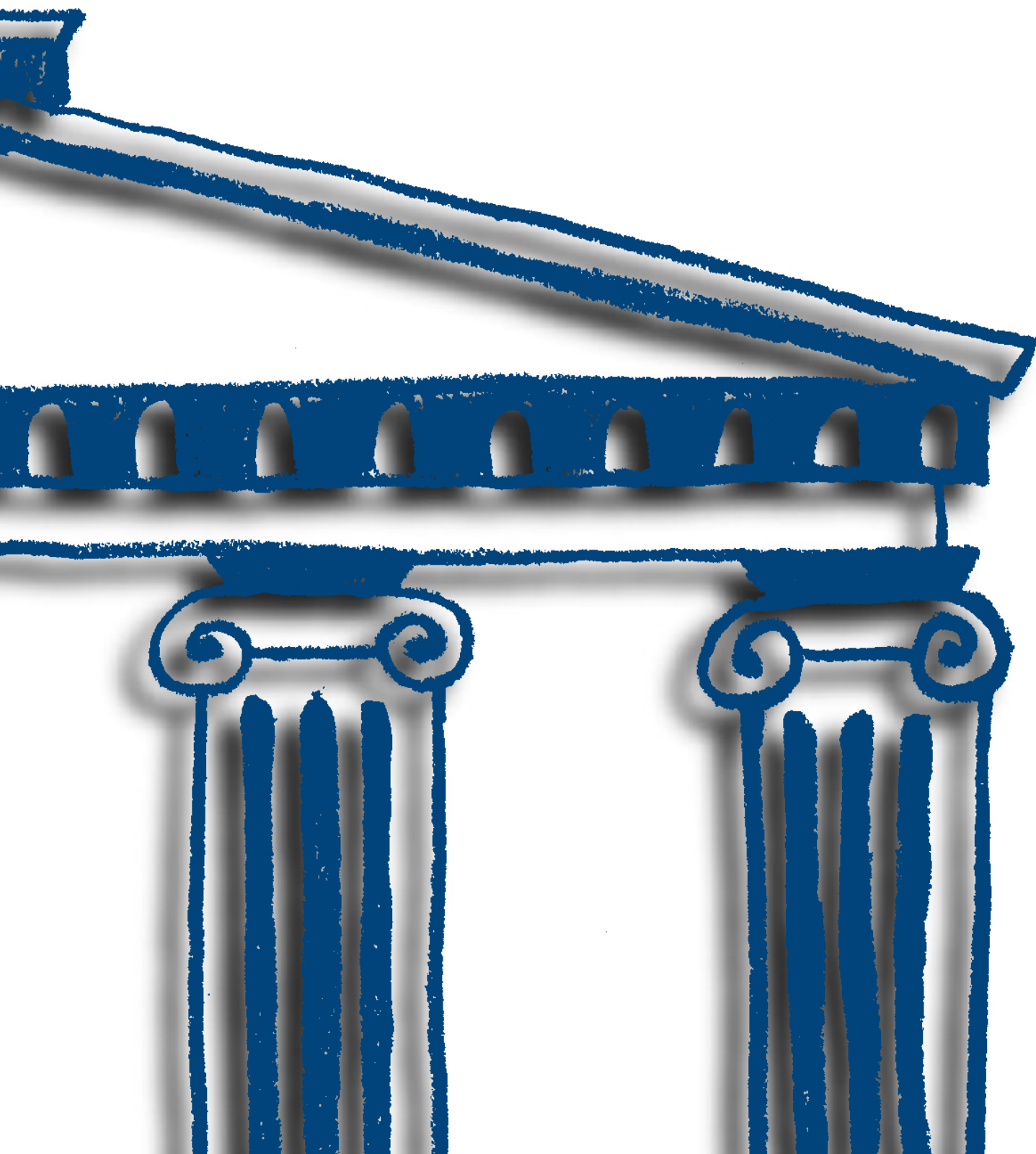


NOVA SCOTIA

Small Claims Court



Small Claims Court

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This guide provides general information only. It does not explain the law. Court staff can give general information about how the court works, and about court rules and procedures. Court staff cannot give legal advice. Speak to a lawyer for legal advice about your situation.

