

A

Introduction to Small Claims Court

What is Small Claims Court?

Small Claims Court is a court of law, but it is not designed for lawyers. It's meant to be a "do-it-yourself" court, where ordinary people may handle their own cases, whichever side they are on. A claim is made through the Nunavut Court of Justice using the Small Claims Rules which are available online at www.nucj.ca.

Do I have to know “legal language”?

No. There aren't many legal words you'll have to know to find your way around Small Claims Court, but there are a few. Here are the main ones:

- The **Claimant** is the person who makes a claim in Small Claims Court.
- The **Notice of Claim** is the form the claimant uses to make the claim.
- The **Defendant** is the person who is being sued - the one the claim is made against.
- The **Reply** is the form the defendant uses to answer the Notice of Claim.
- **Serving a document** means getting it to another person in whatever way the law requires.

If you do not understand the language of this Guide or any Small Claims documents, you must contact the Civil Division of the Nunavut Court of Justice within 25 days at 867-975-6102 or toll free at 1-866-286-0546 and request a translation.

NOTE: In Nunavut, the Notice of Claim or Notice to Third Party is to be served by the Sheriff or his delegate, only (Rule 9.1).

What kind of cases go to Small Claims Court?

A small claim may be for personal injuries suffered in a motor vehicle accident, debt, damage, or the recovery of goods or personal property valued up to \$20,000 not including costs and expenses.

What are some examples of small claims?

- Claims against a business that won't exchange or repair the damaged goods you bought from it;
- Claims against a party that gave you a cheque that “bounced”;
- Claims against a party that owes you money (e.g., unpaid loans);
- Claims for money owing for a service you performed;
- Claims for damage (property or personal injury) caused by a car accident;
- Claims against a party for the money or the goods you bought but didn't get;
- Claims against a party that has bought goods but has not paid you for the invoice;
- Claims against a party who unlawfully has your property.
- This list is not complete.

What cases do not go to Small Claims Court?

There are some kinds of cases that cannot be handled in Small Claims Court, no matter how little money is involved. Landlord and tenant cases, for example, as well as libel and slander suits, cases involving the title to land, family law, probate or bankruptcy cannot be tried in Small Claims Court.

How do I make a claim?

To make a claim in Small Claims Court you must let the Court know about your claim, and the Notice of Claim is the document you will use.

What is the Notice of Claim?

The Notice of Claim is the key to the whole lawsuit. This document tells:

- **WHO** you are
- **WHO** you are suing
- **WHAT** happened that led to this lawsuit, and
- **WHAT** you are asking for.

You may get a Notice of Claim form from the Nunavut Court of Justice or online at www.nuci.ca. If you can't go there yourself, you may telephone or write and ask them to send you one. For instruction on how to fill out the Notice of Claim form go to booklet #2 Making a claim.

What if I am under the age of majority?

If you are under 19 years of age, you must start the claim through an adult who lives in the territory and is willing to act as your litigation guardian. (This person must file at the registry a signed form titled "Authority of Next Friend".)

If you cannot find an adult willing to assist in this case, you may contact the Public Guardian and Trustee. You may contact their office by calling their toll free number at 1-866-294-2127 or 1-867-975-6338. You may also reach them by fax at 867-975-6343 or by email at publictrustee@gov.nu.ca.

It is important to know that as a minor, if your claim is for personal injury, the adult assisting you must use a lawyer if your claim goes to trial.

What if my claim is for more than \$20,000?

You might have a claim for something more than \$20,000, but still want to make it in Small Claims Court. You may do that if you are willing to reduce the amount you are claiming to \$20,000. Just say on the Notice of Claim, in the "How Much?" section, "I am abandoning the amount of my claim that is over \$20,000."

The \$20,000 limit applies to the total of everything you are claiming, including the value of any goods you might be asking for. But it does not include interest and expenses. So, if your claim was for a debt of \$20,500, you could abandon the \$500 and claim \$20,000 plus interest and expenses. (The expenses you may claim in Small Claims Court are very limited - generally, they amount to no more than the filing fee.)

If you do abandon part of your claim, to bring it under the \$20,000 limit, you may not sue for it in another court, or another small claims action. Once you have abandoned it, that part of your claim is gone and you can't sue for it again.

(There are two possible exceptions:

IF the defendant makes a counterclaim against you in the Nunavut Court of Justice, or **IF** the judge in the Small Claims Court transfers your claim to the Nunavut Court of Justice, you would then have the chance to make your claim there in the higher amount.)

What will it cost me for my case?

That will depend on how you handle your case, how the defendant responds to your claim and how you choose to proceed if you win your case.

The fee for filing and serving documents is \$75.00. As a defendant there is no fee to reply to a claim.

In most situations the filing fees and expenses may be added to the total amount the losing party has to pay. This means the costs the defendant had to pay may be charged against the claimant if the defendant is successful with a counterclaim.

