

All About Small Claims

Types of the Small Claims Court Disputes	1
Choosing a Small Claims Court Location	2
The Small Claims Court Fees	2
Small Claims Court Proceedings	3
Completing the Plaintiff's Claim Form	3
Filing the Claim	3
Paying Small Claims Court Fees	3
Small Claims Court Steps (Where Claim Is Defended)	4
Small Claims Court Steps (Where Claim Is Undefended)	5
What You Need to Consider Before Going to Small Claims Court	5
Preparing for Small Claims Court	7
After the Small Claims Court's Judgment	8
Garnishment	8
Seizure and Sale of Property or Land	9
Reasons You Can Be Sued	9
Filing a Defence in Small Claims Court	10
Small Claims Court Fees Payment	10
Defendant's Claim	11
Glossary for Small Claims Court Matters	11
Resources and Guides for Small Claims Court Matters	12

Types of the Small Claims Court Disputes

The Small Claims Court can handle any action for the payment of money or the recovery of possession of personal property where the amount claimed does not exceed \$25,000, excluding interest and costs such as court fees.

The Small Claims Court hears disputes on a wide range of matters which DP Legal Services can help you with:

- contracts for goods and services
- debt collection
- damage to real and personal property
- services rendered
- trespass
- professional malpractice and negligence
- tort actions (wrongful acts that result in damages or injury)
- consumer issues
- N.S.F. cheque
- unpaid invoice/accounts for goods or services sold and delivered
- promissory note
- landlord/Tenant disputes (rent arrears, failure to return security deposit, destruction of rental property)
- breach of warranty (claim that an item purchased does not work the way it is supposed to work)

Disputes involving title to property or land, slander, libel, bankruptcy, false imprisonment or malicious prosecution must be handled in a superior court and cannot be determined in small claims courts.

Choosing a Small Claims Court Location

You must file your claim in the Small Claims Court office in the area where one of these conditions applies:

- where the problem occurred (the location of the cause of action);
- where the party against whom the claim is filed (the defendant) lives or carries on business;
- where the nearest small claims court office location to the place where the defendant lives or carries on business.

To find a Small Claims Court office location you can go to the Court Office Location in the Small Claims Court section of our website.

The Small Claims Court Fees

You must pay a fee to file a claim or defence in a Small Claims Court and for most steps in a proceeding, such as filing a motion, requesting a trial date, and taking steps to enforce a judgment. The number of steps in a proceeding varies from case to case.

There are also fees and allowances that you must pay to witnesses you have summoned for their attendance and travel to court. In addition, you will have to pay for any interpreters you or your witnesses require, other than bilingual (English or French) and sign language interpretation.

If you are successful and are granted a judgment, the judgment may include the fees you have paid. If the debtor refuses to pay even after you have a judgment, additional fees must also be paid to enforce (attempt to collect) the judgment, e.g. if you ask the Enforcement Office to seize and sell the debtor's assets so that you can be paid what you are owed.

Small Claims Court Proceedings

Completing the Plaintiff's Claim Form

- When you fill out the Plaintiff's Claim form, be sure to:
- Get the defendant's name right, including any corporate name
- Explain what happened in detail.
- Include dates and places.
- State how much money you want or what goods you want returned.
- Explain how you figured out the amount or why you should get the goods.
- If you want interest on the money requested, ask for it on the Plaintiff's Claim.
- Attach copies of any documents that support your case.

Filing the Claim

You need to decide which Small Claims Court to go to. If you are not sure where to go, you can phone the court in the location you have in mind to check if it is the right court. You can find the phone number on the Ministry of the Attorney General website. Bring to the court office the original and a copy for each defendant:

- the Plaintiff's Claim form; and
- the documents that support your case

Paying Small Claims Court Fees

You have to pay all applicable fees.

Serving the Plaintiff's Claim after you have filed the claim with the court, you must deliver a photocopy of the claim and your documents to each defendant. This is called serving the defendants. There are different rules for serving different kinds of documents.

If you have filed a claim and the defendant has not filed a defence within 20 days, you can ask the court clerk to note the defendant in default. You do this by filing a Request to Clerk form. You must prove that the defendant was properly served with the claim.

You do this by filing an Affidavit of Service form. When a defendant has been noted in default you can ask the court to order them to pay money to you. This can be done by:

- Asking the court clerk to sign default judgment for a specified sum of money for that you must fill out and file a Default Judgment form; or
- Asking a judge to order default judgment. To do this, you file a Notice of Motion and Supporting Affidavit form. Explain the facts supporting your motion.

