

# Guide to Preparing for BC Small Claims Court

Provincial Court of British Columbia  
Canada

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## Contents

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<b>Part 1 – Claimants’ Guide</b> .....	3
1. Introduction .....	3
2. Definitions.....	4
3. Choose the right court .....	6
4. Consider mediation.....	8
5. Watch out for the limitation period!.....	9
6. Know the Rules (includes Evidence, Opinion Evidence).....	10
7. Gather your evidence.....	13
8. Decide Who to Sue.....	20
9. Prepare and serve a Notice of Claim .....	21
10. Your Court Appearances .....	24
11. The Settlement Conference .....	25
12. The Trial Conference .....	27
13. Getting your witnesses to trial .....	28
14. Preparing for trial.....	28
15. The Trial .....	32
16. If you win .....	33
<b>Part 2 –Defendants’ Guide</b> .....	35
1. Time is short! .....	35
2. Starting point .....	36
3. Your Reply.....	36

4. Making a counterclaim.....	40
5. Is anyone else responsible?.....	41
6. Next steps .....	44
7. Gather your evidence.....	45
8. The Settlement Conference .....	49
9. Preparing for trial.....	50
10. The Trial .....	51
11. Useful Resources.....	52
<b>Claimants’ sample documents .....</b>	<b>53</b>
A. Claimants’ Chronology .....	53
B. Claimants’ Engineer’s Expert Report .....	56
C. Independent Plumber’s Expert Report.....	59
D. Maria Gill’s Witness Notes.....	60
E. Doaks’ Employee’s Witness Notes .....	63
<b>Defendant’s Sample Documents .....</b>	<b>63</b>
F. Defendant’s Chronology.....	63
G. Defendant’s Engineer’s Expert Report.....	65
H. Counterclaim .....	66

# Part 1 – Claimants’ Guide

## 1. Introduction

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This Guide explains the Provincial Court Small Claims process in British Columbia. Read it along with the excellent [Small Claims How-To-Guides](#) on the BC government website.

This Guide adds to the information in those How-To-Guides. This Guide may be helpful to people preparing cases with complicated facts or wanting to know more about evidence. It may also help you decide whether to hire a lawyer or conduct your own case.

**Part 1** of this Guide deals with how to prepare if you are thinking of suing someone. [Part 2](#) deals with how to prepare if you are being sued. Whatever your circumstances, you should read both parts – it helps to know how the other party may be preparing.

However, this Guide provides general information only. It should not be used as legal advice or as authority in court proceedings.

Legal principles can be confusing, but examples can make them easier to understand, so this Guide uses an imaginary problem to illustrate its points. The facts used in the problem are fictional - any resemblance to any real person is accidental.



You’ll find definitions of legal words used in this Guide on the next page.

## 2. Definitions

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These are simple explanations of some legal words used in this guide.

**Affirmation** - a solemn promise to tell the truth without reference to religious belief. It has the same legal significance as a sworn oath

**Claimant** - the person (or company, society etc.) who is suing, who files a claim asking for a court order, one of the parties in a lawsuit.

**Cross examine** - to question a witness after they testify in direct examination

**Declaration** - a judgment that determines parties' rights without awarding damages or ordering anything to be done

**Defendant** - the person (or company, society etc.) being sued, the party who replies to a Claim

**Default** – a default judgment or default order is one made when the other party has failed to take a required action, such as filing a Reply to a Notice of Claim or attending court.

**Direct examination** – the testimony a witness gives in answer to questions posed by the party presenting them (or by their lawyer if the party has a lawyer)

**Evidence** - witnesses' testimony and paper documents, photographs, objects etc. that are admitted as evidence by the justice or judge and marked as exhibits

**Injunction** - a court order that prohibits a party from doing something or compels them to do something

**Parties** - the people suing or being sued - the claimant and defendant and any third parties

**Oath** - a solemn promise to tell the truth, sworn on a holy book

**Opinion evidence** - evidence of information that is likely to be outside the ordinary experience and knowledge of the judge

**Serve a document** – deliver a document in a manner permitted by law

**Testify** - to tell the judge the facts after swearing or affirming to tell the truth

**Testimony** - oral (spoken) evidence given under oath or affirmation

**Trial** - a proceeding where the parties present evidence to a judge, who makes a decision based on the facts proven by the evidence and the law that applies

Here's a summary of the facts of an imaginary dispute, used as an example throughout this Guide.

***Summary of the sample problem***

*Maria and David Gill hired Doaks Plumbing Ltd. (Doaks) to find the cause of flooding in their basement and repair it. Doaks said the flooding was caused by a leak in a water pipe. They repaired the pipe and billed the Gills \$863. The Gills paid the bill.*

*Three months later the basement flooded again. Lee Engineering told the Gills the flooding was caused by cracks in the concrete foundation that had existed for years and had expanded due to heavy rains. Lee said Doaks could have sealed the cracks cheaply but now the cracks are too big for sealing - they'll have to lift the house and replace the foundation or the house will eventually collapse. The Gills paid Super House Renovators Ltd. \$42,500 to lift the house and replace the foundation.*

*The Gills believe Doaks breached their contract by not finding and fixing the cause of the flooding. The Gills are suing to recover some of the money they spent from Doaks.*

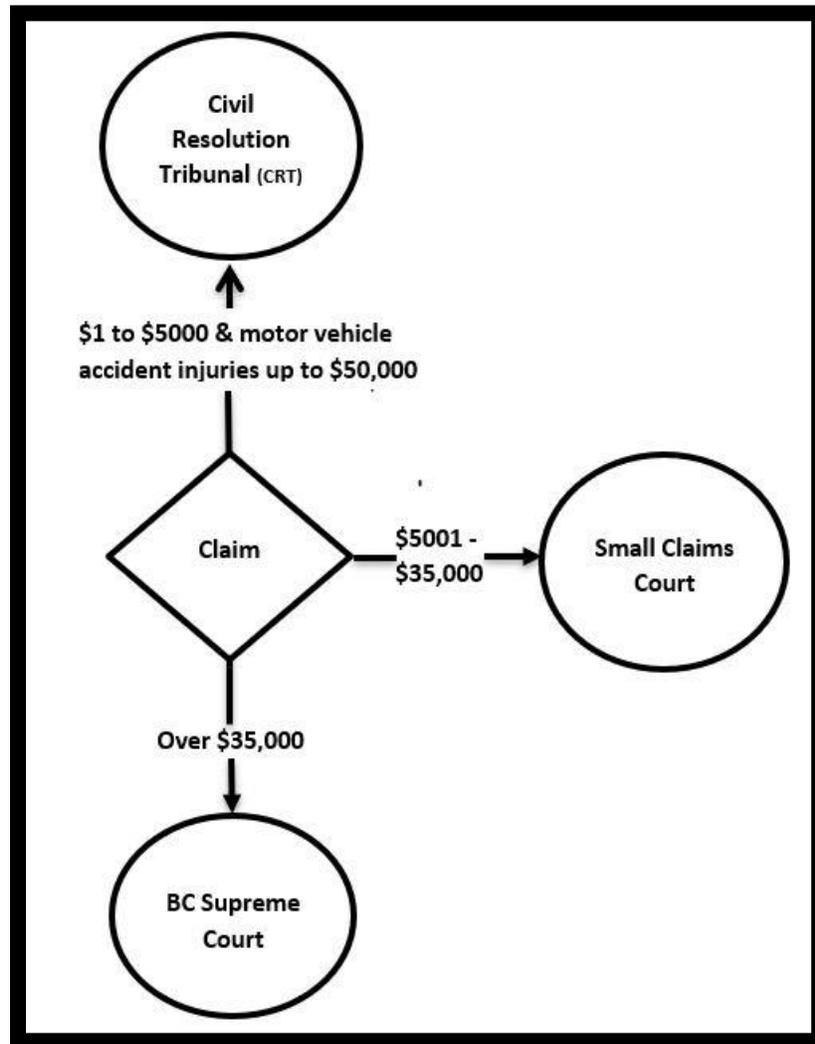
### 3. Choose the right court

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First, think about the **amount of money** you want to claim.

If you are claiming \$5000 or less, you must use the [Civil Resolution Tribunal](#) to resolve your claim.

Generally, if you are claiming between \$5001 and \$35,000 you can bring your claim to Provincial Court. However, some types of claims (described later) must be taken to other courts or tribunals.



If your claim is for more than \$35,000, you have a choice:

- limit your claim to \$35,000 (give up your right to recover more than that) and proceed in Small Claims Court; or
- make your claim in the [Supreme Court of British Columbia](#) where there is no upper limit on the amount the Court can award.

*Maria and David could sue for more than \$40,000 in the BC Supreme Court but they decide to limit their claim to \$35,000 in order to proceed in Provincial Court where procedures are simpler.*

*Deciding whether to abandon part of a claim is an important decision and it is wise to get [advice from a lawyer](#) on which court to use if you think you have a claim for more than \$35,000.*

Next think about the **subject matter or type of claim** you have.

Claims that must be taken to other courts or tribunals, even when the claim is for \$5001 to \$35,000 include:

- issues related to motor vehicle accidents must be taken to the [Civil Resolution Tribunal](#) (with some [exceptions](#))
- disputes about the rights and obligations of strata owners, tenants, and strata corporations must also be taken to the [Civil Resolution Tribunal](#) (though some orders in this regard may be enforced in Provincial Court)
- Claims for defamation (libel or slander) must be brought before the BC Supreme Court.
- Claims arising from residential tenancies must be brought before the [Residential Tenancy Branch](#).
- Applications for judicial review of decisions of British Columbia tribunals like the Labour Relations Board must be brought before the BC Supreme Court.
- Applications for judicial review of federal tribunals like the Immigration and Refugee Board of Canada must be brought before the [Federal Court of Canada](#).

- If you are seeking an injunction or a declaration, you might choose to bring your claim before the [Supreme Court of British Columbia](#). It has undisputed authority to grant those remedies. In Provincial Court there could be a dispute about the Court's authority to grant this kind of remedy and that could delay your case.

In other kinds of cases, the Small Claims Court may have legal authority (“jurisdiction”) over the dispute, but there may be other, more efficient and effective ways of resolving it.

For example, disputes over unpaid wages and other employment matters may be decided by the BC [Employment Standards Branch](#), which has an efficient process for resolving such disputes.



To find information about a BC Government program, department or service, go to <https://www2.gov.bc.ca/gov/content/home> and enter the name you're looking for in the Search box.

## 4. Consider mediation

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There are no sure winners in litigation. Presenting a claim in Small Claims Court can be challenging and time-consuming. And many people also find the court process to be confrontational and stressful.

For those reasons, you may wish to try a mediation process before making a claim in Small Claims Court. Free or low-cost options include:

- BC government [Justice Access Centres](#) in many communities offer free mediation services. “Distance mediation” (by telephone) is available for people living in remote locations.
- [Small Claims BC](#) offers live phone help, online chat, legal information by email, and a free, secure, online negotiation service.

- The Civil Resolution Tribunal’s [Solution Explorer](#) also provides free negotiation and mediation tools to resolve Small Claims disputes of any value, although it only decides [certain kinds](#) of disputes.

You can also hire a private mediator. Ways to find one include the [Mediate BC Society](#), the [Lawyer Referral Service](#), and the [Clicklaw Helpmap](#).

## 5. Watch out for the limitation period!

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Most civil claims must be started within a limited time period. If you do not file a claim within the time limit, the Court won’t be able to hear your case. The time period within which a claim must be filed is called a “limitation period”.

A variety of BC laws impose limitation periods for particular types of claims. However, for most types of claims in Small Claims Court, the limitation period is imposed by the [BC Limitation Act](#).