If you do end up hiring a lawyer to represent you, the lawyer's fees you pay to the lawyer **cannot** be added to your judgment.

Anyone who cannot afford the registry fees may make an application to the Registrar to be exempted from paying the fees.

How may I get more information?

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A (pages 1- 4) WHAT IS SMALL CLAIMS COURT?

B (pages 1-7) MAKING A CLAIM

C (pages 1-4) SERVING DOCUMENTS

D (pages 1 – 5) REPLYING TO A CLAIM

E (pages 1 – 4) GETTING READY FOR COURT - PART 1 - MEDIATION

F (pages 1 – 3) GETTING READY FOR COURT – PART 2 - THE TRIAL

G (pages 1 – 3) DEFAULT

H (pages 1 – 3) WITNESSES

CIVIL RULES - For more detailed information you may want to look at the small claims court rules themselves. The rules have been written for non-lawyers.

The people behind the counter at the Small Claims Registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer your questions about Small Claims Court procedures.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Rules. The information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

Nunavut Legal Aid Offices:

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Civil Registry of the Nunavut Court of Justice:

Main line – (867) 975-6102

Toll free – 1-866-286-0546

B

Small Claims Court Guide

Making a claim

How do I complete the Notice of Claim?

On the Notice of Claim form you have to list who you are and who you are suing; what happened; where it happened; when it happened; and, how much you are suing for. The following are steps that will guide you in filling out the Notice of Claim form.

- **From (Claimant)**

If you are the claimant all you need to put here is your name, your mailing address and contact phone and fax number. This seems simple, and in most cases it is, but it's important to make sure you name the right claimant. For example, if you have a company, should you or the company or both be named as claimant? See the examples on the following pages to help you decide.

Your mailing address and your fax number are important because this is where the Court will send the Reply to your claim, and any other notices or other documents in connection with your case.

If your address changes at any time, be sure to notify the Court and all other parties to the lawsuit. Otherwise, they will keep sending mail to you at your old address and you won't know what is happening in your case.

- **To (Defendant)**

This is where you will answer the question, 'Who are you suing?'

You must be very careful when naming the defendant. If it's not exactly right, you may win your case but then be unable to get your money.

A. If you are suing an individual:

Use the person's full name. Initials are not enough.

Say: ROBERT JOHNSON,

Not: R.W. JOHNSON.

Do not use titles such as Mr., Miss or Dr.

Say: JOHN WILLIAMS and BETH WILLIAMS,

Not: Mr. and Mrs. WILLIAMS

B. If you are suing a company incorporated in Nunavut:

Usually you can tell if you are dealing with an incorporated company because its name will end in "Limited" ("Ltd."), "Corporation" ("Corp."), or "Incorporated" ("Inc."). To get the correct name and address of the registered office you must request a company search. This may be obtained from:

Legal Registries

Location: Department of Justice, 1st Floor, Brown Building
Tel: 867-975-6590 Fax: 867-975-6594
Email: legal.registries@gov.nu.ca

Mail Address: P.O.Box 1000, Station 570
Iqaluit, Nunavut

The registered office may not be the place where the company carries on business, but the registered office address is the one you will put on the Notice of Claim. You must file a copy of the company search in the registry when you file your Notice of Claim.

Usually you will name only the company as defendant.

There are some cases, though, where both the company and the principal of the company would be defendants. These are cases where the principal has something to do with the case, beyond just being the principal of the company.

C. If you are suing a company incorporated outside Nunavut:

If the company has no assets in Nunavut, you should start your claim in the jurisdiction where the company is incorporated.

You may start a claim in Nunavut against a company incorporated outside Nunavut if the company has assets in Nunavut and is not an extra-territorial company. It is strongly recommended that you do a company search before filing the Notice of Claim. The company search will help you obtain the correct legal name of the corporation. Having the correct legal name will increase your ability to enforce a judgment if the Court rules in your favour.

D. If you are suing a business which is not an incorporated company:

Contact your City Hall or Hamlet office and ask for

- a) the correct name of the business, and
- b) the name of the owner.

You will want to name both the business and the owner so that if you get a judgment you may collect from either of them. Example: "Joe Smith, carrying on business as Smith Automotive"

E. If you are suing a partnership:

This is very much like suing a business. Name the partners and the partnership.
Example: "Joe Smith and Marge Smith carrying on business as Smith and Smith Automotives"

F. If you are suing a society:

This is also very much like suing a business. You must obtain a printout of a search showing the proper name and the most recent address of the society. The search is done through the Legal Registries and you may get the telephone number and address from the section above which deals with suing a company incorporated in Nunavut.

G. If it was an auto accident that led to your claim:

You should name as defendants both the driver and the registered owner of the vehicle. You may get the owner's name and address by requesting an Accident Report to:

Director, Motor Vehicles Division
Government of Nunavut
P.O. Box 10
Gjoa Haven, NU
X0B 1J0
TEL: (867) 360-4614
FAX: (867) 360-4619

There is a fee for this information, which must be enclosed with the request. The Motor Vehicles Division accepts personal cheques.

