or examine witnesses before trial in expedited cases.

Witnesses

You must deliver to the other party a list of witnesses that you intend to call at trial, as well as a written summary of the evidence you expect them to give. You cannot use a witness at trial unless you have followed this procedure.

The rules about expert witnesses at trial are the same in expedited litigation. The only difference is that you can usually call only one expert witness. The court may appoint a jointly appointed expert, which means that one expert provides evidence for both parties.

Appeals to the Supreme Court

An appeal is when you ask the Supreme Court to review a decision made by the Provincial Court or an administrative tribunal. You can appeal to the Supreme Court only if a statute gives you that right. For example, appeal decisions from the Provincial Court of BC and decisions made by some administrative bodies, like the Superintendent of Motor Vehicles, because that right is set out in legislation.

If a statute does not specifically give you the right to appeal to the Supreme Court, you have to appeal by way of judicial review, discussed on page 41.

Appeals tend to focus on law rather than facts. The Supreme Court judge will not find fault with the trial judge’s determination of the facts unless it was clearly wrong.

Appeals from Small Claims Court

The procedure for appealing a Small Claims Court decision is set out in:

- Part 2 of the Small Claims Act of BC (for more information, go to the Ministry of Attorney General's Court Services website at www.ag.gov.bc.ca/courts and click on Small Claims; for the Small Claims Procedural Guide, go to www.ag.gov.bc.ca/courts/civil/smallclaims/index.htm);
- Supreme Court Rule 49(3); and
- the November 22, 2004, Practice Direction called *Standard Directions for Small Claims Appeals* (go to the Courts of BC website at www.courts.gov.bc.ca/sc, click on Practice Directions and Notices under Links, and then choose Civil).

An appeal is not a new trial in the Supreme Court, except when a Supreme Court judge allows it, which is rare. You cannot bring new evidence in your appeal, unless the judge allows it, which is also rare.

If you are appealing your case from a decision made in Small Claims Court, you are called the appellant and the other party is called the respondent.

The respondent can apply for summary dismissal under Rule 49(5)(e) if the appellant does not comply with the time limits for filing the transcript, statement of argument, proof of service, or proof of ordering the transcript.

Appeals from family cases in Provincial Court

Section 16 of the Family Relations Act allows you to appeal a family court decision made in Provincial Court, as long as it was not an interim order (an order that is not final).

The appeal is governed by a standard set of rules, which you can see in Family Law Practice Direction #5 on the Courts of BC website at www.courts.gov.bc.ca (click on Practice Directions and Notices under Links, and then click on Family). You must bring the appeal within 40 days of the Provincial Court order. The procedure is set out in section 16(4) of the Family Relations Act.

When you are appealing a decision from the Provincial Court, you are called the appellant and the other party is called the respondent.

You must make and serve the following documents on the respondent:

- a notice of appeal in Form 59A, and
- a complete transcript of the oral evidence given at the Provincial Court hearing and the reasons for judgment (you — the appellant — must order and pay for these).

Both parties must prepare a written outline setting out:

- the grounds of the appeal (if you are the appellant),

- the order you are asking the court to make, and
- the facts and law you are relying on (including a list of authorities — case law and legislation).

You must also prepare an affidavit of service of the documents on the respondent.

You cannot bring new evidence to an appeal in Supreme Court, unless the court allows it, which is rare. The Supreme Court will review the transcript of the Provincial Court hearing and hear your legal argument (your reasons why the Provincial Court did not properly apply the law to the facts of your case).

After hearing your appeal, the Supreme Court can:

- confirm the order of the Provincial Court,
- set aside the order of the Provincial Court,
- make any order that the Provincial Court could have made, or
- direct the Provincial Court to have a new hearing.

Appeals from tribunals

You can appeal a decision of a tribunal to the Supreme Court only if the legislation that applies to your case allows you to appeal (for example, you can appeal a decision by the Superintendent to suspend your driver's license under the provisions of the Motor Vehicle Act).

Once an appeal has been filed in the Supreme Court, it is governed by Supreme Court Rules (see Rule 49). According to Rule 49(5), the court can give directions about the hearing of the appeal, including orders that:

- documents or transcripts be produced,
- evidence be introduced using affidavits or evidence be given orally, or
- the appeal be decided by hearing argument on a point of law only.

Judicial review

If a statute does not specifically give you the right to appeal to the Supreme Court, you may still be able to have a judicial review of a tribunal decision under the provisions of the Judicial Review Procedure Act.

For example, you can apply to the Supreme Court of BC to review an arbitrator's decision under the Residential Tenancy Act. Note, however, that the court recognizes that administrative tribunals, such as the Residential Tenancy Tribunal, are specialized in their area of expertise, and so the court is not easily persuaded to reverse a tribunal's decision.

Evidence at a judicial review hearing

In a judicial review, the judge will not re-try your case or focus on whether he or she would have made a different decision than the tribunal. Therefore, you generally cannot bring new facts or evidence to the review.

You start an application for judicial review with a petition (see Petitions, above). You will need the following documents and evidence:

- A petition that asks for relief (a remedy) under the Judicial Review Procedure Act
- An affidavit that tells the court what happened in the tribunal hearing. The affidavit can only contain information that was submitted at the tribunal hearing; it cannot contain new evidence. It must include the following information:
  - The dates of the various stages of the tribunal and the hearing
  - The documents that were put before the tribunal (as exhibits)
  - the tribunal's decision (as an exhibit)
  - A transcript of the tribunal hearing (as an exhibit, if there is a transcript)
- An outline (a legal argument) that includes the following:
  - The facts you are relying on
  - The order you are asking the court to make
  - The statutes you are relying on
  - The legal argument you are making
- If the judicial review hearing will take more than two hours, it will be put on the trial list and you will need to prepare a Chambers Record (a Chambers Record contains a written argument and a list of authorities — the court cases and statutes you are relying on in your case)

For more information about judicial review and how to prepare a Chambers Record, see the publication *Judicial Review: A Lay Person's Guide* on the Community Legal Assistance Society website at http://www2.povnet.org/publications_clas.