

Quick Guide to the Small Claims Court Canada

Sometimes, filing a claim in the Small Claims Court is not always the most effective way to deal with a problem. The first step should be to try and resolve the dispute by way of a 'written demand,' in which you ask the other party to settle your small claim in full by a specific date. Some provinces actually require evidence of this before you file your Small Claims Court forms with the Small Claims Court. There are several other steps that can be taken after this to settle the dispute rather than going to court; they are mediation and / or arbitration.

Small Claims Court Cases

- ❖ The Small Claims Court Canada deals with civil cases, which are private disputes against individuals or businesses.
- ❖ You **can** use the Small Claims Court to claim for:-
 - Damages resulting from car and motorcycle accidents.
 - General debt issues resulting from defaults or failure to pay for goods, services or loans.
 - Disputes over poor workmanship e.g. with home or car repairs and breaches of contract.
- ❖ You **cannot** use the Small Claims Court to address criminal issues, disputes involving the ownership or title to land, claims resulting from a will, slander, libel, bankruptcy, false imprisonment or cases brought about with malicious intent.

Small Claims Court Limits

If you sue for an amount greater than the Small Claims Court limit stated below, you can still use the Small Claims Court, but you will not receive more than the

provincial maximum if the court rules in your favour. You will also not be able to try to recoup the excess amount in another court.

The Small Claims Court limits for each province are as follows:

Ontario Small Claims Court Limit	\$10,000 (rises to \$25,000 in 2010)
Alberta Small Claims Court Limit	\$25,000
British Columbia Small Claims Court Limit	\$25,000
Manitoba Small Claims Court Limit	\$10,000
New Brunswick Small Claims Court Limit	\$6,000
Newfoundland and Labrador Small Claims Court Limit	\$5,000
Nova Scotia Small Claims Court Limit	\$25,000
Prince Edward Island Small Claims Court Limit	\$8,000
Quebec Small Claims Court Limit	\$7,000
Saskatchewan Small Claims Court Limit	\$25,000

Small Claims Court Rules and Guidelines

- ❖ You can either conduct your claim through the Small Claims Court yourself or you can use a lawyer or a paralegal to represent you.
- ❖ Anyone aged 18 years and over and living in Canada can use the Small Claims Court. You will be known as the plaintiff if you are the person filing the small claim, whilst the person being sued is known as the defendant.
- ❖ If you are under 18 years of age and you want to make a small claim, you have to find someone who is aged 18 or over who is prepared to take responsibility for your small claims lawsuit and accept all of the Small Claims Court fees. This

person is referred to as the next friend. They are responsible for filing the forms and seeing the claim through court.

- ❖ There is a deadline on the length of time that you can file a small claim lawsuit in the Small Claims Court Canada; this is known as the limitation period. It varies according to the type of small claims you make and the province in which you file your small claims. In Ontario Small Claims Courts, the limitation period is two years from the day on which the claim resulted.

Small Claims against an Individual or a Company

- ❖ Make sure that you file your claim against the correct person or business.
- ❖ You do not have to limit your small claim to just one individual or company.
- ❖ You must give their full first and last names on the relevant Small Claims Court forms— do not use initials because they do not sufficiently identify the person. You can find out these details by checking with the local tax department.
- ❖ If you are filing a small claim against a company, you must use the correct company name and this may not be the one that they trade under. You can find out the exact name of a company by searching in the provincial registry. The Registry for Ontario businesses can be found at: - <http://ontarioregistry.com/>.
- ❖ If the company you are suing is unincorporated, you must sue the company in the full name of the owner(s). You can put the company name next to the owners name to avoid confusion.

Small Claims Court Locations in Canada

The court location you choose must be based on one of the following:-

- ❖ The Small Claims Court location closest to the place where the incident occurred.
- ❖ The place where the person you are suing lives or conducts their business.
- ❖ You can find a list of all of the court addresses online at :-

www.legalcanadacommunity.com

Small Claims Court Forms

- ❖ Download, purchase or collect the Small Claims Court forms from the court or provincial court website. You will need the following:-
 - Plaintiff's Claim form
 - Dispute Note for every one of the defendants
 - Notice to Attend for every witness (including interpreters)
 - Affidavit of Service to prove that you have served the papers.
 - When you fill out the Small Claims Court form, you should include the following:-
 - Your full name, address and daytime telephone number
 - The defendant's full name, address, and telephone
 - The amount of money you are claiming
 - Details about the problem
 - The reasons you are suing
 - The number of witnesses
 - Proof of the claim's existence

Small Claims Court Fees

- ❖ Going through the Small Claims Court is a cheaper way of settling a dispute than going through a higher court; you do not have to use a lawyer.
- ❖ Each province has its own set of Small Claims Court fees, which often vary according to the size of the claim but generally they are around \$100 - \$200.
- ❖ If you cannot afford to pay the court fees, you need to fill in a Statement of Finances (available at www.legalcanadacommunity.com)
- ❖ Links to the court fees for each province can be found at:-
www.canadalegalcommunity.com