H. If you are suing the Government of Nunavut:

You should name as a defendant:

HER MAJESTY THE QUEEN IN RIGHT OF GOVERNMENT OF NUNAVUT.

This is the legal name of the Government of Nunavut.

- **And To (Additional Defendant)**

If you are suing more than one defendant:

You may name more than one defendant if the claims against each of them are related. This is where you put in the name of any other defendant you are making a claim against.

- **What happened that led to this lawsuit, and**

This is the part where you tell what the case is about. You should think about this and try to put down the facts that are necessary to make your case.

You don't have to use "legal language". Just tell what happened. That doesn't mean you may leave out essential details. The defendant has to know exactly what the claim is about. Also, the judge will read this document to learn about your case.

- **When?**

Examples: * when did the accident happen; * when was the contract signed; * when did the vehicle stop working, etc.

Again, you may have already answered this. It is here so the Court registry staff may be sure that your claim is being made in time.

There are time limits to most legal actions, and they may be quite complicated. It all depends on what kind of claim you have. You may want to talk to a lawyer about any time limits that may apply to your claim.

If you have tried to settle your differences and that hasn't worked, do not delay in making your claim.

- **Where?**

You may have already answered this question in the "What Happened?" section. It is here so the Court registry staff may be sure that your claim is being made in the right location. (We'll explain what that means later.)

You don't need the complete address here - the name of the city, town or hamlet will do.

If the case involves a breach of contract, tell where the contract was made or where the payments were to be made.

- **Location of the Trial:**

This is where you write the name of the community where you would like the trial to take place. Normally, it would be held in the community where the incident happened.

- **Is your claim for more than \$20,000?**

If your claim is for less than \$20,000 not including costs and expenses then fill in the "No" box.

- **Are you abandoning the amount over \$20,000?**

If your claim is over \$20,000 but you are willing to reduce the amount to \$20,000 fill in the “Yes” box. Remember, once you have abandoned part of your claim you can’t sue for it again.

- **The Defendant understands the language of this claim:**

You may start your action in any of the official languages in Nunavut, Inuktitut, Inuinnaqtun, English or French. If you know whether the defendant understands the language you have chosen to use in this claim, please indicate this by filling in the appropriate box. This is to make sure that the proper language is used when notifying the defendant.

What do I do with my Notice of Claim, after I've filled it out?

The next step is to let the Court know about your claim by taking the Notice of Claim to the Small Claims Court registry. If you have completed the Notice of Claim form online, make sure you print, sign and file it at the registry. Remember, if you are suing a company or a society, you must also have a printout of the search along with your Notice of Claim.

When your Notice is accepted, you will be asked to pay the filing fee. You may pay this by cash, personal or company cheque, certified cheque, money order or bank draft, payable to the Nunavut Court of Justice.

It is possible to mail your Notice of Claim to the registry (don't forget the filing fee) but if you can, you should take it in personally. The registry staff will check your document for you and if they notice any errors you can usually fix them on the spot. You'll save the time it takes to mail documents back and forth.

If the Court is in your community, you may give your Notice of Claim to the Clerk for filing.

How much time do I have to get the Notice of Claim to the defendant?

There is a year to do this. After that time, your Notice of Claim will expire. If you want to continue after that time, you could apply for a renewal.

Service

The defendant must be given notice of the claim. This is done by providing the defendant with a copy of the Notice of Claim. The Sheriff of the Nunavut Court of Justice will arrange for service.

What happens next?

After receiving your Notice of Claim, the defendant may contact you directly and offer to pay the claim or try to settle the case in some way. You are free to make whatever arrangements you want at any time. Just because you have filed a Notice of Claim with the Court, does not mean that you must continue with the claim.

If you are satisfied with what the defendant offers, you should withdraw your claim, once you are paid. If the defendant offers payments, you could both sign a Settlement Agreement (Form 7) and file it at the Registry. This may be enforced if payment stops.

If the defendant files a Reply and agrees to pay all or part of the claim, but you don't agree with how it is to be paid, you may file a payment order and ask for a payment hearing so that the Court may set a payment schedule.

If the defendant files a Reply disputing your claim, the registry will send you a copy of it and set a date for a mediation session.

The defendant has 30 days from the date the Notice of Claim was served to file the Reply.

If the defendant does nothing, you can ask the Court to give you a default judgment, which is enforceable just like a judgment made by a judge following a trial.

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C

Small Claims Court Guide

Serving documents

A lot of paperwork is involved in almost any lawsuit, and it's important that copies of documents get to everyone who needs them.

Getting the paperwork from one person to another is called "service of documents".

*In Nunavut, the Notice of Claim or Notice to Third Party is to be served by the Sheriff or his delegate only (Rule 9.1).

If the party is an individual:

If you are suing an adult, the two methods of service available are:

- personal service, and
- service by registered mail.

