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## Introduction

The Small Claims Court is a court of equity, or fairness, and was established for the purposes of providing an affordable means of litigating disputes. Not all claims can be litigated in the Small Claims Court. Generally, in Ontario Small Claims Court, one can make a claim for damages or recovery of personal property, not exceeding \$25,000. One cannot, for instance, sue to require your contractor to complete the job he abandoned. (This would be known as seeking an injunction. Injunctions are beyond the scope of this book.) Small Claims Court cases can progress a lot quicker than higher court lawsuits.

The procedure in the Small Claims Court is simpler (but not simple) than the procedure in the superior court. For instance, in a higher court suit, the stages of litigation include the exchange of the Statements of Claim and Defence and the Reply (known as the exchange of pleadings), exchange of disclosure documentation (known as the Affidavit of Documents), mediation, out-of-court depositions known as examination for discovery, a pre-trial conference and the trial.<sup>1</sup> For the average contested higher court case, it can take years to reach a trial. In contrast, the Small Claims Court is a lot more streamlined. The stages of a Small Claims Court lawsuit include the exchange of pleadings (no Reply), settlement conference, and trial. There is a less elaborate disclosure of documents and no examinations for discovery. Because of this, far more Small Claims Court cases go to trial than higher court cases. Both courts also have default procedures where judgment can be obtained without a trial. I discuss the default procedures later in this book.

Although the Small Claims Court is a “people’s court”, there are numerous rules and regulations in place which can be confusing and overwhelming to the average litigant. There are the Rules of the Small Claims Court, the section dealing with the Small Claims Court in the Courts of Justice Act<sup>2</sup> and the court’s practice directions that must be considered. Although many litigants prefer to represent themselves, ostensibly to save costs, the reality is that they often find themselves ill-equipped to deal with the procedures of a Small Claims Court action. Thus, they often find themselves frustrated with the system. This is particularly true in home renovation disputes where there are often experts required to prove the work was deficient as well as all sorts of accounting disputes to sort through.

Stemming from this frustration, I realized that there was a need to teach the Small Claims Court process to the public. For those of you reading this book, you have made a wise decision to get informed. Of course, the fact is that the Small Claims Court will always have its aggravations, but with this book you will be much better equipped to deal with curveballs thrown your way, and to avoid these curveballs before they are even thrown. I also repeat my suggestion that you consult with a lawyer or licensed paralegal for advice and information whenever you need it.

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<sup>1</sup> There are exceptions for certain cases commenced in various jurisdictions or for Simplified Procedure matters. This discussion is beyond the scope of this book.

<sup>2</sup> See Sections 22-33.1 of the *Courts of Justice Act*.



## 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 Jones agreed to provide proper renovation work within a certain time period specified in the contract. The contract 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**.<sup>31</sup>

Under the Rules, your evidence must be provided to the Defendant at least 30 days before trial.<sup>32</sup> 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.

With respect to witnesses typical of home renovation cases, I find that it is usually necessary to have an expert contractor to act as a witness. This is because, as homeowner and one who is subjectively involved, it can be difficult to go against a more experienced defendant contractor. Therefore, it pays to get an independent contractor who can explain to the judge why the defendant contractor did a terrible job. Note, this independent expert can be the new contractor that you hired to repair the deficient work, but this may take away a bit from his neutrality and, hence, his credibility as a

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<sup>31</sup> See Rule 18.02 of the Rules.

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