



Claims, Judicial Reviews, Regulatory Proceedings, and more: What's the difference?

We understand that navigating Court, Tribunal, and regulatory processes can be overwhelming and complicated. Complications can even start before a community begins legal proceedings. There are several reasons for these complications, not least of which is the fact that “legal proceeding” can mean many different things.

Accessing helpful resources in various provinces can be challenging, especially when the claim is uncommon or complex.

A good first step for a community is to understand what type of claim they may need to bring and in which Court or Tribunal it should be filed. While answering these questions can entail complex legal questions when it comes to aboriginal law, below we describe a few common types of claims and where they are usually filed.

Civil Claims

Civil Claims are the most common type of court action. A Civil Claim can be brought by an individual, organization, or group to request a certain remedy from the Court. There are different levels of courts across Canada that will deal with claims depending on monetary amounts or complexity. For example, in British Columbia, the Small Claims Court will deal with claims up to \$35,000.00. The Supreme Court will deal with all other claims exceeding \$35,000.00.

Once you file a claim, you must follow the court rules setting out timelines for filing and serving. For example, claims filed in the Supreme Court of British Columbia follow the Supreme Court Civil Rules to determine the timing of steps within the claim. The steps for initiating a claim and responding to a claim against you, also known as pleadings, obtaining evidence, also referred to as discoveries and examinations, expert reports and trial all have a specific timeline within the Supreme Court Civil Rules.

All courts within Canada have rules and similar structures. However, each province and territory maintains their own rules, meaning each are a bit different in how they refer to documents, timelines for filing and service and preparing for trial. JFK Law LLP has experience in each province and territory and is familiar with Court rules and structures across the country.



Applications for Judicial Review

A judicial review is a type of court proceeding challenging a government decision, including decisions made by administrative bodies. Each province has jurisdiction over its own judicial review system so timelines and processes may look different in each province. It is also possible to file an Application for Judicial Review in the Federal Court when the related decision comes from a Federal body or tribunal. When you are preparing for a judicial review, all material that has been contributed to the deciding body is relevant and needs to be provided to your lawyer so that they can efficiently assist in preparing the presentation of the evidence.

Regulatory Claims/Proceedings

Many Indigenous communities will have had experiences with applications for the development of pipelines, transmission lines, mines (among other things). These are often dealt with, at least partly, by regulatory bodies. There are many different regulatory bodies within Canada, such as the British Columbia Utilities Commission, the Alberta Utilities Commission, the Alberta Energy Regulator, and the Canada Energy Board.

As with legal proceedings in courts, regulatory proceedings are each governed by their own set of rules and guidelines that outline the steps of those proceedings and often also describe what form various documents need to follow. The process may look something like: (1) preparing and filing an initiating document, (2) receiving confirmation and/or additional information requests, (3) attending a hearing, (4) various other types of submissions, and (5) a decision. These steps are general and sometimes a regulatory proceeding may not follow this structure. It's always important to understand the legislation, rules and guidelines associated with each regulatory body.

Determining the terminology and process for challenging a regulatory decision can be particularly complex. Some regulatory bodies have internal processes for reconsideration and appeals. Other challenges will require applications for judicial reviews or appeals to particular courts (and some appeals may require leave – or permission – of a court)..

Tribunals and Boards

There are many administrative tribunals and boards in Canada; some at the Federal level and others at the First Nation, provincial and territorial levels. However, some tribunals, like the Specific Claims Tribunal, have a similar evidence and hearing process to Civil Claims as outlined above.



The Specific Claims Tribunal was created to address historical breaches by the Crown of Indigenous rights outside of litigation and can provide monetary compensation up to a maximum of \$150 million. Given the nature of the claims that can be brought before the Specific Claims Tribunal, e.g., proving the Crown's breach of "legal obligations relating to treaties, reserve lands and resources, or First Nations' trust funds"¹, these claims can be lengthy and costly even though the process is intended to be less costly and shorter than Civil Claims. Specific Claims can move through three (3) phases. The first is negotiations. If the negotiations are unsuccessful or non-existent it moves to the second which is validating the claim, and the third is compensation. Each phase can require a variety of resources including various experts, reviewing and managing historical documentation, maintaining factual evidence and chronologies, and reviewing and keeping apprised of the ongoing decisions, specifically within the Specific Claims Tribunal. While this process may sound daunting, the team at JFK Law LLP is well equipped to lead the process and advise you through each step.

Final word

JFK Law LLP is committed to assisting clients navigate these processes through the Courts, Regulatory bodies and Tribunals with certainty. The lawyers, paralegals, and legal staff at JFK Law LLP are experienced in all the processes discussed above.

If you have questions about bringing a claim, how and what that process looks like, please contact our offices.

¹ Specific Claims Tribunal, About Tribunal, online < <https://www.sct-trp.ca/en/tribunal/about-tribunal>>, accessed February 13, 2023.



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