

GUIDE TO DEFENDING A CLAIM AT THE SMALL CLAIMS COURT OF NOVA SCOTIA

What will you find in this Guide?

- ▶ Use this guide if you are looking to Defend a Claim at the Small Claims Court of Nova Scotia
- ▶ This Guide will help you to:
 - File the forms you need to file with the court to defend a claim;
 - File a Defence and Counterclaim;
 - Understand the economic, emotional, and time-consuming implications of the legal process; and
 - Think about alternative dispute resolution (ADR) methods to resolve a legal problem without going to court.

What this guide will not do

- ▶ This guide **does not**:
 - Replace legal advice offered by lawyers or other legal professionals; and
 - Include any information about family or criminal law forms and documents.

Additional Resources

- ▶ The Legal Information Society of Nova Scotia (LISNS) has prepared other materials that may help to better understand other aspects of going to court at www.legalinfo.org:
 - “Glossary of Legal Terms in Plain Language”
 - “Guide to Starting a Claim at the Supreme Court of Nova Scotia”
 - “Guide to Defending a Claim at the Small Claims Court of Nova Scotia”.
 - “Court Etiquette or Dressing, Preparing and behaving Tips for Self-Represented Litigants”
 - “Getting to Know the Court Staff. Who is who inside the courthouse?”
 - “An Overview of the Action Process”

Additional Resources (websites)

- ▶ Legal Information Society of Nova Scotia
 - <http://www.legalinfo.org/>
- ▶ Nova Scotia Legal Aid
 - <http://www.nslegalaid.ca/>
- ▶ The Courts of Nova Scotia
 - <http://www.courts.ns.ca/>

Some things a defendant may want to think about after receiving a Notice of Claim

- ▶ When a defendant does not agree with the information described in a Notice of Claim, they must:
 - Complete Form 2 – Defence/Counterclaim;
 - Submit the completed “Form 2” to the Small Claims Court within 20 days of the date that they received the claim;
 - Serve a copy of the completed Form 2 on the Claimant.
- ▶ If the Defendant does not file a Defence/Counterclaim within 20 days, the court may make an order in their absence and without hearing from them.

Overview of choices

- ▶ There are four options available to the Defendant when they are served with a Notice of Claim:
 - 1) The Defendant can agree with the Claimant and pay the sum of money requested or return the claimed item;
 - 2) The Defendant and the Claimant can try to negotiate a settlement that will be agreeable to both parties. A settlement can even be reached after the trial, but before a decision;

Overview of choices

- 3) The Defendant can file a Defence within 20 days of receiving the Notice of Claim and a trial will be held and an adjudicator will give a decision based on the evidence heard in Court;
- 4) The Defendant can file a Counterclaim, where the Defendant not only disagrees with the claim, but states that the Claimant should be held responsible to reimburse the Defendant or return an item.

Filing a Defence or Counterclaim

- ▶ To defend a claim at the Small Claims Court, the defendant must complete Form 2 and file it with the court and serve the Claimant.
 - ▶ Form 2 can be found online, but it can also be found at a Regional Justice Centre.
 - ▶ If the Defendant completes the online form, he or she must print the forms and have the copies stamped by a court administrator.
- 

Form 2 - Step 1

- ▶ The person starting a court proceeding is referred to as the *Claimant*.
- ▶ The first step is to simply write the full name of the claimant as it appeared in Notice of Claim.

DEFENCE/COUNTERCLAIM - Form 2

To _____
Claimant(s)

Form 2 – Step 2

- ▶ The Defendant must explain their reason(s) for disputing the claim in the space provided in the document. The Defendant can attach a separate page to the Defence if they do not have sufficient space.

My reason for disputing the claim is (if you need more space, attach another sheet of paper):

Form 2 – Step 3

- ▶ If the Defendant also wants to claim something against the Claimant, they must provide an explanation about what they are claiming themselves.

I counterclaim for:

Form 2 – Step 4

- ▶ The Defendant must then include the date and their signature with the necessary information.

Date

Signature of Defendant(s)/Lawyer for Defendant(s)

Defendant's civic address _____

Defendant's mailing address _____

Defendant's phone no. _____

Form 2 – Step 5

- ▶ If the Defendant has a lawyer, they must include their name along with the requested information.
- ▶ If the Defendant does not have a lawyer, they can leave this section blank.

Lawyer's name _____ Phone no. _____ Fax _____ Email _____

Lawyer's address _____

Form 2 – Step 6

- ▶ The Defendant has 20 days after receiving the claim to file Form 2 with the court. The Defendant should therefore file it with the court as soon as possible. The court will complete the following section and will indicate how much time they have to serve the Defendant:

To be filled in by the Clerk of the Small Claims Court:

This defence/counterclaim must be served on the Claimant(s) within _____ days of _____, 20____
, and all parties must appear on the date shown on Form 1 - Notice of Claim to present their evidence
before the Adjudicator.

Clerk of the Small Claims Court

Transfer to another jurisdiction

- ▶ When a Defendant does not believe that the Claimant filed the Notice of Claim in the right community, he or she can complete Form 4 to request that an adjudicator transfer the case to another Small Claims Court in another community.

How do I bring a witness to court?

- ▶ A Claimant or a Defendant who wishes to bring a witness to testify on their behalf must complete **Form 3**.
- ▶ A witness who has been subpoenaed can be told to bring specific documents to the hearing and must attend court if they do not have an adequate excuse to miss the court appearance.