To serve a document personally, you or someone acting on your behalf will simply hand the document to the party. If the person refuses to take it, you may drop it on the floor at his or her feet.

To serve a document by registered mail, you will need to provide proof of service (see [section 8](#) on how to prove the document has been served).

If the party is under the age of 19, different service procedures apply. You may need to seek legal advice as the Nunavut Rules of Court guide this process.

If the party is a company:

You may send the document by registered mail to the address shown on the Notice of Claim. You will need to provide a proof of service. You may take it there personally and leave it at the registered office.

Another way to serve a company is to take it to the company's place of business and leave it with the person who appears to be in charge there. You should get that person's name and title/position.

You may also leave it with the director or officer of the company. And, finally, if the company has a trustee-in-bankruptcy, or a liquidator, or a receiver-manager, you may leave it with that person.

If the party is registered in Nunavut as an extra-territorial corporation (its main place of business is outside the territory), you may leave a copy of the document with the person who is appointed to be its attorney, under Section 389 of the *Business Corporations Act*. Alternatively, you may send these documents to the attorney by registered mail. You would get this information from the Legal Registries in Iqaluit.

If the party is a partnership:

A partnership doesn't have a registered office. To serve a partnership you may take the document to its place of business and leave it with a receptionist or with the person who seems to be in charge. Or, you may mail it by registered mail to, or leave it with, a partner. You will need to provide a proof of service by completing and filing a Certification of Service.

If the party is an unincorporated business:

If the business is not an incorporated company and not a partnership, the owner of the business will be named as the party. This is the person you must serve, and the rules for serving an individual apply.

If the party is a municipality:

If you are serving a municipality, you must leave a copy of the document with the clerk or deputy clerk or some official. The *Municipal Act* has special notice periods and limitation periods that are very short. The registry will not be able to provide this information and you may need legal advice.

If the party is a young person, a society, an unincorporated association or a union:

If you are serving any of these, there are special rules about service, and registry staff may help you with these.

If the party is the Government of Nunavut:

If you are suing the Territory of Nunavut, you may serve the document personally by leaving it during business hours or by registered mail:

Legal and Constitutional Law
Box 1000, Station 540
Sivummut Building
Iqaluit, NU X0A 0H0

Do I have to serve it myself?

No, you don't. Often it will be a simple thing - either sending it by registered mail, or dropping it off at an office, or having someone serve it for you.

What if I can't serve the party?

You might find that when you go to serve your document the party has moved and cannot be found. Or maybe the party knows you are trying to serve the notice and is avoiding you. In any case, there is something you may do.

You may make an application to the Registrar of the Small Claims Court to let you serve the document in some other way. In Nunavut, the Notice of Claim or Notice to Third Party is to be served by the Sheriff or his delegate only (Rule 9.1).

For example, if you know where the party lives but he or she refuses to come to the door, or arranges not to be there whenever you knock, you might get permission from the Court to serve the document by taping it to the party's front door.

In some situations, the Registrar might allow you to serve the document by:

- leaving it with a relative of the party
- mailing it by regular mail, or
- leaving it at the party's last known address.

(Alternative methods of service are sometimes called "substitutional service": that is, they are substituted for the normal method.)

Before asking for some other method of service, you should already have tried several times to serve it in the normal way. Be prepared to give details of how you tried to serve the document and what happened, and why the method of service you are asking for will succeed.

How do I prove that a document has been served?

That depends on who served the document and how.

If you or someone else served the document personally, you may prove it by filing a Certificate of Service. The certificate simply says who served the document and how and when it was served.

If the document was served by registered mail, you must file a Certificate of Service, a copy of the document that was mailed attached to the certificate and a proof of service to show the document has been served.

A proof of service by registered mail may be obtained either by phoning toll free 1-888-550-6333 and asking for a signature copy or accessing the Canada Post internet site: <http://www.canadapost.ca/> and printing the delivery confirmation form.

If there is more than one party served, a separate Certificate of Service must be prepared for each party. You may ask the registry for additional copies of the Certificate of Service to attach to the service copy of the document you served.

How do I change my address for service?

It is up to you to be sure that the Court and the other parties in the lawsuit always have your proper address so that they may serve documents on you. Write to the Small Claims registry to let them know if your address changes. A postcard will do - just be sure to print clearly your name, your new address and the file number of your case. You will have to send the same thing to every other party in the case; that is, claimants, defendants and third parties, if there are any.

If you don't advise the registry and the other parties involved of your change of address, they are entitled to keep sending things to your old address and it will not be possible to keep you informed about what is happening in your case.

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D

Small Claims Court Guide

Replying to a claim

If someone is suing you in Small Claims Court, you will receive a Notice of Claim. For most people, this raises a lot of questions.

If you decide to oppose the claim, it will tell you how. If you simply want a reasonable payment schedule, it will tell you how to arrange that. Read the booklet first and then decide what action you want to take.

