



Fleury, Comery LLP  
Barristers & Solicitors

## YOUR SMALL CLAIMS COURT MATTER

The purpose of this memorandum is to confirm our limited instructions and to provide general advice to our clients for whom we have drafted a Small Claims Court Plaintiff's Claim or Defence.

### LIMITED RETAINER

For reasons of economy you have retained us only to prepare a Small Claims Court Plaintiff's Claim or a Defence, which you propose to have issued out of the appropriate Small Claims Court. Unless we have specific instructions, you are then going to arrange yourself for service of the claim or defence and to appear on your own at the trial of the matter.

### FACTS

The enclosed draft Plaintiff's Claim (Form 7A) or Defence (Form 9A) is based entirely on the facts and documentation supplied by you at our one or two interviews. In the normal course of litigation relevant facts sometimes come to our attention after a claim or defence have been issued. At the time such facts come to our attention we consider and advise whether any steps are necessary to bring those facts to the attention of the other parties. In Small Claims Court the procedure is less formal but you ought to make it clear to the opposite parties, if you intend to lead evidence at trial of any facts that would surprise them. Disclosure by way of a letter will usually satisfy the trial judge.

### PARTIES

As part of our service to a plaintiff we have performed limited corporate and business name searches to confirm the names of the other parties to the claim. Notwithstanding these searches it does occasionally happen that a party is misnamed either through inadvertence or error, and we make no warranties in this regard. If we were conducting the litigation on your behalf we would of course be in a position to take the necessary steps to amend the claim. In the event that any of the parties pleads in defence that they are not properly named in the claim please do advise us forthwith and we can together with you consider what steps to take to correct the claim.

### ISSUING THE CLAIM

The claim must be filed in the Small Claims Court in the jurisdiction where one of the defendants resides or carries on business. You should take the claim to that court office and be prepared to pay a court fee of \$75.00. The court will issue the claim, i.e. put its official seal on the claim and assign it a court file number.

### SERVING THE CLAIM

A true copy of the Statement of Claim must be personally served on all of the defendants. We can put you in touch with our private process servers if you so request. An Affidavit of Service must be prepared setting out how the defendants were served.

### FILING PROOF OF SERVICE

You should attend or arrange to file the Affidavits of Service forthwith at the Small Claims Court office. Frequently your process servers are prepared to carry out this filing and to provide you with a copy and confirmation that the filing is concluded.

### DEFENCE

The defendants are given twenty (20) days to respond to the claim by delivering a Defence setting out their reasons for resisting the claim. If we are preparing the Defence, we shall hand the draft Defence to you. You must attend the relevant court office with a \$40 fee to issue the Defence. Have enough copies - one for the court, and one for each plaintiff. The court will serve it by mail on the plaintiffs, who should read the Defence carefully and try to understand why and how the defendants propose to resist the claim.

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## **DEFENDANT'S CLAIM**

Sometimes the defendants will make their own claim against the plaintiff by serving a 'Defendant's Claim'. The plaintiff must serve and file a Defence to this claim within 20 days of being served with it.

## **DEFAULT PROCEEDINGS**

If the defendants do not serve and file a Defence within the required time (usually, 20 days after the date of effective service of the claim), then the court clerk will note default upon the plaintiff's request. If the claim is a simple "debt or liquidated demand in money", the clerk may enter a default judgment for the amount without the necessity of an attendance for trial. Otherwise, to obtain judgment the plaintiff can either try to file a motion and affidavit for a judgment without a hearing, or ask for an "assessment hearing". We recommend the latter.

## **SETTLEMENT CONFERENCE**

If a Defence is filed the court clerk will fix a date for a Settlement Conference and advise the parties. The conference is an opportunity to find out what the other party is thinking and also, hopefully, to settle the claim for an amount that may satisfy both sides. As part of the preparation for the conference, you are required deliver to the opposite party a List of Proposed Witnesses.

## **DOCUMENT PRODUCTION**

Once you have mailing addresses for the opposite parties you should provide them with copies of all the documents you intend to rely on to support and prove your case at trial. If your documents are in good order at the time of preparation of the Claim or Defence, we suggest they be listed and copies served together with the Claim or Defence.

## **WITNESSES**

If you need to have witnesses to come to trial to back your case, you should attend the Clerk of the Small Claims Court to obtain a "Summons to Witness". You should be able to provide to the Clerk a current address and a \$19.00 fee for him to sign and issue a Summons to Witness. The Summons to Witness must be personally served on your witness. At the time of service, the witness should also receive \$6.00 per day and "reasonable travelling expenses" - make an estimate of the number of kilometres each way between the witnesses' residence and the place of the hearing and tender 30 cents per kilometre.

## **TRIAL**

If the matter has to be tried, either party must now request a trial date and pay a "set down" fee of \$100.00. The court clerk will set a trial date and send a notice of trial to the parties.

You have probably seen "Peoples Court" on the television. The trial fairly accurately reflects the procedure on Peoples Court, i.e. the plaintiff puts in his case by bringing all his evidence. The defendants have an opportunity to cross-examine each of the plaintiff's witnesses. After the plaintiff's case is finished then the defendants put in their evidence and the plaintiff has an opportunity to cross-examine. At the end of evidence there is an opportunity for summaries and submissions and the Judge will make a decision.

Take the time to prepare your case. Consider and write down everything you have to prove and consider how you will prove it - usually by your own testimony. If there are documents, refer to them in your testimony and then tender them as exhibits. Write out everything that you want to say to the Court by way of evidence so that you will not forget anything important. Go to Court early to watch other trials that may proceed before yours.

Further information and resources can be found at: <http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/> .

The court forms can be downloaded from:

<http://www.ontariocourtforms.on.ca/english/scc>

We hope this memorandum is of some assistance to you.

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