Like the other British Columbia statutes mentioned in this Guide, the *Limitation Act* is available, free of charge, on-line at [www.bclaws.ca](http://www.bclaws.ca). Note that the old *Limitation Act* was repealed and replaced by a new one in 2012, so make sure that you are using the 2012 version.

For most claims, the *Limitation Act* imposes a limitation period of **2 years after the day on which the claim is discovered**.

If the end of the limitation period in your case is near, you may wish to file your claim immediately. You can then try to settle the case through mediation while your case proceeds through Small Claims Court, and withdraw your claim if you reach a settlement agreement.

If any of the facts supporting the claim occurred before 2012, it may be necessary to consult a previous version of the *Limitation Act* and the transition provisions in the current *Limitation Act*. These can be confusing, so you may wish to consult a lawyer about them.

Take a look at the [Claimants' Chronology](#) in the sample documents. Maria and David Gill discovered their claim on September 22, 2017.

What is their deadline for filing a claim?

With a 2 year limitation period they must file a claim by September 22, 2019. If they do not, their claim will be extinguished by the Limitation Act, and they will not be entitled to any compensation.

## 6. Know the Rules

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You would not expect to succeed in a sport without knowing its rules. The same is true of a Small Claims case. Learning something about the law will help you prepare and present your case.

### Small Claims Act and Rules

The rules are set out the [Small Claims Act](#) and the [Small Claims Rules](#).

#### To find a BC law ...



To find a BC statute online, go to [www.bclaws.ca](http://www.bclaws.ca). Click on “Laws of British Columbia”, then on “public laws and regulations”, and then on the first letter of the law, for example, click “S” and scroll down to the *Small Claims Act*. To find the *Small Claims Rules*, click on the “Regulations” tab below the *Small Claims Act* tab.



*Annotated Small Claims Act & Rules*, a book published by the Continuing Legal Education Society, provides the full text of the *Small Claims Act* and the *Small Claims Rules*, with short, helpful summaries of how each provision of the *Act* and *Rules* have been interpreted and applied by the courts.

## Use your courthouse library ...

Many BC courthouses have libraries that are open to the public. Find a map and list of courthouse libraries in [the Clicklaw Helpmap](#).

Search online at [www.courthouselibrary.ca](http://www.courthouselibrary.ca) to find out if your courthouse library has a book you want by typing a title or author and clicking “More Details” when the book appears. You can read *Annotated Small Claims Act & Rules* online in a courthouse library even if they don’t have the book.

## Law of evidence

The *Small Claims Act* permits judges to consider any evidence they consider credible or trustworthy that is relevant to the matter being heard (see [section 16](#)). However, most judges will apply the laws of evidence to determine what kinds of information they will consider in deciding your case. The law of evidence is quite complex.



*The Law of Evidence in Canada* by Sopinka, Lederman & Bryant is a good textbook you can also find online or as a book in a [courthouse library](#).

## Opinion Evidence

It is important to understand the difference between evidence of objective facts and opinion evidence. Opinion evidence is evidence of information that is likely to be outside the ordinary experience and knowledge of the judge.

Any witness can testify in court about their personal knowledge – that is, things they saw, heard, touched or smelled themselves. They can also state an opinion about matters of common experience where no special knowledge is required, like the approximate distance between two objects or a person’s apparent age, height or emotional state. But they cannot state an opinion about facts that are likely to be outside the ordinary knowledge and experience of the judge.

*In the [Claimants' Chronology](#), the events described on May 4, 5 and 9 (the puddle of water, the call to Joe Doaks, Joe's visit) are objective **facts** - either they occurred as described or they did not. No special expertise is required to know what happened so Maria can testify about them.*

*But the advice given by Lee Engineering Ltd. about the cause of the puddle and how to fix it is **opinion evidence** - only a person with specialized skill and knowledge could determine the cause of the water problem and know how to fix it.*

Because opinion evidence requires special expertise, it is sometimes called “expert evidence” or “expert opinion evidence”. Before a witness will be permitted to give expert opinion evidence, the judge must be satisfied that:

- the witness has special knowledge about the subject (which can be acquired through education and/or practical experience); and
- the opinion is reasonably necessary to help the judge decide an issue in the trial.

There are special requirements if you want to present expert opinion evidence in a trial. [Sections 10 and 11](#) of the *BC Evidence Act* and [Rule 10 \(3\) to \(8\)](#) of the Small Claims Rules set out the procedure:

- A party who wants to present opinion evidence in a trial must give the other party 30 days' written notice of the evidence. This notice, often called an “expert report”, must set out:
  - the qualifications of the expert witness,
  - the facts upon which the expert witness relied in forming her opinion, and
  - the substance of the opinion.
- The expert report may be received in evidence at trial without requiring the expert to attend in person and testify.
- However, the expert must attend the trial to be cross-examined (questioned) if any party requires their attendance.

- But if a party requires an expert to attend to be cross-examined, and the cross-examination does not add materially to the information in the expert report, the judge may order that party to pay the costs of the expert's attendance.

If you receive an expert report from another party, and you want the expert to attend at trial to be cross-examined, you should give written notice of that to the party who sent you the expert report as soon as possible after you receive the report.

*The [Independent Plumber's](#) and [Engineer's](#) Reports are examples of expert reports which David & Maria might offer as evidence.*

**Note:** An internet search is not a substitute for opinion evidence. And neither Google nor Wikipedia is an expert witness.

## 7. Gather your evidence

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To succeed in court, you must present your case clearly and logically. You can't do that unless you have organized it in a logical way before you start.

A chronology is often a useful tool in organizing your case. Begin by writing out the sequence of relevant events in chronological order, using simple declarative sentences. The sample [Claimants' chronology](#) shows how it can be done.

One of the best rules for presenting a case in court is:

**Figure out what you have to prove.**

**Prove that.**

**Don't try to prove anything else.**

## Claimant's burden of proof

The judge's job in a trial is to decide what facts the evidence proves, and then to apply the law to those facts.

In order to be successful in Small Claims Court a claimant must prove their case "on the balance of probabilities". This means there must be enough evidence in the trial for the judge to decide that it is more likely than not that the facts are as the claimant presents them.

If the claimant and the defendant disagree about a fact, it's called a "disputed fact". If the evidence on a disputed fact does not "tip the scales" in favour of the claimant, then the claimant will not have met their burden to prove that fact on the balance of probabilities.

Consult your chronology to figure out what you have to prove. If you prove all the facts in your chronology will it be enough for a judge to award you what you're seeking? If not, what other facts do you need to prove?

To answer these questions, you need a basic understanding of the legal principles that apply to your case. You could take your chronology to a lawyer for advice on what you need to prove.



Some lawyers offer [unbundled services](#) so they can be hired for specific tasks like this.

[Clicklaw.bc.ca](http://Clicklaw.bc.ca) lists ways to get legal advice, including free or low-cost options.

*The sample problem involves a contract between the Gills and Doaks Plumbing Ltd. The Gills believe Doaks breached the contract by not finding and fixing the cause of the flooding and want to be reimbursed for the damage this caused them.*

*The first task in a contract case is to determine the terms of the contract – what the Gills hired the company to do. There are 2 possibilities:*

- 1. If Doaks contracted to identify the source of the water on the floor, and Lee Engineering is right, Doaks failed to do that and failed to perform its part of the contract. In this case, the Gills can prove their case with the evidence of Maria and Lee alone.*
- 2. But if Doaks only contracted to exercise reasonable care and skill in attempting to identify the source of the water, there's a question whether a reasonably competent plumber would have identified the cracks in the concrete foundation as the problem and advised the Gills to undertake immediate repairs to prevent further damage. In this case, the Gills will also need the evidence of an independent plumber to say that a competent plumber would have identified the cracks in the concrete as the cause and recommended they be sealed. That would be opinion evidence, so the Gills would need to deliver an expert report from the independent plumber 30 days before trial. See the [Independent Plumber's Report](#) for an example.*

Once you figure out what you must prove, update your chronology to include all the facts necessary to prove your case. The chronology will then serve as a checklist for gathering your evidence.

Then decide how you will prove each necessary fact. For each item on the checklist/chronology, you will need a witness, a document, or both.

This chart outlines facts the Gills need to establish to prove their claim and the evidence they might use to prove each fact.

<b><i>Facts the Gills need to prove</i></b>	<b><i>Evidence they can use to prove the fact</i></b>
<i>Heavy rains in Littleton during April &amp; May 2017</i>	<p><i>Environment Canada posts historical rainfall records for Littleton online at <a href="http://www.weather.gc.ca">www.weather.gc.ca</a> – print copies of the records for relevant dates</i></p> <p><i>The BC Evidence Act, <a href="#">section 33</a>, permits the Gills to present these records as evidence (see also “business records” in the text by Sopinka, Lederman &amp; Bryant)</i></p>
<i>There was a puddle of water in their basement on May 4.</i>	<p><i>Maria’s testimony – she saw it and can say so when she testifies.</i></p> <p><i>If she took a photo of the puddle, she could show it to the judge and explain that it shows what she saw on their basement floor on May 4.</i></p>
<p><i>The terms of the contract between the Gills and Doaks Plumbing Ltd.</i></p> <p><i>There was no written contract, so the Gills need to prove the terms of their oral (spoken) agreement – it’s a contract.</i></p>	<p><i>Maria’s testimony - she had the two conversations with Joe Doaks in which they agreed on the nature of the work to be done.</i></p> <p><i>It’s important for Maria to be clear and specific about what was said in the telephone conversation. It would probably help her to prepare written <a href="#">witness notes</a>.</i></p> <p><i>If Doaks had provided a written estimate stating the work to be done, or if Maria had sent Doaks an email after their conversation, confirming her understanding of the agreement, she could present those documents as evidence too.</i></p>

<p><i>The leaks were caused by foundation cracks, not a leaking water pipe.</i></p> <p><i>If the cracks had been sealed in May it would probably have ended the flooding and no further work would have been needed.</i></p>	<p><i>The <a href="#">Engineer's Expert Report</a>, provided it was sent to Doaks at least 30 days before the trial because it is opinion evidence.</i></p>
<p><i>A competent contractor in Doaks' position would have diagnosed the problem correctly in May, 2017, and recommended that the foundation be repaired before it was so badly damaged as to require replacement.</i></p>	<p><i>The <a href="#">Independent Plumber's Expert Report</a>, provided it was sent to Doaks at least 30 days before the trial because it is opinion evidence.</i></p>
<p><i>The amount of the Gills' loss.</i></p> <p><i>In breach of contract cases like this, the innocent parties are entitled to be paid enough money to put them in the position they would have been in if the contract had been performed.</i></p>	<p><i>Maria's testimony that they spent:</i></p> <ul style="list-style-type: none"> <li><i>\$863 to repair the pipe</i></li> <li><i>\$1350 to replace the hot water heater &amp; furnace</i></li> <li><i>\$42,500 to lift the house &amp; replace foundation wall</i></li> <li><i>\$1800 to rent an apartment for October</i></li> </ul> <p><i>totalling \$46,513</i></p> <p><i>Maria's testimony explaining why the heater and furnace had to be replaced and why they had to rent the apartment.</i></p> <p><i>Maria should present the invoices and receipts or cheques used to pay for each expense.</i></p>

*If Doaks Plumbing Ltd. had correctly diagnosed the problem in May, David & Maria would have spent \$5000 - \$7000 to repair the foundation wall in May. They might or might not also have spent \$863 to repair the pipe, depending on whether the pipe needed repair. So, their total cost would have been in the area of \$6000 - \$7500.*

*In fact, they spent \$863 to repair the pipe, \$1350 to replace the hot water heater and furnace, \$42,500 to lift the house and replace the foundation wall and \$1800 to rent an apartment for October, for a total expenditure of \$46,513. Their loss is therefore about \$40,000.*

*Engineer's Expert Report – to prove proper repair in May would have cost \$5000 to \$7000 and \$42,500 was a reasonable price to lift house & replace foundation wall.*

## **Your book of documents**

Your book of documents is a binder containing the “documentary evidence” – all the pieces of paper you want the judge to consider as evidence in the trial. For a document to become evidence it must be relevant to an issue in the trial and you or another witness must be able to identify it – to say what it is.

