

Guide to Getting Ready for Court

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About this guide:

The information contained in this guide is simply an overview of the relevant legislation and rules of procedure. It is not intended to be a substitute for the Rules of the Small Claims Court, which should be examined for specific information. Nothing contained, expressed or implied in this guide is intended as, or should be taken or understood as, legal advice. If you have any legal questions, you should see a lawyer.

Ce guide est également disponible en français.

Special thanks to the Province of British Columbia whose Small Claims Court self-help materials served as a model for this series of Guides.

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Where to get more information:

The Ministry of the Attorney General has a series of **guides** to Small Claims Court procedures which are available at court offices and the Ministry of the Attorney General website at www.ontario.ca/attorneygeneral:

What is Small Claims Court?
Guide to Making a Claim
Guide to Replying to a Claim
Guide to Serving Documents
Guide to Motions and Clerk's Orders
Guide to Getting Ready for Court
Guide to Fee Schedules
After Judgment - Guide to Getting Results

Small Claims Court **forms** are available at court offices and at the following website: www.ontariocourtforms.on.ca. You can find tips on completing forms at the end of this guide.

The staff behind the counter at any Small Claims Court office are helpful. They will answer your questions about Small Claims Court procedures, but keep in mind that they cannot give legal advice and they cannot fill out your forms for you.

For more detailed information, you should refer to the **Rules of the Small Claims Court**. It is a regulation made under the authority of the *Courts of Justice Act*. To view the *Rules* on-line, go to www.e-laws.gov.on.ca and follow these steps:

- Choose English or French
- Click on "Search or Browse Current Consolidated Law"
- Click on the letter "C"
- Click on the plus sign to the left of "Courts of Justice Act"
- Click on "Rules of the Small Claims Court"

Introduction

If your Small Claims Court case is going to court - whether it is for a settlement conference, assessment hearing or trial – you will probably have a lot of questions. This three-part guide will try to answer most of them.

Part One describes the settlement conference, its purpose and what you can do to prepare for it.

Part Two describes what happens during a trial and sets out additional steps to take to get your case ready.

Part Three describes the assessment hearing process and when you would need one.

The steps set out in Part One of this guide refer to preparation for a settlement conference. However, very similar steps also apply to preparation for an assessment hearing or a trial. So, if you are preparing for an assessment hearing or trial, read Part One, but keep in mind that you are not preparing for a settlement conference.

Part One: Settlement conference

What is the purpose of the settlement conference?

If the defendant files a defence, the parties will receive a notice of settlement conference in the mail from the court office indicating the date, time and location of the settlement conference. A settlement conference should be held within 90 days after the first defence is filed.

The purpose of a settlement conference is to:

- resolve or narrow down the issues in the action;
- expedite the disposition of the action (that is, to help to resolve the dispute faster);
- encourage settlement of the action;
- assist the parties with effective trial preparation; and
- provide full disclosure between the parties of the relevant facts and evidence.

Try to be reasonable. Think about what you want from your case, but also determine what you can “live with.” Think about what is acceptable to you. For example:

- If you are suing a contractor over a job that was not done to your satisfaction, you probably want the work done and done right.
- If you are the contractor, you will want to at least break even on the job, but you may be willing to apply some of your profits towards repair work.
- If you are being sued for money you owe someone, maybe you agree that you owe the money and only need more time to pay.

Try not to think in terms of winning and losing. Think instead, "What is my 'bottom line' in this case? What is the minimum acceptable to the other side? Is there any possible solution that we both can live with?"

Even if the whole case cannot be resolved, the settlement conference is a good opportunity to work out an agreement on at least some of the issues, so that the trial can be less expensive, easier and quicker.

If there is going to be a trial, the settlement conference is also an opportunity to help you get prepared for the trial. The judge may make recommendations about your case. Also, there are a number of orders the judge might make.

At the end of the settlement conference, if the parties do not settle the case, the *Rules* provide that the judge will give the clerk a memorandum listing the issues remaining in dispute, matters agreed on, and information related to scheduling. The memorandum will be provided to the trial judge. The judge who conducts your settlement conference will not preside at the trial.

After the settlement conference, the clerk will provide the parties with a copy of the Endorsement Record/Order of the Court, either in person, by mail or by fax. The Endorsement Record/Order of the Court contains any orders that the judge made at the settlement conference. Remember, the settlement conference and any settlement discussions between the parties are private and cannot be disclosed to others, unless you have the consent of all of the parties to do so.