Is Small Claims Court for you?

The Small Claims Court provides a quick, informal, and cost-effective method for deciding claims up to \$25,000 (not including interest and costs). The person making the claim (the claimant) and the person whom the claim is against (the defendant) do not need lawyers to go to court.

You can make a claim for a payment of money and/or the return of goods. The total value of your claim cannot exceed \$25,000 (not including interest and costs). If your claim is for more than that, you can do one of the following:

- drop the extra and claim for \$25,000 in Small Claims Court
- start your case in another court that has jurisdiction over your situation.

You can claim up to \$100 in general damages. This is included in the \$25,000 limit. General damages include things like pain and suffering, and loss of enjoyment of life.

You can make a claim for interest. This is in addition to the maximum \$25,000. The interest may be calculated in one of two ways:

- the agreement between the claimant and defendant specifies interest must be paid and the claimant claims the interest as part of the claim
- the agreement between the claimant and the defendant does not specify interest must be paid and the claimant wants to claim prejudgment interest as permitted in the regulations to the Small Claims Court Act. This interest is calculated based on 4% per year.

You can make a claim for costs to be paid by the defendant. This is in addition to the maximum \$25,000. Costs may include the filing fees, costs of serving the defendant, and witness fees. Whether you win or lose, you cannot get the other side to pay for your lawyer fees if you use one.

Transferring your case from Supreme Court

Either a defendant or a claimant can have a case transferred from Supreme Court to Small Claims Court. All the following criteria must be met:

- the claim must not include an amount for general damages
- the claim amount must be for \$25,000 or less
- the claim must be about an issue Small Claims Court can deal with

To transfer the case, you must fill out a Notice of Election to Transfer (Form 4). You can get a copy of this form from the court administration office. Fill out the form, pay a transfer fee of \$80, and serve a copy of the notice on all parties. The court administration office will send you a notice of the date for the hearing. Fees are subject to change. Check with court staff.

What the Small Claims Court doesn't deal with

The Small Claims Court does not deal with

- ownership of land
- disagreements over wills
- malicious prosecution
- false imprisonment
- defamation (libel and slander)
- claims against the provincial government

Small Claims Court is less formal than other courts. The case is heard by an adjudicator. The adjudicator is a lawyer who will hear and decide your case.

Is it worth making a claim?

Only you can decide whether to make a claim. Ask yourself some questions:

- Do you know where to find the person you want to claim against? If you don't, it will be very difficult to collect money or goods from them.
- If you win, will you be able to collect from that person? If the person is unemployed or self-employed, it may be difficult to collect right away. If the person doesn't have money now, he or she might have some in a year or two.
- Do you have enough evidence to back up your claim? If it is just your word against the other person's, it may be difficult to prove your case. Witnesses or documents, such as bills, contracts, or letters, would help.

How much will this cost?

You should think about these costs before you make a claim.

You will have to pay the following filing fees to file your claim:

- \$80 if your claim is \$4,999.99 or less
- \$160 to file your claim if your claim is from \$5,000 to \$25,000
- \$80 if you want goods returned, as long as they are worth \$25,000 or less

Fees can change. Check with staff at the court administration office.

You have to serve the defendant with the claim, which may cost you money and time.

If you have a witness, you may have to pay witness fees.

Witness fees are \$5 per day and 20 cents per km, one-way, from where the witness lives to the place of the hearing.

If you win, the adjudicator may order the defendant to pay the filing fees, costs of serving the defendant, and witness fees. Whether you win or lose, you cannot get the other side to pay for your lawyer fees if you use one.

As well, if you win, you may have to take steps to collect money from the defendant, which may add to your costs. You can read more about this under “If you win and the defendant doesn’t pay.”

Have you considered mediation?

A dispute can be resolved in different ways. You may want to consider mediation if you believe all parties would be willing to meet with an impartial person called a “mediator.” Mediation helps people to find their own solution to the dispute, rather than going to court. It can also be faster, more private, and help preserve the relationship.

You can find a mediator by looking under Mediation-Services in the yellow pages or by contacting the Nova Scotia Barristers’ Society.

