

Guide to Replying to a Claim

Inside this guide:

Introduction
What if I just do nothing?
What is a defence?
Can I file a defence if I am less than 18 years of age?
Can there be more than one defendant in an action?
I want to dispute the claim – what do I do?
How much time do I have to file my defence?
How do I fill in the defence?
What if I agree I owe the money?
What if I agree that I owe the money but I cannot afford to pay it all right now?
What if I only agree I owe part of what is claimed?
If I make a proposal for terms of payment, should I start making payments right away?
What if I fail to make payments according to my proposal?
What if the plaintiff does not agree with my proposal?
What if I do not make the payments ordered at the terms of payment hearing?
What if I think the plaintiff should pay?
What if I think someone else is responsible for the plaintiff's loss?
What do I do with my defence, after I have filled it out?
What happens next?
What happens if I am noted in default?
How do I ask for the noting in default or a default judgment to be set aside?
I was served with an amended claim. Do I have to file an amended defence?
How do I amend my defence?
How do I settle if I want to?
Checklist: Replying to a claim

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.

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.attorneygeneral.jus.gov.on.ca:

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 "Statutes and associated Regulations"
- Click on the cross to the left of "Courts of Justice Act"
- Click on "Rules of the Small Claims Court"

Introduction

If someone starts an action against you in Small Claims Court, you will receive either:

- a **Plaintiff's Claim [Form 7A]**; or
- a **Defendant's Claim [Form 10A]**.

Most people who receive a claim have a lot of questions about what lies ahead. We encourage you to read this guide and the "What is Small Claims Court?" guide before you decide what action you want to take. These guides will give you information that may help with some of the decisions you will have to make.

For more information about procedures in Small Claims Court, please refer to the list of guides at the front of this guide.

What if I just do nothing?

You should not ignore the claim. If you do, it will be assumed that you admit to the truth of what is claimed against you. The plaintiff can then get a judgment against you, with no further notice to you, just as if there had been a trial. The judgment can then be enforced against you. To learn about what enforcement activities are available to the plaintiff to enforce a judgment, refer to "After Judgment – Guide to Getting Results."

What is a defence?

A **Defence [Form 9A]** is your answer to the claim. It is the form you will use to explain:

- what you disagree with in the claim, and why;
- what, if anything, you agree with; and
- whether you want to propose terms of payment for all or part of the amount claimed.

Can I file a defence if I am less than 18 years of age?

A minor (a person under 18 years of age) may defend a claim for up to \$500 as if he or she were an adult. If the amount in dispute is greater than \$500, a litigation guardian must represent the minor. A litigation guardian is usually a parent or guardian. The litigation guardian must fill out a **Consent to Act as Litigation Guardian [Form 4A]** and file it with the court at the time the defence is filed.

Can there be more than one defendant in an action?

Yes. The plaintiff will list the name and contact information for one defendant on the **Plaintiff's Claim [Form 7A]**. For additional defendants, the plaintiff will tick the box on the claim form that indicates "Additional parties listed on attached Form 1A." The rest of the defendants and their contact information will be listed on the **Additional Parties [Form 1A]** attached to the claim as the second page.

I want to dispute the claim – what do I do?

If you want to dispute the claim, you will need to fill out a **Defence [Form 9A]** and file it at the court location indicated on the top of the claim.

How much time do I have to file my defence?

You have 20 calendar days from the date you were served with the claim to file your defence. After 20 days, the plaintiff can have you noted in default. After the 20 days have passed, you may still try to file your defence. The court office will accept your defence for filing as long as the plaintiff has not filed a request to note you in default.

How do I fill in the defence?