Who attends the settlement conference?

A judge usually presides at the settlement conference. The parties **must** attend, but the witnesses **do not** attend. If any of the parties has a lawyer, paralegal or agent, the lawyer, paralegal or agent may attend as well but the parties must always be there.

The people who attend must have the authority to settle the case. For example, if one of the parties is a company, or if a party requires another person's approval before agreeing to a settlement, then that party must arrange to have ready telephone access to the other person throughout the conference.

If you would like to have someone other than your lawyer or agent attend to support you, you must ask the judge for permission at the start of the settlement conference.

What if I cannot attend on the date set for the settlement conference?

If you are unable to attend on the date set for the settlement conference, you can ask the court to adjourn the settlement conference and reschedule it on another date. Contact the court office for assistance.

If the judge allows the request and makes an order, the clerk will notify the parties of the new settlement conference date.

If the settlement conference is not adjourned before the scheduled date you, or someone on your behalf, must attend the settlement conference to request the adjournment. If a judge allows the request and makes an order adjourning the settlement conference, the clerk will notify the parties of the new settlement conference date.

Can I attend the settlement conference by telephone or video conference?

A settlement conference can be heard or conducted by telephone or video conference if the facilities are available at the court. A party can file a [Request for Telephone or Video Conference \[Form 1B\]](#). Make the request as soon as you are aware you need this arrangement and indicate the reasons for your request. If the judge grants the request, the court will make the necessary arrangements and notify the parties.

What if I do not go to the settlement conference?

If you do not attend the settlement conference, an order can be made against you, including an order requiring you to pay the other party's costs. The judge can also order you to attend an additional settlement conference.

In the event that a defendant fails to attend a settlement conference, a second settlement conference may be scheduled. If the defendant fails to attend again, the judge can order final judgment in the case. No trial will be held.

How should I prepare for the settlement conference?

Get organized. The better prepared you are for your settlement conference, the more you may gain from it. Being well prepared may make it possible for you to avoid the expense and risks of having to go to trial. It is a good idea to do most of your preparation before the settlement conference. If you do have a trial, you will simply have to refresh your memory and make sure that you take into account any recommendations or orders made by the judge at the settlement conference.

More importantly, if you are not prepared and the settlement conference cannot be properly conducted, it could cost you money. For example, if you do not have the necessary documents with you, the judge could order you to pay the other party's expenses for having to come to the settlement conference, and then everyone might still have to come back a second time.

If you are the plaintiff:

There are two basic parts to your case if you are a plaintiff (proving either a plaintiff's claim or a defendant's claim):

1. **You have to prove liability.** That means you must prove that the defendant did something wrong to you for which you should be compensated.
2. **You have to prove the amount owing.** For example, it is not enough to prove that the dry cleaner ruined your suit. You have to prove what the suit was worth, or what it cost to repair the damage.

"Evidence" is whatever you will use at trial to prove your case. You have to think about it now because how you intend to prove your case will likely be discussed at the settlement conference. There are several different kinds of evidence. Those most often used are:

1. Oral testimony: a witness comes to court and answers questions at the trial. Witnesses **do not** attend settlement conferences.
2. Documentary evidence: documents, such as business records and written estimates, are presented in court either by a witness or a party.
3. Expert reports: reports prepared by an expert in the field (e.g. a building inspector).
4. Photographs: photographs are sometimes used as evidence if the person who took them can properly identify them.

Try to break down your case into individual facts and decide what evidence you will use to prove each point. The best way to do this is to review the claim form and defence form closely. Use these documents as a reference and then make a worksheet from them.

Example 1

We will use the same roofer example that we talked about in the "Guide to Making a Claim." You will recall that you hired a roofer to put a new roof on your house. The roof leaks, so you sue ZC Roofing Ltd.

Worksheet

Suppose your claim says this in the "Reasons for Claim and Details" section:

1. ZC Roofing Ltd. put a new roof on my house at 123 King Street, Barrie, ON.
2. The roof leaks and ZC Roofing Ltd. has refused to fix it.
3. My furniture and carpeting were damaged and I had to hire another roofer to fix the leak.

