

SMALL CLAIMS COURT

Small Claims Court is for the payment of money up to \$10,000 for Ontario, **British Columbia, \$25,000 for Alberta, \$7500 for Manitoba, \$8,000 PEI, \$6,000 for New Brunswick, \$5000 for Saskatchewan and Yukon Territories, NWT, Nunavit** and \$3,000 for Newfoundland (exclusive of interest and costs). You can abandon the excess but you cannot split the amount. It is suppose to be informal, inexpensive and relatively simple. It is a court of "equity" and "good conscience" fairness is emphasized instead of formal rules. Non lawyers (agents) may represent parties.

SO WHEN DO WE SUE?

- It is going to cost time (at least 6 months) and money to sue, cases must be carefully picked.
- Have all the methods been tried? It should be the last resort.
- Why is the debtor not paying? Does the debtor have a source of income? assets to sell or garnish?
- How much is due and owing – is it worthwhile?
- Analyze the strengths and weaknesses of the case.

FILLING OUT A STATEMENT OF CLAIM

- It shall contain full names of the parties, including any AKA's from any documentation, e.g. credit bureau, property searches. The nature of the claim including the date, place and the nature of the occurrence of which the claim is based. You have to file copies of the documents with your claim. If the documents are lost or not available say so in your claim and explain why they are not available.
- The address where the plaintiff believes the defendant (debtor) may be served.
- The claims should be completed and then submitted to the court with the documents.

Business Accounts:

Partnership: A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership, if not a limited company. If a limited company sue the customer and garnishee the limited company.

Sole Proprietorship: If a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person and carrying on business as (COB).

SERVICE:

- The claim must be served on the person personally or by alternative to personal service within six months. This is usually done with a private process server.
- A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed. If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected; the document may be served:
 - (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household.
 - (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

**** Rules regarding effect personal service of a claim varies from Province to Province.**

DEFENCE:

- If the debtor files a defence the clerk shall serve the defence to the plaintiff by mail or fax.
- The debtor must file a defence within 20 days after being served. If the claim was mailed, the time period starts on the fifth day after the date of the postmark. If the defence is admitting to liability and proposes a repayment plan that is too small, you can dispute the proposal within 20 days and get a pre-trial hearing to negotiate a higher amount.
- If payments are not made pursuant to the proposal, one can ask the court to obtain default judgment.

DEFAULT JUDGMENT

- A judgment is a decision of the judge, which usually states that one side in the case is entitled to receive a certain sum of money from the other. The amount may include interest and cost, or both.
- If a defendant fails to file a defence within the time frame, it allows the plaintiff to file and obtain default judgment.

WHAT IS A MOTION?

- A motion is a procedure, which is used when you want a judge to make an order. For example when you want to:
 - Set aside a judgment made against you.
 - Add someone else as a party in the case or change the name of a person being sued.
 - Increase the amount you are claiming or change something that you said in your claim or defence.
 - The defendant must file a motion with supportive affidavit explaining why they did not file a defence and why they feel they have a defence to the merits of the claim.
 - Release a garnishee to stop some other form of enforcement process against you.

THE PRE-TRIAL

- Defence filed the court will assign a pre-trial date, if not you may have to request a pre-trial by filing out a specific form.
- A pre-trial is informal and off the record, it can help resolve or narrow the issues and facilitate settlement. It is supposed to resolve certain issues and find out what the real issues are and the facts behind them. The court can make certain orders at the pre-trial - amend a claim or force a party to do something (such as disclosure of documents)
- You have to attend the pre-trial and if one party does not show up, there are penalties (costs etc.) Come prepared to settle the case and with all the facts and documents.
- An offer to settle may be made at any time, either written or oral agreement. An offer to settle out of court can be started by either the Plaintiff or the defendant, but it must be made less than seven days before the hearing commences. If the offer is accepted the matter is over, if it is not accepted the case will go to trial as planned.

THE OPTIONS FOR ENFORCEMENT OF THE JUDGMENT

Notice of Garnishment:

- If the court has ruled in your favor and you have not received payment, you can seize money owed to the debtor by someone else. This is called GARNISHMENT. The Garnishment (20% of the net wages) remains in effect for 6 months or until the debt are paid.
- You can instruct the court to issue a notice of garnishment, part of the debtor's wages from his employer, or funds from his bank accounts or money owed through a contract. The court will send a notice of garnishment to the employer and person who owes the money to the debtor. This is called a GARNISHEE.

- The garnishee is liable to pay to the clerk any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice garnishment is served.
- Before a notice of garnishment is issued, you as the creditor first have to file a sworn statement (AFFIDAVIT) with the court where the debtor lives or carries on business. The affidavit must contain the following information:
 - a) Date of judgment or order and the amount awarded to the Creditor.
 - b) Name of the Small Claims Court in which the judgment was made.
 - c) Rate of post -judgment interest payable.
 - d) Date and amount of any payment made since the order of Judgment was made.
 - e) A statement that the creditor believes that the garnishee does or will owe money to the debtor.
 - f) Details of money owed by the garnishee if it is not for wages.
 - g) Name and address of each person to whom a notice of garnishment is to be served.