Don't include your chronology and witness Notes in your book of documents – you and/or your witnesses will need to testify to provide the information in them to the judge in a trial.

To make a book of documents:

1. Gather up all the documents you want to offer in evidence at trial.
2. Make one set of photocopies of the documents.
3. Organize your documents in some kind of logical order. Chronological order is usually best – it helps the reader notice connections between events and any gaps that need explaining. However, in some cases it may be more logical to organize documents by subject-matter. Choose the order that works best for your documents. For example, if a series of payments is in issue, it might be helpful to organize the invoices and cancelled cheques separately from other relevant documents.
4. Use a black felt-tip marker to number each page in the top right-hand corner. Put the numbers in a place where they will not be cut off during photocopying. Make the numbers large so that they can be read easily.
5. Photocopy the page-numbered copies, making as many copies as you need, and put them in binders. You will need one for the judge, one to become evidence and shown to witnesses, one for each other party and one for yourself.
6. Make an index listing the documents and their page numbers and put a copy of the index in the front of each binder.

You must provide each of the other parties with a copy of your book of documents before the trial, preferably at or before the settlement conference.

## **Witness notes and summaries**

With just a few exceptions, explained in [Getting your witnesses to trial](#), you must bring your witnesses to court to testify at the trial.

There are three important requirements for anyone you wish to call as a witness.

1. They must tell the truth.
2. A witness must have **direct knowledge** of the things you want them to testify about. They cannot tell the judge something you told them about an event - they must have observed the event themselves.

3. Generally a witness may not tell the judge what someone else said unless the speaker was the other party. However, there are exceptions, particularly in Small Claims cases. See [What is hearsay evidence?](#) for an explanation of this rule and how to avoid problems with it.

In most cases, a trial takes place a year or more after the events. Memories fade. Interview your witnesses and have them record their memory of events in writing as soon as possible after you decide to make a claim. While their written notes cannot be used as evidence in the trial, you can use them to prepare questions for your witnesses and they can use them to refresh their memories when preparing to testify.

Of course, a witness must testify about what **they** remember, not what **you** remember, and their written notes must be limited to their recollections. So it is very important that you not influence the witness' memory when you discuss events with them. If a witness were to testify when cross-examined at trial, "I made notes - Maria Gill told me what to write" it would cause serious damage to Maria's credibility, and to her case. The best way to have a witness prepare notes is to hand them a pen and paper and ask them to write out their own memory of the events. You should also write your own notes of what happened while your memory is fresh.

When you go to court for a settlement conference or a trial conference, the judge may order you and the other party to exchange brief summaries of what your witnesses will testify about at the trial. If your witnesses have made notes, you can do this by making short summaries of their notes.

For examples, see [Maria Gill's Witness Notes](#) and [Doaks Employee's Witness Notes](#).

## 8. Decide Who to Sue

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This can be a difficult legal question. Generally, lawyers advise that you sue everyone who might be found liable (responsible to pay) for your damages. However, if you are not sure, it's wise to get advice from a lawyer - if you proceed against someone through a trial with no reasonable basis for success you could be ordered to pay them a penalty. See [Small Claims Rule 20\(5\)](#).

*David & Maria might consider suing Joe Doaks or Doaks Plumbing Ltd. or both, depending on whether it was Joe or his company that Maria hired. In this case, it seems as if Joe was acting for his company in all his dealings with Maria, so the Gills will sue Doaks Plumbing Ltd.*

Whoever you are suing, it's important to find out the correct legal name for a person or company. To find a company's correct name do a [corporate registry search](#).

## 9. Prepare and serve a Notice of Claim

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### Prepare the Notice of Claim

Complete and print a Notice of Claim form [online](#) or get one from your local Provincial Courthouse and fill it out. The Small Claims [Filing Assistant](#) guides you through the process of filling out a Notice of Claim and other Small Claims forms correctly. The BC Government's Small Claims [How-to Guides](#) also provide helpful information on how to [make a claim](#).

You will put your address on the Notice of Claim. If you plan to move, be sure to notify the Court Registry before the move. If the Registry does not have your current address, they will mail notices to your old one. If you miss a court appearance because you didn't get the notice, a judge may dismiss your claim.

When filling out the form you can copy your chronology into the spaces entitled "What Happened?", "When" and "Where" or write in "See attached chronology", and staple a copy of your chronology to the form. There is a fee to file a Notice of Claim.



# NOTICE OF CLAIM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

---

REGISTRY LOCATION

NOTICE OF CLAIM

**FROM:**  
Fill in the name, address and telephone number of the person(s) or business(es) making the claim.

**TO:**  
Fill in the name, address and telephone number of the person(s) or business(es) the claim is against.

**WHAT HAPPENED?**  
Tell what led to the claim.

**WHERE?**  
Tell where this happened.

**HOW MUCH?**  
Tell what is being claimed from the defendant(s). If the claim is made up of several parts, separate them here and show the amount for each part. Add these amounts and fill in the total claimed.

<b>NAME</b>				<b>CLAIMANT(S)</b>
<b>ADDRESS</b>				
<b>CITY, TOWN, MUNICIPALITY</b>	<b>PHONE</b>	<b>POSTAL CODE</b>	<b>TEL. #</b>	
<b>NAME</b>				<b>DEFENDANT(S)</b>
<b>ADDRESS</b>				
<b>CITY, TOWN, MUNICIPALITY</b>	<b>PHONE</b>	<b>POSTAL CODE</b>	<b>TEL. #</b>	

If you need more space to describe what happened, attach another page, mark it "Page 2 of the Notice of Claim" and file it this way. A copy of the attached page must accompany each copy of the Notice of Claim.

<b>CITY, TOWN, MUNICIPALITY</b>	<b>PHONE</b>	<b>WHEN?</b> Tell when this happened.	
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<b>a</b>		\$	
<b>b</b>		\$	
<b>c</b>		\$	
<b>d</b>		\$	
<b>e</b>		\$	
		<b>TOTAL</b>	
		+ FILING FEES	
		+ SERVICE FEES	
		<b>= TOTAL CLAIMED</b>	\$

**TIMELIMIT FOR A DEFENDANT TO REPLY**  
The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant. Then the defendant will have to pay the amount claimed plus interest and further expenses.

The Court Address for filing documents is:

FORM 1  
REV. 08/13/16  
(S/C 753999/0001)

court copy

*In the space on the Notice of Claim next to “How Much”, David and Maria would write in:*

**How much:**

<i>Increased cost of foundation repair</i>	<i>\$36,000</i>
<i>New hot water heater &amp; furnace</i>	<i>\$1350</i>
<i>Rent for October 2017</i>	<i>\$1800</i>

*We abandon the part of our claim that exceeds the monetary jurisdiction of the Court.*

The form asks for the filing and service fees you’ve paid because a successful claimant can recover reasonable lawsuit expenses in addition to damages up to \$35,000. Those expenses do not include a lawyer’s fees but may include expert witness fees, provided they are reasonable, and the expert’s services were reasonably necessary to the claimant’s case.

### **File the Notice of Claim**

You must file your Notice of Claim in the Provincial Courthouse nearest to where

- the defendant lives or carries on business, or
- the transaction or event that resulted in the claim took place.

To file it, you give the completed Notice of Claim to a clerk in the Court Registry who will stamp it, keep the original and give you copies. You are now the “claimant”.

### **Serve the Notice of Claim**

The *Small Claims Rules* allow a claimant to “serve” (deliver a document to) the defendant(s) (the people or companies you are suing) in person or by registered mail.

It's generally better to use "personal service", meaning to hand a copy of the documents to the defendant, because it avoids argument about whether and when the notice was delivered.

To personally serve a company, you can hand a copy of the document to a receptionist or manager at the company's office or to a director or officer of the company.

You can hire a process server to serve the Notice of Claim, ask a friend, or do it yourself. After the Notice of Claim has been personally served on all defendants, the person who served them must swear an [affidavit of service](#) and file it at the Court Registry.

A process server delivers legal documents and provides an affidavit of service for a fee. You can find a process server from an online search or using the yellow pages telephone directory. You may want to contact more than one and make sure their fee includes providing an affidavit of service, because prices may vary.

### **Wait for the Defendant's Reply**

Each defendant must file a Reply in the Court Registry within 14 days if the defendant was served in British Columbia or within 30 days if they were served outside the province. The Registry will send you a copy of the Reply once it is filed.

If a defendant fails to file a Reply within the time limit, you may apply for judgment against that defendant. Complete and file an [Application for a Default Order](#). If a short hearing is needed, the Registry will set a date for you to appear before a judge to prove your claim without any further notice to the defendant.

## **10. Your Court Appearances**

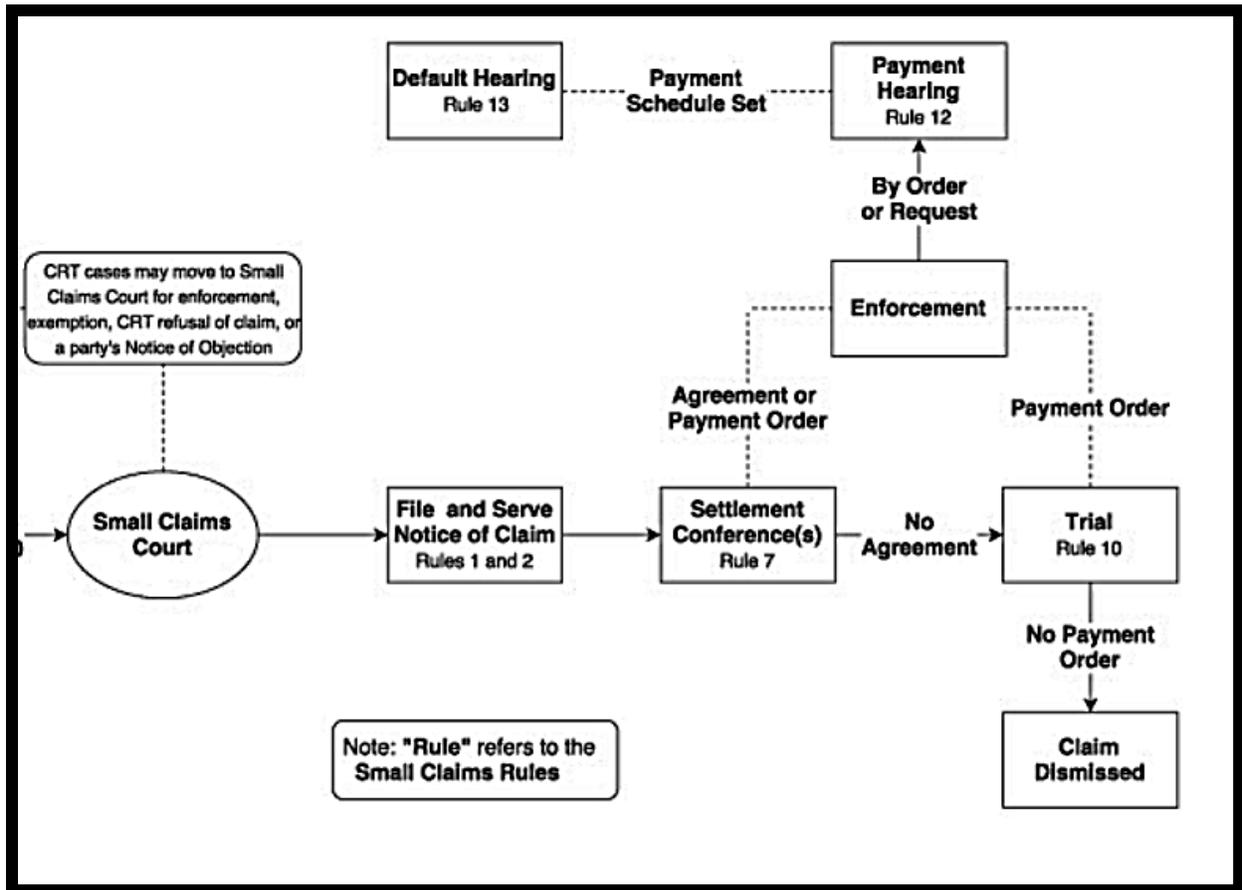
---

Once a Reply is filed the process of appearing in court begins. If no settlement is reached along the way, the steps are usually:

- Attend a Settlement Conference (followed by a Trial Conference for cases estimated to need a longer trial)
- Attend a Trial

- If a payment order is made and enforcement is required attend a payment hearing and/or a default hearing

The chart below shows these steps.