How much?

a) Cost of replacing chair	\$	479
b) Cost of cleaning carpet	\$	135
c) <u>Cost of repairing roof</u>	\$	<u>1,250</u>
TOTAL	\$	1,864

You could prepare a worksheet like this:

FACT	EVIDENCE
A ZC Roofing put the roof on my house	A Signed contract with ZC Roofing and invoice marked "PAID"
B The roof leaks	B Photos taken by me
C The leak was caused by ZC's poor workmanship	C Report of building inspector Evidence of foreman from YZ Roofing who repaired the roof.
D It will cost \$1,250 to repair the roof	D Estimates from three roofing companies
E The leak caused damage to my carpets and furniture	E My own testimony and photos taken by me
F It cost \$135 to clean the carpet	F Invoice from Columbia Carpet Cleaners
G It cost \$479 to replace my chair	G Bill of sale from Peg's Furniture Mart for new chair

Well in advance of the court date, each party must decide if there is any document **not** attached to his or her claim or defence form that the party wants to use at trial to prove his or her case. If so, at least 14 days before the date scheduled for the settlement conference, the document must be served on every other party and filed with the court. Make detailed notes of when and how you served the document in case the court requires you to file an affidavit of service sometime later.

In our example, the documents would include the contract, invoices, bill of sale and written estimates. Some of these documents would already have been attached to the plaintiff's claim and served on the defendant. Any new documents (for example, the report prepared by the building inspector or copies of photographs) would have to be served on the defendant and filed with the court at least 14 days before the settlement conference.

The clerk will send each party a blank [List of Proposed Witnesses \[Form 13A\]](#) together with the Notice of Settlement Conference. At least 14 days before the date of the settlement conference, the plaintiff and the defendant must fill out the form and serve it on each other as well as any other party involved **and** file the documents with the court. You should not bring any witnesses to the settlement conference, but you should be prepared to briefly explain what your witnesses will say if they come to the trial.

For example, you would not bring the building inspector but you could say, "The building inspector told me that the reason the roof leaks is because the flashing was not properly installed and the shingles around the chimney and eaves have to be removed and replaced."

Tip: A good way to organize your papers to ensure nothing is overlooked is to cross-index them with your worksheet. To do this:

- Paperclip each document to a page in a three-ring binder.
- Mark each of the pages in the upper right hand corner with the letters from your worksheet.
- Make the worksheet the first page in the binder, to serve as a Table of Contents.

If you are the defendant replying to either a plaintiff's claim or a defendant's claim:

Begin by closely reviewing the claim and your defence. For example:

- Do you disagree with the plaintiff's version of "Reasons for Claim and Details?" Make a note of exactly what you agree or disagree with and be prepared to briefly explain why to the judge.
- Do you disagree with the amount that the plaintiff says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.
- Do you agree you owe what the plaintiff claims, but simply cannot pay it all at once? If that is the case, bring proof of your financial situation (e.g. recent pay stubs and last year's income tax return). Be prepared to tell the judge what sort of payment terms you are capable of making. If you can pay something right away, all the better.
- Do you agree that you may owe the plaintiff some money, but not the amount claimed? If that is the case be prepared to explain the reasons for your position and what you think would be reasonable.

Example 2

Suppose you agree to pay the plaintiff \$1,000. You might say, "I will pay \$200 today, and then \$200 at the end of each month until it is paid."

Here are a few other things to keep in mind:

First, has the correct defendant been named in the claim?

Example 3

In Example 1, the plaintiff had a contract with ZC Roofing Ltd. If he named Zoro Carey as the defendant (the one who owns the company and did the work) and not the company, Mr. Carey could reply to the claim by saying that he did not enter into an agreement with the plaintiff in his personal capacity and therefore the plaintiff has no case against him.

Second, if the plaintiff has suffered the damage described, has it been proven that it was your fault?

Third, carefully examine the amount of the claim. Is the plaintiff asking for a much more expensive chair to replace the original one that was old and worn? Can this be justified?

Organize your case following the process described earlier in this guide for the plaintiff. Use a worksheet listing the points you wish to make and the evidence you will use to prove those points. Refer to the worksheet in Example 1.

You must serve on the plaintiff any document that was not already attached to your defence and file it with the court at least 14 days before the settlement conference. You must also complete a [List of Proposed Witnesses \[Form 13A\]](#), serve it on the plaintiff and file it with the court at least 14 days before the settlement conference.

Finally, like the plaintiff, you must come to the settlement conference prepared, or risk having to pay the other side's expenses.

What will happen at the settlement conference?

The settlement conference will usually be held in an office or meeting room. This is a less formal procedure than a trial and all parties will sit at a table with the judge. The settlement conference is a private meeting. Members of the public are not allowed.

