



# A Walk through Yukon's Small Claims Court

## #5 Getting Ready for Court



### ALSO AVAILABLE IN THIS SERIES:

- #1 What is Small Claims Court?
- #2 How to Start a Small Claim
- #3 You Are Being Sued - What to Do
- #4 Mediation and Pre-Trial Conferences
- #6 Judgments and How to Collect a Small Claim

# Getting Ready for Court



## PREPARING TO GO TO TRIAL

### How do I prove my case in court?

To prove your case, you must tell your story to the judge and back it up with evidence. The judge will decide your case based on that evidence. This booklet contains information for both plaintiffs and defendants. It explains how to prepare for a trial if the claim is not resolved through mediation or a pre-trial conference.

### How should I organize the information I have to prove my case?

If you attended a pre-trial conference and you prepared a worksheet listing the facts you want to prove and the evidence you have to prove those facts, you can use the worksheet as a starting point.

If you did not have a pre-trial conference, you can start by making a list of the facts you need to prove, and of the evidence you plan to present to prove each part. If you are the plaintiff and the defendant admits certain facts in the reply form, you are not required to prove these facts.

Organize your evidence in the same order as the events that took place. It helps to put the written information about your case in a binder with an index. You should also make separate lists of questions you want to ask your witnesses, the other party and any witnesses you think that they might call. Put the lists of questions in separate sections in your binder along with any bills or other documents you want that witness to identify or explain for the court.

To help you put together your information, refer to the “Trial Preparation Checklist” on page 3.



### What kind of evidence do I need to prove my case?

There are four types of evidence that may be used in court: oral testimony, written statements, documents and objects. Each type of evidence is explained in this booklet.

## Oral Testimony

Oral testimony is information given in court by witnesses who swear an oath or affirmation. Any person who has first-hand information about the case can be a witness. The plaintiff and the defendant can both call witnesses, including themselves, to tell the court what they did or said, and in some cases, what they saw or heard. After you have finished asking your witness all your questions, the other side is allowed to cross-examine the witness. This is done by asking questions to clarify or explain what the witness said.

If you ask someone else to be a witness, you should talk to them well before the date of the trial to be sure that their information will help prove your case. You should review with them the questions that you plan to ask them during the trial. To ensure that the witness appears in court on the date of the trial, you should ask the clerk for a Summons to Witness (Form #15) for you to fill out. The summons orders the witness to appear in court at a certain time, and to bring documents and other things listed on the form.

You are not required by law to serve a summons on a witness, but if you do, you may ask the court for an adjournment if the witness fails to appear at the trial. A witness whose evidence is important to your case may be arrested for failing to appear at the trial.

You can serve the witness personally, or you can pay the Sheriff to serve the summons. The person who serves the summons must swear an Affidavit of Service (Form #4) before a Notary Public to prove that the summons was served. You can ask the clerk to notarize your affidavit at no cost.

If you have the choice of more than one witness who could testify about the same information, you should consider which witness the court is most likely to believe. You should also consider the cost to you of having a witness attend court. If the witness lives more than 25 km away from the place of the trial, you must pay “attendance money” for attending the trial. The witness is entitled to be paid for reasonable travel expenses such as mileage, meals and accommodation.

If you are the plaintiff and you want the cost of summoning witnesses included in your claim, get the witness to sign a receipt that shows the amount of

attendance money received. Then swear an affidavit with a copy of the receipt attached to it. You should submit the affidavit to the court when you ask the judge to include this cost in your claim.

## Written Statements and Documents

Evidence must normally be given in person so that the other side can cross-examine the witness. However, some judges may accept the following documents:

- 1) written statements made by expert witnesses such as doctors; and,
- 2) documents such as hospital records or medical reports, financial records, bills, documentary evidence of loss of income or property, or repair estimates.

If you want to use written statements or documents, you must serve all the other parties with the statement at least 14 days before the date of the trial, or the judge may not accept it as evidence. You can serve a copy on the other party or parties by personal service or by mailing it to them.

If the name and address of the author of the statement does not appear on the statement, you must provide that information separately to the other party. This *must* be done in the interests of fairness. The other party has the right to know that information, and the right to summon the writer to court to answer questions about the statement.

## Documents Introduced by Witness

If the document needs to be explained by a witness, it should not be entered as written evidence. Instead, you should bring it to court and ask the witness who is most familiar with it to explain its meaning to the judge. You should bring the *original* document to court, but if there is no dispute that it is authentic, the judge may accept a copy. If you do not have the document yourself, you should ask the person who has it to provide it voluntarily. If they will not give it to you, you can use a summons to order them to bring it to court.

## Objects

If your claim concerns an object which is small enough to bring to court, you may bring it to the trial. If the object is too big to bring into the court, you should take a photograph of it and enter the photo as evidence. If you didn't take the photo, you should be sure to have the person who took it show up in court in case the judge and the other side have questions about it.

## How do I prove my case when I am suing for an unpaid debt?

If you are suing for a debt such as an unpaid loan or an NSF cheque, you need to prove:

- 1) that a debt exists;
- 2) the amount of the debt; and,
- 3) that the debt is unpaid or only paid in part.