## 11. The Settlement Conference

In most cases, you must attend a settlement conference before a trial is scheduled. After the Reply is filed the Court Registry will mail notice of the settlement conference date to the address you've provided.

Both parties must attend the settlement conference. If one party fails to attend, the judge may grant a judgment to the other party.

*If Joe Doaks fails to attend the settlement conference, the judge may (not must) grant judgment to David & Maria for \$35,000 without hearing any evidence.*

*If the Gills fail to attend, the judge may (not must) dismiss their claim.*

Usually, only the parties to the lawsuit and their lawyers, if they have them, are allowed in the conference room with the judge. It's not necessary to bring witnesses to a settlement conference and if they accompany you, they will usually have to wait outside the conference room.

At the settlement conference, a judge will help the parties talk about the possibilities for settling the lawsuit. In some cases, a judge may be willing to help by offering an informal assessment of each party's likelihood of winning.

Remember that your chances of winning are never 100%. You can't be sure how the evidence will come out at trial. Since there are no sure winners in lawsuits, it can be helpful to ask yourself two questions when thinking about whether to settle:

1. What are my odds of winning?
2. What will be the financial consequences of winning (or losing)?

*If David & Maria think they have a 60% chance of winning, it would be logical for them to settle for 60% of \$35,000, or \$21,000.*

*They might also consider the time they'll have to take off work to prepare and conduct a trial and what that will cost them.*

To encourage frank discussion, everything said at a settlement conference is “without prejudice”. That means no one can be forced to disclose what was said at a settlement conference (with one exception – when there’s an application to enforce a settlement agreement made at the settlement conference). If the case doesn’t settle, the trial judge cannot be told anything that was said at the settlement conference.

You are not obliged to settle. Although the judge may point out some possible benefits of settling, you can say you just want to proceed to trial. If parties don’t agree on a settlement, most judges will use any time remaining to help them get organized for trial. If there is information or a document you would like to obtain from the other party you can ask the judge to direct they provide it.

It is helpful to bring 3 copies of your witness summaries, your expert reports and your book of documents to the settlement conference. It shows you are well-prepared and can help persuade the other party of the strength of your case. If you don’t settle, the judge may direct that you give the defendant(s) their copies of your material and that they deliver a similar package to you by a deadline.

To prepare properly, both parties need to know the case they have to meet. If a party doesn’t obey such a direction, the other party may apply for judgment against them without a trial.

For more information, see [What can I expect at a Settlement Conference?](#).

## 12. The Trial Conference

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If you don’t reach an agreement at a settlement conference and your trial is estimated to take longer than a day (or a half day, depending on the court location) you may have to return to court for a Trial Conference before the trial.

The purpose of the Trial Conference is to ensure that everyone is prepared for the trial. At least 14 days before the Trial Conference all parties must file a [Trial Statement Form](#) at the Court Registry and deliver a copy of their filed Trial Statement to the other party at least 7 days before the Conference.

See [What can I expect at a Trial Conference?](#) for more details.

## 13. Getting your witnesses to trial

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Your expert witnesses only need to come to the trial if an opposing party has given notice requiring them to attend. If there's been no such notice, they need not attend, and you can simply provide their expert report(s) as evidence in the trial. However, if that notice has been given, you must arrange for your expert(s) to attend the trial in person.

You can also ask a judge at a settlement conference or trial conference to direct that other witnesses be permitted to give their evidence at trial by written statements. This will usually only be possible if there is no issue about their evidence. If the other party wants to question the witness, the judge may order that they attend the trial in person to be cross-examined.

Unless a judge has excused your non-expert witnesses from attending trial, they **must attend in person** to give their evidence and be cross-examined.

If any witness, including an expert, is not willing to attend court to give evidence or they need something to show an employer, you can prepare and give them a [summons to a witness](#) requiring them to attend. Mail the summons to them at least 21 days before trial or deliver it at least 7 days before trial.

Complete and file the [certificate of service](#) included with the summons form. Then, if the witness fails to attend, the trial judge may issue a warrant for their arrest.

## 14. Preparing for trial

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### Trial Procedure

The judge at your trial may follow the traditional trial procedure that works like this:

1. The parties may make a **brief** opening statement, explaining the orders they want the judge to make and why. This is a good time to tell the judge you have a book of documents to present.
2. The claimant testifies and then the defendant cross examines (questions) them.
3. The claimant presents any other witnesses they have brought to court. For each witness, the claimant questions them first and then the defendant cross examines them.
4. If the defendant decides to provide evidence, they may testify and then the claimant cross examines them.
5. The defendant presents any other witnesses they have brought to court. For each witness, the defendant questions them first and then the claimant cross examines them.
6. After all the witnesses have testified, each party may briefly summarize their case in a closing statement and point out the weaknesses in the other party's case.

However, [Rule 10 \(1\)](#) of the Small Claims Rules permits Provincial Court judges to [modify](#) the traditional procedure when they consider it appropriate, and the judge may do this to ensure people without a lawyer are able to present their case fairly and effectively.

### Your testimony

Use your chronology as a checklist for the things you want to say and the documents, photos, objects etc. that you want to present during your testimony. During your testimony go through your book of documents, and explain what each document you can identify is. For example, "At page 4 of my book of documents is the invoice I received from the defendant. At page 5 is a receipt showing I paid the invoice."

## **Your witnesses' evidence**

Write out the questions you will ask each witness to bring out all the facts in their witness notes. If there are any documents a witness has provided, have the witness identify the document and explain what it is.

## **Cross-examination**

Review the defendant's Reply and witness summaries. Write out the questions you think you may want to ask the defendant and their witnesses.

Those questions might be designed to bring out facts that:

- Clarify the evidence
- Support your case
- Test the observations, recollections and truthfulness of the witness ("You didn't inspect the foundation wall?")
- Show the witness may be biased ("You and Joe Doaks are best friends?")
- Show that the witness previously said something significantly different from their testimony in court. (Ask the judge if you may show the witness a letter, email, or text they wrote. If given permission, read out the portion that contradicts their testimony and ask the witness if they wrote it.)
- Put your version of the facts to them. ("Isn't it true that you did not tell your employees to look for cracks in the cement foundation wall?")

During the trial, while the defendant is questioning their witnesses, make notes of points you might want to question them about in cross-examination.

### **Tips for effective cross-examination**

- Be brief.
- Short questions, plain words.
- Only one question at a time.
- Don't ask the witness to repeat testimony they gave earlier.
- Questions only! Don't argue with the witness. Remember you may only ask questions, not make statements, while cross-examining.

- Questions only! Don't comment on the witness' answers. You can do that when you sum up at the end of the trial.

Prepare cross-examination if you are able, and let the judge know at the start of the trial that you have questions you want to ask. But if you do not feel able to cross-examine the other party or their witnesses, tell the judge that. The judge may be able to use a different procedure. See [Modified trial procedures in Small Claims Court](#).

## **Opening and closing statements**

Make notes for **brief** opening and closing statements. You can adjust your closing statement by adding notes to it during the trial about evidence you didn't anticipate.

Maria Gill might make an opening statement like this for herself and her husband:

### ***Opening:***

*Your Honour, this trial is about a breach of contract. The evidence will show my husband and I hired the defendant to identify the cause of a leak in our basement and fix it. The defendant told us he'd done that but hadn't, and as a result the foundation wall of our house was damaged. It cost \$42,500 to fix it.*

*We're asking the Court to award us \$35,000 in damages, plus fees and expenses. We have a book of relevant documents to present as evidence. We gave the defendants copies of the book 3 months ago.*

And she might make a closing statement like this:

***Closing:***

*Where we and Mr. Doaks recall things differently, we say you should accept our recollections as more reliable.*

*The evidence showed the leak in our basement was a huge concern to us and we paid careful attention to what Mr. Doaks said. He admitted it was a busy time for him and he dealt with 20 other customers that week.*

*The evidence proves that the defendants didn't do the job they were hired to do, or if they did, they didn't do it competently, and their actions cost us more than \$40,000. We have established our claim for \$35,000 in damages, plus fees and expenses.*

## 15. The Trial

---

This is where all your hard work pays off!

The judge will explain the procedure they will follow at the start of the trial. See [Modified trial procedures in Small Claims Court](#) for some of the ways a judge may adjust the procedure. You can ask the judge questions about procedure if you are confused or need anything clarified.

The trial judge will have read your chronology because it is attached to or included in your Notice of Claim, so they will begin your trial with a good understanding of what the case is about. If your chronology is complete and well-written, you won't need to make

an opening statement to the court – you can just tell the judge your case is set out in the Notice of Claim.

You don't have to worry about forgetting things because you have checklists in the form of your chronology, witness notes and lists of questions. You can present your case in a logical and orderly way because you have thought it through carefully. Your trial will take less time than most because you are well-organized.

See the explanation of [Trial procedure](#) on page 29.

## **Decision**

The judge must decide what facts have been proven by the evidence in the trial and apply the law to those facts.

The judge may give you their decision at the end of the trial, or they may want to think about it for a while. In that case you will receive a written judgment in the mail sometime later. The judge may award all or part of the amount you claimed, or they may dismiss your claim.

## **16. If you win**

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If the trial judge awards you a sum of money at the end of the trial, they will have to decide when it must be paid. You can ask for immediate payment if you believe the defendant has the money to pay. Otherwise you can ask for monthly or other lump sum payments by certain dates. The judge will make a payment order after hearing from both parties.

Many defendants will pay the amount of the judgment as ordered. If they do not, there are several ways to enforce a judgment.

You can register your judgment against any real estate owned by the defendant, attach his bank accounts or instruct the sheriffs to seize and sell some of his assets. All of those remedies are described in the [Getting Results](#) Small Claims How-to-Guide and in the [Court Order Enforcement Act](#).

## **Payment hearing**

Another way to collect the money owing to you is to have a “payment hearing” under [Rule 12](#) of the *Small Claims Rules*. At a payment hearing, the judge will allow you to cross-examine the defendant about his ability to pay the judgment. If the judge is satisfied that the defendant has the ability to make payments, either in a lump sum or in instalments, the judge may order a payment schedule. For more, see [How to enforce a Small Claims Court Payment Order - with a payment hearing](#).

## **Default hearing**

If a payment schedule is ordered and the defendant doesn’t pay as required, you may obtain a date for a “default hearing” under [Rule 13](#) and serve the defendant personally with a summons to the default hearing. If the judge at the default hearing is satisfied that the defendant’s failure to pay amounts to contempt of court, the judge may sentence the defendant to not more than 20 days in jail. See [How to enforce a Small Claims Court Payment Schedule - with a default hearing](#).

**Part 2 – Defendants’ Guide** starts on the next page.

## Part 2 –Defendants’ Guide

Part 2 of the BC Small Claims Court Guide focuses on things a defendant needs to know but the information should be useful to a claimant too. However, both parts of this Guide provide general information only. They should not be used as legal advice or as authority in court proceedings.