Judges may conduct settlement conferences in different ways, but usually the judge will say a few words and then ask each party to give a brief summary of his or her case. You do not need to write this out in full but you should have a list of the points you wish to make. If you made a worksheet, use that.

If all parties agree on a final settlement, the judge may make an order which disposes of the case and you will not need to go to trial. If a settlement is not reached, the settlement conference is an opportunity to try to resolve some issues before the trial and to assist in preparing for the trial.

Example 4

Going back to the claim in Example 1, the parties might agree that the carpet damage was not the roofer's fault, because the homeowner had agreed to remove it before the roof was repaired. They might also agree that the chair was old and only worth \$150. They will have a trial but it will be shorter and simpler because they only have to deal with issues about the \$1,250 repair job.

Once the settlement conference is completed, the clerk will provide the parties with a copy of the Endorsement Record/Order of the Court.

The clerk will also provide each party with a Notice to Set Action Down for Trial that states that one of the parties must request a trial date and pay the fee for setting the action down for trial. Failure to set the action down for trial will result in the clerk eventually sending you a notice of approaching dismissal.

Is there a special rule for claims less than \$2,500?

If the claim is for less than \$2,500 (\$2,500 is the minimum claim that can be appealed according to O. Reg. 626/00 under the *Courts of Justice Act*), there is a special procedure available to parties who consent to it. The parties can file a signed [Consent \[Form 13B\]](#) (before the settlement conference) indicating that they wish to have final judgment at the settlement conference. If the parties do not reach a settlement the judge can then make a final judgment at the settlement conference. If you consent to this procedure, this will be the final judgment in your case and you will not have to attend again for a trial, or pay the trial fee.

What if we settle the case after the settlement conference?

Even though you have been through a settlement conference and your case has been set for trial, it does not mean that you have to go to trial. If you keep talking to one another after the settlement conference, and you agree to settle, you can fill out and sign a [Terms of Settlement \[Form 14D\]](#). File the terms of settlement, signed by all parties, as soon as possible in order to notify the court that the action has been settled. If a trial date has been scheduled, notify the court of the settlement before the scheduled trial date, if possible.

If one party fails to abide by the terms of the settlement, the other party can make a motion to the court to either:

- ask for judgment in the terms of the settlement, or
- go to trial as if there had been no settlement.

What is an "Offer to Settle"?

An "Offer to Settle" is the name given to a formal written offer made by one party to the other party. Either party can make a written offer to settle to the other party at any time until a judge disposes of the case. The party may use the [Offer to Settle \[Form 14A\]](#), or may write a letter setting out the terms of the offer.

If you have made or received an offer to settle and it has not been accepted, **you cannot file the offer to settle at the court office.**

If you have made or received an offer to settle and it has not been accepted **you must not mention the offer to settle or any negotiations relating to it to the judge during the trial** until a final disposition has been made of all issues of liability and relief, except for costs.

I want to discuss settlement with the other party. Do I have to make an offer to settle?

No. The offer to settle process is a special process which may be used, but it is not required. The use of the offer to settle has several important consequences which are discussed below. If you and the other party want to settle your case, it is not necessary to use the offer to settle process.

The simplest way to settle an action is to talk with the other side until you come to an agreement. Write down the details and sign your agreement in the presence of a witness who also signs the document. You may use the [Terms of Settlement \[Form 14D\]](#) noted above and file it with the court.

However, if you are not sure that the other side is willing to settle, you can make a written offer to settle using the [Offer to Settle \[Form 14A\]](#). Keep in mind that you do not have to use this form, but it is provided for your convenience.

I received a written offer to settle. What can I do now?

Carefully consider **any** written offer that is made to you.

If you do not accept an offer to settle, and if the offer to settle was made at least 7 days before trial, there is a chance that you could end up being penalized with an order for costs made against you. For example:

- the judge may order extra costs **against a defendant** who rejects an offer to settle when the judgment at trial is as favourable as, or more favourable than, the plaintiff's offer to settle, or
- the judge may order costs **against a plaintiff** when the judgment is as favourable as, or less favourable than, the defendant's offer to settle.

Remember: An offer to settle which is not accepted may be disclosed to the trial judge only when all issues of liability and relief have been determined, and only costs remain to be determined.

Example 5

Referring back to the claim in Example 1, the parties are scheduled to go to trial over whether the \$1,250 repair job is necessary.