The number of steps in a Small Claims Court proceeding varies from case to case. Generally, there are 2 types of Small Claims Court procedures: defended and undefended claims:

Small Claims Court Steps (Where Claim Is Defended)

1. Plaintiff's Claim
2. Affidavit of Service
3. Defence
 - a. Settlement Conference
4. Defence with Proposed Terms of Payment
 - a. Terms of Payment Hearing (Optional)
 - b. Terms of Settlement
 - c. Motion to vary terms of settlement
5. Trial
 - a. Enforce judgment, or
 - b. Appeal to Divisional Court
6. Order
 - a. Notice of default of payment

- b. Affidavit of service and Affidavit of default of payment
- c. Default judgment
- d. Enforce judgment

Small Claims Court Steps (Where Claim Is Un defended)

1. Plaintiff's Claim
2. Affidavit of Service
3. Request to Note In Default
 - a. Default Judgment
 - b. Assessment for Damages
4. Motion to Set Aside Judgment
5. Enforce Judgment

What You Need to Consider Before Going to Small Claims Court

Before starting a lawsuit, you should ask yourself if it will be worth it. There are a number of factors you have to consider before making a claim in Small Claims Court and a number of pieces of information you will need to collect.

Information you need to have about a person or business you want to sue in Small Claims Court:

- 1) You will need the correct legal name of the person or business and a current residential or business address. Before going to Small Claims Court, you must have the exact name of the person, or of the corporation, or the Ontario corporation number, or the exact name of the registered business.

For information on how to search a corporation or registered business name, you may contact the Companies Helpline, Ministry of Government Services.

Please note that there is a fee for the search and the search will not be conducted over the phone.

2) If you obtain a judgment in your favour, you may have to enforce (attempt to collect) the judgment. In order for you to collect, the person/business must have one of the following:

- money,
- assets that can be sold,
- debts (e.g. bank account, employment income) that can be garnished.

3) Does the person/business owe others money? You may be able to find out by contacting your local credit bureau, enforcement office, land registry office, and/or Small Claims Court (a fee may be payable). You may find that there are other creditors who are already waiting in line to collect their judgments.

Even if the person/business does not have money now, you may be able to collect your judgment in future.

4) Information you need to have to support your Small Claims Court case.

You will have to prove your case. Consider what witnesses and/or documents you have to support you. If it is just your word against the other person's, it may be difficult to prove your case. Consider if you have the following:

- Any written evidence or documentation: copies of documents (for example, contracts, N.S.F. cheques, record of payments), photographs and other that you intend to use to support your claim must be attached to the claim form if you decide to go ahead.
- A record of any payments, returned cheques, etc. and/or a clear recollection of what happened and when: you will be required to write in the plaintiff's claim form a short, clear summary of the events that took place and the reasons you think you are entitled to judgment against the defendant.
- Witnesses that can support you

5) Time you have to spend There may be a time limit on how long you can wait before making a claim in Small Claims Court, which is set out in the Limitations Act. Under the law, the time you have to sue may run out. Check the time limits for your type of case.

Consider other options to resolve the issue

To keep your costs low, you might want to try to reach an agreement out of court. This is called settlement. You may consider mediation, which is a less formal method of resolving a dispute through a neutral third party. Mediation can be less time-consuming, more flexible, and less expensive than proceeding in court.

It can also help you find your own solution to the dispute and preserve your relationship with the person/business. DL Legal Services is always ready to provide you with mediation services.

Preparing for Small Claims Court

You should prepare your case as thoroughly as you can. Think of what the defendant will say and what evidence they could bring to Small Claims Court. It is also a good idea to go to the court where your claim will be heard and watch a couple of small claims court cases so you will know what will be required of you.

Be neat while filling in forms in small claims court. These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read. Forms are available at court offices and at the following website: www.ontariocourtforms.on.ca

Count days for timelines according to the Rules of the Small Claims Court: When calculating timelines, count the days by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

Sign an affidavit. The affidavit must be signed in the presence of the person before whom it is sworn:

- a Small Claims Court staff member who has been appointed a commissioner for taking affidavits (there is no fee for this service);
- a lawyer who is entitled to practice law in Ontario;
- a notary public; or

- any other person who has been appointed a commissioner for taking affidavits in connection with court documents

If your address for service changes, you must serve written notice of the change on the court and all other parties within 7 days after the change takes place.

After the Small Claims Court's Judgment

Some people think that when the trial is over and the judge's decision is made or a default judgment is obtained, the successful party will automatically be paid by the debtor and that is the end of the case.

A judgment is an order of the court; it is not a guarantee of payment. If you are the plaintiff and you win the case you become the creditor, you may still have to take further steps to get the money or property from the defendant who becomes the debtor. If the debtor does not pay, there are legal steps called enforcing the judgment. You have two options for trying to get the money:

Garnishment

You can have the court order someone else who owes the debtor money to give it to you instead of to the debtor. For example, the debtor may be receiving wages from an employer or may have money in the bank. You can ask the court to make the debtor's employer or bank pay this money to the court. The court will then pay you. This is called garnishment.