Here are a few pointers on filling in your **Defence [Form 9A]**:

- Make sure that you state on whose behalf the defence is being filed. For example, if there is more than one defendant, is the defence being filed on behalf of all of the defendants or just one defendant?
- Include names and contact information for all plaintiffs and defendants indicated on the claim. If the claim has more than one plaintiff or defendant you will need to attach an **Additional Parties [Form 1A]**. Check the box on the defence form that indicates "Additional plaintiffs (or defendants) listed on attached Form 1A."
- Write or type your name on your defence form **as it appears in the claim** (e.g. if the claim says "Alex Andrew Wong", the defence should say "Alex Andrew Wong", **not** "Alex Wong"). If your legal name is different from the name used on the claim, indicate the error and state your full legal name in your defence.
- If your address is listed incorrectly on the claim, put your correct address on the defence. If you do not provide your correct address, the court and the other parties will continue to send documents to the incorrect address and you will not know what is happening in your case.
- Fill in the court file address and number from the plaintiff's claim.
- Organize any supporting documents you need to file with the defence. If your defence is based in whole, or in part, on a document, attach a copy of the document to your defence (e.g. a contract or invoice). If you no longer have the document, or cannot find it, state in your defence the reason why the document is not attached.
- Review the "Reasons for claim and details" section of the plaintiff's claim. In your defence, give clear, detailed reasons why you dispute the claim. It is often helpful to use separately numbered paragraphs. If the claim has numbered paragraphs, you can write your reply to each paragraph using the same numbers used in the claim.

Try to be brief. You may have many other quarrels with the plaintiff unrelated to the claim, but do not include them here. Do not try to use "legal language." Just make your points clearly and in your own words.

Example 1

You are a roofer. You put a roof on an addition to a customer's house and now the customer is suing you. He says the roof leaked and he had to pay \$1,250 to fix it. In the "Reasons for claim and details" section of the claim he says:

"I am claiming the following amounts and am attaching my invoices to this claim:

- | | |
|--|---------|
| 1) Cost of replacing water damaged chair | \$ 479 |
| 2) Cost of cleaning carpet | \$ 135 |
| 3) Cost of repairing roof | \$1,250 |

You might say, in your "Reasons for disputing the claim and details" section of the defence:

- 1) I do not know about any chair in the area that could have been damaged by a leak from the roof.
- 2) There was only a small rug in the room and it would not cost \$135 to clean it.
- 3) If there was a leak at all, it was caused by faulty shingles.

What if I agree I owe the money?

You may file a **Defence [Form 9A]** and, in your defence, you can admit the amount owing and propose a payment date. If you do not file a defence, and the plaintiff takes additional steps in the proceeding, you may be responsible for paying the extra costs incurred by the plaintiff.

You must make your payments directly to the plaintiff. You should keep proof of your payments (e.g. a copy of your cheques or money order stubs).

Example 2

You are the roofer in Example 1. If you admit that you owe the money, you might indicate on the defence form:

"I admit the full claim made against me in the amount of \$1,864 and propose the following terms of payment: \$1,864 on August 1, 2006."

What if I agree that I owe the money but I cannot afford to pay it all right now?

You may not be able to pay what you owe because you do not have the money to pay right now. Sometimes installment payments can be the answer, or a delayed payment date might satisfy both parties.

If you agree that you owe the money claimed, but cannot afford to pay it immediately, you may file a **Defence [Form 9A]** with the court. In your defence form, you can make a proposal for "terms of payment". This is where you can tell the plaintiff what sort of payment arrangements you want to make, such as weekly or monthly payments.

Example 3

You are the roofer in Example 1. You admit that you owe the \$1,864, but work has been slow lately and you have a lot of other financial obligations. You might indicate on the defence form:

"I admit the full claim made against me in the amount of \$1,864 and propose the following terms of payment: \$300 per month for three months commencing June 1, 2006, and an additional \$364 on September 1, 2006."

What if I only agree I owe part of what is claimed?

You can also make a proposal for terms of payment for only part of the amount claimed. You would then make payments as proposed and go to a settlement conference and, if necessary, a trial regarding the amount that you do not admit to owing.

If I make a proposal for terms of payment, when should I start making payments?

The *Rules* state that you must make the payments in your proposal as though the proposal were an order of the court. Keep copies of your proof of payment.

What if I fail to make payments according to my proposal?