The plaintiff sends the defendant a letter with an offer to settle for \$1,000 so that he can avoid the time and expense of trial. The offer to settle is made in writing and is served on the defendant more than 7 days before the trial date. The defendant does not accept the offer to settle.

At trial the judge finds for the plaintiff and awards the plaintiff judgment for \$1,250 plus costs of \$75. After the judge gives the judgment, the plaintiff shows the judge his offer to settle. The judge then awards the plaintiff an additional \$75 in costs because the defendant failed to accept the offer to settle.

In an alternative example, the defendant makes an offer to settle for \$850 plus costs. The offer to settle is made in writing and is served on the plaintiff more than 7 days before trial. The plaintiff does not accept the offer to settle.

At trial the judge awards the plaintiff \$750. After the judge gives the judgment, the defendant shows the judge his offer to settle. The judge awards the defendant costs of \$100.

Remember, an offer to settle may be accepted until the time specified in the offer, or until the judge makes a final decision in the case, if no time for expiry is specified in the offer.

I want to make a formal offer to settle. What can I do?

You can make a written offer to settle using the [Offer to Settle \[Form 14A\]](#). Keep in mind that you do not have to use this form, but it is provided for your convenience.

You can specify a date after which the offer is no longer available for acceptance. If the offer has not been accepted by that date, the offer is deemed to have been withdrawn. If you change your mind and want to withdraw your offer to settle before that, you can serve a [Notice of Withdrawal of Offer to Settle \[Form 14C\]](#) on the party to whom the offer was made. However, you cannot withdraw your offer if the party has already accepted it.

If the other party wishes to accept your offer, he or she must do so in writing and serve the acceptance on you. The party can complete an [Acceptance of Offer to Settle \[Form 14B\]](#) or write a letter. Once the offer to settle is accepted, the settlement is then binding on both you and the other party.

What can I do if the offer to settle is not accepted?

If you have made or received an offer to settle, and it has not been accepted, **you cannot file the offer to settle at the court office, and you must not mention the offer to settle during the trial.** You may only mention the offer to settle when the judge has decided all issues of liability and relief, except costs.

If you made a written offer to settle that was not accepted, you may bring it with you to the trial to show the judge **after** a final judgment on all issues of liability and relief, except costs, has been made in the case.

Part Two: Trial

What is the difference between a settlement conference and a trial?

There are a number of differences between a settlement conference and a trial. A settlement conference is a private discussion between the parties, with the assistance of the judge. The purpose is to see whether the parties can agree on a settlement. A trial is a public process where each party tells his or her own side of the case to a judge who makes a decision about the issues in the case. You will have a different judge at the trial than you have at the settlement conference.

Sworn evidence may be heard from witnesses at a trial. At a settlement conference the parties simply tell the judge what the witnesses would say if they were present.

How do I prepare for trial?

If you followed the information in this guide about preparing for the settlement conference, much of your work is already done. Start by going back and reviewing these documents:

- the claim;
- the defence;
- the defendant's claim (if any);
- your worksheet;
- the settlement conference endorsement record (containing court orders made at the settlement conference);
- any direction given or recommendations made by the judge at the settlement conference; and
- any documents or other evidence you may have.

You will likely be the main witness for your case, and you may be asked to tell your story, so prepare what you will say. Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who does not know you or the other people involved. Make a list of all the points you want to cover.

The plaintiff should be prepared to start by telling the judge briefly what the case is about, remembering to mention any facts the parties have agreed to.

Remember, under no circumstances should either party mention to others anything about discussions at the settlement conference. Also remember that under no circumstances should either party mention to the judge anything about an offer to settle that has not been accepted. The offer to settle can only be discussed when the trial is over and all issues of liability and relief, except costs, have been determined.

Tip: If possible, try to go to court and watch some cases being tried. Small Claims Courts are open to the public. Unless the judge orders otherwise you are allowed to sit and watch any day the court is in session.

Are there special rules about how to behave in court?

Yes, there are special rules about how to behave in court:

- The judge in Small Claims Court is called "Your Honour."
- Everyone stands when the judge enters or leaves the courtroom.
- You must stand whenever you are speaking to the judge or the judge is speaking to you. You will also stand while questioning your witnesses.

- Remember, it is improper for you to attempt to have any out-of-court communication with a judge unless the judge specifically orders it.

There are signs posted in the courthouse about other behaviours which are not permitted. You must abide by these rules to show respect for the court.

What evidence can I present at trial?

