



# Small Claims Court





## ***What is Small Claims Court?***

Small Claims Court is an option for people who want to make a claim of \$16,000 or less against an individual or corporation. The parties do not need a lawyer to represent them in Small Claims Court. Small Claims Court cannot be used to deal with rent, damage deposits, or family law issues.

## ***Is it worth making a claim?***

The following questions should be considered before filing a claim:

- Have the parties talked to see if the issue can be resolved outside of court?
- Does the person or company being sued have any assets?
- If successful, is the debt collectable? If the Defendant is unemployed or self employed, or is a company with few assets, it may be difficult to collect.
- Is the Defendant's address known?
- Is there evidence to support the claim? If it is just one party's word against the other, it may be difficult to prove the claim. Witnesses or documents such as bills, contracts or letters are important to make the case.

## **Filing Fees**

See fee schedule for filing fees. As fees may change from time to time, please contact court staff (contact information at the end of this booklet) to see what fees apply to your case.

## **To start a claim**

Step 1 - Complete the form called "Plaintiff's Claim Form 7A". This form can be downloaded from the PEI Government website ([www.courts.pe.ca](http://www.courts.pe.ca)). A paper copy may also be obtained at the Courthouse. The party starting the claim is called the "Plaintiff" and the person/corporation being sued is called the "Defendant".

It is important that all information on the form be complete and accurate. The spelling of names and addresses must be correct. If names are misspelled, the wrong person could be sued. If the claim is against an incorporated business, be sure to use its correct name. If necessary, contact the Corporations Division of the Office of the Attorney General at (902) 368-4550 to obtain this information.

The following information must be provided to complete the Plaintiff's Claim:

1. The full names, addresses (including postal codes) and contact numbers for both the Plaintiff and the Defendant.
2. The nature of the claim, including details of the date, place and events leading to the claim.
3. The amount of the claim.
4. The name, address, telephone and fax number of the agent/lawyer for the Plaintiff and the Defendant if he or she is represented.

Step 2 - Take the completed Plaintiff's Claim to the courthouse to be registered. The following is required:

1. The original and three (3) photocopies of the Plaintiff's Claim. If there is more than one Defendant in your case, add a copy for each one.
2. Applicable filing fee (see fee schedule) in cash or cheque made payable to Supreme Court of PEI.

Step 3 - Notify the Defendant of the claim.

**The Plaintiff's Claim must be served on the Defendant within 6 months after it is registered with the court.**

Service may be completed on the Defendant by personal service, registered mail or regular mail (see Rule 8).

### **Parties in Bankruptcy:**

If the Defendant is already bankrupt or may be filing for bankruptcy, the claim cannot be continued or collected upon if the debt is included in that bankruptcy. If the unsuccessful party goes bankrupt after judgment has been awarded, the court's decision will be set aside and the debt cannot be collected.

### **When the claim is filed:**

What happens next depends on how the Defendant responds to the claim.

The Defendant has 20 days to file a Defence to your claim. After being served, the Defendant has the following options:

1. File a Defence with the court stating he or she agrees with the Plaintiff's claim and suggest the terms for payment. The court serves a copy of the Defence on the Plaintiff. The court will assume the Plaintiff agrees with this proposal unless the Plaintiff requests a hearing within 20 days of receiving the Defence.
2. Agree to **part** of the Plaintiff's claim and propose terms of payment. The court will assume the Plaintiff agrees with this proposal unless the Plaintiff requests a hearing within 20 days of receiving the Defence (Form 9B).
3. File a Defence with the court that **disputes** the Plaintiff's entire claim. Once this happens, a **pre-trial conference** is scheduled (see following section).

- 4 Do nothing. If the Defendant has not responded within 20 days of being served, the Plaintiff can file for a "*Minute of Judgment*". These forms are available at the Court (see applicable sections following).
- 5 File a counter-claim/third party claim (Defendant's Claim - Form 10A) against the Plaintiff or another party. This claim must be filed within 20 days of filing a Defence.

The Plaintiff can file a "*Notice of Discontinuance*" anytime after the time of filing the claim. This form tells the court that the Plaintiff does not want to continue with the claim.

### **Pre-Trial Conference:**

After a Defence or a Request for Hearing has been filed, the parties will receive a Notice of Pre-Trial Conference by facsimile or certified mail. This notice will be posted to the address indicated in the documents. The hearing with all parties is before the Prothonotary (an officer of the Court who is a neutral party) in an attempt to narrow or resolve the issues. Therefore, the parties must prepare by bringing all evidence, written statements of witnesses, reports, pictures, financial records and bills. If the Plaintiff intends to call witnesses at trial, a List of Proposed Witnesses (Form 13A and Rule 18) must be completed. If any party does not attend the pre-trial despite having received notice of it being held, the Prothonotary may impose sanctions including assessment of costs, dismissal of a plaintiff's claim or noting the defendant in default. The Prothonotary also has the authority to dismiss claims or defences if there is no legal foundation for the claim or defence (See Rule 12.02). The pre-trial is usually scheduled to be held 3-4 weeks after the filing of the Defence or Request for Hearing. In the event the matter is not resolved at the pre-trial conference, it will be scheduled for trial.

