Proud Author of the ***Ontario Small Claims Court Handbook***

Contents

Purpose of this e-Book and Disclaimer.....5

Preface.....6

Introduction.....7

About this e-Book.....8

The Sample Case.....11

Chapter 1 - Think before you Sue.....12

Chapter 2 - How to Draft the Plaintiff's Claim.....15

Chapter 3 - How to File the Plaintiff's Claim.....17

Chapter 4 - How to Serve the Plaintiff's Claim.....19

Chapter 5 - Default.....21

Chapter 6 - The Settlement Conference.....24

Chapter 7 - The Trial (Logistics).....28

Chapter 8 - The Trial (Preparation and Advocacy).....31

Chapter 9 - The Trial (General Tips).....37

Chapter 10 - After the Trial.....39

Chapter 11 - Enforcement.....41

Conclusion.....45

Glossary.....46

About Mr. Small Claims Court and the Author.....49

Resources.....50

Appendices.....51

Chapter 1 – Think Before You Sue

Bringing a case in the Small Claims Court should be approached like every other important decision you make: with thought and a view as to what you are trying to achieve. I am always amazed to see people hastily scribbling their claim on the small claims forms. Most people would be informed, careful, and prepared before purchasing a $25,000 vehicle, so why not take the same care when preparing a lawsuit? The following is a discussion of just some of the things to consider before beginning a lawsuit.

Be aware of time limits.

There are time limits to bring a lawsuit in any court, including the Small Claims Court. A defendant has a defence if a claim is out of time. The governing law is the *Limitations Act*.[9]

Under section 4 of the *Limitations Act*, one has until the second anniversary from the date of discovering a claim to commence a lawsuit. Taking our sample case, say that on January 1, 2010, Smith discovered that Jones has no intention of repaying the loan. Well, in that case he would have until January 1, 2012 to file a claim. A claim after that date may be "statute-barred" if Jones pleads a limitation period defence

There are some important points to consider:

1) The Limitations Act defines the *"discovery"* of a claim*.*

When a claim is considered to be "discovered" is subject to interpretation. Under section 5 of the Limitations Act, "discovery" is defined as follows:

5. (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[9] *Limitations Act*, 2002, S.O. 2002 c. 24, Sch. B. For clarity, we will be dealing with the new Limitations Act which came into effect January 1, 2004. Note, there are transition rules that apply the former Limitation Act for acts or omissions before January 1, 2004. A discussion of the transition provisions is beyond the scope of this book. I will assume the act or omission occurred after January 1, 2004 and that the new *Limitations Act* applies.

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Chapter 2 – How to Draft the Plaintiff's Claim

This chapter discusses the initial document in your Small Claims Court lawsuit; the Form 7A **Plaintiff's Claim**.

What is a Plaintiff's Claim?

A Form 7A Plaintiff's Claim in the Small Claims Court is the equivalent of the Statement of Claim in a higher court action. The Plaintiff's Claim, often simply referred to as the "claim", sets out the names of the parties, what the Plaintiff is claiming from the Defendant, and the essential factual circumstances surrounding the dispute.

Why is the Plaintiff's Claim important?

The Plaintiff's Claim is the single most important document you are going to prepare and file with the Small Claims Court because it is the basis of your law suit and it is the first document that the **deputy judge** reviews to form his or her overall impression of the case. Of course, that is not to say that it is *impossible* to win with a poorly drafted Plaintiff's Claim, but your chances are much better with a well-prepared claim.

How do I get a copy of the Plaintiff's Claim Form?

You can pick up a blank Plaintiff's Claim from any court office or the Ministry website[17] or on the Mr. Small Claims Court website.

How do I draft a Plaintiff's Claim?