Evidence that may help prove your case at trial might include: documents, records (including audio or visual records), or written statements.

Examples of documents which might be used as evidence include: hospital records, medical reports, financial records, receipts, bills, estimates, photographs identified by the person who took them, and other documents that show the party's loss or property damage.

The *Rules* provide for copies of written statements, documents and records to be served on all parties at least 30 days before the trial date. You may have already served most of this material before the settlement conference.

If you serve on another party a written statement or document described in subrule 18.02(2) of the *Rules*, you must include:

- the name, telephone number and address for service of the witness or author; and
- if the witness or author is to give expert evidence, you must also include a summary of his or her qualifications.

Example 6

Referring back to Example 1, the plaintiff in this case would serve the written statement of the building inspector indicating that the leak was caused by ZC's poor workmanship. The plaintiff would also include the inspector's name, telephone number, address for service and a summary of the inspector's qualifications.

If you want to ask questions of the author of another party's written report or document, you can summons the author as described below in the discussion about witnesses. You must also serve a copy of your summons to witness form on all parties in the case. If you do not, a party who has not been served may request an adjournment of the trial and, if granted, you may be ordered to pay costs.

You should bring the original documents and at least three copies of each document to the trial. The original may be entered by the court as an exhibit. The copies are for the judge, the other party (or parties) and yourself.

Check with the court office prior to the scheduled trial date to ensure that any equipment you may require is available in the courtroom (e.g. a television and VCR if you have footage that you would like to show the judge). You may be required to bring the necessary equipment with you.

What witnesses can I have?

When you are thinking about possible witnesses, remember that the best witnesses are usually those who have personal, first-hand knowledge of the facts. You may also want to have expert witnesses that you think will assist your case, for example, a report of the building inspector. The judge will determine what evidence given by the witness will be allowed.

Think carefully about the questions you will ask your witness in order to get the evidence you think you will need, and write those questions down.

It is okay for you to review the questions with your witnesses beforehand, but you must not tell them what to say. Be sure to tell them this so they won't be concerned if they are asked in court whether they've discussed the case with you.

At the trial, witnesses will be required to swear or affirm that they will tell the truth.

How do I make sure my witnesses will come to court?

You can fill out a [Summons to Witness \[Form 18A\]](#) form and file it at the Small Claims Court office. The court will issue the summons. There is a fee to issue the summons.

The summons to witness must be served personally on the witness at least 10 days before the trial date together with attendance money. Attendance money includes a witness fee and travel expenses. Refer to the "Guide to Serving Documents" and the "Guide to Fee Schedules" for more information.

You may be required to file an [Affidavit of Service \[Form 8A\]](#) to prove service of the summons and attendance money so make sure you keep a record of the details such as the date, time, and address where the summons was served.

Example 7

Referring back to Example 1, the plaintiff in this case wishes to have the foreman from YZ Roofing, who was in charge of the repair of the roof, testify about the problems with the original roofing job and the work required to repair the roof.

The defendant would ask the court clerk to issue a blank summons to witness form and pay the fee.

Once he filled in the witness details for the witness, he would make a photocopy for himself and then personally serve the original summons to witness form on the witness together with attendance money.

Then, from his copy, he would make enough photocopies to serve on every other party.

Remember that it is your responsibility, and in your own best interests, to make sure your witnesses attend. You do not have to serve a summons on the witness, but if you do not and your witness does not appear, you may have to proceed without the witness.

If a witness fails to attend trial after being properly served with a summons to witness and attendance money, the trial judge may issue a warrant for his or her arrest.

If the court finds a party has abused the power to summons a witness, the judge may order the party to pay money to the witness to compensate him or her for inconvenience and expense.

What if my witness requires an interpreter?

If a witness who is summonsed requires an interpreter, the court will provide an interpreter from English to French or French to English or visual language interpretation.

It is the responsibility of the party summoning the witness to arrange for interpretation for other languages. Failure to do so may result in an adjournment of the trial and an award of costs against you.

The court will provide an interpreter for other languages to parties who have qualified for a fee waiver.

For more information see the "What is Small Claims Court?" guide.

What can I do when a witness for the other side says something I do not agree with?

When you are in court, when it is the other party's turn to say what happened or ask his or her witness questions, you should not interrupt.

When a witness for the other side has finished giving evidence, the judge may allow you to ask the witness questions.

What if I cannot be ready in time, or cannot attend, on the date set for the trial?