WRIT OF SEIZURE AND SALE OF PERSONAL PROPERTY:

- This allows the sheriff to seize lands and the goods of the judgment debtor (personal or business property). The writ of seizure remains in force for 6months after the date of its issue and a further 6months after each renewal. A writ of seizure of land stays in effect for 6 years. Before legal possession can be taken the property must have equity.

RESOURCES:

GENERAL:

Canadian Legal Information Institute:
<http://www.canlii.org/>

The Great Library of the Law Society of Upper Canada (civil law):
http://library.lsuc.on.ca/GL/whats_civil.htm

Ontario Small Claims Court Forms:
<http://www.attorneygeneral.jus.gov.on.ca/html/CAD/sccforms.html/CAD/sccforms.htm>

How to make Ontario Small Claims Work for you:
<http://www.attorneygeneral.jus.gov.on.ca/html/CAD/sccbook.htm>

Ontario Small Claims Court Rules (and forms)
<http://www.attorneygeneral.jus.gov.on.ca/english/courts/>

(THIS LINK NO LONGER WORKS) <http://192.75.156.68.81/ISYSquery/IRLA0C1.tmp/1/doc>

Links to Other Provincial Legal Resources:

British Columbia:
<http://www.ag.gov.bc.ca/courts/>

British Columbia Small Claims Links:
<http://www.provincialcourt.bc.ca/quicklinks/smallclaimsmattersusefullinks.html>

Alberta:
<http://www.albertacourts.ab.ca/>

Alberta Justice System:
<http://www4.gov.ab.ca/just/lawu/justandyou.html>

Manitoba Small Claims Procedures:
<http://www.manitobacourts.mb.ca/SmallClaims.htm>

Manitoba Court System:
<http://www.gov.mb.ca/justice/>

Courts of Saskatchewan:
<http://www.saskjustice.gov.sk.ca/courts/default.shtml>

Public Legal Education Association of Saskatchewan:
<http://www.plea.org/>

Yukon Department of Justice:
<http://www.justice.gov.yk.ca/>

North West Territories Department of Justice:
<http://www.justice.gov.nt.ca/>

WHAT DO THESE WORDS MEAN:

FYI. An extensive on-line dictionary can be found @:

<http://www.duhaime.org/dictionary/diction.htm>

- ADJOURNMENT:* Court order to postpone a hearing to a future date.
- AFFIDAVIT:* A written statement or declaration of facts, sworn or affirmed to be true. Swearing or affirmation takes place before an official having the authority to administer oaths.
- CAUSE OF ACTION:* The fact or facts, which give a person the legal right to begin a lawsuit.
- CLAIM:* A lawsuit or the document stating what is being claimed in a lawsuit.
- CLERK:* The court official to whom certain powers and duties are given by law.
- COMMITTAL:* If the debtor fails to attend or fails to properly ORDER answer questions, the court may commit the debtor to jail – there are many steps to be taken before the court takes that step.
- COUNTERCLAIM:* A claim introduced by the defendant against the plaintiff in the original claim and arising out of the same circumstances.
- COURT ENFORCEMENT OFFICER:* Court official (formerly known as the (bailiff) responsible for enforcing the terms and order or judgment when instructed by the court.
- COURT PROCESS OFFICER* Court official responsible for delivering legal documents, such as a claim or summons to witness.
- CREDITOR:* The person whom the money is owing because of a judgment or order.
- DEBTOR:* The person who owes money due to a judgment or order.
- DEFAULT JUDGMENT:* A judgment that is issued against a defendant who has failed to file a defence.

DEFENDANT: The person against whom a claim is made.

EXECUTION: To lien or seize customer's assets.
(writ)

GARNISHEE: The person or corporation who owes money to a debtor (such as an employer or a bank).

GARNISHMENT: The procedure by which a creditor can collect on a judgment or order by claiming money owed to the debtor by a third party.

HEARSAY: A statement or document made by someone who is not in court.

JUDGMENT: A decision made by a judge resolving a dispute.

LITIGATION GUARDIAN: A person who acts on behalf of a minor or a mentally incompetent person in a lawsuit.

NOTICE OF MOTION: Written notice by one party to the other party in a lawsuit about an intention to argue a particular issue before a judge.

NOTICE OF TRIAL OR PRE-TRIAL: A formal notice issued by the court to all parties in a claim stating the date, time and place a trial or pre-trial is to take place.

ORDER: A direction of a judge made in a case.

PLAINTIFF: The person who brings a claim against another person, company or organization.

REFEREE: Court official who may hear pre-trial hearings. In many cases, he/she assist in working out a payment plans and may assist in the obtaining consolidation orders.

RESERVE JUDGMENT: To postpone a decision until all facts have been fully considered or a point of law reviewed.

SEIZE, SEIZURE: To take legal possession of property, the act of doing so.

SERVE, SERVICE: To deliver a legal document to a person, the act of doing so.

SET OFF: A debt the plaintiff owes the defendant who may be deducted from the amount the court finds the plaintiff is owed

SPECULATIVE Legal action taken, when there is

ACTION (SPEC): reason to believe there will be assets or wages in the near future.

SUMMONS A legal document from the court requiring a
TO WITNESS: witness to appear in court at a specific time.

THIRD PARTY CLAIM: A claim filed by a defendant against another party other than plaintiff whom the defendant believes is responsible for the plaintiff's claim.

WRIT: Written instructions to a court officer to
(Execution) enforce a court order.