

Guide to procedures in small claims court

Learn about the steps to follow in small claims court, including how to complete and submit forms.

Overview

The information contained in this guide is an overview of the small claims court procedures. It is not intended to be a substitute for the *Rules of the Small Claims Court* (<https://www.ontario.ca/laws/regulation/980258>), which should be examined for specific information.

Nothing contained, expressed or implied in this guide is intended as, or should be taken or understood as, legal advice. If you have any legal questions, you should see a lawyer or paralegal.

Where to get more information

Small Claims Court forms are available at court offices and at www.ontariocourtforms.on.ca (<http://www.ontariocourtforms.on.ca/>). You can find tips on completing forms (<https://ontario.ca/document/guide-procedures-small-claims-court/tips-completing-forms-small-claims-court>) at the end of this guide.

The staff at any Small Claims Court office are helpful. They will answer your questions about Small Claims Court procedures, but keep in mind that they cannot give legal advice and they cannot fill out your forms for you.

For more detailed information, you should refer to the **Rules of the Small Claims Court** (<https://www.ontario.ca/laws/regulation/980258>).

Making a claim

Overview

If you are thinking of making a claim in Small Claims Court, or if you are already involved in a case, this guide will answer questions about the court and provide examples of how to prepare a typical Small Claims Court claim.

The information set out in this guide will attempt to assist you if you want to file either a Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx&wdOrigin=BROWSELINK%20>) or a Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx&wdOrigin=BROWSELINK>).

Definition of a claim

A claim is your opportunity to explain to the court:

- who you are
- who you are suing
- what happened that led to the lawsuit

- what you are asking for

Types of claims are dealt with in Small Claims Court

The Small Claims Court can handle any action for the payment of money or the recovery of personal property where the amount claimed does not exceed \$35,000, excluding interest and costs such as court fees. This includes the value of all goods that the plaintiff is asking for in total, no matter how many defendants there are. Refer to "Small claims court: suing someone" (<https://www.ontario.ca/page/suing-someone-small-claims-court>) for more information.

A claim can also be brought in Small Claims Court under the *Parental Responsibility Act, 2000* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00p04_e.htm) against a parent of a child (under 18 years of age) in certain circumstances where a child takes, damages or destroys your property. Please refer to the *Parental Responsibility Act, 2000* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00p04_e.htm) and "The *Parental Responsibility Act* - Recovering Losses in Small Claims Court" brochure for more information. You can request a copy of this brochure at any Small Claims Court location.

Filing your claim online

The Small Claims Court E-Filing Service portal (<https://www.ontario.ca/page/file-small-claims-court-documents-online>) allows users to e-file a Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx&wdOrigin=BROWSELINK%20>) using an online system. Filers have the option of filing electronically instead of in-person or by mail. This service allows plaintiffs to prepare and submit all required forms online up to and including default proceedings. They are able to pay court fees online and will receive court-issued documents by email from the court.

A person is eligible to file a claim online where their claim is:

- for a debt or liquidated demand in money for an amount up to \$35,000
- the interest claimed is less than 35%, and
- no party is a person under disability.

Making a claim if under 18 years of age

A minor (a child under 18 years of age) may sue for an amount up to \$500 as if he or she were an adult. If the amount claimed is greater than \$500, a litigation guardian must represent the minor. A litigation guardian is usually a parent or guardian. The litigation guardian must fill out a Consent to Act as Litigation Guardian [Form 4A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/04a/scr-4a-jan21-en-fil.doc>) and file it with the court at the time the claim is filed or as soon as possible afterwards.

Settling a case

You can settle your case at any time before final judgment. For more information see "Getting ready for court" (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) .

Plaintiff's claim

A Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx&wdOrigin=BROWSELINK%20>) commences an action.

Defendant's claim

A Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx&wdOrigin=BROWSELINK>) may be filed by a defendant to an action where the defendant makes a claim in the action against another person, or another party (such as the plaintiff, or a co-defendant).

