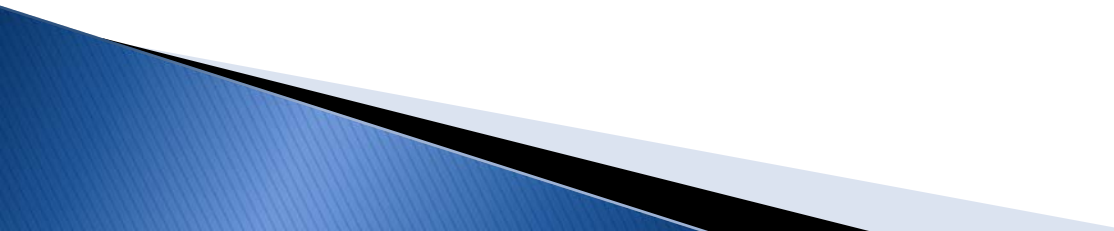


GUIDE TO STARTING A CLAIM AT THE SMALL CLAIMS COURT OF NOVA SCOTIA

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What will this guide help you do?

- ▶ This guide was created to help a self-represented person to start an action in the Small Claims Court of Nova Scotia.
- ▶ This guide will help with:
 - Completing the necessary forms needed to start a claim;
 - Better understanding the economic, emotional, and time-consuming implications of starting a claim; and
 - Thinking about other out-of-court options, or “alternative dispute resolution” methods, to resolve your legal problem.

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 Defending an Action at the Supreme Court of Nova Scotia”
 - “Guide to Defending an Action 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/>

Before starting a claim

- ▶ A person who is thinking about starting a court application should consider the following questions before starting a notice of claim:
 1. Is there a **time limit** for you to file a claim in the new *Limitations of Actions Act* or other applicable statute? Did you miss the deadline to file your claim or are you within the permitted period to start a claim?
 2. Does the Small Claims Court have the ability (*jurisdiction*) to hear your claim?
 3. Have you been able to identify what facts are important for you to justify a claim against someone? This information is required when completing the first form to start your claim and is also known as a *cause of action*.
 4. What do you want to get at the end of the Small Claims Court trial? Is it something that the court can actually order from the other person?

3. Overview of choices

- ▶ The following image shows the different paths available to a claimant. A person may be able to choose more than one path depending on her or his interests, resources, and beliefs.

Do Nothing

If the other party has no money or assets, you might not get the compensation you want

Costs: dispute resolution and lawsuit costs can be high. Weigh what you will gain against what you may lose

Consider your emotional wellbeing. The process may be long and the result uncertain.

Try to work out the dispute

Negotiation

Mediation

Arbitration

Go to Small Claims Court

For claims up to \$25,000, excluding costs and interest.
Faster, flexible, easier, less formal process

You can't go to Small Claims Court about:

- land ownership
- malicious prosecution
- wrongful conviction
- wills and estates
- defamation (libel slander)
- a pain & suffering claim over \$100 (general damages)

For more information see www.courts.ns.ca under Small Claims Court.

Go to Supreme Court of Nova Scotia ("SCNS")

Application

Action

The following diagrams look at Applications & Actions step-by-step.

4. Starting a claim

- ▶ You need to complete “Form 1” and file it with the court clerk at the courthouse in order to start a claim in Small Claims Court.
- ▶ The forms are available electronically on the Courts of Nova Scotia website <http://www.courts.ns.ca/> but the forms must be printed and a copy delivered to the Small Claims Court where the wrong is alleged to have occurred.
- ▶ The following slides show an example of how the forms should be completed.

Form 1 - Step 1

- ▶ The person starting a court proceeding by filing a Notice of Claim is referred to as the *Claimant*.
- ▶ The first step is to simply write the full name of the claimant (as it would appear on their driver's licence or passport) and their contact information.

Claimant(s):

Name _____
Civic address _____ Postal code _____
Mailing address _____ Postal code _____
Phone no. _____ Fax _____ Email _____

Form 1 - Step 2

- ▶ The claimant must identify the defendant or defendants (as there can be more than one), and must write down the defendants' full name and contact information.

Defendant(s):

Name _____
Civic address _____ Postal code _____
Mailing address _____ Postal code _____
Phone no. _____ Fax _____ Email _____

Form 1 - Step 2 (cont.)

- ▶ If the defendant is a business, the claimant should write down the name of the business. If defendant is an incorporated business operation, the information about the business may be found on the online database of the Registry of Joint Stock Companies:

<http://novascotia.ca/sns/access/business/registry-joint-stock-companies.asp>

Form 1 – Step 3

- ▶ The claimant must then identify an amount of money or the return of property that they wish to claim against the defendant.
- ▶ In the Small Claims Court, a claimant can only ask for money that does not exceed a total amount of \$25,000 (not including interest and other costs).

I claim from the Defendant(s) _____ dollars (\$ _____)
or the delivery to me of _____

Form 1 – Step 3 (cont.)

- ▶ A claimant can only request up to \$100 in general damages, which includes money for pain and suffering or loss of enjoyment in life.
- ▶ The amount claimed for general damages is included in the total claim of \$25,000.
- ▶ A claimant can request interest cost to be added to the total claim, and therefore this interest can put the total claim over the limit of \$25,000.
- ▶ The interest cost will either be based on the percentage the parties had previously agreed or, if there is no agreement, as determined by the court.

Form 1 – Step 3 (cont.)

