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## Small Claims Court Guide

### Getting Ready for Court

#### Part two - The trial

##### **What is the difference between a mediation session and a trial?**

There are a number of differences. A mediation session is a private discussion between the parties, with the assistance of the mediator. A trial is a public process where each party tells its own side of the case to a judge or adjudicator who makes a binding decision.

Evidence is heard from witnesses at a trial; at a mediation session the parties simply tell the mediator what the witnesses would say if they were present.

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

If you have any witnesses, chances are they will agree to come to court voluntarily. If not, you may get a Notice to Appear as a Witness (form 10) at the Small Claims Court Registry. If it is served on the witness, along with reasonable traveling expenses (i.e. taxifare), at least five days before the court date, the person will be required by law to attend.

##### **What if I can't be ready - or can't attend - on the date set for the trial?**

If you have a very good reason for being unable to attend on the date set, you may appear in court to ask the judge to postpone or adjourn your trial. Your application must be in writing and you have to serve the other party with it at least seven days before you ask the judge.

If you apply to postpone or adjourn your trial, the judge may order you to pay some costs.

##### **A trial preparation checklist**

- review the Notice of Claim, and Reply, and any other documents that have been filed
- review the results of your mediation session
- list the points you need to prove to win your case
- consider how you will prove each one
- gather the documents you need and organize them in logical order
- contact any witnesses you decide are necessary
- obtain statements from expert witnesses, if any, and send out copies as required (see Rule 15.5)
- prepare questions for witnesses and review them together
- prepare a list of questions for cross-examination
- on your trial date, give yourself plenty of time to arrive well ahead of the time you have been given

If you have prepared your case well, you will be much more relaxed on the day of your trial and you will be able to present your case to its best advantage.

## **Getting Results**

Some people think that when the trial is over and the mediator's decision is made, the winner will be paid and that's the end of the case. Unfortunately, for some it's just the beginning.

Getting a court order or a settlement agreement is one thing, but getting your money is another matter.

### **If I win my case, will the Court collect my money for me?**

No. Collecting money is not the Court's responsibility. The Court has a number of procedures you may use - tools that are available to you - but it is up to you to use them.

### **What do I do once I have my order?**

Whether your payment order was made by a judge after a trial or mediation session, or whether you got it by default, the order first has to be put in writing. The Small Claims Court Registry staff may help you with this. Then you give it to the Registry, where it will be signed and entered in the court records. This is called "filing" the order and it must be done before you may take any steps to collect on it.

After that, the first thing you should do is send a copy to the debtor with a letter asking for prompt payment. Be sure to include the address where payment may be made. Set a reasonable deadline, taking into account whether payment will likely come by mail, and other circumstances you may know about.

If that doesn't work, you will have to take other steps to enforce your order. You have 10 years before the order expires, but usually, the faster you act, the better your results will be.

### **What can the creditor do if the debtor doesn't pay?**

If the debtor does not pay, the creditor has a number of options. The most commonly used are:

- a) a payment hearing
- b) garnishing wages or bank accounts
- c) seizure and sale of goods by the court bailiff
- d) a default hearing (if there was already a payment schedule in effect)
- e) registration against land.

## **Summary**

There are many different tools available to help you collect your money once the Court has given you a payment order.

In most cases, you should start with a simple written request for payment along with a copy of the order. If that doesn't work, take a look at all the information you have about the debtor and try to decide what would be the most effective method. Usually a payment hearing is a good start because you may use that to gather the information you may need later. A payment schedule is often the answer - if timing and amount of the

payments are manageable for the debtor, you have a better chance of collecting what's owing to you.

But if the debtor has money available and is just determined not to pay, take a look at the other options that are available to you and decide what will give you the best chance of success.

### **How may I get more information?**

This is one in a series of booklets available online or from the Small Claims Court Registry. The titles in the series are:

**A ( pages 1- 4 ) WHAT IS SMALL CLAIMS COURT?**

**B ( pages 1-7 ) MAKING A CLAIM**

**C ( pages 1- 4 ) SERVING DOCUMENTS**

**D ( pages 1 – 5 ) REPLYING TO A CLAIM**

**E (pages 1 – 4 ) GETTING READY FOR COURT - PART 1 - MEDIATION**

**F ( pages 1 – 3 ) GETTING READY FOR COURT – PART 2 - THE TRIAL**

**G ( pages 1 – 3 ) DEFAULT**

**H ( pages 1 – 3 ) WITNESSES**

**CIVIL RULES** - For more detailed information you may want to look at the small claims court rules themselves. The rules have been written for non-lawyers.

The people behind the counter at the Small Claims Registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer your questions about Small Claims Court procedures.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Rules. The information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

### **Nunavut Legal Aid Offices:**

Maliiganik Tukisiinaikvik (Iqaluit) – (867) 979-5377

Keewatin Legal Services (Rankin Inlet) – (867) 645-2536

Kitikmeot Law Centre (Cambridge Bay) – (867) 983-2906

High Arctic Law Office (Pond Inlet) – (867) 899-8707

### **Civil Registry of the Nunavut Court of Justice:**

Main line – (867) 975-6102

Toll free – 1-866-286-0546