**Pre-Trial Conference/Trial:**

Before the trial begins, parties should prepare their evidence and make sure their witnesses are ready. Notice of all evidence and witnesses must be given to the other party no less than 14 days before the trial (See Rule 18).

Once a case is scheduled for trial, a further pre-trial conference is held before a Supreme Court Judge. This pre-trial conference is held to try to resolve the claim. If it is impossible to resolve the claim, a trial will be held. The trial is usually held on the same day as the second pre-trial conference. The trial is held before a different Supreme Court Judge, who listens to the case and makes a decision. It is important parties have all their evidence and witnesses with them for the trial.

If a case goes to trial, costs may be awarded to or against either party (see Rule 19). These costs may include lawyer's fees, inconvenience and expense, filing costs and/or other expenses.

**If the Defendant does not respond**

If a Defendant does not file a Defence in response to the Plaintiff's Claim, a Minute of Judgment showing the date and the amount owing may be filed with the Court (Rule 11).

**Setting aside a default judgment**

If the Defendant was noted in default and judgment is filed, the Note of Default and Judgment can only be set aside upon a motion for a hearing before a Supreme Court Judge (Rule 15). At this hearing, the Judge must be satisfied that the party has a valid defence and a reasonable explanation for failing to file a defence on time. The motion must be made as soon as possible after the Judgment has been filed.

## **Court Ordered Judgment**

The successful party may file a Minute of Judgment to help collect what is owed. A Minute of Judgment stays in place for 10 years and will affect the other party's ability to obtain credit. It can be renewed for further 10 years if done so before the expiration of the original Minute of Judgment. At the request of the successful party, a "*Writ of Seizure and Sale of Personal Property*" can be issued to Sheriff Services (See section on Writs).

Once the unsuccessful party has paid the debt, the successful party must sign a "Satisfaction Piece" and file it with the court, confirming the Judgment has been satisfied.

## ***What is Sheriff Services?***

Sheriff Services is a publicly funded service provided by the Office of the Attorney General of Prince Edward Island. In Small Claims Court, the primary goal of Sheriff Services is to manage writs of seizure and sale and garnishee orders.

## ***How do Sheriff Services collect what is owed?***

When a court order is filed with Sheriff Services:

- The "*Writ*" is received by the writ manager at Sheriff Services. The writ manager notes the time and date of delivery. He or she enters all information into a judgment/writ book, along with a calculation of current fees and commissions. The writ manager records the writ onto a list containing all current writs, which can be viewed upon request.
- A letter and copy of the Writ are sent by mail to the unsuccessful party and the successful party receives a copy. The letter tells the unsuccessful party that a writ has been filed with Sheriff Services and advises him or her what needs to be done to satisfy the matter. The unsuccessful party has 10 days to respond with a plan to settle the issue. This plan may include full payment, an offer for less than the full amount (if the successful party agrees), and a payment schedule (if the successful party agrees). It may include a wage garnishee.

- There are a number of things that can happen if the unsuccessful party does not respond to the demand letter. Sheriff Services can seize and sell property or real estate; conduct an *“Examination in aid of Execution”*; or conduct a hearing to consider a wage garnishee. These services have a fee, which is paid by the successful party and recovered from the unsuccessful party when the writ is carried out (see fee schedule). For any of these things to happen, the successful party must start the process. Sheriff Services staff can assist in decision making as to which is the most appropriate method in your case.
- A writ is valid for one year. It must be renewed by the successful party before the expiration date, if the claim has not been satisfied. There is no fee for renewing a writ before the expiry date. If the writ is renewed after the expiry date, a renewal fee is charged (see fee schedule).

*Is there a guarantee I will get the settlement owed to me?*  
**Collection is not guaranteed.** Sometimes Sheriff Services has problems collecting on writs. Some of the challenges include:

- **The unsuccessful party cannot pay:** If an unsuccessful party has a low income, he or she may lack the ability to pay. In this case, Sheriff Services will arrange a payment schedule with the unsuccessful party. The payment schedule doesn't always work because the arrangement is not always maintained by the unsuccessful party. If Sheriff Services know where the unsuccessful party works, a *“Wage Garnishee Hearing”* may be held to determine the amount, if any that can be deducted from his or her wage. If the unsuccessful party has a low income, a wage garnishee may not be appropriate. There is a fee charged to the successful party to conduct a Wage Garnishee Hearing. This fee is added to the total amount owing and is recovered if Sheriff Services are able to collect on the writ (see fee schedule).

