



The Small Claims Court:

the "Do-it-Yourself" Court

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It all starts with a dispute. Someone is refusing to pay you board. You bought a horse that for one reason or another is not worth the money paid for it. The purchaser of your horse bounces her cheque. If all attempts to get satisfaction from your adversary have failed, the only alternative is to sue. Take them to court!

Unfortunately, many of you with experience of court process know that suing someone can be an expensive proposition. Lawyers are not cheap and law suits can drag through the courts for years. If the matter in dispute is worth a fair amount of money, the effort and expense of a law suit may be justified. But what do you do if the matter concerns only a few thousand dollars?

In Ontario, significant changes have been made to the Small Claims Court in 2010. You can now make a claim in the Small Claims Court for amounts up to \$25,000. This is a significant increase from the previous limit of \$10,000 in 2009. There are Small Claims Courts in every province and limits on claims in these Courts vary province to province.

The Small Claims Court is truly a court for the people. Lawyers are not required and the system is set up to help the lay person pursue their own claim, without lawyers, to settlement or trial.

Procedures in the Small Claims Court are simplified and informal. After the laying of the initial complaint, called a claim, there is very little paperwork for the complainant to do before going to court to resolve the dispute. The court process is user friendly and the clerks at the court are very helpful.

Locating the appropriate Small Claims Court in which to make a claim is not easy. There are a number of Small Claims Courts throughout

Ontario, one for each territorial division. To find an address and phone number of the court closest to you, look in the blue pages of your phone book under Provincial Government, Attorney General or on the internet by clicking on the "List of Small Claims Courts" link on the Ministry's website at www.attorneygeneral.jus.gov.on.ca.

Filing a claim with the court starts the law suit or "action". The action must be commenced by the complainant or "plaintiff" and tried in the territorial division in which the cause of the action arose or in which the person being sued, the "defendant", resides or carries on business. As an example, if your action relates to a horse purchased in Kingston and the defendant resides in Kingston, you will have to commence your action in the Kingston Small Claims Court regardless of where you live.

The claim is a standard form [Plaintiff's Claim – form 7A] available at any Small Claims Court or at www.ontariocourtforms.on.ca/english/scc. For acceptance by the court, it must contain the following information:

- a) the names and addresses of the parties involved in the claim and their status as plaintiff or defendant (note that there can be more than one plaintiff and defendant);
- b) the nature of the complaint in fair detail including dates, places, and important aspects of the complaint;
- c) the amount of money claimed as relief in the claim; and
- d) attach to the claim a copy of any documents relevant to the complaint.

Take care when listing the parties in the claim. Remember that a company has a separate legal identity from the people that run it. If

your complaint is against a company, then the company alone should be named as the defendant unless you have a separate complaint against the operators of the company. There is a government office to which you can write to determine whether an organization is a company. You can also find this information on line.

Note also that in addition to companies, there are a number of other legal relationships between people that will affect how they are listed as parties on a claim. Though this court is designed to operate without lawyers, it wouldn't hurt to pay a lawyer to review your claim before having it issued by the court to ensure that it catches all the right people and that, legally, you have a good case.

The claim will be issued by the Small Claims Court for a fee and a copy given to the plaintiff. It is the plaintiff's responsibility to serve the claim on the defendant within 6 months of issuance of the claim by mail or personal service. Please refer to the Small Claims Court rules (see the Guide to Serving Documents – www.attorneygeneral.jus.gov.on.ca) for instructions on service.

The defendant has twenty days from the receipt of the claim to respond to the court. The defendant has various options, including:

- a) the defendant can file a defence with the court indicating the reasons why he or she disputes the plaintiff's claim;
- b) the defendant can file a defence and "counterclaim" against the plaintiff for damages suffered through a loss caused by the plaintiff;
- c) the defendant can file a defence and make a "third party claim" against a person other than the plaintiff for loss suffered by the defendant arising out of the occurrence relied upon by the plaintiff or related to the plaintiff's claim;
- d) the defendant who admits liability but wishes to arrange terms of payment may file a defence proposing terms of payment; or
- e) the defendant can simply ignore the claim and have judgment signed against him or her for the full amount of the plaintiff's claim.