Your evidence should include written documents, such as the defendant's IOU, NSF cheque, unpaid bills or letters to help prove your case. Any people who were present when the debt was incurred, or who heard the defendant say that the money was owed to you, should be introduced as witnesses to support your case.

If you are suing to get an NSF cheque paid, you must be able to prove that the defendant signed the cheque, and that it was returned by the bank because the defendant's account did not have the funds to cover the amount of the cheque. Often the defendant will not deny that this is the case, and providing the cheque with the "not sufficient funds" bank stamp will be enough to satisfy the judge that you are still owed the money. If the defendant denies writing the cheque, you will have to prove they did.

## How do I prove a case of a broken contract?

If you are suing because the defendant broke a contract with you (for example, the defendant performed work for you but did not do the job properly), you must prove:

- 1) that there was a contract;
- 2) the details of the contract;
- 3) how the contract was broken by the defendant; and,
- 4) the amount of money you are suing for, and how you arrived at that amount.

If you have a written contract, it will be easier to prove your case. The contract will form the most important part of your evidence. If there was no agreement in writing, you can still prove that you had a verbal contract through the testimony given by you and any other witnesses who were present when you made the contract.

To prove that the contract was broken, you must show that certain conditions of the contract were not carried out, or were not carried out satisfactorily. If the defendant did not finish the work, or if the work was done poorly, you should get at least two written

estimates to show what work needs to be done, and what it will cost to complete or repair the job. The estimates are added proof that your claim is fair and reasonable.

If you have already had the work finished or repaired by someone else, you should provide copies of the repair estimates and the invoices to the court when you file your claim. You may also need to have the people who prepared the estimates or who did the repairs appear in court on your behalf.

## How do I prove my case when I am suing over a vehicle accident?

If you are suing because of a vehicle accident, you must prove:

- 1) that the accident happened;
- 2) how the accident happened and who caused it;
- 3) the identity of the driver and/or owner of the vehicle; and,
- 4) the reason for the amount you are claiming.



You can usually prove how the accident happened through your oral testimony and the testimony of any other people who saw the accident. You need to state the location, date, time and weather conditions when the accident occurred. You should also give details about the condition of both vehicles before and after the accident, the steps you took to avoid a collision, and any other useful information. Photographs of the vehicles can be useful.

If the owner and driver are not the same person, you can obtain a certificate from Motor Vehicles which states the owner's name. If the driver was using the vehicle with the owner's consent, the owner is also liable for any damages caused by the driver's negligence.

To prove your case for the amount you are claiming, you must prove the type and extent of the damages you suffered due to the accident. Damages can include pain and suffering, lost wages, the cost of vehicle repairs, and other items.

## Can I watch trials in Small Claims Court to find out what goes on in court?

Visiting the court beforehand to see how it operates is a very good idea. It will give you a chance to learn what to expect in court, and to become more comfortable with the proceedings. Hearings of Small Claims Court are open to the public. Talk to the clerk to find out when the court will be sitting before your case goes to trial.



### TRIAL PREPARATION CHECKLIST

- review the claim form, the reply and any other documents filed in court
- review the results of your pre-trial conference if one took place
- list the points you need to prove in order to win your case
- plan how you will prove each of these points
- gather the documents you will need and organize them in logical order
- contact any witnesses you decide are necessary
- get written statements from expert witnesses, documents such as medical records, financial records, bills or repair estimates
- serve copies of written statements or documents by personal service or first class mail to all the other parties
- prepare questions for your witnesses and review them together
- prepare a list of questions for cross-examination

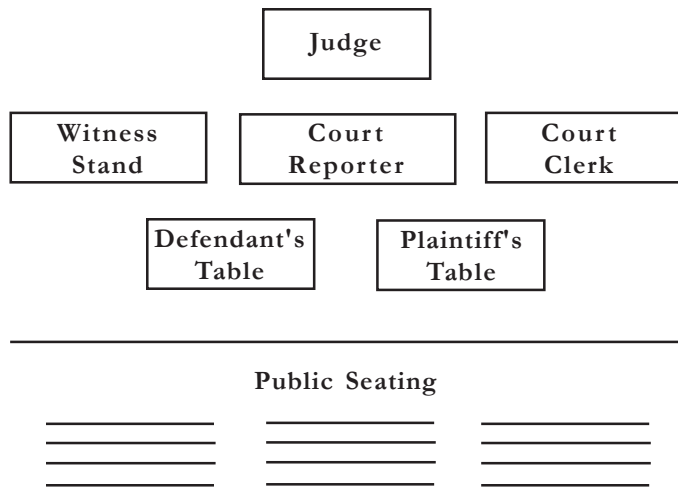
# YOUR DAY IN COURT

## What should I do when I first arrive for my trial?

Be sure to arrive before the time set for small claims cases. If your case is set to be heard in Whitehorse, check the bulletin boards on the ground floor of the Law Centre to find out the number of the courtroom where your trial will take place. Several cases may be heard each day. You may have to wait in the public seating area of the courtroom until your case is called. Do not leave and return later; you may miss your chance to present your side of the story.