The general information in this guide about filling out the claim form applies to a plaintiff's claim, but there are also some special rules which apply to a defendant's claim. These are discussed in the defendants claim section (<https://ontario.ca/document/guide-procedures-small-claims-court/making-claim#section-3>) .

How to fill out the claim form

The forms for both the plaintiff's claim and defendant's claim include a lot of information to help you fill them out. The following is a list of the key information you should include in your claim:

1. Fill in the court name, address and telephone number.
2. Check the box if one or more of the plaintiffs is under 18 years of age.
3. Check the box if there are additional plaintiffs or defendants listed on an Additional Parties [Form 1A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) and include the additional parties form as page 2 of your claim.
4. Fill in the full names of the parties to the action and their addresses and contact information. Ensure that you have named each defendant correctly. Where a defendant is known by several different names, the Additional Parties [Form 1A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) can be used to continue with the identification of the defendant's "Also Known As" names if the space provided in the Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx&wdOrigin=BROWSELINK%20>) is insufficient. Ensure that additional defendant names are linked to the first defendant name by using the same defendant number reference.
5. If you chose to represent yourself insert your own name, address, telephone number and email address (if any).
6. Fill in the amount that you are claiming.
7. Fill in the annualized pre-judgment interest rate claimed and amount due up to the date the claim is filed.
8. If you are filling out a defendant's claim, include the court file number of the main action.
9. Fill in the reasons for your claim and details. Give a full explanation of what happened, including the dates and places and nature of the occurrences involved. Calculate and explain the amount of money and any interest you are claiming.
10. Attach a copy of supporting documents to the claim. If the documents are not attached, fill in the reasons for not attaching the documents in the "Reasons for Claim and Details" section.

11. Make one copy of everything for yourself and a copy for each defendant.

More than one plaintiff or defendant

Together you and one or more other plaintiffs can sue one or more defendants. List the name and contact information for one plaintiff on the Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fscs%2F07a%2Fscr-7a-aug22-en-fil.docx&wdOrigin=BROWSELINK%20>) and check the box that indicates "Additional parties listed on attached Form 1A." List the rest of the plaintiffs and their contact information on the Additional Parties [Form 1A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) and attach it to the claim as the second page. Do the same if there is more than one defendant, or if there is insufficient space for a defendant's "Also Known As" names.

Information to include about the defendant

If your claim is against an individual, be sure to indicate the defendant's full given name and address, including their apartment or unit number and postal code. You must be very careful when naming the defendant. If the name you use on your claim is not exactly right, you may win your case but then be unable to take steps to enforce your judgment. If, after judgment, you realize you have incorrectly named a defendant, you will need a court order to amend your judgment to correct the name.

Example 1

You hired a roofer to put a new roof on your house. The roof leaks, so you sue "Zoro Carey Roofing." You obtain judgment, but they refuse to pay, so you direct the sheriff to seize personal property to sell at auction. Now you find that the company's registered name is "ZC Roofing Ltd." You have a judgment against the wrong party.

The rules about names are strict, but they are not complicated. Here are some rules you may need to know:

1. Use the person's full name. Initials are not enough.
Write: HELEN RODRIGUEZ on the claim form
Not: H. RODRIGUEZ
2. Do not use titles such as Mr., Miss or Dr.
Write: JAMAL ROBERTS on the claim form
Not: Mr. ROBERTS
3. If your claim is against more than one individual, be sure to include each defendant's full name. Also, check the box on the claim form to indicate that additional defendants are listed on the Additional Parties [Form 1A] (<https://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) attached as page 2 of the claim.
Write: RONALD SIMMONS on the claim form and LORRAINE SIMMONS on the additional parties form
Not: RONALD AND LORRAINE SIMMONS on the claim form
4. If a defendant is known by more than one name, the Additional Parties [Form 1A] can be used to list the defendant's "Also Known As" names if the space provided within the claim form is insufficient.
 Check the box on the claim form to indicate the form is attached as page 2 of the claim and ensure the same defendant number is used to link the additional "Also Known As" names to the first defendant name.
 Example: The defendant you are suing is named Robert Smith. However, you have information that he is also known as Rob Smith, Bob Smith and Robbie Smith.

