

STREET LAW SMARTS #7

SMALL CLAIMS COURT

What is Small Claims Court?

Small Claims Court is a branch of the Superior Court of Justice. It deals with civil disputes and has a monetary value limit of \$25,000 for claims. It has simplified rules and procedures and also has a user-friendly website with an assortment of guides that help walk you through the Small Claims Court process. These guides are accessible at <http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/>, and the websites for the individual guides can be found below.

What types of cases go to Small Claims Court?

Small Claims Court can deal with any action for the payment of money or the recovery of personal property, with a limit of \$25,000. Examples of typical Small Claims Court cases include claims for money owed under an agreement (e.g. unpaid accounts, unpaid loans, unpaid rent, NSF cheques, etc.) and claims for damages (e.g. property damage, personal injuries, breach of contract, etc.).

How much do Small Claims Court claims cost?

It really varies. Most steps in a Small Claims Court proceeding will require you pay a fee, but if you are unable to pay these fees you can request a fee waiver. Also, if you are successful you can ask for the other party to pay your fees, but they can also do the same if you are unsuccessful.

Who can represent a party in Small Claims Court?

While many people represent themselves in Small Claims Court, you can also be represented by a lawyer, a law student, or a paralegal. Lawyers can be found through the Law Society of Upper Canada's Lawyer Referral Service, which will provide you with the name of a lawyer in your area and allows for a free consultation of up to 30 minutes. This service can be reached at 1-800-268-8326 or 416-947-3330, and a list of lawyers in Ontario and their contact information can also be accessed at: www.lsuc.on.ca.

Limitation periods

There may be a time limit on how long you have to make your claim, so you should know when the event giving rise to the dispute took place. You may need to get legal advice on whether you are too late to make a claim.

See the above information on who can represent a party in Small Claims Court and **Street Law Smarts #1: Where to get legal help.**

General steps in a Small Claims Court dispute

1. Plaintiff fills out the claim form

- The plaintiff writes the reasons for their claim, the amount they are claiming, and attaches any documents that will help prove their side of the story.

2. Plaintiff files the claim at the Small Claims Court

- The plaintiff should take both the original and a copy of the claim to the court, plus two copies of the supporting documents.
- The plaintiff should make sure they are filing, and enough photocopies of the stamped claim to serve on each defendant.

3. Plaintiff serves (gives) a copy of the claim on each defendant

4. Defendant has 20 days to file their defence

- If the defence is not filed after 20 days, the plaintiff can request the clerk to note the defendant in default.
- If the defendant is noted in default, the defendant has 15 days to pay.

5. If the defendant files their defence, the dispute moves forward to a settlement conference (see the step below)

- If the defendant makes a claim of their own in addition to filing their defence, the plaintiff must file their own defence.

6. Settlement Conference

- A private discussion between the parties with the assistance of a judge.
- The purpose of a settlement conference is to encourage settlement, resolve the dispute faster, and provide full disclosure of the relevant facts between the parties. If the parties are unable to reach a resolution, the settlement conference will also assist the parties with trial preparation.
- If the claim is for less than \$2,500, the parties can agree to a judgment at the Settlement Conference.

7. Trial

- A public process where each party explains their side of the dispute to a judge, who then makes a judgment on the issues.

8. Collection of money

- A judgment in court is not a guarantee of payment, and so both successful and unsuccessful parties will likely have some post-judgment options.

- If the debtor (unsuccessful party) is not paying, then the creditor (successful party) has a variety of options to pursue.

Important tips for Small Claims Court forms

- Be neat: delays are frequently caused by forms that cannot be read. Forms are available at both the court offices themselves and on <http://www.ontariocourtforms.on.ca/english/scc>
- At the top of the forms, if you are filing you should fill in the name and address of the court where you are filing
- Court staff will provide you with a court file number, which should then be written on the top right corner of all of the documents
- Make a sufficient number of copies for all completed forms
- For some documents, court fees must be paid in order to file them. Fees are payable in Canadian funds in cash, cheque, or money order payable to the Minister of Finance. If you cannot afford to pay court filing or enforcement fees, you can request a fee waiver
- An affidavit can be sworn before:
 - A Small Claims Court employee who has been appointed a commissioner for taking affidavits;
 - A lawyer who is allowed to practice law in Ontario;
 - A notary public; or
 - Any other person who has been appointed a commissioner for taking affidavits.

It is a criminal offence to knowingly swear or affirm a false affidavit, and affidavits must be signed in the presence of the person before whom it is sworn or affirmed

- Counting days for timelines: Exclude the first day and include the last day of the time period. If the final day of the period occurs on a holiday, the period ends on the next day that is not a holiday
- If your address for service changes, you must provide written notice of the change to the court and all other parties within seven (7) days after the change takes place
- You should dress appropriately and leave plenty of time to get to the location for both settlement conferences and trials

Internet resources

- Small Claims Court Forms <http://www.ontariocourtforms.on.ca/english/scc>
- Small Claims Court Guides
<http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides>

Court locations

- 47 Sheppard Ave. East
Toronto, ON M2N 5N1
Hours: Monday-Friday 8:30-5:00
Phone Number: (416) 326-3554
- 855 Major Mackenzie Dr. E.
Richmond Hill, ON L4B 4C6
Hours: Monday-Friday 8:30-5:00
Phone Number: (905) 737-4416