

SMALL CLAIMS COURT

Small Claims Court in British Columbia is, as the name might suggest, the Court you go to when you have a small claim. Small is defined as \$10,000.00 or less. If you have ever seen "The People's Court" or Judge Judy on TV, you probably have a good idea of what happens when you finally arrive at the trial stage. However, there is much more to it than that.

Small Claims Court is part of the Provincial Court system and it is presided over by Provincial Court Judges. These are the same judges who might also, on another day, hear a claim for maintenance and support in the family division of Provincial Court or a speeding (Provincial offences) or .08 (Federal offences) trial in the criminal division.

The Small Claims Courts were originally established in order to allow greater access to the justice system by the general public. On any given day the presiding judge in Small Claims Court may hear landlord and tenant matters, claims against employers for wages, contract disputes, negligence claims and just about any other type of civil claim that might otherwise be seen in the B.C. Supreme Court.

Although lawyers are certainly allowed to appear (and often do), their participation in the Small Claims Court system is neither encouraged nor compensated. Unlike the higher courts, successful litigants are not entitled to taxable court costs for anything more than nominal amounts.

Taxable court costs are generally awarded to the winners in the higher courts and are paid by the loser. They usually cover anywhere from 1/3 to 1/2 of the legal fees and disbursements. In Small Claims Court they are seldom more than \$10.00 or so and that doesn't even pay for the lawyer's gas to get there.

As you might imagine, if the winner has a big legal bill he might be worse off at the end than the loser, especially if he can't collect from the debtor. Worse, not only are legal fees unrecoverable in Small Claims Court, parties represented by Counsel are given no special consideration when it comes to scheduling settlement conferences or trials. In short, chances are fairly good that there won't be a lawyer there unless you bring one or you are fighting with ICBC or some other big corporation.

The procedures in Small Claims Court are very similar to those in the higher Courts. There are, however, some notable exceptions. For example, the "discovery" process requiring each side to appear, produce documents and be examined under oath has been replaced with a mandatory settlement conference that must be held before a judge. The effect is pretty much the same as it merely delays collection in some instances while facilitating compromise in others.

Another difference is the relaxation of many of the more rigid rules of procedure and evidence. Much more is left to the discretion of the presiding judge. If you leap up at the trial to object to hearsay testimony, for example, the judge may decide to hear it and tell you to sit down, even if you're right!

In Small Claims Court the rules are pretty much whatever the judge wants them to be. As with the higher courts, however, it is wise to accept the judge's decision with a smile and a "thank you, Your Honour". By the way, "Your Worship" is the proper title given to the Mayor while "Your Lordship" or "My Lord" is the correct way to address a Supreme Court Justice. "Your Honour" (Your Honor in the US) is the title accorded to provincial judges. In any court, though, arguing the law with the trial judge is seldom productive.

Beginning a small claim lawsuit is also cheaper and easier. Forms are available at no cost from the Court registry. Often, if they're not too busy, the staff will even help you fill them out or give you guidance as you go along. Don't worry too much if it doesn't sound like Perry Mason drafted the pleadings. If the judge can decipher the reasons and the grounds upon which you base your claim, that is usually enough.

Even if you are successful in convincing the judge of the propriety of your claim, the fight is not always over. Once you have a Small Claims judgement you are in exactly the same position as the holder of a judgement from Superior Court. While it is equally valid, it is also equally incomplete. You still have to collect it. This is where most people have to turn to the professionals for help.

To follow through on the collection usually entails seizing assets or registering judgements against property. Sometimes, you can garnishee monies owed to the debtor if you happen to know where he banks or who owes the debtor money. Most people are not trained to do these sorts of things and the Courthouse staff don't really have the time or the expertise to help you when you get

to this stage.

Your best bet is to go to a collection agency, a bailiff or a collections lawyer for help. Since they will want to be paid for their work, however, you shouldn't use their services unless there is a reasonable likelihood of success. Mind you, you should probably have thought of that at the beginning. After all, "you can't get blood out of a stone", even with a judgement.

The Small Claims Court is there for everyone's use. As Doug Llewelyn, of the People's Court, so rightly points out - "If you think you have a claim, don't take the law into your own hands, take them to Court."