If you do not attend at trial, judgment may be granted against you or your claim may be dismissed. If you have a very good reason for being unable to attend on the date set for trial, you can ask the court to adjourn the trial and reschedule it to another date. Contact the court office for assistance. If the judge allows the request and makes an order, the clerk will notify the parties of the new trial date.

If the trial is not adjourned before the scheduled date, you or someone on your behalf must attend court on the trial date to request the adjournment. If a judge allows your request and makes an order adjourning the trial, the clerk will notify the parties of the new trial date.

If an adjournment is granted and a new trial date is set, make sure you notify all of your witnesses about the new date. It may be necessary for you to prepare and serve a summons with the new date and attendance money on each witness.

If a trial has been adjourned two or more times, any further adjournment may be made only on motion, with notice to all parties who were served with a trial notice, unless the court orders otherwise. Refer to the "Guide to Motions and Clerk's Orders" for more information.

What is a judgment?

The judgment is the decision of the judge who heard your case. Usually, a judge in Small Claims Court will give judgment in court right after both sides have finished presenting their cases. Sometimes, however, the judge may not give the judgment right away but will give the decision later (this is called reserving judgment). In this case, a copy of any reasons for judgment or an endorsement record will be mailed to each party when the judgment is made.

A judgment is an order of the court; it is not a guarantee of payment. Refer to "After Judgment – Guide to Getting Results" for information about what you can do to attempt to collect your money or property after you get your judgment.

Can I appeal a judgment?

You can appeal a judgment to a higher court if the amount of the judgment, not including court costs, is more than \$2,500, or there is an order directing recovery of personal property valued at more than \$2,500. This is set out in O. Reg. 626/00 under the *Courts of Justice Act*.

An appeal is based upon your belief that a judge made a significant mistake. It is not an opportunity to retell your story. The judge who hears the appeal will not hear any new evidence; he or she will rely entirely on the transcript of the trial and the court record.

For more information about appeals, see the guides to Divisional Court available at Divisional Court locations and on the ministry's website at www.ontario.ca/attorneygeneral. The Ontario Courts website at www.ontariocourts.ca also contains useful information. From the home page:

- click on "Superior Court of Justice"
- click on "Divisional Court"

What if judgment is made against a party who did not appear at trial?

In some circumstances, a party who did not appear at trial may make a motion to set aside or vary the judgment obtained against them. The motion must be made within 30 days after becoming aware of the judgment, unless the court extends the time. See the "Guide to Motions and Clerk's Orders" for more information on making a motion.

Can either party ask for a new trial?

In very limited circumstances, which are set out in the *Rules*, a party can ask for a new trial. A motion for a new trial must be made within 30 days after the final order at the trial, unless the court orders otherwise. To do so, serve and file:

1. A [Notice of Motion and Supporting Affidavit \[Form 15A\]](#) setting out your reasons for asking for a new trial; and
2. A document proving that you have made a request to a court reporter to make a transcript of the reasons for judgment and any other portion of the proceeding that is relevant. You can obtain a transcript by contacting the court office to order it. There will be a fee for this process. Refer to the "Guide to Fee Schedules" for more information.
3. If available, a copy of the transcript must, at least three days before the hearing date, be served on all parties who were served with the notice of trial, and be filed with proof of service (the transcript must be *both* served and filed at least three days before the hearing date). For information on service, see the "Guide to Serving Documents".

Under the *Rules*, you may request a new trial only where:

- there was a purely arithmetical (mathematical) error in the determination of the amount of damages awarded at trial; or
- there is relevant evidence that was not available to the party at the time of the original trial and could not reasonably have been expected to be available at that time.

If your request for a new trial is based on a mathematical error, your affidavit must show the error in calculating in the judgment and the correct calculations. For more information about requesting a new trial, refer to Rule 17.04 of the *Rules of the Small Claims Court*.



Checklist: Getting ready for trial

Follow this checklist when getting ready for your trial:

1. Review the claim, defence (if any) and any other documents that have been filed.
2. Review the results of your settlement conference. Make a note of all points that were agreed to which are no longer in dispute and any direction given by the judge.
3. List the points you need to prove.