Some legal terms used in this Part are explained briefly in the [Definitions](#) section on page 4.

### 1. Time is short!



Being “served with” a document means having it delivered to you in a manner permitted by the law. [Rule 2](#) of the BC Small Claims Rules tells how a Notice of Claim must be served on a person or a company.

If you are served with a Notice of Claim inside British Columbia, you have only **14 days** to file your response to the claim against you, using a document called a “Reply”. If you are served outside British Columbia, you have **30 days**.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 <b>Notice Received</b>	2 Day 1
3 Day 2	4 Day 3	5 Day 4	6 Day 5	7 Day 6	8 Day 7	9 Day 8
10 Day 9	11 Day 10	12 Day 11	13 Day 12	14 Day 13	15 <b>Last day to file Reply</b>	16

**Note:** If February 15 were a statutory holiday or a weekend, the last day to file would be Monday February 18, the first day the courthouse was open after the 15th. See the rules about this in the BC *Interpretation Act* [section 25.5](#).

## **But ... it's always better not to leave it until the last day in order to avoid last minute problems!**

If you do not file your Reply within the time limit, you could be ordered to pay the claim without any further notice or opportunity to respond.

Once you are served with a Notice of Claim, there's a lot of work to do before you file your Reply.

## **2. Starting point**

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**Part 1** of this Guide explains the Small Claims Court process in British Columbia. Although it focuses on things a claimant needs to know, you need that information too. Read [Part 1](#) before continuing with **Part 2**. Doing that may also help you decide whether to hire a lawyer or conduct your own case.

## **3. Your Reply**

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The form used for the defendant's response to a Notice of Claim is called a Reply. What you say on your Reply depends on the type of response you want to make.

You'll receive a blank Reply form like the one on the next page with the Notice of Claim, or you can get one [online](#) or at your [local Provincial Courthouse](#).

The Small Claims [Filing Assistant](#) guides you through the process of filling out a Reply and other Small Claims forms correctly. [SmallClaimsBC](#) and the BC Government's Small Claims [How-to Guides](#) also provide helpful information on how to [reply to a claim](#).

REGISTRY FILE NUMBER
REGISTRY LOCATION

# REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

- To a Claim
- To a Counterclaim

REPLY

**TO:** NAME \_\_\_\_\_ CLAIMANT(S)

ADDRESS \_\_\_\_\_

CITY, TOWN, MUNICIPALITY \_\_\_\_\_ TEL. # \_\_\_\_\_

PROV. \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

**FROM:** NAME \_\_\_\_\_ DEFENDANT

This is the defendant who has made this Reply. If you have named more than one defendant, their Replies will be separate.

ADDRESS \_\_\_\_\_

CITY, TOWN, MUNICIPALITY \_\_\_\_\_ TEL. # \_\_\_\_\_

PROV. \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

**DISPUTE:** This is how the defendant disagrees with your claim(s). The Court will set a date for a settlement conference or in some cases a trial and notify you.

a \_\_\_\_\_

b \_\_\_\_\_

c \_\_\_\_\_

d \_\_\_\_\_

e \_\_\_\_\_

**AGREEMENT WITH THE CLAIM:** I (NAME) \_\_\_\_\_ agree to pay \$ \_\_\_\_\_

If this is filed in, the defendant has agreed to pay this amount and is proposing this payment schedule. I could make the following payments:

\_\_\_\_\_

\_\_\_\_\_

## COUNTERCLAIM

**WHAT HAPPENED?** \_\_\_\_\_

If this part is filed in, the defendant has made a claim against you. This is what the defendant says led to the claim against you. If you dispute the counterclaim you must file a separate Reply.

\_\_\_\_\_

\_\_\_\_\_

**HOW MUCH?** This is what the defendant is claiming.

a \_\_\_\_\_ \$ \_\_\_\_\_

b \_\_\_\_\_ \$ \_\_\_\_\_

c \_\_\_\_\_ \$ \_\_\_\_\_

TOTAL	\$	_____
+ FILING FEES	\$	_____
= TOTAL CLAIMED	\$	_____

claimant's copy

claimant's copy

FORM 2  
SOL 002 6/2017  
(OPC 7530864502)

## **If you agree that you owe the money**

If you agree that you owe the money being claimed, you can contact the claimant to arrange to pay or work out an agreement for payment. However, unless the claimant files a Notice of Withdrawal of the claim within your 14 or 30 day time limit, you should file a Reply explaining that you've paid or are making payments.

If you agree you owe what is claimed but can't pay now and haven't agreed with the claimant on payment terms, file a Reply saying you agree with the claim and setting out how you propose to pay it. You or the claimant can then request a [payment hearing](#) where a judge or judicial justice will review your financial circumstances and set a payment schedule for paying the claim in installments.

The [BC Small Claims How-to Guides](#) explain some of the ways a lawsuit can be settled if you agree to pay. You may want to [speak to a lawyer](#) about which option is best for you.

## **If you don't agree with the claim**

If you don't agree with the claim, your Reply is your first opportunity to give the Court your side of the story. You can fill out the Reply form in two ways, depending on how complicated the facts of your case are, and how comfortable you are with composing and typing an organized summary of the facts.

### **1. Short and simple**

The [BC Small Claims How-to Guides](#) explain how to fill out the Reply form in a short, simple way. In many cases this is all you need.

### **2. Add a detailed chronology**

The Reply form doesn't have much room for a detailed explanation of your defence to the claim. If your case is complicated or the Notice of Claim contains a detailed [chronology](#), you may want to provide one too, by attaching a "schedule" to the Reply form.

A "schedule" is a statement that is attached to another document to add details. To add a schedule to the Reply form, type out your response to the claim on paper, listing the facts in the order they happened, in numbered paragraphs as shown in the sample [Defendant's Chronology](#). Put "Schedule 1" in the upper right corner, attach it to the Reply form, and write "See Attached Schedule 1" beside the letter "a" under "Dispute" on the Reply form.

## Your defence – what to include in your Reply

First, check the [limitation period](#). If a claim is filed after the end of the limitation period, the claimant has lost their right to sue. If you think the claim was filed after the limitation period, say that on the Reply form.

Next, you may disagree with the claimant on the facts, or on how the law applies to the facts, or on both facts and law. In most cases, the parties agree on some of the facts and disagree on others. It is very helpful to a judge to have a clear statement of which facts are agreed and which facts are disputed. The Reply form asks you to state what parts of the Notice of Claim you agree and disagree with, and you should also do this if you are preparing a detailed Schedule.

To find out about the law that applies to your case, talk to a lawyer if you can. If you are looking at legal information online, make sure it applies in BC Find sources of legal information and advice, including low cost options on the [Provincial Court website](#).

*Joe Doaks says Doaks Plumbing Ltd. was hired to inspect the plumbing in the Gills' basement and repair it as needed, not to find the source of the water on the floor.*

*He says his company performed the duties it was hired for carefully and competently.*

*After being served with the Notice of Claim, his company contacted an engineer who said it wasn't necessary to replace the foundation wall – a cheaper repair could have been done.*

In these circumstances, Mr. Doaks will want to say in the company's Reply that:

- it agrees it entered into a contract with Ms. Gill, but it disputes the terms of the contract
- it performed its work competently and did not breach the contract
- it disagrees with the damages claimed.

The [Defendant's Chronology](#) is an example of the response that could be attached as a schedule to Doaks Plumbing Ltd.'s Reply.

## **File your Reply**

When your Reply is ready, file it in the court registry (the court registry's address will be on the Notice of Claim). The registry will send a copy to the claimant. There is a fee for filing a Reply unless you have agreed to pay the full claim.

Be sure to inform the registry in advance of any change in your address or contact information. If you don't, you may not receive notice of dates set for court proceedings, and a payment order could be made against you without your knowledge.

## **4. Making a counterclaim**

---

A counterclaim is a claim brought by a defendant in a lawsuit against the claimant. If you think the claimant should pay you some money, you can add a counterclaim to your Reply. You'll see that the Reply form has space for a counterclaim, where you can set out your claim against the claimant.

Imagine that the Gills' cheque for \$863 was returned marked "NSF" when Doaks Plumbing Ltd. tried to cash it. In that case Doaks Plumbing Ltd. might make a counterclaim and put something like this on the Reply form under "Counterclaim".

## **COUNTERCLAIM WHAT HAPPENED?**

*The Claimants and the Defendant entered into a contract in which the Defendant agreed to remove the drywall in the Claimants' basement, inspect the plumbing in the basement, and replace the drywall, for a fee of \$300.*

*They then entered into a contract in which the Defendant agreed to repair a damaged pipe in the basement for an estimated fee (including materials) of \$600.*

*The Defendant performed the work and sent the Claimants an invoice for \$863. The Claimants sent the Defendant a cheque for \$863, but the cheque was returned by the Claimants' bank marked "Not Sufficient Funds". The Defendant has not been paid for its work.*

## **HOW MUCH?**

*a. The Defendant asks that the Claimants be ordered to pay the Defendant \$863, the agreed price for the services provided by the Defendant.*

The Counterclaim could also be typed on a separate page, marked "Schedule 2", and attached to the Reply form, with "See Schedule 2" noted on the form under "Counterclaim". Schedule 2 might look like the [sample counterclaim](#).

If there isn't enough space on the form, you can use a schedule to set out your counterclaim. Whichever way you choose to explain a counterclaim, you fill in the "Total", "Filing Fees", and "Total Claimed" boxes on the form.

## **5. Is anyone else responsible?**

---

In some cases, there are people whom the claimants have not sued, but who might be responsible, in whole or in part, for the claimants' loss. These people may be added as parties to the Small Claims Court action using a form called a Third Party Notice.

There are two types of third party claims:

1. shared fault
2. a separate claim on the same facts

## **1. Shared fault**

This type of third party claim involves damage or loss caused by the fault of more than one person. When that is proven, they share legal responsibility and the judge must decide the degree to which each person was at fault.

Imagine that a neighbour uphill from Maria and David installed a new drainage system in the fall of 2016, that it had the effect of diverting groundwater onto the Gills' property, and that the increased ground-water flow increased the hydrostatic pressure on the Gills' foundations, making their cracking problem worse.

In that case, Doaks Plumbing Ltd. would want to issue a Third Party Notice to the neighbours to bring them into the lawsuit. (To prove its case against the neighbours, Doaks would need [opinion evidence](#) from a geotechnical engineer, set out in an expert report like the others you have seen.) Doaks Plumbing Ltd. might put something like this beside "What Happened?" on the Third Party Notice.

### **WHAT HAPPENED?**

*The cracking in the Claimants' basement wall was caused or made worse by the conduct of the Third Parties, Joseph & Rose LeBrun.*

*In the fall of 2016, Mr. & Ms. LeBrun negligently installed drainage works at their home, which adjoins and lies on higher ground than the Claimants' house.*

*The negligently installed drainage caused greatly increased groundwater flow from the LeBrun property onto the Gill property, greatly increased hydrostatic pressure on the Gill foundation wall, and cracking of the concrete foundation wall.*

Beside “How Much?” it might put the amount on the Notice of Claim, “\$35,000”, or write “The Defendant seeks apportionment of fault and contribution or indemnity from the Third Party.”

Section 4 of the BC [Negligence Act](#) states:

- (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.
- (2) Except as provided in section 5 if 2 or more persons are found at fault
  - (a) they are jointly and severally liable to the person suffering the damage or loss, and
  - (b) as between themselves, in the absence of a contract express or implied, they are liable to contribute to and indemnify each other in the degree to which they are respectively found to have been at fault.

