

PROVINCIAL COURT OF ALBERTA'S MONETARY JURISDICTION INCREASED



LITIGATION & INSURANCE LEGAL ALERT OCT, 2002

On October 22, 2002, the Government of Alberta introduced the *Provincial Court Civil Division Amendment Regulation* (A.R. 215/2002), which dramatically increased the Provincial Court Civil Division's monetary jurisdiction to matters **with a value not exceeding \$25,000.00**.

The Civil Division, more commonly known as "Small Claims Court", deals with claims with a comparatively low monetary value, and is structured to enable unrepresented litigants, or those who wish to limit their legal expenses, to pursue legal claims in an expedited fashion. The Court's jurisdiction was last increased in 1997, at which time it was modified to include claims with a value not exceeding \$7,500.00.

In essence, the changes mean that the Court can now adjudicate on any matter involving:

- CLAIMS FOR DEBT, AS IN CONTRACT DISPUTES;
- CLAIMS FOR DAMAGES DUE TO NEGLIGENCE OR OTHER TORTIOUS CAUSES;
- CLAIMS FOR THE RETURN OF PERSONAL PROPERTY;
- CLAIMS FOR SPECIFIC PERFORMANCE, OR RECISSION, OF CONTRACTS; OR
- CLAIMS FOR EQUITABLE REMEDIES

where the value of the claim does not exceed \$25,000.00 or, if the Plaintiff so desires, where the Plaintiff agrees to abandon that portion of their claim in excess of \$25,000.00. If a Plaintiff elects to abandon the excess portion of their claim, they are unable to pursue that shortfall later.

Notwithstanding this amendment, the Civil Division remains unable to adjudicate on certain matters that are outlined in section 9.6(2) of the *Provincial Court Act*, R.S.A. 2000 c. P-31, such as claims for defamation, challenges to the validity of a testamentary instrument, or claims against a judge, justice of the peace or peace officer for actions committed while in the scope of their duties. Any such matters must be pursued in the Court of Queen's Bench of Alberta.

When deciding whether to commence an action in the Civil Division as opposed to the Court of Queen's Bench, especially under the new monetary limit, it is essential that a potential litigant realize that there are

several notable differences between the two Courts. Although matters in the Civil Division can proceed to trial on an expedited basis—generally within six months—the litigants do not have "as of right" access to such procedural safeguards as mandatory document disclosure, and examinations for discovery. Such matters *can* be ordered by the presiding Judge at a Pre-Trial Conference; however, this requires a Plaintiff, or a Defendant, to take positive steps to enhance the discovery process. Furthermore, a Judge of the Provincial Court is not bound by the formal rules of evidence, and has the discretion to admit *any* evidence that the Court deems proper.

Finally, all but a few specified costs are left to the Judge's discretion after a Provincial Court trial, which can allowing a successful litigant to be substantially under-compensated for their legal expenses, whereas Justices in the Court of Queen's Bench are generally guided by the more substantial cost tables in the *Alberta Rules of Court*.

When contemplating commencing legal proceedings, it is consequently essential that one consider the trade-off between the potential expediency (and reduced costs) of a Civil Division action, and the more exhaustive (but more costly) processes of the Court of Queen's Bench. Should you have any questions, or require any assistance in this regard, please feel free to contact a member of the Parlee McLaws LLP Litigation and Insurance Services Practice Group.

CONTACT

CALGARY

CHAIR:

BRUCE CHURCHILL-SMITH ..(403)294-7019
BCHURCHILL-SMITH@PARLEE.COM

EDMONTON

CO-CHAIR:

JAMES F. MCGINNIS(780)423-8520
JMCINNIS@PARLEE.COM