

## E Small Claims Court Guide

### Getting Ready for Court

#### Part One – Mediation:

If your Small Claims Court case is going to court you will receive either a notice of a mediation session or a Notice of Trial in the mail from the Court Registry. Most cases will have a mediation session.

First, we will talk about the mediation session, what its purpose is and what you may do to prepare for it.

If all goes well, your case will end there, with a settlement. If not, there will be a trial. For more information on how to prepare for trial please refer to Part two – The trial.

#### What is the mediation for?

There are two main purposes for the mediation:

- to encourage settlement of cases, and
- if settlement is not possible, to help the parties prepare their cases for trial.

Try not to think so much in terms of "How can I win my case?" Think instead, "What do I want from this case? What does the other side want? Is there any possible solution that we both can live with?"

Even if the whole case cannot be resolved, the mediation session is a good chance to work out an agreement on at least some of the issues, so that the trial will be easier, quicker and less expensive.

#### How should I prepare for a mediation session?

The better prepared you are for your mediation session, the more you will gain from it. In fact, it is a good idea to do most of your preparation at this time. Then, if you do have a trial, most of your work is done.

What's more, if you are not prepared and the session cannot be properly conducted (because you don't have the necessary documents with you, for example) it may cost you money. The mediator may order you to pay the other party's expenses for coming to the session, and you may all have to come back a second time.

#### If you are the Claimant:

*(Go to the "If you are the Defendant", unless you have a counterclaim. If so, read this because the same applies to counterclaims.)*

If you are the claimant, there are two basic parts to your case:

First: You have to prove liability. That means you must prove that the defendant did something wrong to you.

Second: You have to prove the amount. It's not enough to prove that the dry cleaner ruined your suit. You have to prove what the suit was worth or what it cost to repair the damage.

The evidence is whatever you will use at trial to prove your case. But you have to think about it now because the mediator at the mediation session will want to know how you intend to prove your case. There are several different kinds of evidence. The most often used are:

a) oral testimony (at trial only): a witness comes to court and answers questions at the trial;

b) documentary evidence: documents, such as business records, are presented in court either by a witness or a party;

c) photographs: photographs are sometimes used as evidence if the person who took them may properly identify them.

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. The best way to do this is to get out your Notice of Claim for reference and then make yourself a worksheet.

You must bring to the mediation session all of the documents that you will use at trial - if there is one - to prove your case. This would include the contract, invoice, bill of sale and written estimate, if you have them. **DO NOT BRING THE WITNESSES.** You should be prepared to summarize what your witnesses would say if they had to come to court.

### **If you are the Defendant:**

Begin by looking again at the Notice of Claim and at your Reply.

Do you disagree with the claimant's version of "What Happened?" Make a note of exactly what it is you disagree with and be prepared to tell the mediator what, if anything, you agree with.

Do you disagree with the amount that the claimant says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.

Do you agree to pay what the claimant claims, but simply can't pay it all at once? If that's the case, bring with you some evidence of your financial situation - recent pay stubs, for example, and last year's income tax return. Then tell the mediator what sort of payment terms you would need. If you can pay something right away, that is even better.

## **What will happen at the session?**

You will go into an office or meeting room and sit at a table with the mediator. In any case, this will be a private meeting. Members of the public are not allowed.

The mediator will say a few words and will likely ask each of you to give a brief summary of your case. You don't need to write this out in full but you should have a list of the points you wish to make. If you've made a worksheet, you may wish to use that.

The mediator may then lead you both into a discussion of what, if anything, you could agree on. Ideally, you would agree on the final result and then you would complete, sign and file a Settlement Agreement (form 7), and that would be the end of it. Or, you might agree on some of the issues and leave others for the trial.

## **Who attends the mediation session?**

The mediator will be there and possibly a clerk (to take notes). The parties must attend. If anyone has a lawyer, the lawyer may attend as well but the client must always be there.

If one of the parties is a company, then the company's representative must be one who has authority to settle the claim.

If you would like to have someone attend with you for support, ask the mediator's permission at the start of the session.

## **What if I don't come to the mediation session?**

If you don't attend the session, an order may be made against you. If you are the defendant, this could be an order that you pay the full amount of the claim. If you are the claimant, it could be an order dismissing your claim. The mediator may also order that the case go to trial, and set a trial date in the absence of one of the parties.

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

If you can't have all your documents ready in time for the mediation session, or if you have a good reason for being unable to attend on the date set, ask the Registrar to postpone your session to another date. Be sure that the Registrar has notice - in writing - at least seven days before the date set. If the Registrar doesn't think that you tried your best to be ready, you may still be required to keep the appointment.

If you cannot attend in person, you may make a written application to the Registrar to attend by telephone.

## **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