Write: (Defendant No. 1) ROBERT SMITH and ROB SMITH in the "Also Known As" box on the claim form, and BOB SMITH and ROBBIE SMITH on the additional parties form within the "Also Known As" box.

Not: ROBERT SMITH as Defendant No. 1, ROB SMITH as Defendant No. 2, BOB SMITH as Defendant No. 3, and ROBBIE SMITH as Defendant No. 4.

5. If you are suing an incorporated company (it usually has Limited, Ltd., Corporation, Corp., Incorporated or Inc. after its name), make sure you have the correct corporate name, address and postal code. If you want a specific corporate officer to be served, include the person's name and position in the corporation.

Example 2

Referring back to Example 1, the unsatisfied customer was suing Zoro Carey Roofing because that was the name on the invoice provided and Zoro Carey installed the leaky roof. Even though Zoro Carey did the work, the defendant would still be ZC Roofing Ltd. because the agreement to install the roof was with the company.

There are some cases where both the company and the proprietor of the company would be defendants. These are cases where the proprietor has something to do with the case, beyond just being the proprietor of the company.

Example 3

ZC Roofing Ltd. applied for credit at a roofing supply company but the credit application is denied without a personal guarantee from Zoro Carey. Zoro signs the guarantee and, by doing so, is agreeing to pay the debt personally if ZC Roofing Ltd. does not. If the roofing supply company decides to sue, the defendants in the action could be:

ZC Roofing Ltd. on the claim form; and

Zoro Carey on the additional parties form.

For information on how to search a corporation or registered business name, you may contact the Companies Helpline, Ministry of Government and Consumer Services. Please note that there is a fee for the search and the search **will not** be conducted over the phone. The Helpline can be reached at 416-314-8880 or toll free in Ontario at 1-800-361-3223.

If the business you are suing is not incorporated (for example, a sole proprietorship or partnership), you will need the correct name of the business and the address for service. You may also wish to name the proprietor(s) or partner(s) as parties if you wish to obtain a judgment against them as well.

Example 4

Ann Carey has her own landscaping business. It is not an incorporated company. If one of her suppliers wants to sue her because she did not pay a bill, the supplier could name as the defendants:

ANN CAREY, carrying on business as ANN'S LANDSCAPING on the claim form; and

ANN'S LANDSCAPING on the additional parties form.

You may use "c.o.b." as a short form for "carrying on business" if you wish.

Example 5

If Ann, in the above example, was in partnership with her sister Joan, then the defendants could be:

ANN CAREY c.o.b. as ANN'S LANDSCAPING on the claim form;

JOAN KOSKI c.o.b. as ANN'S LANDSCAPING on the additional parties form; and

ANN'S LANDSCAPING on the additional parties form.

If you make a claim against a partnership or proprietorship you may also use the firm name, and ask for an order that would be enforceable personally against a person as a partner or proprietor. You should serve that person with the claim, together with a Notice to Alleged Partner [Form 5A] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/05a/SCR-05A-Jan14-fil-EN.doc>) .

Proof to support your claim

You should set out the reasons for your position in the claim. You must also attach to the claim form copies of documents that you intend to use to support your claim (called "supporting documents"). Keep your originals because you will likely need to hand them to the judge if you proceed to trial. If you refer to any documents that are lost or unavailable, you must explain on the claim form why this material is not attached.

Explaining your case on the claim form

You should type or write clearly on the claim form a clear outline of the events that took place and the reasons you think you are entitled to a judgment. It is up to you to decide how to explain your case. Often a good way to organize what you want to explain is in the order that the events actually happened. You may also find it helpful to use separately numbered paragraphs. Give a full explanation of what happened including the dates and places involved.

You do not have to use "legal language." Just say what happened, including important details. The defendant should know exactly what the claim is about.

Example 6

The customer who was suing the roofer in Example 1 might say this:

1. "ZC Roofing Ltd. put a new roof on my house at 123 King Street Barrie, Ontario on October 1, 2008.