Transfer to another jurisdiction

- ▶ When a Defendant does not believe that the Claimant filed the Notice of Claim in the right community, he or she can complete Form 4 to request that an adjudicator transfer the case to another Small Claims Court in another community.

What happens after Defence / Counterclaim is submitted to Court

- ▶ The Defendant must send a stamped copy of Form 2 to the Claimant.
- ▶ If the Defendant does not file a Defence or Counterclaim, the Claimant can complete **Form 6** and file it with the court to request a Quick Judgment.
- ▶ If the Defendant does not file a Defence or Counterclaim, the adjudicator can make an Order in his or her absence – Form 7(a) or 7(b).

Certificate of Judgment – Form 8

- ▶ The Adjudicator can grant a certificate of Judgment, which will allow the judgement creditor to place a lien on any real property owned by the Defendant or the Claimant (in the case of a successful counterclaim).
- ▶ The judgement creditor (successful party) must go to the Land Registry and/or Personal Property Registry to register the lien.
- ▶ The Sheriff's Office will not take action on real property but can take action on real property.

Recovery Order – Form 12

- ▶ A Sheriff can be authorized to enter on the lands of the Defendant or Claimant to take possession of the property described in an Order of the Small Claims Court Adjudicator.

Execution Order – Form 11

- ▶ Once a Judgment is granted by the Small Claims Court, an Execution Order can be granted which allows a sheriff to seize real property (recorded lien at Land registry for minimum of 1 year required) or personal property, subject to restrictions, and to sell it at a public auction to satisfy the money owed to the Claimant or Defendant. Restrictions include a vehicle worth \$30K or less required for work; tools of a trade; basic household furnishings.
- ▶ A sheriff can also serve an Execution Order on an employer to seize wages, subject to restrictions, of the Defendant or Claimant. Restrictions include up to 15% of gross wages when making a specified minimum amount on a weekly basis; income assistance; Canada pension, old age security, employment insurance.

Certificate of Satisfaction – Form 13

- ▶ Once the debt owed is reimbursed in full, a certificate of satisfaction must be filed with the Small Claims Court for the Judgment to be removed.

Notice of Appeal – Form 9

- ▶ When a Claimant or Defendant is not satisfied with the outcome of the decision by Small Claims Court Adjudicator, and they believe there was a:
 - Jurisdictional error;
 - Error of law; or
 - Failure to follow the requirements of natural justice,They can file a Notice of Appeal within 30 days of receiving the decision of the Adjudicator.

Notice of Appeal – Form 9 (cont.)

- ▶ The person who files a appeal is called the Appellant
- ▶ The Appeal, if granted, will be heard by a judge of the Supreme Court of Nova Scotia
- ▶ Once the Appellant submits Form 9 with the Small Claims Court, the Adjudicator will provide a written summary report (Form 10) of the findings of law and fact made by the Adjudicator.

Additional Resources

- ▶ There are additional resources that can help you navigate the court process and to solve legal questions that you may have.
- ▶ For additional legal information, visit LISNS website at www.legalinfo.org
- ▶ If you wish to use LISNS's lawyer referral service call free at 1-800-665-9779. The referral service will allow you to find a private lawyer that will charge \$20 + GST for a 30-minute consultation session. This may be a valuable resource to clarify any questions that you have that are particular to your case.
- ▶ Nova Scotia Legal Aid may be able to help you if you qualify. You will need to sign an application and give them proof of your household income. Visit www.nslegalaid.ca for more information.

**Form 2 – Defence/Counterclaim
In the Small Claims Court of Nova Scotia**

To _____
(Claimant(s))

My reason for disputing the claim is:

(If you need more space, attach another sheet of paper.)

I counterclaim for:

Date

Signature of Defendant(s)/lawyer(s) for Defendant(s)

Defendant's civic address: _____

Defendant's mailing address: _____

Defendant's phone no. _____

Lawyer's name _____ Phone no. _____ Fax _____ Email _____

Lawyer's address _____

To be filled in by the Clerk of the Small Claims Court:

This defence/counterclaim must be served on the Claimant(s) within ____ days of _____, 20__, and all parties must appear on the date shown on Form 1 – Notice of Claim to present their evidence before the Adjudicator.

Clerk of the Small Claims Court

In the Small Claims Court of Nova Scotia

County of: _____ Claim No. _____

Between:

Claimant
- and -

Defendant

SWORN to at _____)
in the County of _____)
this _____ day of _____)
20 ____, before me, _____)
_____)
_____)
_____)
_____)
_____)

A Commissioner of the Supreme
Court of Nova Scotia, Clerk of the
Small Claims Court

AFFIDAVIT OF SERVICE

I _____, of (address) _____
_____, Nova Scotia, make oath and say that I did on _____, the _____ day of
_____, 20 ____, before the hour of _____ o'clock in the (check one)
 AM or PM,

(B) (Complete this section if Defendant is an individual), serve

with a Notice of Claim in Small Claims Court Case number _____, issued by the
clerk of the Small Claims Court on _____, 20 ____, by leaving a true
copy with him/her personally at _____
_____.

or (B) (Complete this section if Defendant is a corporation) serve (insert
name of corporation)

with a Notice of Claim in Small Claims Court Case Number _____, issued by the
Clerk of the Small Claims Court on _____, 20 ____, by leaving a true copy with
the Recognized Agent for the Defendant corporation (insert name of recognized agent) _____
_____, personally, at _____
_____.