Serving the Papers

- ❖ You can serve papers by giving the Small Claims Court documents directly to the defendant, handing them to a person you believe to be over 16 years of age at the defendant's address or by sending them via registered mail so that the defendant has to sign for them.
- ❖ Small Claims Court documents served on a business can be given to the president, chairperson and head officer, a director of the corporation or to a manager located in the office where the small claim was issued or you may send it by registered mail to the company's registered address.
- ❖ Hand the forms in to the Small Claims Court office where your case will be heard and pay the relevant Small Claims Court fees.
- ❖ The court logs details of your small claim and return a copy of the Small Claims Court form to you.
- ❖ Serve Dispute Notes and a copy of your claim form to all defendants.
- ❖ Witnesses should be served with a Small Claims Court Notice to Attend and must be paid their witness fee. Each court has a list of witness fees, but generally they are around \$10 - \$20 per day.
- ❖ If you use registered mail, the Small Claims Court forms are considered to be served seven days from the date of mailing if the documents are sent within the province where the small claim is being issued or 14 days if they are being sent to another province. It is vital that you retain a Copy of Signature or a Certificate of Delivery Confirmation from the post office.

Swearing an Affidavit

- ❖ Fill out an Affidavit of Service and file it in person with the Commissioner for Oaths at the Small Claims Court office. He / She will ask you to swear the affidavit in his / her presence. If you served the small claims court forms by

registered post, you should attach the Signature of Certificate of Delivery Confirmation.

Waiting for a Court Date

- ❖ The defendant should either file the small claims Dispute Note, settle the claim or call a Settlement Conference within 20 days after being served, or 30 days if they are served outside of the province where the claim has been filed.
- ❖ If they do settle the claim, or you negotiate an agreement, you should let the small claims court know by filing a Notification of Withdrawal.
- ❖ If they file the small claims court Dispute Note this means that they intend to contest your case in the small claims court and the court will set a date for your hearing and notify all parties involved.
- ❖ If the defendant(s) fail to respond in any way to your small claims court forms, you can obtain a Default Judgment, which is a ruling against the defendant without a court hearing. You do this by filing a Request for Default Judgment/Noting in Default with the clerk of the court at which your proceedings were set to be held.
- ❖ Once this has been logged you and the defendant will receive a Certificate of Judgment

Small Claims Court Preparation

- ❖ Be well prepared for your day in the Small Claims Court
- ❖ Present your small claims case clearly.
- ❖ You can present evidence and call witnesses, but you should be sure that whomever you call or whatever evidence you present it is completely relevant to the case.
- ❖ If you present documents as evidence, they must be original copies.
- ❖ If you use photographs as evidence, they must be relevant to the claim and verified by the photographer who took them and that person must testify as to when the photographs were taken.

- ❖ Any witnesses called must be physically present in court and have a direct connection with the events leading up to the claim.
- ❖ Do not call witnesses whose testimony is based on hearsay.
- ❖ Prepare your witness questions beforehand and make them clear and simple. Remember that you must ask questions, not just make statements.

The Day in Court

- ❖ Before the court session commences, a clerk will read the list of hearings, to be heard that day. The list is read out before the morning and afternoon sessions.
- ❖ When your name is read out, you should stand up and identify yourself to the clerk.
- ❖ Courtesy before the judge is vital; you must stand when the judge enters and leaves the courtroom and when you speak to him or her. Throughout your case, you should speak slowly and clearly and address the judge as “Your Honour.” You should never interrupt, shout or argue. If you do not understand, something the judge has said, you may ask for clarification.
- ❖ Wait until the judge calls your name. Then you must go to the front of the courtroom and inform the judge of all witnesses present. Your judge may ask your witnesses to leave the courtroom until their testimony is required.
- ❖ You must question the witnesses by standing and facing them and asking them to present what they know about the incident or claim.
- ❖ The witnesses you present will also be cross-examined by the defendant or his representatives.
- ❖ Take notes as each of your witnesses are cross-examined because you have the chance to re-examine them once the defendant has finished questioning them.
- ❖ Once all evidence has been presented and all witnesses have been cross-examined, both parties can make their final argument known as the Summation.
- ❖ The judge will then either make a decision over the case or postpone a decision to a later date.

Small Claims Judgment

- ❖ Once the judge has made a decision on your case, all of the parties involved are sent a Certificate of Judgment.
- ❖ Once the defendant receives their copy of the Judgment, they should pay you. However, winning your case does not necessarily mean that you will receive the damages owed to you.
- ❖ You may need to take other steps to enforce the judgment such as applying for a Writ of Enforcement (available at www.legalcanadacommunity.com).