How to make a claim

Where to make the claim

You can make a claim either where the problem happened or where the defendant is living or carrying on business. Small Claims Court locations are included at the back of this booklet.

Fill out the Notice of Claim form

Your first step is to go to the Small Claims Court office at the court house to pick up a form called a Notice of Claim. The Notice of Claim is also available online as an interactive court form at <www.gov.ns.ca/just/repselfmain.htm> or <www.courts.ns.ca> .

You will need to provide all the following information in the form:

- the full name, civic address, mailing address, phone number, fax number and email address for both you and the defendant
- how much money you are claiming, or a description of the goods you want to recover
- the reasons for your claim, including all the important details of your problem

What if the claimant is a business?

If you are operating a business and would like to commence your claim using the business name, the business must be registered with the Registry of Joint Stock Companies before you start your claim and at the time you suffered the loss or damage. Make sure you use the correct business name when starting a claim in the name of a business. You can get the correct name of the business by contacting the Registry of Joint Stock Companies.

What if the defendant is a business?

It is important to correctly identify the defendant you are suing on the claim form. There are three basic types of business:

1. **Individual carrying on an unincorporated business:** The defendant is operating an unincorporated business if the name of the business does not end with Ltd. or Inc. You can sue this person in the name of the individual or the name of the firm, or both. For example, if John Smith is operating a business named Smith's Paving, you can list the defendant as John Smith, or Smith's Paving, or John Smith and Smith's Paving. If you name both, then you can enforce the judgment against both if you wish.
2. **Partnership:** When suing a partnership, you name the partners and the partnership. For example, if John Smith and Henry Jones are partners in A & B Company, then you would name John Smith, Henry Jones, and A & B Company all as defendants. If there are a large number of partners, name the one(s) you feel are responsible for your loss and the partnership.
3. **Corporations:** You can only sue corporations in the name of the business. Make sure you name the corporation completely and properly in the Notice of Claim form.

If the defendant is a business, you can get the correct name of business by contacting Registry of Joint Stock Companies.

What if the defendant is a society or club?

Most societies and clubs are incorporated under the Societies Act. The law requires incorporated societies to have a recognized agent and a registered office. You can find out who the agent is and where the office is through the Registry of Joint Stock Companies.

How do I contact the Registry of Joint Stock Companies?

You can call the Registry at (902)-424-7770. From outside Halifax, call Access Nova Scotia, toll-free, at 1-800-225-8227. You can also go to the Registry of Joint Stock Companies website <<http://www.gov.ns.ca/snsmr/rjsc>>.

What if I want to sue more than one person?

If you have more than one person responsible for your loss, name them all as defendants.

File the Notice of Claim

Once you have filled out the Notice of Claim, give the original and two copies to the Small Claims Court clerk at the court administration office and pay the fee. The clerk fills in the number of days you will have to serve the defendant (usually 10 days), and the date of the hearing of your claim. The clerk will then give two copies back to you. This process is called filing the claim.

Personally serve the defendant

You must serve one copy of the Notice of Claim on the defendant.

Under the Small Claims Court Act service on the defendant must be by personal service. Personal service means delivering the Notice of Claim by hand to the defendant. To serve a document personally, you or someone acting on your behalf will simply hand over the documents to the defendant. You can ask a friend to serve the defendant or hire someone to serve the defendant for you. Look in the yellow pages under "bailiffs" and "process servers."

How do I serve the Notice of Claim on a business?

If you are serving an individual running an unincorporated business, you will serve the defendant who is operating the business.

If you are serving a partnership, you will serve a person employed at the principle place of business of the partnership, the partnership's registered agent, or one or more of the partners for the business. It is important to get the name of the person being served, or at least their position (e.g., receptionist, manager). If the partnership is dissolved or unregistered, then you should serve everyone you want held liable for your loss.

If the business is a corporation, you will serve the document on the registered agent of the corporation or someone of authority, for example, the director or president of the corporation or someone employed at the principle place of business of the corporation. It is important to get the name of the person being served or at least a description of their position (e.g., secretary, manager).

How do I serve the Notice of Claim on a society or club?