There is a standard formula for drafting a claim.
Generally, the format of a proper Plaintiff's Claim is:

1) Remedies Sought (e.g. $25,000 in damages);

2) Introduction; (e.g. names of the parties);

3) Factual Background; (e.g. details of contract between Plaintiff and Defendant);

4) What Went Wrong (e.g. how the Defendant breached the contract);

5) Legal basis for claim (e.g. Plaintiff pleads breach of contract); and

6) Remedies Sought (Yes, twice)

[17] See Footnote 6

Chapter 6– The Settlement Conference

If the Defendant does file a Defence, the Small Claims Court will send you a copy of the Defence. Then, typically within a few weeks, the court will mail each party a Notice of Settlement Conference scheduling a date, time and place (a courtroom within the Small Claims Court jurisdiction where you sued) for the **settlement conference**.[28]

If you have not received a Notice of Settlement Conference within a few weeks of receiving the Defence, you should check with the court so as to ensure you do not miss it. This chapter discusses the settlement conference stage.

What is a Settlement Conference?

A settlement conference is a "without prejudice" meeting between the parties in court. It is without prejudice in the sense that what is said at the conference is not evidence that can be used in court if the matter proceeds to a trial. The discussion at the settlement conference, however, will disclose the relevant facts and the evidence that will be presented at the trial. It is facilitated by a deputy judge who will not be the presiding deputy judge at trial. While the format of the meeting can be unpredictable, typically you will present your side of the story, listen to the Defendant present his, listen to the deputy judge's opinion and perhaps negotiate a settlement.

What is the purpose of the Settlement Conference?

The purpose of the Settlement Conference is set out in the Rules[29] as follows:

(a) to resolve or narrow the issues in the action;

(b) to expedite the disposition of the action;

(c) to encourage settlement of the action;

(d) to assist the parties in effective preparation for trial; and

(e) to provide full disclosure between the parties of the relevant facts and evidence.

Why is the Settlement Conference important?

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[28] The court will typically also send out a copy of Form 13A List of Proposed Witnesses which must be filled out and served and filed by no later than 14 days before the Settlement Conference. In cases where you are the only person with knowledge of the dispute, then simply list yourself as the only witness.

[29] See Rule 13.03 (1).

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Chapter 7– The Trial (Logistics)

A trial is the parties' chance to have their "day in court". Each side attends court on the appointed day and argues their respective case. A deputy judge of the Small Claims Court listens to the parties' evidence and **case law** and, at the end, renders a Decision. This Chapter discusses the logistics surrounding a Small Claims Court trial.

Scheduling a trial

To get to the trial, one of the parties must "set it down" for trial. This is typically done by the Plaintiff, who is typically more eager than the Defendant to have his day in court, but any party can do it. To set the matter down for trial, you have to fill out a Form 9B Request to Clerk and file it with the Small Claims Court along with a $100 filing fee.

Evidence at trial

As the Plaintiff, you have to prove your case. The proof of your case is referred to as the **evidence**. Evidence consists of testimony and documents, which will be marked as exhibits. For instance, in our example case of Smith v. Jones, say Smith wants to prove that there was a promissory note provided to Jones. The note will then be part of the documentary evidence that the Smith will present at the trial.

In the Small Claims Court, written statements from a witness who cannot be present at trial are also allowed as evidence. The witnesses' name, telephone number and address must be listed on the witness statement as well as a summary of qualifications if the witness is giving expert **testimony**.[31]

Under the Rules, your evidence must be provided to the Defendant at least 30 days before trial.[32] If you serve the evidence late, you run the risk of the judge disallowing it at trial. However, if the deadline has passed and you realize you have not served all your evidence, you should still serve it, and do so immediately. This is because a judge can use his or her discretion to waive the deadline, particularly where the recipient of the new evidence is not prejudiced, or harmed, as a result of the late service.

Evidence brief

I recommend preparing an evidence brief which is, essentially, a bound book of all your documentary evidence. You should serve it on the Defendant as well as file a copy with the court. The evidence brief will help you stay organized and avoid scrambling around with loose papers during the trial. It also gives the trial judge a sense that you know what you are doing, and he will appreciate you

[31] See Rule 18.02 of the Rules.

[32] Subject to any orders at the Settlement Conference providing that the evidence has to be served by a specific date. See chapter 6 above.