4. Consider how you will prove each point.
5. Gather the original documents you need and organize them in logical order.
6. If you have not already done so, serve on all other parties the documents and witness statements that you will use at least 30 days before trial, and include contact information and the address for service for each document's author.
7. Contact any witnesses you decide are necessary.
8. If you decide to summons any witness(es), serve a copy of the summons and attendance money on your witness(es) at least 10 days before the trial.
9. Obtain statements from expert witnesses, if any, and serve copies on the other parties together with the expert's contact information, address for service, and qualifications.
10. Prepare a list of questions for your witnesses.
11. Prepare a list of questions that you would like to ask the witnesses for the other party or parties.
12. On your trial date, dress appropriately and give yourself plenty of time to travel to the courthouse and find your courtroom.

If you have prepared your case well, you will be much more relaxed in court and you will be able to present your case to its best advantage.

Part Three: Assessment hearing

Where a defendant does not file a defence to a claim for an unliquidated amount, the plaintiff can ask the clerk to note the defendant in default and request an assessment hearing before a judge to prove the amount the defendant owes. An unliquidated claim is a claim where the amount in dispute is not fixed under a clear and distinctly stated agreement (for example, damage to property or a personal injury). For more information, refer to the "Guide to Making a Claim."

Note: You may also make a motion in writing for an assessment of damages, rather than scheduling an assessment hearing. For information about motions in writing for an assessment of damages, refer to the "Guide to Motions and Clerk's Orders."

How do I prepare for an assessment hearing?

An assessment hearing proceeds as a trial except the defendant is not present. Because the defendant did not file a defence, the defendant is considered to have admitted the claims you made against him or her. As a result, you do not have to prove the defendant's liability (i.e. that the defendant does, in fact, owe you something). You must only prove the amount that the defendant should pay to compensate you.

The information about preparing your case in Parts One and Two of this guide will help you prepare for an assessment hearing. It is a good idea to prepare your case as suggested in Parts One and Two. The sections you may find particularly helpful are:

- how to prepare your case in Part One;
- information on witnesses and documents in Part Two (but keep in mind that you are not required to serve the defendant with these materials); and
- information on how to behave in court in Part Two.

Tips on Completing Forms in Small Claims Court

1. **BE NEAT.** These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read. Forms are available at court offices and at the following website: www.ontariocourtforms.on.ca.
2. How to **COUNT DAYS FOR TIMELINES** in the *Rules of the Small Claims Court*:
When calculating timelines in the *Rules*, count the days by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday. The court can order, or the parties can consent to, the shortening or lengthening of the time prescribed by the *Rules*. Holidays include:
 - any Saturday or Sunday
 - New Year's Day
 - Family Day
 - Good Friday
 - Easter Monday
 - Victoria Day
 - Canada Day
 - Civic Holiday
 - Labour Day
 - Thanksgiving Day
 - Remembrance Day
 - Christmas Day
 - Boxing Day
 - any special holiday proclaimed by the Governor General or the Lieutenant Governor

NOTE: If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.
3. At the top of the forms, fill in the **NAME AND ADDRESS OF THE COURT** where you are filing the documents.
4. Once court staff provides a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
5. Bring enough **COPIES** of your completed forms to the court office. Usually you will require one copy for each party who must be served and one copy for your own records. In most cases, the court will keep the original form. There is a fee to have copies made at the court office. Refer to the "Guide to Fee Schedules" for more information.
6. **COURT FEES** must be paid to issue and file specific documents. Refer to the "Guide to Fee Schedules" for more information. Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance. If you cannot afford to pay court filing or enforcement fees, you may request a fee waiver. The fee waiver applies to most fees in Small Claims Court proceedings. More information about fee waiver is available at any court office and on the Ministry of the Attorney General website at www.ontario.ca/attorneygeneral.
7. An **AFFIDAVIT** can be sworn before:
 - a Small Claims Court staff member who has been appointed a commissioner for taking affidavits (there is no fee for this service);
 - a lawyer who is entitled to practice law in Ontario;
 - a notary public; or
 - any other person who has been appointed a commissioner for taking affidavits in connection with court documents.

The affidavit must be signed in the presence of the person before whom it is sworn.

NOTE: It is a criminal offence to knowingly swear a false affidavit.
8. If your **ADDRESS FOR SERVICE** changes, you must serve written notice of the change on the court and all other parties within seven (7) days after the change takes place.

Any Comments?

Your feedback is important. Tell us how we can we help you better by taking a moment to comment on this Guide.

Put your response in the Customer Comment Box at any Small Claims Court location.

Was this Guide helpful to you?

Yes

No

Why?

What can we do to make this Guide better?

Thank you!

*Your feedback is requested to help us improve these guides.
Please do not provide any personal information.*