If the society or club is incorporated under the Societies Act, you can serve the Notice of Claim on someone employed at the principle place of business of the society or the registered office, or on the recognized agent. It is important to get the name of the employee or at least describe their position (e.g., receptionist, manager).

If the society or club is not incorporated, then serve someone you know to be responsible for the operations of the organization. You can also sue and serve the person with whom you actually did the business that lead to you making your claim.

What if there is more than one defendant?

If you have named more than one individual, business, or society as defendant, then you will have to arrange for personal service on each defendant.

Proof of service

The person who serves the Notice of Claim will have to file an affidavit of service with the Small Claims Court giving the details of when they served the defendant. If you pick up the Notice of Claim form at the court administration office, the affidavit of service is printed on the back of the first page of the Notice of Claim. If you use the online court forms program, you can print an affidavit of service form.

The affidavit of service is taken to the Small Claims Court office where the clerk will swear to the affidavit. The affidavit provides important information. It tells the court the date, time, and location that the defendant was served and who delivered the Notice of Claim form to the defendant. Once the adjudicator is satisfied that you properly served the defendant and that the defendant is aware of your claim, the adjudicator will proceed to hear your case. Always remember that the adjudicator has to be satisfied that the defendant has been properly served, whether it is an individual, business, or society.

Review the procedural checklist at the end of this guide to review the steps necessary to bring a claim.

If you are a defendant

Once you are served with the Notice of Claim, you become the defendant. The claim form will tell you the reasons for the claim and the date of the hearing. Don't ignore the claim. If you do, the adjudicator can decide against you without a court hearing. If you do not file a defence, the decision against you can be made before the scheduled hearing date (see quick judgments below in this guide).

What do I do after I am served the Notice of Claim?

As a defendant you have four choices, two that involve settling out of court and two that involve going to court.

Settling out of court

- You can try to negotiate a settlement. If you feel that you do owe some money to the claimant, offer what you feel is reasonable. If you are unable to pay it all at one time, try to arrange to pay some from time to time. When both sides work it out, you may avoid the time and expense of a hearing. If you agree to settle, write out your agreement in the form of a receipt or a release of the claim from the claimant. The release should contain all the information about the agreement and be signed by both parties. Remind the claimant to cancel the hearing date.
- You can pay the claimant. Again, get a receipt or a release form from the claimant and have him or her cancel the hearing date.

Going to court

- You can defend your claim. You must do this by filing a Defence. There is a form for a defence attached to the bottom of the claim form served on you by the claimant. You file the Defence with the clerk of the Small Claims Court and serve it on the claimant. You can serve the claimant by personal service, registered mail, or such other method of service as directed by the court. You have 20 days from the date the claimant serves the document on you to file your Defence. The adjudicator may find an important fact in your story which may cause the claimant to lose, or which may reduce the amount awarded. If you decide to go to court, you may bring witnesses at your own expense and other documents to support your story.
- You can counterclaim against the claimant. If, for example, the claimant says you caused an accident that damaged his or her car, but you think that the claimant caused the accident, you may want to counterclaim for the damages to your car. The adjudicator will look at your

counterclaim and the claimant's claim at the same time, and will decide who owes money to whom. The fee for filing a counterclaim is presently \$53. Fees are subject to change. Check with court staff. The counterclaim may be served on the claimant personally, by registered mail, or such other method of service as directed by the court. You have 20 days from the date the claimant serves you with the Notice of Claim document to file a counterclaim and serve it on the claimant. You can use the defence portion of the claim form for filing a counterclaim.

Quick judgment

What is quick judgment?

If the defendant has not filed a defence or counterclaim within 20 days after the Notice of Claim has been served, the claimant may complete an Application for Quick Judgment (Form 6). A quick judgment is a legal process which allows an adjudicator to make a decision on a claim without having a court hearing. You may get this application from the court administration office or online at www.gov.ns.ca/just/regulations/regs/sccfrmpr.htm.

When you are filing an Application for Quick Judgment, you must provide a sworn affidavit and attach any evidence you may have to support your claim. The clerk will forward your Notice of Claim, Application for Quick Judgment and evidence to the adjudicator.