The judge may first hear default hearings or cases in which only one party shows up, as these are usually quicker than a trial where both sides present evidence. When your name is called, go up to the front and sit at the table set aside for your side.

## How is the courtroom set up?



## In what order are the plaintiff's and defendant's cases presented?

Usually the plaintiff is the first to be sworn in to give evidence. After the plaintiff has given evidence, the defendant can then ask questions about the plaintiff's testimony as part of the cross-examination. Then the plaintiff can call witnesses to the stand. The defendant can cross-examine the witnesses after they give their testimony.

When the defendant has finished cross-examining the plaintiff's witnesses, the defendant can present their case. The plaintiff can cross-examine the defendant and the defendant's witnesses after they finish giving their testimony.

After both parties have given their evidence, they may summarize their cases to help the judge come to a decision.

## What are the rules in court?

You must call the judge "Your Honour". You must stand when the judge enters or leaves the courtroom, and you must stand when you are speaking to the judge from your table. You must also stand when you question your witnesses. You may either stand or sit in the witness box when you are testifying.

You should speak clearly and slowly. The judge will take notes as you are speaking. Do not interrupt when the other side is speaking. If you disagree with some of the other party's evidence, make a note of your objection. You will have a chance to summarize your case before the end of the trial; this is the time when you can comment on any statements or evidence that the other side presents.

## How do I present my case?

If you are the plaintiff, you have to prove your case on "the balance of probabilities". This means that you must prove to the judge that it is most likely that the events took place in the way you claim they did.

If you are the defendant, you must show that your version of events is more believable than the plaintiff's version.

Both parties should set out the facts of their case in the order that the events occurred. Stick to the facts that you know, speaking slowly and clearly. If you have information that came to you from another person, you should call that person as a witness. If you have documents to enter as evidence, they should be identified by a witness who wrote them or who has direct knowledge of them.

## How should I question my witnesses?

Your witnesses will probably be asked to wait outside the courtroom until they are called to testify so that their testimony is not influenced by other witnesses. Once the clerk has asked the witness to swear an oath or to affirm to tell the truth, you may ask your questions.

When you question your witnesses, start by asking them their name, address and occupation before you ask them questions that relate to your case. Ask your questions so that the facts are brought out in the order in which events occurred. Make your questions brief, and ask them so that witnesses describe what happened.

## **How does cross-examination work?**

Cross-examination is your chance to point out what you see as errors or contradictions in witnesses' testimony by asking them questions about what they said under oath. Witnesses do not usually lie intentionally, so if you are cross-examining them, you should focus on showing that the witness may be mistaken and on why the witness may be mistaken. The judge will not allow you to harass the witness, nor will you be able to use cross-examination as an opportunity to tell your side of the story.

If you are cross-examined, the other party will ask about possible errors or inconsistencies in your testimony. You must tell the truth, and answer clearly. If you don't understand the question, say so. Try to be polite and to keep calm as you respond.

## **What should I say to summarize my case?**

When both sides have given their evidence, they may summarize their arguments. Your summary should outline the facts as you believe they happened, and show how the facts have been proven. If witnesses told different stories, you should state why your witnesses should be believed over those of the other side. This means you must listen carefully to all testimony, and make notes of points that you will want to address in your summary. If you prepare an outline of your summary before you go to court, you can make changes and fill in information during the trial.

## **When will the judge give a decision in the case?**

Usually the judge will give an oral decision or judgment after both sides have presented their cases. Sometimes the judge may want to review the facts or the laws which apply to the case. If the judge postpones the decision (known as "reserving judgment"), a copy of the judgment will be filed in the court, and the clerk will contact each party as soon as the judgment is released. A copy of the

judgment will be mailed to you, or you may pick it up at the Court Registry.

## **What kind of decision can the judge make?**

The judge may decide to:

- dismiss your claim
- allow your whole claim
- allow part of your claim
- set up a payment schedule
- award interest and costs

## **How do I get my money after the decision has been issued?**

The defendant must pay you the amount set out in the decision. If the defendant does not pay you, see the section on enforcing judgments in Booklet #6, Judgments and How to Collect a Small Claim.

## **What can I do if I disagree with the decision?**

Either party may appeal the judge's decision to the Supreme Court. To appeal, you must file a Notice of Appeal with the Clerk of the Supreme Court within 30 days of the decision.

If you appeal, you must follow the Small Debt Appeal Rules. These rules are more complicated than the rules of the Small Claims Court, so you may need a lawyer. Before you appeal, you may want to talk to a lawyer to get an opinion as to whether you are likely to win the case. If you lose your appeal, you will probably have to pay your own lawyer's costs as well as those of your opponent's lawyer.

If you do not know any lawyers, ask your friends if they can recommend one, or contact the Lawyer Referral Service at 668-4231.



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**Need more information about Small Claims Court? Call:**

**Whitehorse: 667-5441**

**Dawson City: 993-5070**

**Watson Lake: 536-7551**

**Or toll-free from within the Yukon 1-800-661-0408, local 5441**

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