If you are a claimant and the person you are suing makes a counterclaim against you, this booklet may provide some help with some of the decision you'll have to make.

What if I just do nothing?

The one thing you should NOT do is ignore the claim. If you do nothing, the claimant may get a judgment against you, just as if there had been a trial. Then they can proceed to garnishee your salary, bank account or seize your property.

What if I want to pay the claim?

You may agree that you owe what is claimed. If that's the case, you may pay it directly to the claimant. Or you may contact the claimant to make some arrangements that you can both live with, and the claimant may withdraw the claim. Either way, that will end the lawsuit.

Alternatively, if you have reached an agreement, to pay all or some of the claim, you may both sign a Settlement Agreement (Form 7) and file it with the Registry or the claimant may file a payment order with the Registry. Nothing further would happen with the lawsuit, unless the terms of the agreement were not followed (Rule 13).

What if I don't agree with the claim?

If you and the claimant cannot agree, either on the claim itself, or on the terms of payment, there are several things that you may do:

- If you do owe what is claimed, but can't pay it right away, and can't agree with the claimant on a payment schedule, you may ask the court to set a schedule of payments that you can handle.
- If you don't agree with the claim, you may deny all or part of what the claimant says.
- If you say the claimant owes you money, that will set off his claim.
- You may make a counterclaim against the claimant (use Reply form (form 2) and Counterclaim form (form 3)).

Whatever you decide, you will use the Reply form (form2).

What is a Reply?

The Reply is your answer to the Notice of Claim. It is a special form you will use to tell:

- what you disagree with in the Notice of Claim, and why
- what, if anything, you agree with
- what, if anything, you are claiming against the claimant, and
- whether you want the Court to set a payment schedule.

How much time do I have to file my Reply?

Whether you were in Nunavut or outside of Nunavut when you received the Notice of Claim, you have 30 days to reply.

Even after the time limit has passed, the Court Registry may still file your Reply, as long as the claimant has not obtained a default judgment against you or had a hearing date set to determine what you owe in default.

Even if one of those things had happened, you may still ask the Court for permission to file a Reply after the time limit. You will have to have a good reason for your delay.

Where do I get a Reply form?

When the claimant gave or sent you the Notice of Claim, a blank Reply form should have been included with it. If it was not, or if you need another form, you may get one from the Nunavut Court Registry or go to the Nunavut Court of Justice website at www.nucj.ca. You may also call the Courthouse in Iqaluit and request a form.

How do I fill out the Reply?

The Small Claims Court forms are specially designed to be used by people who are not lawyers. You may find all the help you need on this sheet. If not, don't hesitate to ask the Court Registry staff for assistance.

Let's look at an actual Reply form and go through it step by step.

From (Defendant):

This is where you put your own name, address and telephone number. Again, copy your name as it appears on the Notice of Claim.

The address given on the Notice of Claim may not be the right one. You must be sure that the address you give is correct because this is where the Registry will send any further notices or information to you.

If your e-mail or mailing address changes at any time, be sure to notify the Small Claims Court Registry and all other parties to the lawsuit. Otherwise, they will continue to send mail to your old address and you won't know what is happening in your case.

To (Claimant):

This is where you put the name of the claimant. Simply copy the claimant's name, address and telephone number from the Notice of Claim.

PART A: I agree with the claim:

If you want to pay the claim but you need some time - and you can't come to an agreement with the claimant - fill in this space. In the spaces to follow, you may tell what sort of payment arrangements you want to make.

Most of us want to pay what we owe. Often the reason we don't is that we simply can't. Or we can't pay it right away. Sometimes installment payments may be the answer. Or a delayed payment date might satisfy both sides.

PART B: I do not agree with any part of the claim:

This is where you tell what you disagree with in the Notice of Claim. You should take some care with this part. Look at the "How much" section of the Notice of Claim. If the claim has more than one part - a, b, c, and so on - then you should reply to each part separately, using the same letters.

You may have already answered this in the AND TO (ADDITIONAL DEFENDANT) section but if you believe that the claimant should be going after someone else for the whole amount or for some of it, be sure to put it in here.

If there is anything in the Notice of Claim that you agree with, be sure to include that here. Otherwise, the claimant might have to spend money to prove it in court. The judge could order you to pay the claimant back for money that was wasted proving something that was never really an issue.

Try to be brief. You may have many other quarrels with the claimant, but don't include them here. Stick to only those items that appear in the Notice of Claim under "How much".

Don't worry about using "legal language". Just make your point in your own words.

Counterclaim Or Third Party Claim:

If you have a claim to make against the claimant, (fill in the appropriate box). A counterclaim is just another claim, like the one in the Notice of Claim, except that it is made by the defendant, against the claimant. It is important to correctly identify who you are suing. You have to fill in a Counterclaim form (form 3) and attach it to the Reply (form 2).

If you have a claim to make against someone else then you fill in the appropriate box. It is important to correctly identify who you are suing. You have to fill in a Third Party Claim form (Form 4) and attach it to the Reply.

