



Debtor/Creditor & Small Claims Court

Small Claims Court

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Intro to Small Claims Court

Small Claims Court is presided over by lawyers who are trained as Small Claims Court Adjudicators.

The majority of people appearing in Small Claims Court are not represented by a lawyer.

Parties appearing in Small Claims Court will have the opportunity to present evidence, call witnesses, cross examine the opposing party and their witnesses and present the court with a summary of their evidence and any law applicable to their case.

The formal rules of evidence are not as strictly enforced in Small Claims Court. Generally evidence that is 'relevant' to the issue before the Court will be considered.

Beginning a Proceeding in Small Claims Court

Notice of Claim

In order to commence a Small Claims Court matter a claimant must file a Notice of Claim. The Notice of Claim can be completed online: <https://www.interactivecourtforms.ns.ca>

The Notice of Claim **must** be filed in person at your local Small Claims Court. It **cannot** be filed online. A list of Small Claims Court locations can be found here: http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Claim. If a claimant's income is sufficiently low the fee can be waived by completing a waiver of fees form: http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

Service

After filing a claim a claimant must personally serve the defendant with the Notice of Claim. The Small Claims Court will provide a deadline for service.

After serving the Notice of Claim an affidavit of service **must** be sworn and filed with the court. Small Claims clerks can swear the affidavit. The affidavit of service can be printed along with the Notice of Claim form, or obtained from the court when filing the Notice of Claim.

Actions by Creditor

If a debtor is served with a Notice of Claim by a creditor the debtor can either:

- i. Settle the matter out of court - The parties can come to an agreement to settle the matter forming the basis of the claim. Any agreement reached by the parties should be put in writing;
or

- ii. File a Notice of Defence or Counterclaim – If a debtor wishes to defend themselves against a claim, or file their own claim against the claimant, they **must** file and serve a Notice of Defence or Counterclaim **within 20 days** of being served with the Notice of Claim. If a Notice of Defence or Counterclaim is not filed and served within the limitation period a claimant can seek a quick judgment against the defendant.

Following the hearing the adjudicator will issue their decision in writing **within 60 days**.

Appeals

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

- i. Jurisdictional error;
- ii. Error of law; or
- iii. Failure to follow the requirements of natural justice (i.e. the right to a fair hearing).

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

Enforcing Small Claims Court Orders

There are basically three options for enforcing a Small Claims Court Order. Prior to being able to pursue any of those options the successful party must ask the court which heard the case for an Execution Order, Certificate of Judgment and/or Recovery Order. This is done by simply contacting the court and explaining what it is you are seeking. In response the court will provide the necessary forms to complete in order to obtain the document requested.

The three options are:

- i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc... This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here: <http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp>
- ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor's ability to mortgage or sell property they currently own, or may own in the future, without first satisfying the Court Order. It creates what is known as a 'lien' against the debtor's real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor's property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: <http://www.novascotia.ca/snsmr/offices.asp>

- iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

All of the preceding options are available to either debtors or creditors who obtain a Small Claims Court Order.

Acknowledgement

Dalhousie Legal Aid Service would like to gratefully acknowledge and thank the [Law Foundation of Ontario](#) for its financial support of LEAP.

Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

Laws change frequently. We will try our best to make sure the information contained in all of our documents, as well as any other information you receive from Dalhousie Legal Aid Service, is reliable. However, **we cannot guarantee that the information in this document is completely accurate and up-to-date.** By accessing information from Dalhousie Legal Aid Service you assume any risks that arise from doing so.