- **Sheriff Services cannot identify assets of the unsuccessful party:** Sometimes a successful party files a writ against a person he or she knows very little about. When this happens, it can be difficult to identify the person's assets. In this instance, Sheriff Services will recommend an Examination in Aid of Execution take place. This is a hearing held under oath to determine the assets of the unsuccessful party and whether he or she can pay what is owed. There is a fee charged to the successful party to conduct an Examination in Aid of Execution. This fee is added to the total amount owing, and is recovered if Sheriff Services are able to collect on the writ (see fee schedule).
- **Sheriff Services does not have enough information on the Defendant:** It is important that the Plaintiff include all of the Defendant's contact information on the claim. It is the Plaintiff's responsibility to provide this information. Sheriff Services needs this information to collect on the writ.
- **The Plaintiff has unreasonable expectations:** The Plaintiff often thinks that the Defendant will be forced to pay the amount owing on the writ regardless of financial circumstances. If the Plaintiff knows the Defendant cannot pay, he or she can still file a Minute of Judgment. This remains in effect for ten years and can be renewed for a further ten years. A Plaintiff may file a writ knowing it may not be paid right away, in the hope that the Defendant's financial situation will improve (a writ must be renewed on an annual basis, unless it has been paid in full).

## **Prince Edward Island Courthouse Contact Information**

### **Sir Henry Louis Davies Courthouse**

Small Claims Court  
Supreme Court of Prince Edward Island  
42 Water Street, PO Box 2000  
Charlottetown, PE C1A 7N8  
Telephone: (902) 368-6004  
Fax: (902) 368-0266

### **Summerside Courthouse**

Small Claims Court  
108 Central Street,  
Summerside, PE C1N 3L4  
Telephone: (902) 888-8125  
Fax: (902) 888-8222

### **Sheriffs Services contact information**

Queens and Kings County  
Supreme Court of Prince Edward Island  
42 Water Street, PO Box 2000  
Charlottetown, PE C1A 7N8  
Telephone: (902) 368-6050  
Fax: (902) 368-6571

Prince County  
322A Notre Dame Street,  
Summerside, PE C1N 1S5  
Telephone: (902) 888-8191  
Fax: (902) 432-2756

This brochure has been prepared for information purposes only, and should not be considered a substitute for the law. If information in this brochure conflicts with statutes, the statutes are correct.

# Glossary of Terms

<b>Plaintiff</b>	The person who started the claim.
<b>Defendant</b>	The person against whom a small claim was filed
<b>Writ Seizure and Sale of Personal Property</b>	A document issued by the Registrar at the request of a successful party. The party who wins the case may file a Writ of Seizure and Sale of Personal Property. This document enables the Sheriff to seize and sell real or personal property owned by the person who loses the case.
<b>Minute of Judgment</b>	At the request of the successful party, the Registrar may issue a Minute of Judgment. Although the Sheriff cannot collect on a Minute of Judgment, the unsuccessful party's ability to obtain loans and sell or buy property may be affected. This Judgment is in effect for ten years from the date of filing and can be renewed by the successful party for a further ten years if done so before the expiration of the ten year period.
<b>Examination in aid of Execution</b>	Upon direction from the successful party, a hearing is conducted by the Sheriff with the unsuccessful party under oath. This is done to determine the assets of the unsuccessful party and whether he or she can pay what is owed. If there are assets which can be seized, the party to whom the money is owed can direct the Sheriff to seize and sell that property. (fee applies - see fee schedule)

<b>Wage Garnishee</b>	A court order to take part of the wage for an amount determined through a hearing. 2) A Garnishee order, which is directed to a third party owing money to the successful party which may be collected on behalf of the Plaintiff. (this differs from a wage garnishee, which is a separate process)
<b>Wage Garnishee Hearing</b>	A hearing conducted by the Prothonotary or Sheriff to determine whether part of a debtor's wage can be taken to satisfy the claim, and if so, how much. Factors such as the Debtor's income and reasonable monthly expenses are considered. If a wage garnishee is ordered, it is sent directly to the Debtor's employer. The employer is required to forward the specified amount to the Sheriff each month. (fee applies - see fee schedule)
<b>Assets</b>	Property owned by the unsuccessful party, which may be subject to seizure and sale. (some legislative restrictions apply and can be explained by the Sheriff)
<b>Real Property</b>	A term used to indicate real estate such as a house, apartment building or land owned by the Defendant. (A writ must be filed for a period of four months and all other means of execution of the writ must be pursued prior to seizure and sale of real property)

<b>Seizure</b>	The action by the Sheriff of taking possession of and selling property owned by the person who owes the money
<b>Sale</b>	The public auction of seized assets from a losing party. The proceeds of the sale are paid to the person to whom the debt is owed. (the Sheriff may apply a portion of the proceeds to the amount owing as commission)
<b>Payment Plan</b>	An arrangement made with the party who loses the case to pay a fixed amount of money each month until the debt is paid. (the successful party has the option of accepting an amount less than the full claim) If the unsuccessful party is working, a voluntary wage garnishee agreement may be signed.
<b>Wage Garnishee Agreement</b>	A document signed by an employed debtor. It includes an amount that the debtor agrees to pay each month. If the Debtor fails to make the arranged payments, an order may be issued to his or her employer for the arranged amount, without having to conduct a wage garnishee hearing.
<b>Satisfaction Piece</b>	A document signed by the person who is owed the money when the amount owing has been paid in full or otherwise paid to the satisfaction of the Plaintiff . It is filed with the court to indicate the matter has been resolved.

## *Notes*



Design: Creative Services  
Printing: Document Publishing Centre  
2017