“Fault”, in the context of the *Negligence Act*, includes, but is not limited to, negligence. So in this Third Party Notice the defendant Doaks Plumbing Ltd. is saying that if the claimants prove they suffered damage or a loss, the LeBrunns are either wholly or partly responsible. Doaks Plumbing Ltd. is asking the judge to decide the degree to which it and the third party were at fault, and to order the third party to pay all or part of any money awarded to the claimant.

## **2. A separate claim on same facts**

The second type of third party claim involves a defendant who has their own claim against a third party arising from the events alleged by the claimant.

For example, Doaks Plumbing Ltd. might have an insurance policy which it thinks should cover Maria and David’s claim. There are sometimes disputes arising from differing interpretations of an insurance policy between an insurer and insured over whether a claim is covered.

If Doaks Plumbing Ltd.’s insurer refused to defend the Gills’ claim, Doaks Plumbing would be entitled to issue a Third Party Notice to the insurer. Doaks Plumbing could write on the Third Party Notice form something like:

**WHAT HAPPENED?**

*The Defendant is the insured and the Third Party is the insurer under policy #543987, issued by the Third Party to the Defendant for the calendar year 2017. Under the terms of the policy, the Third Party is obliged to defend and indemnify the Defendant against the Claimants' claim. The Third Party has wrongly denied coverage under the policy and has refused to defend and indemnify the Defendant.*

**HOW MUCH?**

*The Defendant seeks an order that the Third Party indemnify the Defendant for its costs of defence of this proceeding, and for any amount that may be awarded against the Defendant.*

The Small Claims [Filing Assistant](#) can help you fill out a Third Party Notice.

Once you have prepared and filed your Third Party Notice, you must serve it on (deliver it to) the third party or parties and file an [affidavit of service](#) in the registry. It must be served in the same way as a Notice of Claim.

See [What if I think there is someone else who should pay?](#) in the BC Government's Small Claims [How-to Guides](#) for helpful information on Third Party Notices, and in particular, details on how to serve them.

## 6. Next steps

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The remaining steps for a defendant are like those for a claimant. See: [Consider mediation](#) at page 8, [Know the Rules](#) at page 10, and [Gather your evidence](#) at page 13.

## 7. Gather your evidence

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Using Schedule 1 and any counterclaim and/or Third Party Notice as your chronology and checklist, decide what you need to prove and how you will prove it.

This chart shows the facts Doaks Plumbing Ltd. would want to establish to prove its case, and evidence it might use to prove those facts.

<p><b><i>Facts Doaks Plumbing Ltd. wants to prove in its defence</i></b></p>	<p><b><i>Evidence it can use to prove the fact</i></b></p>
<p><i>The terms of the contract between the Gills and Doaks Plumbing Ltd.</i></p>	<p><i>Joe’s testimony about his conversations with Maria, including that he told her “We just do plumbing. If the problem is something else, we can’t help you”. Joe should be as precise as possible about what was said.</i></p> <p><i>If Joe made any notes of the conversations as part of his normal business practice, he should include a copy of the notes in his book of documents.</i></p> <p><i>Testimony of Doaks’ employee, Tony Rome about what Joe told him to do and what he said to Maria.</i></p>
<p><i>That Doaks Plumbing Ltd. did the work it agreed to do and did it competently.</i></p>	<p><i>Testimony of Joe Doaks and Doaks Plumbing Ltd.’s employee, Tony Rome.</i></p> <p><i>Cross-examination of Terry Bloggins, the Gills’ independent plumber.</i></p> <p><i>The Gills’ NSF cheque as evidence that they were satisfied with Doaks’ work at the time. (copies of the front and back of the cheque would be included in the defendant’s book of Documents.)</i></p>

<p><i>That it was not necessary for the Gills to remove and replace the foundation wall.</i></p>	<p><i>The <a href="#">Defendant Engineer's Expert Report</a>, provided it was sent to Doaks at least 30 days before the trial because it is opinion evidence. (The Claimants would likely require the defendant's engineer to attend for cross-examination.)</i></p> <p><i>On receiving the claimants' engineer's report, Doaks should send a letter to the claimant saying he will require their expert to attend the trial for cross-examination.</i></p> <p><i>Then Doaks would cross-examine the claimants' engineer in the trial, ask her about her familiarity with polymiycolene grout, and ask her to agree that it's possible the foundation wall could have been repaired with that grout. The defendant's expert may be able to suggest questions Joe should ask the claimants' expert.</i></p>

### **Proving a counterclaim**

To prove its counterclaim, a defendant has the same burden as a claimant has to prove a claim. A defendant must prove a counterclaim on the balance of probabilities.

<p><b><i>Facts that Doaks Plumbing Ltd. needs to prove for its counterclaim</i></b></p>	<p><b><i>Evidence it can use to prove the fact</i></b></p>
<p><i>Doaks did the work it agreed to do competently</i></p>	<p><i>Covered as part of its defence.</i></p>
<p><i>Doaks invoiced the Gills \$863 and received a cheque from them in that amount.</i></p> <p><i>The cheque was returned marked 'NSF'. The Gills never paid Doaks for its work.</i></p>	<p><i>Joe Doak's testimony and the cheque marked NSF.</i> <i>Cross examination of Maria Gill.</i></p> <p><i>Joe Doak's testimony and the cheque marked NSF.</i></p>

### **Proving a Third Party Notice**

If Doaks Plumbing Ltd. filed a Third Party Notice it would need to prove on the balance of probabilities that the third party was at fault, and either wholly or partly responsible for the claimants' loss.

<p><b><i>Facts that Doaks Plumbing Ltd. would need to prove for the Third Party Notice against the LeBrun's</i></b></p>	<p><b><i>Evidence it can use to prove the fact</i></b></p>
<p><i>Joseph &amp; Rose LeBrun own the house adjoining the Gills' house at 123 Long St., Littleton. Their house is on higher ground than the Gills' house.</i></p> <p><i>In the fall of 2016, Mr. &amp; Ms. LeBrun installed drainage works at their home.</i></p> <p><i>The LeBrun's drainage was installed negligently.</i></p> <p><i>The LeBrun's drainage works caused greatly increased groundwater flow from the LeBrun property onto the Gill property, greatly increased hydrostatic pressure on the Gill foundation wall, and cracking of the concrete foundation wall.</i></p>	<p><i>Results of a title search for the adjoining property, photographs of the two properties, cross-examination of Maria about the neighbouring property.</i></p> <p><i>Obtain any city permits issued for the work, and any inspection records.</i></p> <p><i>Cross-examination of Maria about what she saw of the drainage work, and anything the LeBrun's might have said to her about it.</i></p> <p><i>Doaks could call the LeBrun's as witnesses or cross-examine them if they testify in their own defence.</i></p> <p><i>Doaks would need to call an expert witness to establish this – perhaps another engineer or another drainage company.</i></p> <p><i>Doaks would need to call an expert witness to establish this. On receiving the claimants' engineer's report, it would send them a letter saying it required their engineer to attend the trial for cross-examination.</i></p> <p><i>Then at trial Doaks would cross-examine the claimants' engineer and question its own engineer on the likely effects of greatly increased groundwater flow on a concrete foundation wall.</i></p>

## Witness notes

Just like the claimant, you should have your witnesses prepare witness notes.

A witness' notes can be used to refresh their memory before the trial, to help you prepare questions for your witnesses, and to help you write the brief summaries you may be ordered to exchange after a settlement conference or a trial conference.

## 8. The Settlement Conference

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Once you have prepared your case, you are ready for a settlement conference. See [The Settlement Conference](#) on page 25.

Like a claimant's chances of winning, a defendant's chances are never 100%, so it can be useful to consider the same two questions when thinking about whether to settle:

1. What are my odds of winning?
2. What will be the financial consequences of winning (or losing)?

*If Joe thinks the claimant has a 40% chance of winning, it might make sense for Doaks to settle for 40% of \$35,000, or \$14,000.*

*Joe should also consider the time he and company employees will have to take off work to prepare and conduct a trial and what that will cost the company.*

See [The Trial Conference](#) on page 27 and [Getting your witnesses to trial](#) on page 28.

## 9. Preparing for trial

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See [Preparing for trial](#) on page 29. You should also prepare questions for witnesses and notes for opening and closing statements. These notes can be changed during the trial to reflect the evidence as it is presented.

Joe Doaks might make opening and closing statements like this for his company:

**Opening:**

*Your Honour, we believe the evidence will show that Doaks Plumbing Ltd. did exactly what its contract with the claimants required it to do – inspect plumbing in the Gills’ basement and repair any leaky pipes it found. We say the company performed the work it agreed to do competently and was not paid because the Gills’ cheque was returned NSF. We will therefore ask you to dismiss the claim, grant the counterclaim and order Mr. and Ms. Gill to pay the defendant \$863 plus fees and expenses.*

*In addition, we’ll present evidence that it was not necessary to replace the Gills’ foundation wall – that the cracks could have been repaired using a particular kind of grout, so their damages were much less than claimed.*

*Finally, we will show that it was poorly done drainage work on a neighbouring property that increased hydrostatic pressure on the foundation wall and caused the cracking, so if anyone is responsible for the claimants’ damages it is the third parties, those neighbours.*

**Closing:**

*Your Honour, the evidence shows my company did exactly what it contracted to do – it inspected and repaired the plumbing in the Gills’ basement. I ask you to find that my recollection of my conversations with Ms. Gill are more accurate than hers because I made a note on my calendar of what her job was when she called me, and her version doesn’t make sense – we’re a plumbing company. I wouldn’t accept an assignment to find the source of water on a basement floor because we don’t have that expertise. So we ask you to dismiss the claim and grant the counterclaim – the Gills should pay us the \$863 they owe us for the plumbing work we did.*

*In addition, we say the Gills haven’t proven the damages they claimed. The evidence doesn’t prove it was necessary to remove and replace the foundation wall – you have the evidence of Dr. Grace that the wall could have been repaired with polymicolene grout for \$5000.*

*Finally, we say that the hydrostatic pressure on the foundation wall caused by the LeBrun’s drainage work is the most likely cause of the concrete cracking and if anyone is at fault it is the LeBrun’s.*

## 10. The Trial

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The judge will explain the procedure they will follow at the start of the trial. See [Trial procedure](#) on page 29 for an outline of the traditional procedure and [Modified trial procedures in Small Claims Court](#) for some of the ways a judge may adjust the procedure. You can ask the judge questions about procedure if you are confused or need anything clarified.

The trial judge will understand the issues because you have stated in your Reply where you agree and where you disagree with the Claimant. If your Reply is complete and well-

written, you won't need to make an opening statement to the court – you can just tell the judge your case is set out in your chronology and the Reply.

You don't have to worry about forgetting things because you have checklists in the form of your chronology, witness notes and lists of questions. You can present your case in a logical and orderly way because you have thought it through carefully. Your trial will take less time than most because you are well-organized.

See these sections of **Part 1** of the Guide on the trial and what comes afterwards: [The Trial](#) at page 32, [Decision](#) and [If you win](#) at page 33.

## 11. Useful Resources

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The Courthouse Library in your community may have these books:

- *Annotated Small Claims Act & Rules*, Continuing Legal Education Society
- *Guide to Civil Litigation - British Columbia Edition*, Carswell, 2010
- *The Law of Evidence in Canada*, Sopinka, Lederman & Bryant

The [Small Claims How-to Guides](#) are on the BC Government website.

