



## Small Claims Court By Jodi Wyman

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The old saying is that a person representing himself in court has a fool for a client. The one exception to this rule is in Small Claims Court.

If someone feels they have a claim for financial damages against another person they can proceed under *The Court of Queen's Bench Small Claims Practices Act* and attend Small Claims court. The court is limited to awarding a sum of no more than \$10,000.00.

There are many remedies which this court cannot grant. Small Claims Court does not deal with such things as landlord and tenant matters, family law, estates or defamation for example. It can however be appropriate when seeking financial damages such as for breach of contract, unpaid debts, or damage to personal property.

The hearing officer in Small Claims court can also determine liability in some cases.

Small Claims are heard by court officers who are not Judges and may not necessarily be lawyers.

The proceedings are deliberately kept very informal, and most people do not bring lawyers. Plaintiffs are given the opportunity to explain their case to the Hearing Officer and present documentary evidence such as letters, cancelled cheques, invoices, photos, contracts, etc. Witnesses can be subpoenaed and compelled by law to attend the hearing and testify under oath.

To initiate a small claim, a preprinted form must be completed at the Court of Queen's Bench and a fee paid. The document will be filed in the courthouse closest to where the Defendant resides or carries on business, or where the cause of action arose. When the small claim form is filed at the courthouse, a date is given for the hearing. There are usually a number of cases on the same day.

The form must then be served on the Defendant either personally, or by sending the document by registered mail. Proof of service will need to be provided to the Hearing Officer.

The Defendant can then give notice to the court that they intend to appear at the small claim hearing, and then they are given the opportunity to attend and present their evidence. It is then up to the Hearing Officer to make a decision based on a balance of probabilities.

If the Defendant does not appear in court, a judgment can still be issued against them based only on the Plaintiff's evidence. A Small Claim should never be ignored. The Hearing Officer also has the jurisdiction to order court costs against the unsuccessful party up to a maximum of \$100.00. Decisions of the Small Claims court are subject to enforcement as any other judgment of the court. Wages or bank accounts can be garnished or assets seized.

Given that Small Claims court proceedings can be fast, informal, and relatively inexpensive, often litigants whose claims could be for more than \$10,000.00 should consider proceeding to Small Claims court even knowing that

they cannot receive their full judgment. It may save them money in the long run.

Small Claims Court decisions are subject to appeal to the Court of Queen's Bench, where the hearing is more formal and the rules of evidence are stricter. If your case is appealed to the Court of Queen's Bench, it is usually recommended that at that point you retain a lawyer.