If you fail to make payment in accordance with the proposal in your defence, and the plaintiff has not disputed your proposal, the plaintiff can serve a **Notice of Default of Payment [Form 20L]** on you. You must then make arrangements to pay the plaintiff the money owing under the proposal within 15 days of being served with the notice. If you do not, the plaintiff can ask the clerk to sign judgment for the part of the claim that you admitted to owing in your defence.

What if the plaintiff does not agree with my proposal?

If the plaintiff does not agree with your proposal for terms of payment in your defence, the plaintiff can ask the court to schedule a terms of payment hearing. The plaintiff must file the **Request to Clerk [Form 9B]** asking for the hearing within 20 days after receiving a copy of your defence from the court. The plaintiff will also serve this request on you.

The court will send all parties a **Notice of Terms of Payment Hearing** setting out the date, time and place for the hearing. The court will also send you a blank **Financial Information Form [Form 20I]** if you, not your business, is being sued. If you are an individual who is being sued, you must fill out the financial information form and serve it on the plaintiff before the hearing.

Note: You **cannot** file the financial information form with the court.

At the hearing, the court may make a payment order that differs from your proposal for terms of payment. If you do not appear at the hearing, the plaintiff may obtain judgment for the part of the claim that you admitted to owing in your defence.

What if I do not make the payments ordered at the terms of payment hearing?

If you do not make the payments ordered at the terms of payment hearing, the plaintiff may ask the clerk to sign default judgment against you for the outstanding amount, unless the court has ordered otherwise.

What if I think the plaintiff should pay?

If you believe that you have a claim to make against the plaintiff indicate that in the defence form and file a **Defendant's Claim [Form 10A]**. For example, if the roofer in Example 1 has not been paid in full for the work, he might file a defendant's claim against the customer for the amount owing.

What if I think someone else is responsible for the plaintiff's loss?

You may believe that you have a claim to make against someone else who, in your opinion, should be responsible for paying the claim. If you wish to make a claim against another party, indicate that in your defence form and complete and file a **Defendant's Claim [Form 10A]**. A defendant's claim is like a plaintiff's claim, except that it is made by the defendant against the plaintiff or someone else.

When you fill out your defendant's claim, you are the plaintiff since you are now the one making a claim. This is referred to as being "a plaintiff by defendant's claim." In your defendant's claim, it is important to correctly identify who you are suing. Refer to the "Guide to Making A Claim" for more information about completing a defendant's claim.

Example 4

The roofer in Example 1 might feel that if the roof does leak, it is because the shingles were faulty. In that case, the roofer might file a defendant's claim against another party, the manufacturer of the shingles. The roofer can say, "I do not agree that there is anything wrong with the roofing job but if there is, then it is the shingle manufacturer who should pay you, not me."

You must file your defendant's claim within 20 days after you file your defence, unless you make a motion and ask the court to allow you to file it later. Refer to the "Guide to Motions and Clerk's Orders" for more information about how to make a motion.

What do I do with my defence, after I have filled it out?

After you have filled out your **Defence [Form 9A]**, the next step is to take the defence (with any supporting documents attached) to the Small Claims Court office where the claim was filed. The address of the court office will be on the top of the claim you receive. You must also bring enough copies of the defence and supporting documents for the court office to serve on each plaintiff. The clerk will keep the original. There will be a fee for filing the defence. For more information about court fees, refer to the "Guide to Fee Schedules."

It is also possible to mail your defence, supporting documents and copies, together with the fee to the Small Claims Court, but if you can, you should take your documents in personally. The court staff will check your documents and if they notice that the documents are incomplete you can usually fix them on the spot. This way, you will avoid wasting time mailing the documents back and forth with the court.

What happens next?

Once you have filed your defence, the court will serve a copy on the plaintiff, or on all plaintiffs if there is more than one. Your original defence will be filed in the court file.

If you disputed all or part of the claim you will have to attend a settlement conference. The settlement conference should take place within 90 days after the first defence in the case is filed. It is helpful if you advise the court in writing when you file your defence if there are particular days when you cannot attend court during that 90-day period. You **must** attend the settlement conference. Refer to the “Guide to Getting Ready for Court” for more information.

