



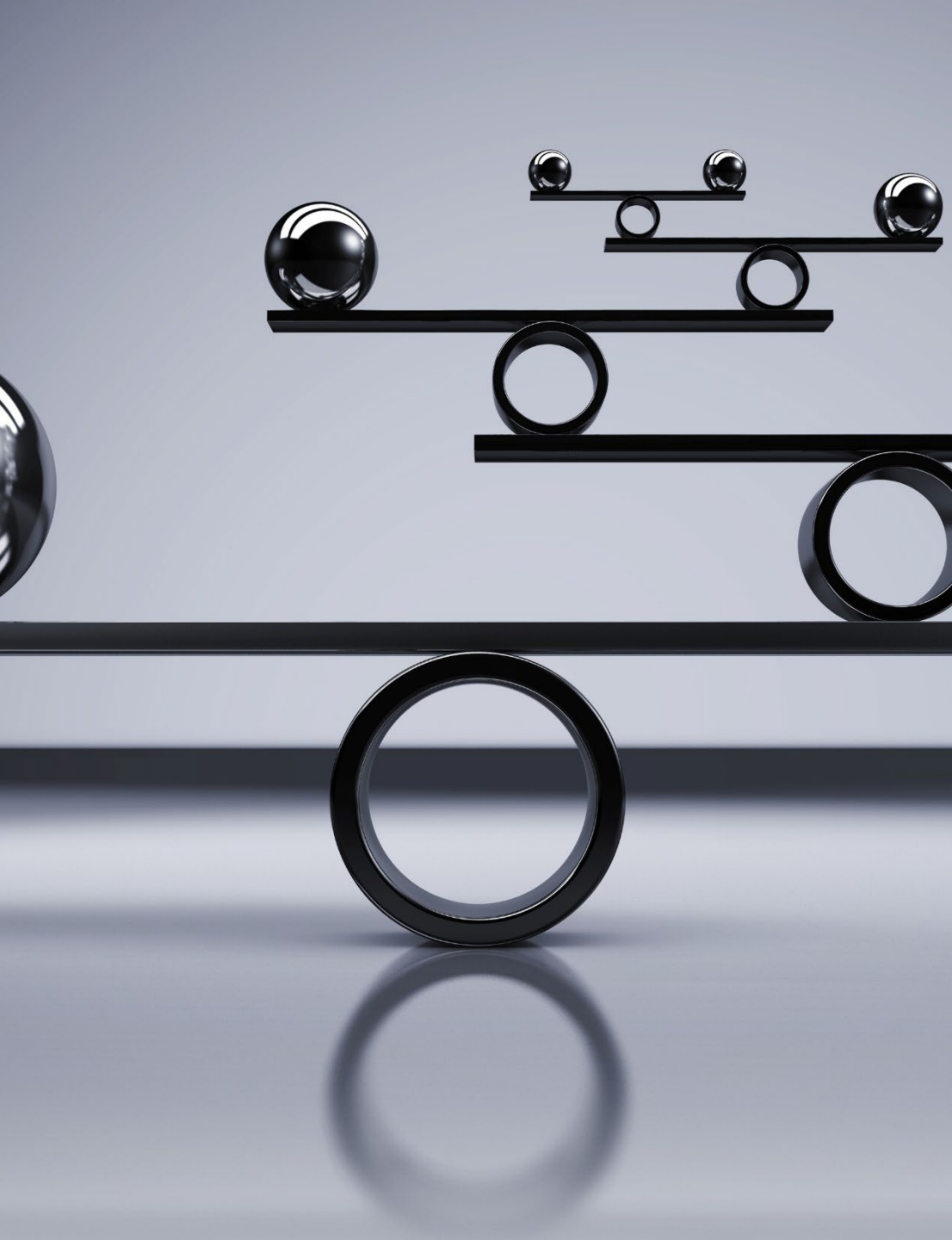
FORUM SHOPPING BY EMPLOYEES – STRATEGIES FOR DEFENDING MULTIPLE CLAIMS BY THE SAME EMPLOYEE

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Today we will cover:

1	Introduction + Legislative Update
2	Forums for Employment Claims
3	Initial Considerations when Facing Multiple Claims
4	The Role and Impact of Issue Estoppel
5	Strategies for Managing Concurrent Claims from the same Employee
6	Questions?