What do I do with my Reply, after I've filled it out?

The next step is to file the Reply with the Court. You do that by taking or mailing it to the Small Claims Registry. The address will be on the Notice of Claim you received. If you have completed the Reply form online, make sure you print, sign and file it at the Registry.

When your Reply is filed, you will be asked to pay the filing fee unless you have agreed to pay the full claim.

You may pay by cash, personal or company cheque, certified cheque, money order or bank draft, payable to the Nunavut Court of Justice.

If you can, you should take it to the Registry yourself. The staff there will check the form for you and point out any errors or things you might have missed. They can't give legal advice but they are experienced in dealing with Small Claims forms and they may be very helpful.

If they have to mail a form back to you for corrections, you may run out of time.

What happens next?

Once the Registry has accepted your form(s), they will send a copy to each of the other parties in the case.

Mediation is the next step. You will receive a notice in the mail, telling you where and when it will be held and you must attend.

The mediator will discuss with both of you the possibility of settling the claim. If you have asked in your Reply for a payment schedule, that will be discussed during the mediation. If you reach an agreement, you will each sign a Settlement Agreement (Form 7) setting out the terms for payment.

Remember that at any stage, you are always free to try to work out some agreement with the claimant, which will put an end to the lawsuit.

What if I think there is someone else who should pay?

It may be that there is someone else who should be responsible for paying the claim. This is called a "Third Party Claim". If you have a Third Party Claim, ask your Small Claims Court Registry for a Third Party Notice (form 4). You will fill out the form, sign and file it in the Registry, just as you did with your Reply.

The third party will receive notice about the claim when they are served the following by the Sheriff (Rule 9):

- a copy of the Third Party Notice
- a copy of the Notice of Claim
- a copy of your Reply
- a copy of any Notice of Settlement Conference or Notice of Trial that has been issued, and
- a blank Reply form.

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E

Small Claims Court Guide

Getting Ready for Court

Part One – Mediation:

If your Small Claims Court case is going to court you will receive either a notice of a mediation session or a Notice of Trial in the mail from the Court Registry. Most cases will have a mediation session.

First, we will talk about the mediation session, what its purpose is and what you may do to prepare for it.

If all goes well, your case will end there, with a settlement. If not, there will be a trial. For more information on how to prepare for trial please refer to Part two – The trial.

What is the mediation for?

There are two main purposes for the mediation:

- to encourage settlement of cases, and
- if settlement is not possible, to help the parties prepare their cases for trial.

Try not to think so much in terms of "How can I win my case?" Think instead, "What do I want from this case? What does the other side want? Is there any possible solution that we both can live with?"

Even if the whole case cannot be resolved, the mediation session is a good chance to work out an agreement on at least some of the issues, so that the trial will be easier, quicker and less expensive.

How should I prepare for a mediation session?

The better prepared you are for your mediation session, the more you will gain from it. In fact, it is a good idea to do most of your preparation at this time. Then, if you do have a trial, most of your work is done.

What's more, if you are not prepared and the session cannot be properly conducted (because you don't have the necessary documents with you, for example) it may cost you money. The mediator may order you to pay the other party's expenses for coming to the session, and you may all have to come back a second time.

If you are the Claimant:

(Go to the "If you are the Defendant", unless you have a counterclaim. If so, read this because the same applies to counterclaims.)

If you are the claimant, there are two basic parts to your case:

First: You have to prove liability. That means you must prove that the defendant did something wrong to you.

Second: You have to prove the amount. It's not enough to prove that the dry cleaner ruined your suit. You have to prove what the suit was worth or what it cost to repair the damage.

The evidence is whatever you will use at trial to prove your case. But you have to think about it now because the mediator at the mediation session will want to know how you intend to prove your case. There are several different kinds of evidence. The most often used are:

a) oral testimony (at trial only): a witness comes to court and answers questions at the trial;

b) documentary evidence: documents, such as business records, are presented in court either by a witness or a party;

c) photographs: photographs are sometimes used as evidence if the person who took them may properly identify them.

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. The best way to do this is to get out your Notice of Claim for reference and then make yourself a worksheet.

You must bring to the mediation session all of the documents that you will use at trial - if there is one - to prove your case. This would include the contract, invoice, bill of sale and written estimate, if you have them. **DO NOT BRING THE WITNESSES.** You should be prepared to summarize what your witnesses would say if they had to come to court.

If you are the Defendant:

Begin by looking again at the Notice of Claim and at your Reply.

Do you disagree with the claimant's version of "What Happened?" Make a note of exactly what it is you disagree with and be prepared to tell the mediator what, if anything, you agree with.

Do you disagree with the amount that the claimant says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.

Do you agree to pay what the claimant claims, but simply can't pay it all at once? If that's the case, bring with you some evidence of your financial situation - recent pay stubs, for example, and last year's income tax return. Then tell the mediator what sort of payment terms you would need. If you can pay something right away, that is even better.