The adjudicator will be looking for documentation to support the amount of your claim and the basis of your claim (such as letters, contracts, invoices, photographs). If the adjudicator decides that the claim is valid, he or she may award quick judgment and you will not have to go to court. You should note that quick judgment is not always an option. If you are unable to prove your claim with documentary evidence you may be required to attend the hearing and provide sworn evidence and bring any witnesses necessary to prove your claim. You can also simply wait until your hearing date, go to court, and prove your claim.

If you have a quick judgment ordered against you

If the defendant is served with a Notice of Claim and fails to file a defence or counterclaim, then quick judgment may be awarded to the claimant. The defendant may apply to the court to have the order set aside and have the matter set down for hearing. The defendant's application must be made in writing. A copy of the application form can be obtained from the Small Claims Court office at the court house. The defendant must serve this application on the claimant by personal service.

The defendant's application will be heard by an adjudicator at a hearing. The defendant must demonstrate that there was a reasonable excuse for failing to file a defence within the time required and that there is a reasonably arguable defence to the claim. If the defendant fails to satisfy these two criteria, the application to set aside the quick judgement may not be successful.

The court hearing

How do I prepare for the hearing?

It is important to spend time preparing for your case. A well organized and well presented case will be more persuasive.

The facts of a case are established through evidence. There are two kinds of evidence: oral testimony and documents. The Small Claims Court is not bound by the technical rules of evidence. The court will, however, assess the credibility and relevance of a particular piece of evidence.

You can give testimony yourself. Think about what you want to say and how you are going to say it. Not all facts in a case are disputed. Some disputed facts are not important. Focus on the important disputed facts. If you have other witnesses, then make sure you either arrange for them to be at the hearing voluntarily, or serve them with a subpoena. See the brochure *Using a subpoena in the Small Claims Court (Form 3)* for information about preparing and serving a subpoena.

This brochure is available from the court administration office and on online at <www.gov.ns.ca./just/repselfmain.htm>.

You have the right to ask questions of the witnesses from the other side on cross-examination. Think about the questions you wish to ask. Write them down before your hearing date. You can ask the witness to respond to statements you put to them. Ask questions that you believe will help your case. Do not give evidence yourself through your questions or argue with the witness.

Documents, that is to say, letters, memorandums, work orders, contracts, invoices, photographs, and so on, are very important. Gather the documents together, and organize them in sequence. **Make copies for the court and for the other side.** Try to provide copies of the documents to the other side before the hearing, even if you have to do so at the court house itself. People may be subpoenaed to bring documents in their possession to court.

Consider discussing your case with a lawyer before the hearing. A simple half-hour consultation should not cost too much. He or she can point you to the issues and advise how best to address them.

What do you need to bring to the hearing?

You must present your case, whether or not a defence or a counterclaim is filed. You should write out the facts you want to tell the adjudicator and collect any documents such as bills, contracts, or letters that you want to rely on. Photographs can also be very valuable in proving your claim. It is a good idea to make copies of documents for the adjudicator and the defendant and give the copies to the court clerk or take them to the hearing. Keep the originals.

If you have any witnesses, you must arrange to have them attend court. It is not sufficient for a witness to write a letter to the court. The adjudicator will want to hear from them in person to assess their credibility. Remember the other side has a right to ask your witnesses questions too.

How do I bring a witness to court?

To make sure your witnesses attend, you can get a subpoena from the clerk and serve it on the witness. A subpoena is a written order that says a person must be in court at a certain time for a specific purpose. You must serve the subpoena at least four days before the hearing. You should give the witness his or her witness fees at the same time you are serving them with the subpoena. For more information about subpoenas see the brochure *Using a Subpoena in the Small Claims Court (Form 3)* available from the court administration office or online at www.gov.ns.ca/just/repselfmain/htm.

You should prepare the questions you will ask the witness. This will help you remember important questions.

What usually happens?

The Notice of Claim will list the date, time, and place for the hearing. You go to the place set for the hearing and wait until your case is called.

The adjudicator will first make sure that both the claimant and the defendant are there. If the defendant is not there, the adjudicator will decide whether the defendant was properly served. If the defendant was not properly served, the matter will be adjourned, which means the case will be heard on another date.

If the defendant was properly served, the hearing will go ahead even if one of the parties is not in court.