LEGISLATIVE UPDATE

Notable Updates

British Columbia

- Bill 11, *Employment Standards Amendment Act, 2025*
- Minimum Wage Increased to \$17.85 as of June 1, 2025

Ontario

- Bill 30, *Working for Workers Seven Act*





FORUMS FOR EMPLOYMENT CLAIMS

Primary Forums for Employment Claims



The Courts



The Employment Standards Branch



WorkSafeBC



British Columbia Human Rights
Tribunal



The Courts – CRT, BCPC, & BCSC

Wrongful dismissal claims

Damages typically sought

- Unpaid wages (including unpaid vacation pay)
- Pay-in-lieu of notice
- Lost benefits
- Aggravated / punitive damages

The Courts – CRT and Small Claims

Civil Resolution Tribunal

- Claims under \$5k
- Rarely see Employment Claims in this context
- Decisions are publicly available

Provincial Court a.k.a. Small Claims

- Claims between \$5k and \$35k
- Mediation required via settlement conference (typically occur 3 – 6 months after pleadings close)
- Very few procedural steps required before trial
- No opportunity to recover legal fees even if successful
- Process typically takes 1 – 2 years
- Existence of action and decisions are publicly available

The Courts – Supreme Court of British Columbia



Claims with a monetary value of \$35k+



Heightened procedural requirements – lists of documents, examinations for discovery, etc.



“Fast Track” process is available for some claims that are less than or equal to \$100k



Summary trial available



The Courts – Supreme Court of British Columbia (cont'd)



No mandatory mediation



Self-directed (i.e., court is not going to push the process along for you)



Recovery of legal fees is possible – tariff costs unless formal offer to settle



Existence of action and decisions are publicly available



The Employment Standards Branch

Deals with claims for entitlements under the *Employment Standards Act*

Damages: unpaid wages (including unpaid vacation, overtime, etc.)

Typical process:

- EE files complaint
- Investigator appointed
- Investigator contacts employer / investigates claim
- Investigator provides pre-liminary assessment
- If matter is not resolved, dispute goes to “Decision Maker” following report from Investigator

The Employment Standards Branch (cont'd)

No recovery of legal fees, even if successful

Duration of process can vary wildly

Existence of complaint is not public until a decision

Decision is publicly available

Penalties for non-compliance with ESA

\$500 for first time offender; \$2,500 for not following same requirement at same location within 3 years; \$10,000 for not following same requirement at the same location within 3 years of the second contravention

WorkSafeBC

Deals with claims under *Workers Compensation Act* (most commonly prohibited action complaints)

Prohibited action: any act or omission by an employer or union, or by a person acting on behalf of an employer or union, that adversely affects a worker with respect to a term / condition of employment / membership in a union. Includes disciplining, reprimanding, or terminating an employee.



WorkSafeBC (cont'd)



Damages: lost wages, out-of-pocket expenses



No recovery of legal fees, even if successful; Duration of process varies



Existence of complaint is not public until a decision; decision is publicly available



Human Rights Tribunal



Deals with claims under *Human Rights Code* (s. 13, specifically)