What will happen at the session?

You will go into an office or meeting room and sit at a table with the mediator. In any case, this will be a private meeting. Members of the public are not allowed.

The mediator will say a few words and will likely ask each of you to give a brief summary of your case. You don't need to write this out in full but you should have a list of the points you wish to make. If you've made a worksheet, you may wish to use that.

The mediator may then lead you both into a discussion of what, if anything, you could agree on. Ideally, you would agree on the final result and then you would complete, sign and file a Settlement Agreement (form 7), and that would be the end of it. Or, you might agree on some of the issues and leave others for the trial.

Who attends the mediation session?

The mediator will be there and possibly a clerk (to take notes). The parties must attend. If anyone has a lawyer, the lawyer may attend as well but the client must always be there.

If one of the parties is a company, then the company's representative must be one who has authority to settle the claim.

If you would like to have someone attend with you for support, ask the mediator's permission at the start of the session.

What if I don't come to the mediation session?

If you don't attend the session, an order may be made against you. If you are the defendant, this could be an order that you pay the full amount of the claim. If you are the claimant, it could be an order dismissing your claim. The mediator may also order that the case go to trial, and set a trial date in the absence of one of the parties.

What if I can't be ready - or can't attend - on the date set for the session?

If you can't have all your documents ready in time for the mediation session, or if you have a good reason for being unable to attend on the date set, ask the Registrar to postpone your session to another date. Be sure that the Registrar has notice - in writing - at least seven days before the date set. If the Registrar doesn't think that you tried your best to be ready, you may still be required to keep the appointment.

If you cannot attend in person, you may make a written application to the Registrar to attend by telephone.

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F

Small Claims Court Guide

Getting Ready for Court

Part two - The trial

What is the difference between a mediation session and a trial?

There are a number of differences. A mediation session is a private discussion between the parties, with the assistance of the mediator. A trial is a public process where each party tells its own side of the case to a judge or adjudicator who makes a binding decision.

Evidence is heard from witnesses at a trial; at a mediation session the parties simply tell the mediator what the witnesses would say if they were present.

How do I make sure my witnesses will come to court?

If you have any witnesses, chances are they will agree to come to court voluntarily. If not, you may get a Notice to Appear as a Witness (form 10) at the Small Claims Court Registry. If it is served on the witness, along with reasonable traveling expenses (i.e. taxifare), at least five days before the court date, the person will be required by law to attend.

What if I can't be ready - or can't attend - on the date set for the trial?

If you have a very good reason for being unable to attend on the date set, you may appear in court to ask the judge to postpone or adjourn your trial. Your application must be in writing and you have to serve the other party with it at least seven days before you ask the judge.

If you apply to postpone or adjourn your trial, the judge may order you to pay some costs.

A trial preparation checklist

- review the Notice of Claim, and Reply, and any other documents that have been filed
- review the results of your mediation session
- list the points you need to prove to win your case
- consider how you will prove each one
- gather the documents you need and organize them in logical order
- contact any witnesses you decide are necessary
- obtain statements from expert witnesses, if any, and send out copies as required (see Rule 15.5)
- prepare questions for witnesses and review them together
- prepare a list of questions for cross-examination

- on your trial date, give yourself plenty of time to arrive well ahead of the time you have been given

If you have prepared your case well, you will be much more relaxed on the day of your trial and you will be able to present your case to its best advantage.

Getting Results

Some people think that when the trial is over and the mediator's decision is made, the winner will be paid and that's the end of the case. Unfortunately, for some it's just the beginning.

Getting a court order or a settlement agreement is one thing, but getting your money is another matter.

If I win my case, will the Court collect my money for me?

No. Collecting money is not the Court's responsibility. The Court has a number of procedures you may use - tools that are available to you - but it is up to you to use them.

What do I do once I have my order?

Whether your payment order was made by a judge after a trial or mediation session, or whether you got it by default, the order first has to be put in writing. The Small Claims Court Registry staff may help you with this. Then you give it to the Registry, where it will be signed and entered in the court records. This is called "filing" the order and it must be done before you may take any steps to collect on it.

After that, the first thing you should do is send a copy to the debtor with a letter asking for prompt payment. Be sure to include the address where payment may be made. Set a reasonable deadline, taking into account whether payment will likely come by mail, and other circumstances you may know about.

If that doesn't work, you will have to take other steps to enforce your order. You have 10 years before the order expires, but usually, the faster you act, the better your results will be.

What can the creditor do if the debtor doesn't pay?

If the debtor does not pay, the creditor has a number of options. The most commonly used are:

- a) a payment hearing
- b) garnishing wages or bank accounts
- c) seizure and sale of goods by the court bailiff
- d) a default hearing (if there was already a payment schedule in effect)
- e) registration against land.

Summary

There are many different tools available to help you collect your money once the Court has given you a payment order.