As the claimant, you are responsible for leading your evidence first. You will need to describe the facts that caused the claim. Give your evidence by calling witnesses and showing the adjudicator any documents that help your claim. The defendant may question your witnesses and you, if you take the stand.

If you are testifying on your own behalf, you will take the witness stand and be “sworn in.” This means, you will promise to tell the truth either by swearing on a holy book, or just promising to tell the truth by saying “I solemnly affirm to tell the truth.”

The defendant may also give evidence and call any witnesses. You may question the defendant and his or her witnesses.

After all the witnesses have given evidence, both you and the defendant have a chance to give a summary of the facts.

This means you have a chance to repeat the main reasons you want the adjudicator to decide in your favour, without repeating all the details.

The adjudicator may decide at the hearing or give a written decision within 60 days.

How to behave in court

Here are some suggestions about appropriate behavior at court:

- **Tell the truth.**
- **Make a good impression.** Dress neatly and in clean clothes. This tells the adjudicator that you respect the court and care about your case.
- **Be respectful.** Be respectful to everyone in the court and courthouse. This includes the adjudicator, court staff, the other side, and their lawyer and witnesses. How you act is as important as how you look.
- **Arrive early.** Be at least 5 minutes early for the hearing. The court is very busy. Make sure that the court clerk knows that you have arrived. If you are late, your case might get postponed, or it might be dismissed.
- **Know what to ask.** You can ask court staff for information about the process and what type of information to put on the forms, but they can't tell you what to write on the forms or what to say at a hearing. That's legal advice and you would call a lawyer for that type of help.
- **Come prepared.** Make sure you have all of the documents with you at the hearing and bring the correct number of copies with you. Remind your witnesses to be on time for the court case. Make sure you bring your witnesses with you to the hearing and that they are ready to testify in court. Write out the questions you plan to ask and go over them with your witnesses before the hearing.

- **Use a lawyer if you need help.** You can use a lawyer if you need help, even if you started the case on your own.
- **Listen for your case to be called.** There may be other people in the courtroom waiting for their cases to be heard. Listen for your name to be called. When it is called, move to the front of the room and signify that you are present.
- **Do not bring your children to court.** Day care is not provided by the courts. Children may not be left unattended. Children will not be allowed in the courtrooms.
- **Wait until the adjudicator speaks to you before talking.** Address the adjudicator, other side, lawyers, and all witnesses in court by their last name and title, for example, Mr. Jones, Ms. Smith. You can also call the adjudicator “Mr. Adjudicator” or “Madam Adjudicator.”

After the hearing

If you win

Normally the person will return the goods or pay you once the court advises him or her of the decision.

If you win, but the defendant does not pay

The defendant may not pay you the money owed or return the goods as quickly as you want. Or maybe the defendant doesn't pay at all, or return any goods. If this happens you can take steps to enforce the court's order.

Consult the brochure *Enforcing a Small Claims Court Order: A Guide for Creditors* available from the court administration office and online at <www.gov.ns.ca./just/repselfmain.htm> for information about what to do to enforce your court order.

If you lose

You have two choices: accept the decision or appeal it. You have 30 days to appeal to the Nova Scotia Supreme Court. An appeal is difficult to do without a lawyer, so think about getting some legal advice. If you would like to appeal, you can contact the Supreme Court for more information and consult the brochure *How to File a Notice of Appeal from a Small Claims Court Decision (Form 9)* available from the court administration office and online at <www.gov.ns.ca/just/repselfmain.htm>.

For more information

You don't need a lawyer to go to Small Claims Court, but you may wish to talk to a lawyer about the claim or court procedure. A lawyer can help you decide if you have a good claim or defence and can tell you what evidence or witnesses you need. A lawyer can explain what will happen in court so that you will feel more comfortable when you present your case.

The Legal Information Society (LISNS) has a lawyer referral service. Lawyers who participate agree to meet with clients for a half-hour consultation for \$20. For a referral or to reach the LISNS information line call 455-3135 (in Metro) or 1-800-665-9779 (toll free in Nova Scotia). LISNS also operates Dial-a-Law, which provides pre-recorded phone messages about different legal issues. Call 902 420-1888 (Note: This is not a toll free number). For more information about LISNS visit their website at <www.legalinfo.org>.