- ▶ If the claimant believes they have a right to more than \$25,000, they can:
 - Commence a claim in the Small Claims Court in the amount of \$25,000 and dropping the extra money above that amount; or
 - Start a Notice of Action in the Supreme Court of Nova Scotia.
- ▶ If the claimant is successful, he or she can request that their costs be paid by the defendant. These costs can include the filing fees, the costs of serving the documents to the defendant and any witness fees.
- ▶ Regardless of who wins a case in Small Claims Court, the claimant or defendant cannot get the opposing party to pay for their lawyer fees.

Form 1 – Step 4

- ▶ The claimant must include the reasons for their claim that include all the important facts. The reasons for the claim should be brief and to the point.

The reason for this claim is: _____

Form 1 – Step 4 (cont.)

- ▶ Some examples of questions that may help a claimant complete this section of the form include:
 - What did the defendant do?
 - When did it happen?
 - Where did it happen?
 - Why do you think the defendant is responsible to pay you or return goods to you?

Form 1 - Step 4 (cont.)

- ▶ The following are examples of “reasons for this claim”
 - **unpaid account** - the claim is for an account for a chesterfield sold to the defendant on April 1st for \$100.
 - **work not completed** - the claim is for carpentry work to build a deck. The job was not completed by April 1st as agreed and it will cost \$100 to complete.
 - **claim for damages from an auto accident** - the claim is for damages done to a car in an accident on April 1st. The cost of repairs is \$100.

Form 1 - Steps 5, 6 & 7

- ▶ After completing the previous sections in the form, sign and date the document.

_____ _____
Date Signature of Claimant(s)/lawyer(s) for Claimant(s)

- ▶ If you have a lawyer, fill out their information. If not, leave it blank.

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

Lawyer's address _____

- ▶ Finally, bring the forms to court clerk at the courthouse to have it sign and filed.

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

This claim must be served on the Defendant(s) within _____ days of _____, 20____.

This claim will be heard on _____, 20____ at _____ a.m./p.m.

at _____.

(place of hearing)

Form 2 – Affidavit of Service

- ▶ An Affidavit of Service must be submitted to the Court once the Notice of Claim has been personally served on the defendant. The claimant can personally serve the defendant themselves or can hire a process server to deliver the documents.

Form 2 - Step 1

- ▶ The following the be clearly indicated on the top of the Affidavit of Service, the county in which the case will be heard and the claim number. The claim number is the number that the court assigns once the Notice of Claim is filed and typically this information is completed by the court clerk.

County of _____

Claim No. _____

Form 2 - Step 2

- ▶ If you are the claimant, write your name on the space above the word Claimant, and write the name of the defendant in the space above the word Defendant

BETWEEN:

Cassandra Mullins

Claimant

- and -

Morgan Murphy

Defendant

Form 2 – Step 3

- ▶ Once the document has been served, the affidavit must be completed by the person doing the service including the address, date and time in which the defendant was served the Notice of Claim.

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,

Form 2 – Step 4

- ▶ If the defendant is an individual, the claimant must ensure that section A of the Affidavit of Service is completed. The person serving the document must include the name of the defendant, case number provided by the court, the date the Notice of Claim was filed and the location where the documents were served on the defendant.

(A) (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 _____.

Form 2 – Step 4 (cont.)

- ▶ If the named defendant is a corporation, the claimant must ensure that section B of the Affidavit of Service is completed.

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

_____.

5. What happens next?

- ▶ After a claim is filed and the defendant receives their copy, these are some of the things that can happen:
 - The defendant contacts the claimant and the parties are able to negotiate an out-of-court settlement.
 - The defendant contacts the claimant and makes arrangement to pay the claimant or return the property.
 - If the defendant does not file a defence, an order can be given in the absence of the defendant and a judgment can be recorded. A claimant must still take steps for an order to be made.
 - If the defendant submits a defence to the court, a trial will take place on the date indicated by the court clerk.

What happens next (cont.)

- ▶ If the claimant and the defendant settle their dispute before the scheduled court appearance , the agreement should be put in writing and signed by both the defendant and claimant; the defendant should have done what was promised before the claimant calls the court to withdraw the claim.
- ▶ If a hearing is held, an oral decision may be made at the time of the hearing or a written decision may be made several days (or month) later or the matter may be adjourned.

6. Where to get more help

- ▶ For additional legal information, visit the Legal Information Society of Nova Scotia's website at www.legalinfo.org
- ▶ Self-represented people are encouraged to call the **Legal Information Line toll-free at 1-800-665-9779** to speak with a legal counsellor.
 - In some cases, LISNS may be able to refer callers to a private lawyer in their community for a 30 minute appointment at a cost of no more than \$20+taxes.

Form 1
Notice of Claim
In the Small Claims Court of Nova Scotia

For Court use only
Claim No. _____

**This matter will take
longer than 2 hours**

Yes

No

Claimant(s):

Name _____
Civic address _____ Postal code _____
Mailing address _____ Postal code _____
Phone no. _____ Fax _____ Email _____

Defendant(s):

Name _____
Civic address _____ Postal code _____
Mailing address _____ Postal code _____
Phone no. _____ Fax _____ Email _____

I claim from the Defendant(s) _____ dollars (\$ _____)
or the delivery to me of _____
The reason for this claim is: _____

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

Date Signature of Claimant(s)/lawyer(s) for
Claimant(s)

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

Lawyer's address _____

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

This claim must be served on the Defendant(s) within _____ days of _____, 20____.
This claim will be heard on _____, 20____ at _____ a.m./p.m.
at _____

(place of hearing)

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 _____
_____.