If a defence is filed, the dispute proceeds to trial. But before the trial, the court often holds a pre-trial or settlement conference.

The pre-trial or settlement conference is basically a settlement meeting between the parties in the dispute. It is supervised by a judge or other court official and there are cost sanctions against parties who fail to attend or come inadequately prepared.

The meeting is fairly informal. The judge

reviews the claim, defence, and the documents, and attempts to facilitate settlement of the dispute thereby avoiding the need for a trial. If the judge cannot settle it, he or she can at least assist in narrowing the issues, making sure each party knows the other's full case, and advising the parties on preparation for trial. Many claims are settled at this stage and the parties sign a settlement agreement that is filed with the clerk. If no settlement is reached, the trial follows shortly after the pre-trial conference.

At trial, the parties should present all the evidence to support their case including original documents, witnesses, and any exhibits that are relevant to the issues involved. The plaintiff and the defendant will each be given a turn to address the judge and explain their side of the dispute. This will include the presentation of documents and the examination of any witnesses. The judge is usually very helpful and will assist each party with the procedural aspects of the presentation. Once both sides of the dispute have told the judge their stories, the judge will make a decision about the case and hand down a "judgment".

A judgment is a court order that is enforceable against all parties to the action. If the plaintiff has won, the judgment will usually require the defendant to pay the plaintiff a sum of money as compensation for the plaintiff's claim and the costs of the action. This judgment is effective immediately and interest will run on the judgment until it is paid in full by the defendant.

If the defendant refuses to pay the judgment, there are a number of enforcement mechanisms available to the plaintiff.

The plaintiff can issue a "garnishment" against debts payable to the defendant. A garnishment is a very powerful collection tool. If served on the defendant's employer, the employer will be required to pay a portion of the defendant's salary to the plaintiff with each pay cheque. If a garnishment is served on the defendant's bank, the bank will be required to pay to the plaintiff all monies held for the defendant up to the total amount indicated as owing in the garnishment. As long as a debt payable to the defendant can be identified, the payor of the debt can be required to pay the plaintiff the monies owing.

Another powerful collection tool is the "writ of seizure and sale". The plaintiff can seize and sell personal property or land owned by the defendant to satisfy the judgment. For the seizure of personal property, the plaintiff provides the clerk of the court with necessary information, such as the make, license plate and probable location of the

defendant's car, and the clerk will send the bailiff to seize it. The property will eventually be sold by public auction and the proceeds used to satisfy the judgment. This procedure can be quite expensive.

A writ of seizure and sale filed against land will prevent the defendant from dealing with his land without first satisfying the judgment. The defendant will have difficulty refinancing mortgages, selling property, or obtaining loans until the judgment has been paid in full.

If the plaintiff is unsure of the assets held by the defendant, the plaintiff can require the defendant to attend an examination at which the defendant must answer questions concerning the nature of his personal assets. If the defendant fails to attend or refuses to answer the questions, the court can commit him to jail.

In Ontario, the Small Claims Court is governed by a set of easy to read rules that can be picked up at the local library, on line, or at the government book store. If you are planning to commence or defend an action in this court, I strongly recommend that you review a book entitled Ontario Small Claims Court Practice, by Marvin A. Zuker, Judge, and published by Carswell. You can find a copy at your local law school or library. It explains simply and in greater detail the procedures of the Small Claims Court.

The new higher limit of \$25,000 makes the Small Claims Court an attractive venue to settle many disputes in the horse world. It is cheap and efficient. Consider also the popular alternatives of mediation and arbitration. Finally, there is always the "ounce of prevention" – paper your deals, look ahead, and plan for possible problems before they become disputes. ✨

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