In most cases, you should start with a simple written request for payment along with a copy of the order. If that doesn't work, take a look at all the information you have about the debtor and try to decide what would be the most effective method. Usually a payment hearing is a good start because you may use that to gather the information you may need later. A payment schedule is often the answer - if timing and amount of the payments are manageable for the debtor, you have a better chance of collecting what's owing to you.

But if the debtor has money available and is just determined not to pay, take a look at the other options that are available to you and decide what will give you the best chance of success.

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G

Small Claims Court Guide

Default

The Court may award a final judgment to the claimant when the defendant fails to file a Reply. This is called a default judgment. A Reply is the written statement of the claimant, in answer to the defendant's claim.

If a Defendant Does Not Reply to a Claim

If a defendant does not file a Reply within 30 days, the claimant may ask the Clerk for a default judgment.

This means that if a claimant has filed a claim against you, you have to complete a Reply (Form 2) and file it at the Court within 30 days of receiving it; otherwise, the claimant may get judgment against you in the amount that they have claimed, seize your goods and property; or schedule an assessment hearing without you being there.

Judge's permission needed in certain cases

No default judgment will be made on a counterclaim or Third Party Notice, without the Court's permission.

How to ask for a default judgment

To ask for a default judgment under Rule 12.1, a claimant must submit a written direction to the Registry.

If a claim is for an identified amount (or recovery of goods)

If a claim is for a clearly and easily identified amount and the claimant completes the steps mentioned above and, if the Clerk is satisfied that all preconditions have been met, the clerk will enter judgment requiring the defendant to pay the amount claimed and prepare a Certificate of Judgment (Form 11B).

If a claim is not for an identified amount

If a claim is for damages where the amount depends on the circumstances, and the claimant completes the steps above, the Clerk will set a date for an assessment hearing.

No notice of hearing

A defendant who has not filed a Reply and has been noted in default is not entitled to receive notice of any further steps taken in the proceedings.

Purpose of assessment hearing

The purpose of an assessment hearing under this rule is to allow a judge to determine

- (a) the amount the claimant is entitled to, if the claim is for money, and
- (b) the terms of any other order it considers appropriate.

If a claimant does not attend

If a claimant does not attend at the time set for an assessment hearing, the Court may adjourn the hearing or dismiss the claim.

How do I set aside the Noting in Default?

As a defendant, if you have been noted in default you may apply to set aside the Noting of Default or the subsequent judgment. To do this you fill out the Notice of Motion (Form 9) at the Registry. However, for the Court to set aside the Noting in Default you have to show that you have a good defence to the claim or show that you have a good reason for why you are in default.

What do I do once I have obtained a Certificate of Judgment?

Please go to the booklet number 6 *Getting Ready for Court – Part 2 – The Trial* where it talks about how you may collect payment.

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H

Small Claims Court Guide

Witnesses

This booklet will tell you about the steps required for you to summon a witness. It also explains what you have to do if you are summoned to attend court. A **summons** is when the court requires a person to attend court as a witness at a trial, hearing or examination, to produce documents or other things or to testify before the court.

How a witness is told to attend court

To summon a witness to court, a party must:

- (a) complete a Notice to Appear as a Witness (Form 10), following the instructions on the form, and
- (b) serve a copy of the summons on the witness at least 5 days before the date the witness is required to attend, and
- (c) pay the witness' costs for transportation and accommodation OR arrange for telephone/video testimony.

A Notice to Appear as a Witness may be served on the witness by mail, registered mail, fax or e-mail.

A Notice to Appear as a Witness is not effective unless the witness' costs for transportation and accommodation OR arrangements for telephone/video testimony are made.

What if I do nothing?

If you are required to appear as a witness and you don't show up, or if you don't bring the required documents, the party who required you to appear may seek an adjournment and institute civil contempt proceedings against you.

Travelling expenses

What if I am a resident of Iqaluit and I am asked to be a witness in Cape Dorset?

The party who has required you to attend the trial must

- a) arrange for you to attend by telephone or videoconference
OR

- b) pay your costs of transportation to and accommodation in the community where the trial will be conducted.

If travel costs are not offered, or telephone/video testimony is not arranged, the witness will likely have a defense to any civil contempt proceedings.

Summons not always necessary

If a witness will attend court voluntarily, a summons is not necessary.

What a witness served with a Notice to Appear as Witness must do

A person who is served with a Notice to Appear as a Witness must:

- (a) attend court at the time and place stated on the notice, and
- (b) bring to court any records and other things required by the notice.

If a witness does not obey a Notice to Appear as Witness

As stated earlier, if you decide not to appear as witness, or bring the documents requested, the other party may institute civil contempt proceedings against you.

What if I cannot attend court or if I don't have anything to contribute?

If you are summoned as a witness but you are unable to attend or if you think that you don't have anything to contribute you should contact the Court Registry and let them know. They will be able to help you.

Expert Witnesses

An expert report or testimony from an expert witness is not admissible at trial, unless the Court orders otherwise.

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