To make this happen:

- Fill out a Notice of Garnishment form and an Affidavit for Enforcement Request.
- File the Notice of Garnishment form and an Affidavit for Enforcement Request with the court.
- Then serve the Notice of Garnishment and a blank Garnishee's Statement on the person or business that has the money.
- Serve the Notice of Garnishment on the debtor.

Seizure and Sale of Property or Land

If the debtor does not pay, you can have their things seized. To do this:

- Fill out and bring to the court a Writ of Seizure and Sale of Personal Property form or Writ of Seizure and Sale of Land and Affidavit for Enforcement Request.
- The court will give you forms to take to the enforcement office.
- Give the enforcement office details about the items you want taken and where to find them

The enforcement office will seize the goods or land and sell them at a public auction. The enforcement office will pay the amount received for the goods to the court. Part of this money will be used to pay the court back for costs like storing the goods and advertising the sale.

You will receive the money that is left over, but not more than you are owed. Selling the debtor's land involves a lot of paperwork and a Writ of Seizure and Sale of Land is not usually used for a lawsuit in Small Claims Court.

“NOTICE: YOU HAVE BEEN SUED!”

Reasons You Can Be Sued

- The plaintiff may think you owe them money under an agreement they have with you.
- The plaintiff may think they have been harmed by something you did or should have done but didn't. They want money to make up for the loss.
- The plaintiff may think you have property that belongs to them.

In all these cases and in other cases where the plaintiff wants no more than \$25,000 you can be sued in Small Claims Court. You should not ignore the lawsuit in Small Claims Court. If you ignore the lawsuit the court will think the plaintiff is right about the facts. If you don't reply, the case will go on without you.

You will not have a chance to defend yourself and tell your side of the story.

Filing a Defence in Small Claims Court

The defendant's response to the Plaintiff's Claim is called the Defence. You must file your Defence with the Small Claims Court office no later than 20 days after receiving the Plaintiff's Claim. When you fill out the Defence form be sure to include:

- Your name and address.
- What you disagree with about the plaintiff's claim and why.
- Anything you agree with in the plaintiff's claim.
- If you want to pay all or part of what you owe, how much you will pay and when you will pay.
- Attach copies of any documents that support your case. For example, contracts, bills and photographs.

You have to bring to the Small Claims Court office where the plaintiff started the claim the original and a copy for each party listed on the plaintiff's claim:

- The Defence form.
- All other documents supporting your case.

The Small Claims Court office will deliver a copy of the Defence form and documents to the plaintiff(s) and any other defendant listed on the plaintiff's claim.

Small Claims Court Fees Payment

- To respond to the claim you should file a Defence and pay all applicable fees.
- Court fees at each step in the case.
- Photocopies and delivery of documents.
- Fees, travel expenses and interpreters for witnesses you call to court.
- Legal fees if you have someone represent you.

If you did not file the Defence on time, the Small Claims Court may make a decision against you and may order you to pay money or give goods to the plaintiff. This decision is called a “default judgment.”

Defendant’s Claim

You can also make a claim of your own against the plaintiff. This is called a Defendant’s Claim. For example, the plaintiff may owe you money. Or you may believe someone else caused the plaintiff’s loss and that person should pay instead of you.

Please remember, DP Legal Services is here to help you with your case and can always represent you in Small Claims Court.

Glossary for Small Claims Court Matters

- An affidavit is a formal sworn statement of fact, signed by the author, who is called the affiant or deponent, and witnessed as to the authenticity of the affiant’s signature by a taker of oaths, such as a notary public or commissioner of oaths.
- An affidavit of service certifies the service of a notice, process, summons, or writ by stating the time and manner in which the document was served
- A default judgment is a binding judgment in favor of either party based on some failure to take action by the other party. Most often, it is a judgment in favor of a plaintiff when the defendant has not responded to a summons or has failed to appear before a court.
- A defendant is a party who is required to answer the complaint of a plaintiff or pursuer in a civil lawsuit before a court.
- A judgment is the formal decision made by a court following a lawsuit. At the same time the court may also make a range of court orders, providing a remedy for the plaintiff. □ A motion is a procedure of bringing a limited, contested issue before a court for decision. A motion may be thought of as a request to the judge to make a decision about the case. Motions may be made at any point in administrative, criminal or civil proceedings.

- A plaintiff is the party who initiates a lawsuit before a court. By doing so, the plaintiff seeks a legal remedy, and if successful, the court will issue judgment in favor of the plaintiff and make the appropriate court order.
- A summons is a legal document issued by a court or by an administrative agency of government for various purposes. The summons is addressed to a defendant in a legal proceeding. Typically, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person, and that a case has been initiated in the issuing court.

Resources and Guides for Small Claims Court Matters

The Ministry of the Attorney General has a series of guides to Small Claims Court procedures which are available at court offices and the Ministry of the Attorney General website at www.ontario.ca/attorneygeneral Small Claims Court forms are available at court offices and at the following website: www.ontariocourtforms.on.ca