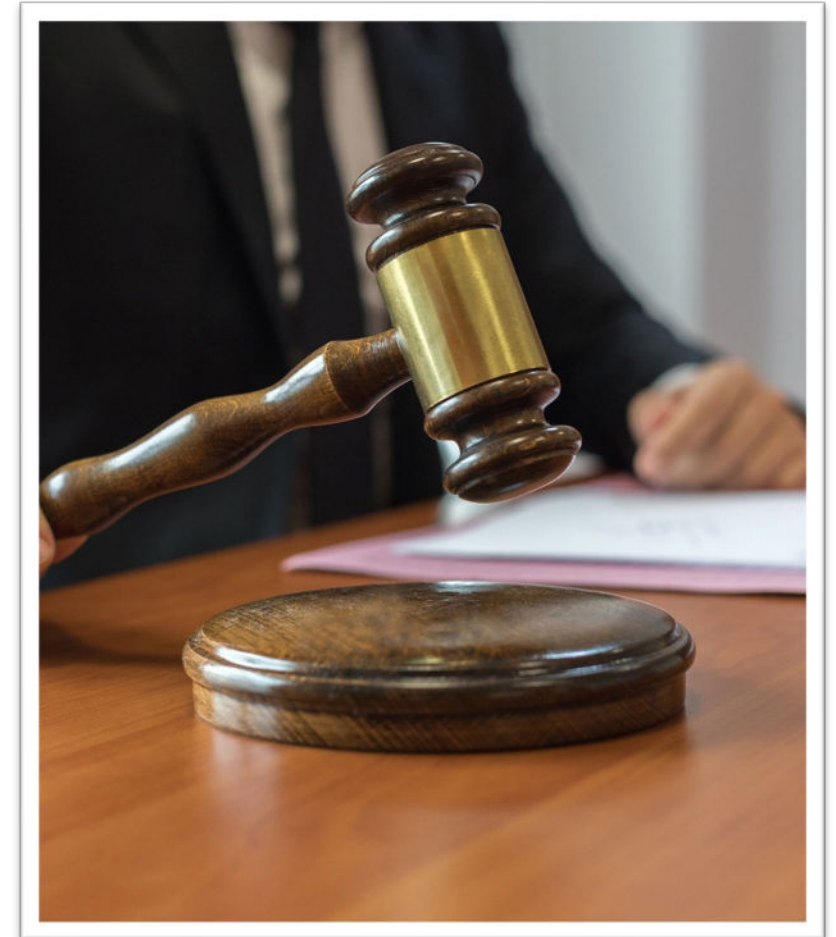
Damages: injury to dignity, lost wages



Opportunity to pursue claims against individual employees in certain circumstances, not just the employer



Very lengthy process



Human Rights Tribunal (cont'd)



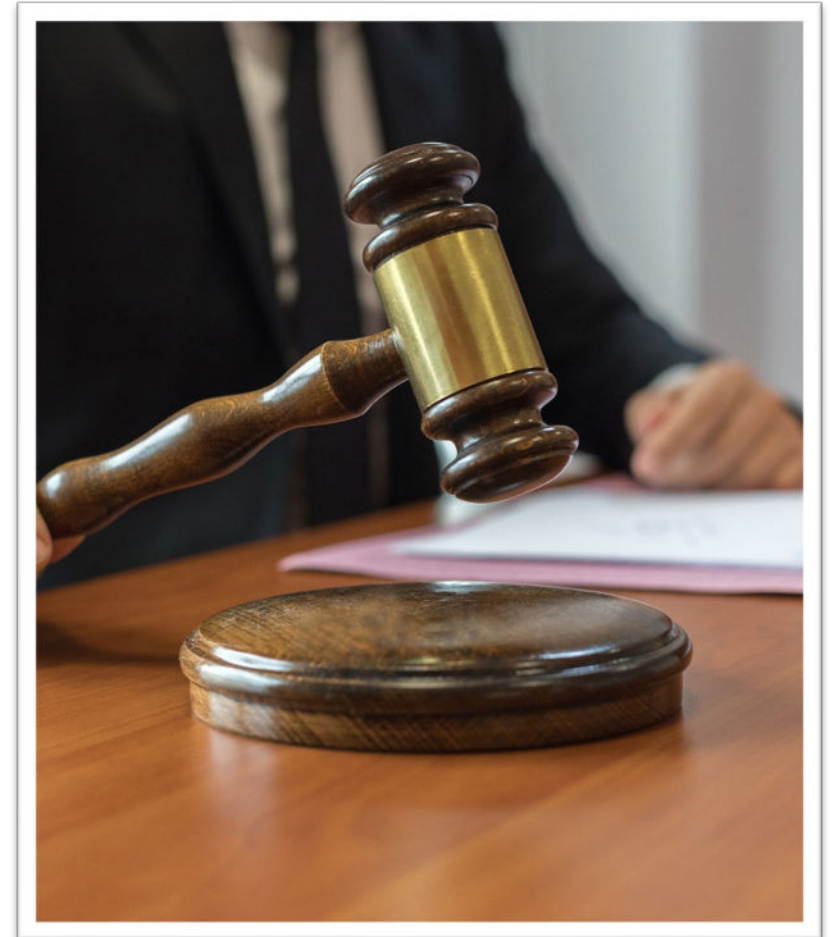
Mediation opportunity – free mediator provided by Tribunal



No cost recovery even if successful



Typically, the existence of complaint is not public until complaint is placed on hearing list. Decisions are made public.