### Useful websites

BC Employment Standards Branch: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards>

BC Government: <https://www2.gov.bc.ca/gov/content/home>

BC Government's Small Claims How-to Guides:

<https://www2.gov.bc.ca/gov/content/justice/courthouse-services/small-claims/how-to-guides/>

BC Small Claims Filing Assistant: <https://justice.gov.bc.ca/FilingAssistant/index.do>

BC Small Claims Forms online: <https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/small-claims-forms>

BC Provincial Court website – Resources for Small Claims cases:

<http://www.provincialcourt.bc.ca/types-of-cases/small-claims-matters/links>

BC Statutes: [www.bclaws.ca](http://www.bclaws.ca)

Civil Resolution Tribunal: [www.civilresolutionbc.ca](http://www.civilresolutionbc.ca)

Civil Resolution Tribunal's Solution Explorer: <https://civilresolutionbc.ca/how-the-crt-works/getting-started/small-claims-solution-explorer/>

Clicklaw Helpmap: <https://www.clicklaw.bc.ca/helpmap>

Corporate registry search: <https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/searches-certificates>

Federal Court of Canada: [http://www.fct-cf.gc.ca/fc\\_cf\\_en/Index.html](http://www.fct-cf.gc.ca/fc_cf_en/Index.html)

Justice Access Centres: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac>

Map of Courthouse libraries: <https://www.clicklaw.bc.ca/helpmap/service/1009>

Residential Tenancy Branch:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Small Claims Act: [http://www.bclaws.ca/civix/document/id/complete/statreg/96430\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96430_01)

Small Claims BC: <http://www.smallclaimsbcc.ca/>

Small Claims Rules: [http://www.bclaws.ca/Recon/document/ID/freeside/261\\_93\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/261_93_01)

Supreme Court of British Columbia: [https://www.bccourts.ca/supreme\\_court/](https://www.bccourts.ca/supreme_court/)

## Claimants' sample documents

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### A. Claimants' Chronology

2001 The claimants, David & Maria Gill, bought a house at 123 Long Street, Littleton, British Columbia and have lived in it since then.

April - May, 2017

There were a series of heavy rainstorms in Littleton.

May 3, 2017

There was a heavy rainstorm in Littleton

May 4, 2017

David & Maria discovered a puddle of water in the basement of their home.

May 5, 2017

Maria telephoned Joe Doaks, owner of Doaks Plumbing Ltd., and asked him to come to the house and find the source of the water.

May 9, 2017

Maria was at home when Joe came. She showed him the basement. Joe said he'd need to remove the drywall to find the source of the water and it would cost about \$300 for his company to remove the drywall, do the inspection and replace the drywall. Maria said to go ahead. Joe agreed to conduct the inspection sometime the following week.

May 19, 2017

Two employees of Doaks Plumbing Ltd. came to the house, went to the basement, and removed the drywall. They were in the basement for about 40 minutes. They came back upstairs, told Maria they had found the source of the water and said Joe would be in touch with her.

May 22, 2017

Joe phoned Maria and told her the source of the water was a cracked PVC water pipe in the subfloor. He said the cost to repair the pipe and replace the drywall would be about \$600. Maria authorized Joe to do that work.

May 29, 2017

An employee of Doaks Plumbing Ltd. came and worked in the basement for about 45 minutes. When he came upstairs, he told Maria he'd completed the repair. Maria went down to the basement after he left and saw that the drywall had been replaced and the puddle was gone.

June 6, 2017

Maria and David Gill received an invoice from Doaks Plumbing Ltd. for \$863.

June 14, 2017

Maria mailed a cheque for \$863 to Doaks Plumbing Ltd.

June 22, 2017

Doaks Plumbing Ltd. deposited the cheque to its bank account.

September 12, 2017

Heavy rain fell in Littleton, the first rainfall since early May.

September 13, 2017

David & Maria's basement flooded. They found more than 6 inches of water on the floor. The furnace and hot water heater were damaged beyond repair.

September 18, 2017

David & Maria hired Lee Engineering Ltd., a firm of consulting engineers, to inspect the basement and find the cause of the problem.

September 22, 2017

Lee Engineering Ltd. inspected the basement, and reported that:

1. the cause of the problem was cracks in the concrete foundation wall;
2. the cracks had probably existed for some time, perhaps months, perhaps years, but had expanded because of the hydrostatic pressure resulting from the heavy rains in 2017;
3. if the cracks had been identified in May 2017, they could probably have been filled with a concrete sealant, and that repair would probably have prevented any further expansion of the cracks and any subsequent damage;
4. because of the expansion of the cracks between May 4 and September 22, the cracks can no longer be repaired;
5. for that reason, it will be necessary to lift up the house, replace the concrete foundation and lower the house onto the new foundation;
6. if that is not done, the cracks will continue to expand, and the foundation will eventually fail, causing the house to collapse.

October 1, 2017

David & Maria hired Super House Renovators Ltd. to lift up the house and install a new concrete foundation.

October 5, 2017

Super House Renovators Ltd. started work. David & Maria moved to a rented apartment. They paid \$1800 rent for the month of October.

October 31, 2017

Super House Renovators Ltd. finished the work and gave the Gills an invoice for \$42,500.

November 2, 2017

David & Maria replaced the hot water heater and furnace, at a cost of \$1350.

November 10, 2017

Maria paid Super House Renovators Ltd.'s invoice.

## **B. Claimants' Engineer's Expert Report**

***Lee Engineering Ltd.***  
**Consulting Engineers**  
**1642 West Georgia Street**  
**Vancouver, BC**  
**V6R 5H5**

January 15, 2018

*Gill v. Doaks Plumbing Ltd.*  
Action #C97403 (Prince George Registry)  
Provincial Court of British Columbia

### My Retainer

David & Maria Gill have retained me to provide this expert report and to provide expert evidence at the trial of this action. Mr. & Ms. Gill have agreed to pay Lee Engineering Ltd. a fee of \$175 per hour for those services. Neither I personally nor Lee Engineering Ltd. has any other financial interest in the outcome of this action. Our fee is not contingent on the outcome of the action. I have no other relationship, personal or professional, with Mr. or Ms. Gill. To the best of my knowledge, information and belief, no other principal or employee of Lee Engineering Ltd. has any such relationship.

I understand that, as an expert witness, it is my duty to assist the court by providing information within my expertise, that I am do so impartially, and that I am not to act as an advocate for any party. I have discharged that duty faithfully in preparing this report and will do so faithfully if I am asked to give evidence at the trial of this action.

### My Qualifications

I graduated with the degree of Bachelor of Applied Science from the University of Western Ontario in May 2002. My major field of study was structural engineering.

After graduation, I worked for Atkinson Engineering Ltd., of Waterloo, Ontario from June 2002 to September 2005. Most of my work there was related to concrete structures, particularly highway overpasses. I was admitted to the Association of Professional Engineers of Ontario, in January 2004.

In May 2007 I obtained a Master of Applied Science from the University of British Columbia. My studies focused on concrete structures, particularly underground structures and the impact of ground water on the stability of those structures. My thesis was titled "Catastrophic Failures of Subsurface Concrete Structures Caused by Hydrostatic Pressures".

Since June 2007, I have worked for Lee Engineering Ltd., becoming a partner in June, 2013.

During my career, I have been called upon many times to analyze problems with concrete structures, recommend remedial measures, conduct competitive bidding processes as the owner's agent, to select remediation contractors and supervise remediation work.

#### Facts Upon Which My Opinion Is Based

On September 18, 2017, David and Maria Gill retained Lee Engineering Ltd. to inspect their basement, determine the cause of flooding they had observed in the basement, and recommend remedial measures. I was assigned to perform those tasks.

I attended at the Gills' home at 123 Long Street, Littleton, BC on September 22, 2017. The house is a 3-bedroom bungalow of approximately 2500 square feet. It has a full-height basement, all below ground level. I descended the stairs to the basement and observed that it was fully-flooded. I measured the depth of the water in each of three separate locations in the basement, and obtained measurements of 9.4 centimetres, 10.7 centimetres and 10.3 centimetres at those locations.

I am informed that the Gill house was constructed in 1992.

The electrical boxes of the furnace and hot water heater in the basement were located at the bottom of each appliance, and so were fully flooded. As a result, each appliance was unsafe to use. I disconnected the power to both appliances to prevent them from shorting and causing an electrical fire.

As a result of my research and field experience, I was aware of the possibility that the water source might be seepage through stress cracks in the concrete foundation wall. Upon close inspection using a high intensity light, I found 74 stress cracks in the foundation wall, each fully penetrating the wall laterally, and so allowing ground water to penetrate from the surrounding soil into the basement. I measured the cracks with calipers and found that they ranged from 3.4 mm to 9.7 mm in width on the shorter dimension and from 14.7 mm to 31.2 mm in the longer dimension.

I went outside and dug 3 test holes in the soil within a metre of the concrete foundation wall. I found that the basement had been excavated in the native soil, which is described by soils engineers as “Class 7, mixed aggregate and organic material”. Such soils have the following relevant properties:

1. They readily retain ground water. Unlike other soils, they do not shed water readily and do not drain well.
2. As a result, they exert strong lateral pressure on subsurface structures (like concrete foundation walls) when wet.
3. They also exert negative lateral pressure on subsurface walls as they dry (as they will due during a prolonged period of drought). As the soil slowly dries, mostly through evaporation, the soil will pull away from the subsurface wall, depriving it of lateral support and causing it to flex.

I assume to be true the facts stated in the attached Chronology, provided to me by Maria Gill, and have relied on those facts in forming my opinion.

### Summary of My Opinion

If I had been consulted by Mr. & Ms. Gill in May 2017, I would have been alert to the possibility that the leakage of water observed in the basement was caused by micro cracking of the concrete foundation wall. I would have examined the surrounding soil, as I did in September, and discovered that the soil was Class 7, mixed aggregate and organic material, which would have lent support to that hypothesis. I would then have examined the basement walls carefully with a high-intensity light.

If I had done all that, it is highly probable that I would have discovered micro cracking of the foundation wall.

Having regard to the quantity of water in the basement in May 2017 (a small puddle) and the intensity of the rainfall in late April and early May (92 mm in 23 days, according to Environment Canada records), it is clear that in May the cracks in the foundation wall were much smaller than those I observed in September. Were that not so, the basement would have been fully flooded, as it was in September. As a consequence, if the cracks had been discovered in May, it would probably not have been necessary to remove and replace the foundation wall. Rather, it would probably have been possible to fill the micro cracks with an epoxy grout, and so effect a full and lasting repair without removing and replacing the foundation wall.

The cost of such a repair in May would have been of the order of \$5000 - \$7000. In my opinion, any competent engineer consulted by Mr. & Ms. Gill in May 2017 would have proceeded as I describe, and would have reached the same conclusions as I would have done if I had been consulted at that time.

If Mr. & Ms. Gill had conducted a competitive bid process for lifting the house and replacing the foundation, the low bid from a competent contractor would have been in the range of \$40,000 to \$50,000.

Yours very truly

*Susan B. Wright, P.Eng.*

Susan B. Wright, P. Eng.

## **C. Independent Plumber's Expert Report**

***Terry's Plumbing***  
**949 Main Street**  
**Littleton, British Columbia**  
**V3S 4T9**

May 7, 2018

### Why I was hired

David & Maria Gill hired me to give my opinion on how a competent plumber would have handled the water problem in their basement in May 2017.

### My Qualifications

I finished high school with Grade 10 in Saskatchewan in 2004.

I apprenticed to Speedy Plumbing Services in Regina and became a journeyman plumber in 2005.

I stayed with Speedy and got my Red Seal certificate in 2008.

Since 2008 I've owned and worked in my own plumbing business in Littleton, BC I've inspected, diagnosed and repaired hundreds of leaky basements.

### My Opinion is based on these facts:

Mr. and Ms. Gill told me that there was a puddle of water on the floor of their basement in the first week of May 2017, and that they saw no sign of where the water came from. They said the drywall was not water-stained and didn't seem to be damp anywhere. They said they saw no dripping pipes or faucets.