For more information on representing yourself in court, the Department of Justice website is <www.gov.ns.ca/just/repselfmain.htm>. The Courts of Nova Scotia website is found at <www.courts.ns.ca>.

Small Claims Court Procedural Checklist

Claimants

- Prepare Notice of Claim
- File Notice of Claim and filing fee with Small Claims Court administration office
- Personally serve defendant with one copy of issued Notice of Claim and Defence/Counterclaim form within the number of days required by the court
- Prepare affidavit of service to file with the court at or before the hearing
- If defendant does not file Defence/Counterclaim within 20 days, decide whether to apply for quick judgment
- If no quick judgment, prepare for the hearing:
 - Decide whether to subpoena witnesses
 - Prepare questions for witnesses
 - Make copies of documents for defendant(s) and adjudicator
- Attend hearing

Defendants

- Once served with Notice of Claim, complete Defence/Counterclaim form
- File 3 copies of the Defence/Counterclaim form with Small Claims Court administration office within 20 days of being served with Notice of Claim. For Counterclaim only, pay filing fee to the court presently \$53
- Serve claimant with issued copy of Defence/Counterclaim within the number of days required by the court. Service may be by personal service, registered mail, or such other method of service as directed by the court
- Prepare affidavit of service for filing with the court at or before hearing
- If you fail to file Defence/Counterclaim within the number of days required by the court, a quick judgment may be issued against you. If this happens:
 - Decide whether to apply to set aside quick judgment
 - If applying to set aside quick judgment, complete application form, file it with the court, and personally serve the application on claimant. Attend hearing on date specified by the court
- If no quick judgment, prepare for hearing:
 - Decide whether to subpoena witnesses
 - Prepare questions for witnesses
 - Make copies of documents for claimant and adjudicator
- Attend hearing

Court Locations

If you would like more information, contact the Clerk of the Small Claims Court in your county. They are listed as follows:

Annapolis County

377 St. George Street, Courthouse
P. O. Box 129
Annapolis Royal, Nova Scotia
BOS 1A0
Phone: 532-5462
Fax: 532-7225

Note: The clerk is only in this office part time.
Call first to check hours of operation.

Digby County

117 Queen Street, Courthouse
P. O. Box 1089
Digby, Nova Scotia
B0V 1A0
Phone: 245-4567
Fax: 245-6722

Antigonish and Guysborough Counties

11 James Street
Antigonish, Nova Scotia
B2G 1R6
Phone: 863-7300
Fax: 863-7479

Cape Breton and Victoria Counties

136 Charlotte Street
Suites 1 and 2, Harbour Place
Sydney, Nova Scotia
B1P 1C3
Phone: 563-3590
Fax: 563-0510

Inverness and Richmond Counties

15 Kennedy Street
Suite 201
Port Hawkesbury, Nova Scotia
B9A 2Y1
Phone: 625-4218
Fax: 625-4084

Colchester County and Hants East

1 Church Street
Truro, Nova Scotia
B2N 3Z5
Phone: 893-3953
Fax: 893-6114

Cumberland County

3rd Floor 16 Church Street
Amherst, Nova Scotia
B4H 3A6
Phone: 667-2256
Fax: 667-1108

Halifax Regional Municipality

5250 Spring Garden Road
Halifax, Nova Scotia
B3J 1E7
Phone: 424-8722
Fax: 424-0551

Kings County and Hants West

The Law Courts
87 Cornwallis Street
Kentville, Nova Scotia
B4N 2E5
Phone: 679-5540
Fax: 679-6178

Lunenburg and Queens Counties

599 King Street
Suite 201, Kings Court
Bridgewater, Nova Scotia
B4V 1B3
Phone: 543-4679
Fax: 543-0678

Pictou County

69 Water Street
P. O. Box 1750
Pictou, Nova Scotia
BOK 1H0
Phone: 485-6373
Fax: 485-6737

Yarmouth and Shelburne Counties

403 Main Street
Yarmouth, Nova Scotia
B5A 1G3
Phone: 742-4142
Fax: 742-0678