INITIAL CONSIDERATIONS WHEN FACING MULTIPLE CLAIMS

Initial Considerations When Facing Multiple Claims

- Availability of options to dispense with and/or stay a duplicative proceeding

- Procedural Requirements

- Cost of Litigation

- Cost Recovery

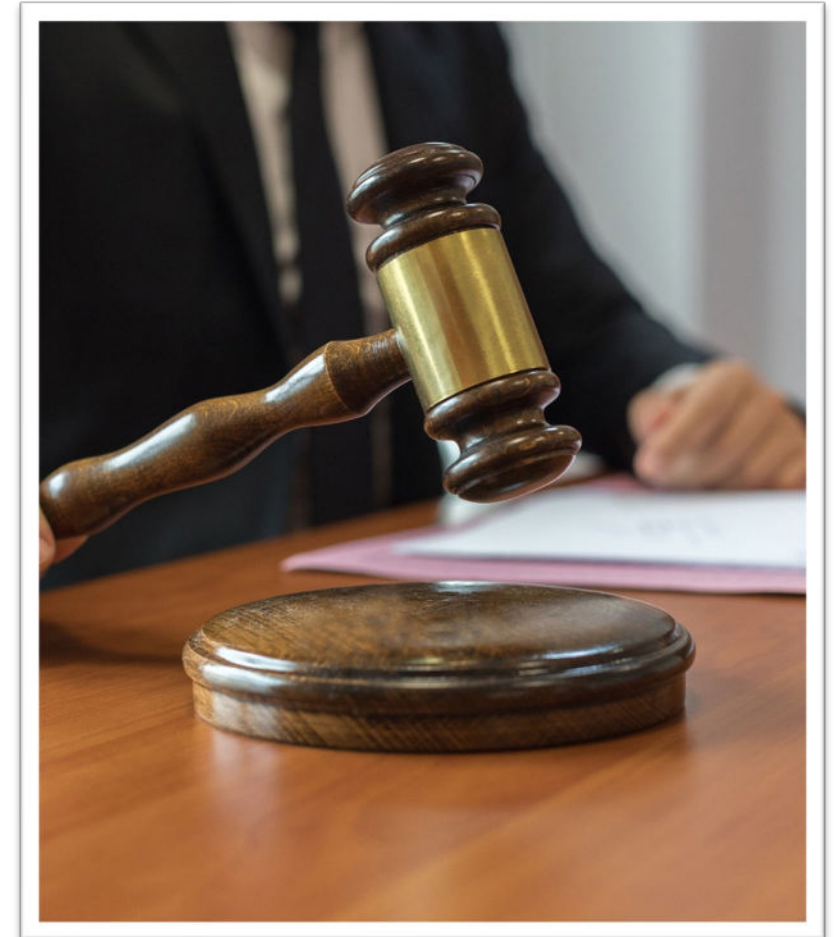
- Timing

- Reputational Impact



The Courts – Civil Resolution Tribunal

- Applicants are required to disclose duplicative proceedings at outset of filing claim
- No official mechanism in which to bring an application to dismiss or stay duplicative proceeding
- If there is a truly duplicative Claim, the Tribunal may dismiss, but only after final hearing
- No opportunity to recover legal fees even if successful
- Decisions are publicly available



The Courts – BCPC

Provincial Court a.k.a. Small Claims

- Primary mechanism for resolution is settlement conference
 - If the action is not resolved at settlement conference, it will proceed to trial
- In limited circumstances of *res judicata*, a party can bring an application for summary dismissal
 - A hearing is required for the application, which is by default held in-person
- No opportunity to recover legal fees, even if successful
- Existence of action and decisions are publicly available

The Courts – Supreme Court of British Columbia

Various options available:

1. Application to Strike for an Abuse of Court process:
 - Allows for recovery of special costs
2. Application to Stay action
 - May be prudent where there is a mandatory arbitration clause
3. Summary Trial

The Courts – Supreme Court of British Columbia (cont'd)



Self-directed timing, however, these applications tend to be somewhat longer and require court attendance for multiple days



May get some costs ordered in accordance with tariff, and possibly special costs, with disbursements



Existence of action and decisions are public



The Employment Standards Branch



Employer may file a written submissions to the ESB officer assigned to the file and should argue that the matter is already being addressed in a more appropriate form or has already been resolved and decided elsewhere



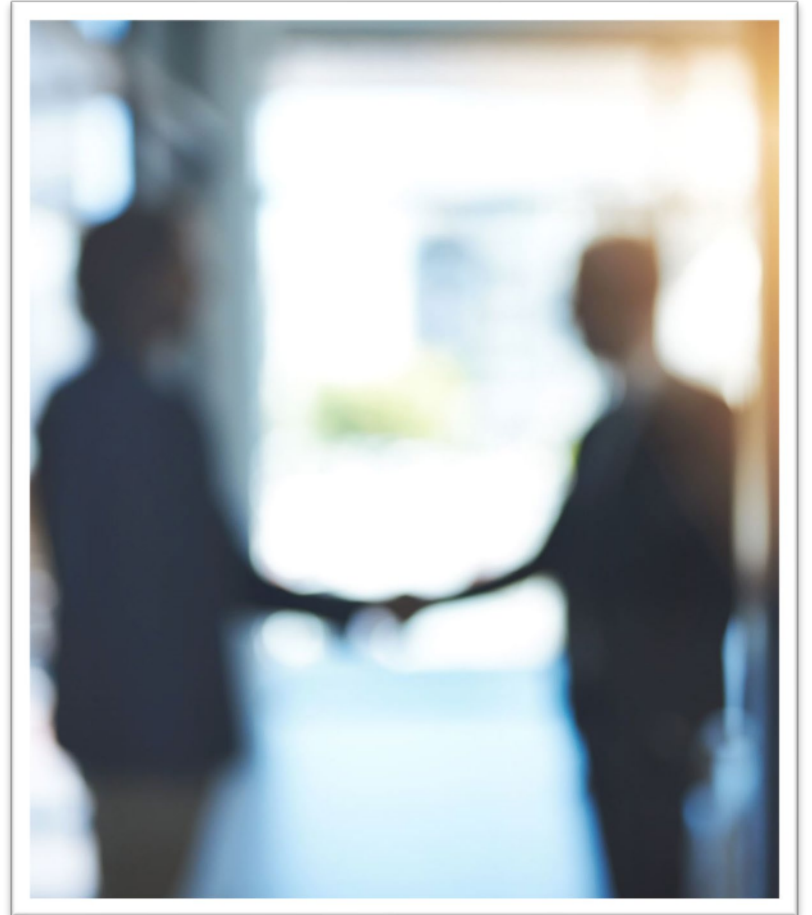
In some cases, the ESB will pause or defer investigation pending the outcome of another process, particularly if the facts overlap heavily and the outcome of the other proceeding may resolve, or render moot, the ESB complaint