### My Opinion

In my opinion, with those facts a competent plumber would have suspected there could be pressure cracks in the concrete foundation wall, and would have carefully inspected

the wall with an intense light to find out. Pressure cracks are common in foundation walls, particularly in the Littleton area, and most experienced plumbers have encountered them more than once. Because there was no water staining or dampness in the drywall, it was very unlikely that a leaking pipe behind the drywall was the source of the water on the floor. A competent plumber would have looked for other sources, particularly pressure cracks.

When you have pressure cracks, it is very important to repair them quickly. They tend to get worse fast, and they can cause serious structural damage to the foundation walls.

I am charging the Gills \$65 an hour for my opinion and for testifying if I am needed at a trial.

Yours truly,

*Terry Bloggins*

## **D. Maria Gill's Witness Notes**

I live with my husband and our two children at 123 Long Street, Littleton BC. My husband and I bought the house in 2001 and have lived in it since that time.

Until May 2017, we never had any problem with water in the basement, and no problems with plumbing in the house.

We had a lot of rain in Littleton in April and May 2017, much more than normal. The weather was the talk of the town at that time - the river was rising, everyone was worried about flooding and people in low-lying areas had flooded basements. It rained particularly hard on May 3, 2017.

On May 4, 2017, I noticed a round puddle of water on the basement floor. It was about 3 feet across and about a ½ inch deep. My husband, David, saw it that evening, and we agreed to call a plumber. We found Doaks Plumbing Ltd. online.

On May 5, 2017, I telephoned Doaks Plumbing Ltd. and spoke to Mr. Doaks. I told him that:

1. we had a puddle of water in the basement;
2. we never had a problem with water in the basement before;

3. I thought that it might have something to do with the heavy rains over the past few weeks.

Mr. Doaks said that he did not think the rain had caused the puddle. He said he thought a broken pipe was a more likely explanation. I asked him to send someone to identify the source of the water and fix the problem, whatever it was, and he agreed.

Mr. Doaks came to the house himself on May 9, 2017 at about 2:30 p.m. I went down into the basement with him and showed him where the puddle had been. Most of the water had dried up by then, but there was still a damp circle on the floor, so we could see where it was. Mr. Doaks had an ordinary flashlight with him. It was not a high-intensity lamp. He shone the flashlight on the walls and ceiling of the basement but did not find any signs of seeping or dripping water. He said the problem was probably a leaking pipe in the subfloor; he couldn't say for sure without removing some drywall and taking a look; to have him do this would cost about \$300. I told him to go ahead. He agreed to this sometime in the next week.

On May 19, 2017, two employees of Doaks Plumbing Ltd. came to our house. I don't remember their names. They went down to the basement and removed the drywall. They were in the basement for about 40 minutes. They came back upstairs, told me they had found the source of the water, and said Mr. Doaks would be in touch.

On May 22, 2017, Mr. Doaks called and told me that the source of the water was a cracked PVC water pipe in the subfloor, and the cost to repair the pipe and replace the drywall would be about \$600. I asked him to go ahead and do the work.

On May 29, 2017, an employee of Doaks Plumbing Ltd. came to my house and worked in the basement for about 45 minutes. When he came back upstairs, he told me that he'd done the repair. I went down to the basement after he left and saw that the drywall had been replaced and the puddle was gone.

On June 6, 2017, I received a bill for \$863 from Doaks Plumbing Ltd. I paid the bill by cheque dated June 14, 2017 (page 11 of our document book). The back of the cheque shows it was cashed by Doaks Plumbing Ltd. on June 22, 2017.

It didn't rain at all in Littleton between early May and early September. I remember because the drought was as unusual as the heavy rains we got in the spring, so everyone was talking about the weather that summer.

On September 12, 2017, we had a heavy rainstorm in Littleton.

On September 13, 2017, our basement flooded. I went down into the basement in my gumboots and measured the water with a ruler. There was a little over 6 inches of water on the floor. The electrical boxes under the furnace and hot water heater were completely submerged.

On September 18, 2017, my husband and I retained Lee Engineering Ltd., a firm of consulting engineers, to inspect the basement and determine the cause of the problem.

On September 22, 2017, Ms. Wright of Lee Engineering Ltd. inspected the basement. She told me that:

1. the cause of the problem was cracks in the concrete foundation wall;
2. the cracks had probably existed for some time, perhaps months, perhaps years, but had expanded because of the hydrostatic pressure resulting from the heavy rains in 2017;
3. if the cracks had been identified in May, 2017, they could probably have been filled with a concrete sealant, and that repair would probably have prevented any further expansion of the cracks and any subsequent damage;
4. because of the expansion of the cracks between May 4 and September 22, the cracks can no longer be repaired;
5. for that reason, it would be necessary to lift up the house, replace the concrete foundation and lower the house onto the new foundation;
6. if that is not done, the cracks would continue to expand and the foundation would eventually fail, causing the house to collapse.

On October 1, 2017, my husband and I retained Super House Renovators Ltd. to lift up the house and install a new concrete foundation. We could not live in the house while that work was being done, so we rented a basement suite from our neighbours, Fred and Maria Sanders. The rent for the basement suite for the month of October was \$1800. (cheque for the rent page 12 of our document book).

Super House Renovators Ltd. started work on October 5, 2017 and finished the job on October 31, 2017. We moved back into our house on November 1. We paid Super House Renovators \$42,500 for their work. (invoice and cancelled cheque pages 18 - 19 of our book of documents).

We had to buy a new hot water heater and a new furnace. (Invoices and cancelled cheques pages 13 – 17 of our document book).

*Maria Gill*

Dated January 4, 2018

## **E. Doaks' Employee's Witness Notes**

I have been a journeyman plumber since 2005 and have been employed by Doaks Plumbing Ltd. since October 2010.

On May 18, 2017, Joe Doaks told me to go with Jim Prentice (another plumber employed by Doaks Plumbing Ltd.) to the house at 123 Long Street, Littleton, BC and look for a plumbing leak that was causing water in the basement. Joe didn't say anything about the foundation walls. He said there had to be a leaking pipe somewhere in the subfloor, so Jim and I should remove the drywall and find the leak in the pipe.

Jim and I got to the house at about 9:30 a.m. on May 19. Ms. Gill was at home and showed us down to the basement. There was a thin film of water on the floor near the hot water heater, about 2 feet in diameter. Jim and I thought that the hot water heater might be the problem, so we took a look at it, but it was OK - no problem there. We stripped some drywall off the basement ceiling and found an old PVC water pipe with a crack in the side of it. We went back upstairs, told Ms. Gill what we found and left. Then we went back to the shop and told Joe.

We did not look at the foundation walls. Nobody asked us to.

*Tony Rome*

Dated April 4, 2018

## **Defendant's Sample Documents**

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### **F. Defendant's Chronology**

**(attached as Schedule 1 to the Defendant's Reply)**

1. The Defendant, Doaks Plumbing Limited, carries on business as a plumbing installation and repair company in Littleton, British Columbia.
2. On May 4, 2017, Maria Gill called Joe Doaks to complain about water in her basement. Joe asked Ms. Gill if she knew the source of the water. She replied

that she did not, and that she hoped that Joe could investigate and tell her the source of the leak. Joe replied: “Well, we can certainly do that if it’s a plumbing issue, but there are lots of other possible sources of the problem. We just do plumbing. If the problem is something else, we can’t help you”.

3. Ms. Gill asked Joe to come to her house and investigate.
4. Joe attended at the Gill house on May 9, 2017, and was shown to the basement by Ms. Gill. Joe observed that most of the plumbing pipes were concealed by the drywall, so he suggested that he send a crew to remove the drywall and inspect the pipes. He quoted a price of \$300 for that service. Ms. Gill asked him to proceed.
5. On May 19, 2017, Joe sent two qualified plumbers to the Gill house, with instructions to remove the drywall and inspect the pipes. They were not instructed to inspect the concrete foundation wall and did not do so. They removed the drywall, inspected the pipes and found a crack on one side of a PVC pipe. They removed and replaced the cracked portion of the pipe and replaced the drywall.
6. Doaks Plumbing Limited has no expertise in structural engineering and has never told anyone that it has such expertise. Ms. Gill retained Doaks Plumbing Limited for only one purpose: i.e. to inspect the plumbing in the Gill home, and to repair it as needed. Doaks Plumbing Limited performed those duties carefully and competently.
7. After the Notice of Claim in this proceeding was served upon Doaks Plumbing Limited, we retained Dr. Samuel Grace as an expert witness. In the opinion of Dr. Grace, it was not necessary for Mr. & Ms. Gill to remove and replace the foundation wall. On the contrary, the foundation cracks observed in October 2017 could have been repaired by the use of polymeric grout. The cost of such a repair would have been less than \$5000.

## **G. Defendant's Engineer's Expert Report**

***Dr. Samuel P. Grace***

Professor, Faculty of Applied Science  
University of British Columbia  
101 West Mall  
Vancouver, BC  
V8H 2M1

January 18, 2018

### My Retainer

I have not been paid anything for my services in preparing this report and will not receive a fee if I am called as a witness at the trial of the proceeding.

I may benefit indirectly, as a shareholder of Miracle Grouting Enterprises Inc., if that company receives favourable publicity as a result of the trial of this proceeding.

I understand that, as an expert witness, it is my duty to assist the court by providing information within my expertise, that I am to do so impartially, and that I am not to act as an advocate for any party. I have discharged that duty faithfully in preparing this report and will do so faithfully if I am asked to give evidence at the trial of this action.

### Qualifications

I received the degree of Bachelor of Applied Science from Queen's University in June 1991, the degree of Master of Applied Science from Waterloo University in 1993, and a PhD in Applied Science from the Massachusetts Institute of Technology in 1997. Since 1997, I have been a member of the Faculty of Applied Sciences at the University of British Columbia. I was appointed a full professor in May 2008.

Since my undergraduate days, my field of study has been focussed on the use of grout to perform structural repairs of concrete structures and the development of new grouting materials and techniques for that purpose. I have published 57 scholarly articles on that topic in peer-reviewed journals of the engineering profession.

I am a founding shareholder and director of Miracle Grouting Enterprises Inc., a leading developer and manufacturer of innovative grouting products.

### Facts Upon Which This Opinion Is Based

I have read, and assume to be true, the witness notes of Maria Gill and Susan B. Wright.

### Summary of My Opinion

In my opinion, it was unnecessary to remove and replace the foundation walls in the Gill home.

The cracks observed by Ms. Wright could have been repaired by the use of polymiocolene grout, a product first introduced to the market by Miracle Grouting Enterprises in 2014, and successfully employed in many similar applications since that time. I described the use and application of polymicolene grout in my paper, "Structural Repair of Concrete Structures Using Polymicolene Grout - Field Applications and Measured Outcomes", which may be found in the *American Journal of Structural Engineering & Technology*, Vol. 82, Part 3 (2016).

The cost of repair of the cracks reported by Ms. Wright in the Gill basement, using polymicolene grout, would have been about \$5000. If that method of repair had been used, it would not have been necessary to lift the house off its foundation.

Yours very truly,

*Samuel P. Grace*  
Samuel P. Grace PhD

## **H. Counterclaim**

1. It is true that:
  - a. the Claimants Maria and Tony Gill and the Defendant Doaks Plumbing Ltd. entered into a contract in which the Defendant agreed to remove the drywall in the Claimants' basement, inspect the plumbing in the basement, and replace the drywall, for a fee of \$300;
  - b. the Claimants and the Defendant then entered into a contract in which the Defendant agreed to repair a damaged pipe in the basement for an estimated fee (including materials) of \$600;

- c. the Defendant performed the work and sent the Claimants an invoice for \$863;
  - d. the Claimants sent the Defendant a cheque for \$863 in payment of the invoice.
2. It is not true that the Defendant cashed the cheque. The cheque was returned to the Defendant by the Claimants' bank, marked "Not Sufficient Funds".
3. The Defendant asks that the Claimants be ordered to pay the Defendant \$863, the agreed price for the services provided by the Defendant.