If you admitted the entire claim and made a proposal for terms of payment, and the plaintiff does not dispute it, no further steps are required as long as you make your payments on time.

Remember, you are free at any stage to try to work out an agreement with the plaintiff, which could settle your lawsuit.

What happens if I am noted in default?

If you have been noted in default because you did not file a defence within 20 days of being served with the claim, the plaintiff can obtain default judgment against you without further notice to you. The *Rules* also provide that once you are noted in default, you cannot file a defence or take any other step except to bring a motion to set aside the noting of default, unless you have the court's permission or the plaintiff's consent.

How do I ask for the noting in default or a default judgment to be set aside?

There are two ways to do this under the *Rules*:

1. You may bring a motion to set aside the noting in default or default judgment. The *Rules* provide that the defendant should bring a motion to set aside a default judgment "as soon as is reasonably possible in the circumstances." The *Rules* also outline the test that you will have to meet. You should read Rule 11.06 in particular, to make sure that you have addressed all the requirements. In your materials you should explain what your defence is and why you failed to file your defence in time.
2. You may also file a **Request for Clerk's Order [Form 11.2A]** and a **Consent for Clerk's Order [Form 11.2B]** in which all parties consent to set aside the noting in default and default judgment. Refer to the “Guide to Motions and Clerk's Orders” for more information.
3. If the noting in default and/or default judgment is set aside, you will need to complete and file a **Defence [Form 9A]**.

I was served with an amended claim. Do I have to file an amended defence?

If you are served with an amended claim, you are not required to file an amended defence. However, you may wish to file an amended defence in order to reply to any new claims made.

How do I amend my defence?

You may amend your defence without obtaining an order from the court to do so, as long as:

- the amended defence is served on all parties, including any party noted in default; and
- the amended defence is filed with the court at least 30 days before the originally scheduled trial date, unless the court allows a shorter notice period.

You should bring two copies of the amended defence to the court office. You must file a copy of the defence that is marked "AMENDED" with any additions underlined and any other changes clearly identified. Your copy will be returned to you so that you can make photocopies to serve on the other parties. There is no fee required to file an amended defence.

You will need an order from a judge or clerk if you wish to amend your defence when your trial is less than 30 days away. Refer to the "Guide to Motions and Clerk's Orders" for more information.

How do I settle if I want to?

For more information about settling a claim, refer to the "Guide to Getting Ready for Court."



Checklist: Replying to a claim

1. Review the claim thoroughly.
2. Complete a **Defence [Form 9A]**. If you are admitting part, or all, of the claim, make your proposal for terms of payment. For the part of the claim that you dispute, give a full response to what is claimed. It may be helpful to use separately numbered paragraphs. Attach an **Additional Parties [Form 1A]** form, if there is more than one plaintiff or defendant in the case and check the "Additional plaintiff/defendant" box on the defence form. Fill in the court file number from the plaintiff's claim.
3. Organize any supporting documents you need to file with the defence.
4. Make enough copies of the defence and supporting documents for the court to serve on each plaintiff. Make a copy for yourself for your records.
5. Take the defence and supporting documents, and copies, to the court office. Remember the defence must be filed within 20 calendar days after you were served, unless the court extends the time. You can try to file your defence after the 20-day period expires. The court office will accept your defence for filing as long as you have not been noted in default.
6. Pay the fee to file the defence.

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.

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.

Holidays include:

- any Saturday or Sunday
- New Year's 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.

The court can order, or the parties can consent to, the shortening or lengthening of the time prescribed by the *Rules*.

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. Make enough **COPIES** of your completed forms. The court will stamp and return your copy of the forms so you can make copies for service. 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. A listing of Small Claims Court fees can be viewed at the Ministry of the Attorney General website at www.attorneygeneral.jus.gov.on.ca or you can refer to the "Guide to Fee Schedules." Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance.
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.*