No recovery of legal fees, even if successful



Decision is publicly available



WorkSafeBC

No formal “application to dismiss”, but an employer may write a submission requesting dismissal which should include a brief summary, grounds for dismissal, and request for closure and/or non-investigation

Employer may send this request to the assigned Prevention Officer, Employer Services Advisor or the Investigation Division depending on the file stage

If WorkSafeBC refuses to dismiss the Complaint, you may be able to challenge the decision via a reconsideration request to WorkSafe, or appeal to WCAT

WorkSafeBC (cont'd)

WorkSafeBC has broad discretion, and unlike courts, it does not follow strict rules of *res judicata* or estoppel. However, it may close a complaint early if it sees that:

- The matter has been or is being addressed elsewhere in good faith;
- There's no genuine new information; and
- The complaint appears retaliatory or repetitive

No recovery of legal fees

Decision is publicly available

Human Rights Tribunal

An application to dismiss may only be brought at the discretion of the Tribunal

- Tribunal Hearing Path dictates procedural requirements for an application to dismiss
- May bring application pursuant to various sections of the Human Rights Code, if permitted by the Tribunal



Human Rights Tribunal (cont'd)



Due to backlog, the Tribunal may take more than one year to decide a dismissal application



Tribunal unlikely to order significant costs penalties to unsuccessful party, even where conduct is inappropriate



Decisions are publicly available





THE ROLE AND IMPACT OF ISSUE ESTOPPEL

What is Issue Estoppel?

Doctrine that prevents a party from relitigating or re-arguing a point already determined in an earlier decision

Gorenshtein v. British Columbia (Employment Standards Tribunal), 2016 BCCA 457:

- (1) same question has been decided;
- (2) judicial decision said to create the estoppel is final; and
- (3) parties to the judicial decision are the same parties in the proceedings where the estoppel is raised

What is Issue Estoppel? (cont'd)



Initially developed in the context of prior court proceedings



Extended to decisions classified as quasi-judicial pronounced by administrative officers and tribunals

Issue Estoppel in Administrative Proceedings

Even if these conditions are met, issue estoppel is not automatically applied to the proceeding

Non-exhaustive list of factors to consider:

- the wording of the statute from which the power to issue the administrative order derives;
- the purpose of the legislation;
- the availability of an appeal;
- the safeguards available to the parties in the administrative procedure;
- the expertise of the administrative decision maker;
- the circumstances giving rise to the prior administrative proceedings; and
- potential injustice

Impact on Employment Issues

Multi-forum employment litigation is rarely straightforward; look for overlap

Findings made before a tribunal or court can have a significant impact on parallel proceedings

- Reduce risk of unwelcome findings;
- Consistent position between proceedings; and
- Impact of failing to fully advance your case in each proceeding

Double-edged sword:

- When to rely on issue estoppel; and
- How to argue against issue estoppel

Double-Recovery



Cannot claim for the same loss twice



Similarities in heads of damages in different forums are not conclusive





STRATEGIES FOR MANAGING CONCURRENT CLAIMS FROM THE SAME EMPLOYEE

Strategies

GOAL: to resolve all matters simultaneously

- Pick your battles carefully
- Pick your forum carefully, considering:
 - Mediation, settlement conferences;
 - Legal costs
- Settlement incentives in different forums
- Full and final release covering all claims



ANY QUESTIONS?

THANK YOU



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