

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 handles civil disputes with a monetary value of up to \$35,000. This court has simplified rules and procedures; and a user-friendly website:

<https://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/index.php#online>

Detailed how-to guides are also available (eg. making a claim, responding to a claim, getting ready for court):

<http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/>.

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 \$35,000. Examples of Small Claims Court cases include claims for money owed under an agreement (e.g. unpaid accounts, unpaid loans, unpaid rent, NSF cheques) and claims for damages (e.g. property damage or recovery, personal injuries, breach of contract).

How much do Small Claims Court claims cost?

The cost 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

* Plaintiff is the person making the claim.

* Defendant is the person responding to the claim.

1. Plaintiff fills out the Claim Form: includes reasons for claim, amount claiming and attaching documents to prove their side.
2. Plaintiff files the claim at the Small Claims Court: this can be done online at www.ontario.ca/smallclaims; in person; or by mail. The claim will be stamped by the court to show that it has been filed.
3. Plaintiff serves (gives) a copy of the stamped claim on each defendant.
4. Each defendant has 20 days to fill out a Defence Form. If the defence is not filed after 20 days, the plaintiff can request the clerk to note the defendant in default and the defendant then has 15 days to pay.
5. If the defendant files their defence, the dispute moves forward to a settlement conference (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. A settlement conference is held. This is a private discussion between the parties with the assistance of a judge. The purpose of this is to encourage a resolution, 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.
7. A trial is held. This is a public process where each party explains their side of the story and can call witnesses in support of their story. The judge who hears all of this then makes a decision on the issues.
8. Collection of money. A decision 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. Information on this is available in the court's "After Judgment - Guide to Getting Results".

Tips for Filling out Claims Forms

- Be neat: delays are frequently caused by forms that cannot be read. Forms are available at both the court offices themselves and online:
<http://www.ontariocourtforms.on.ca/english/scc>
- At the top of the forms, 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 enough copies of all the completed forms.
- For some documents, court fees must be paid in order to file them. Fees are payable 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.

Court locations

For a list of court locations:

https://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/index.php

Toronto Small Claims Court address: 47 Sheppard Avenue East (near Yonge Street).
Hours: Mon-Fri, 8:30-5:00. Phone: 416-326-3554