2. The new roof leaked.
3. I advised ZC Roofing of the leak on October 5, 2008 but ZC Roofing Ltd. refused to fix it.

4. My furniture and carpeting were damaged by the leak and I had to hire another roofer to fix the leak.
5. The leak was repaired on October 15, 2008 by YZ Roofing."

Notice that in our example the address of the house and the date of the job are given. The roofer will have no trouble knowing which job this case is about.

Calculate and explain the amount of money you are claiming.

Example 7

Referring back to Example 6, the plaintiff in that case might show the breakdown of the amount claimed (in the Reasons for Claim & Details) like this:

"I am claiming the following amounts and am attaching my invoices to this claim:

a) Cost of replacing chair \$ 479

b) Cost of cleaning carpet \$ 135

c) Cost of repairing roof \$1,250

TOTAL \$1,864"

Asking for interest on the money claimed

If you want to ask for interest on the money you are claiming you must ask for interest in your claim form. If the rate of interest has been agreed to by the parties (e.g. in a written contract signed by the parties), indicate that interest rate in your claim.

Example 8

A supplier is suing a customer for payment of a bill. The plaintiff might show the breakdown of the amount claimed (in the Reasons for Claim & Details) like this:

How much? \$ 849

The plaintiff also claims pre-judgment interest from May 1, 2007 under an agreement at the rate of 24% per year, and post-judgment interest, and court costs.

If no interest rate was agreed upon, you can ask the judge to award you pre-judgment and post-judgment interest at the rate as defined in the *Courts of Justice Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.htm) . Before judgment, the interest is called pre-judgment interest. After judgment it is called post-judgment interest. These rates are available in the court office and on the Ministry's website at: www.ontario.ca/attorneygeneral (<http://www.ontario.ca/attorneygeneral>) .

Interest must be expressed as an annual rate (e.g., 24% per annum and not 2% per month). The *Interest Act* (<http://laws-lois.justice.gc.ca/eng/acts/I-15/>) (Canada) provides that where a contract does not provide for an annualized rate of interest equivalent to the monthly, weekly or daily rate of interest charged, no interest exceeding the rate of 5% per annum shall be chargeable.

Section 347 of the *Criminal Code of Canada* (<https://laws-lois.justice.gc.ca/eng/acts/c-46/>) deals with "criminal interest rates."

Calculating pre-judgment interest

On your claim form you will indicate the **pre-judgment interest** (<https://www.ontario.ca/page/prejudgment-and-postjudgment-interest-rates#section-1>) rate that you are claiming, which will be pursuant to an agreement or the *Courts of Justice Act*, but the amount of pre-judgment interest will not be calculated until the date judgment has been awarded:

(principal claim amount) x (pre-judgment interest rate %) ÷ (365 days per year) x (number of days from date the claim arose to the date judgment is awarded) = pre-judgment interest owing to date of judgment

Example 9

Naoki is filing a claim in Small Claims Court for \$5,000. He has a written contract signed by the parties that indicates interest will be calculated at 10% per year.

Naoki wants to claim pre-judgment interest at the rate of 10%, pursuant to the written contract. Sixty days had passed from the date the cause of action arose until the date judgment is awarded.

Pre-judgment interest would be calculated as follows:

$$\$5,000 \times 10\% \div 365 \text{ days per year} \times 60 \text{ days} = \$82.19$$

If the defendant fails to file a defence, you may be able to obtain default judgment against him or her. This process is discussed later on in this guide. If you obtain a default judgment signed by the clerk against him or her, the amount of interest awarded will be the amount owed on the date judgment is awarded.

If you go to trial or an assessment hearing, or make a motion for an assessment of damages in writing, you can ask the judge at the hearing (or in your motion documents) for pre-judgment interest up to the judgment date. You would calculate the total amount of pre-judgment interest owing up to date of judgment in the same manner:

(principal claim amount) x (pre-judgment interest rate %) ÷ (365 days per year) x (number of days from date the claim arose to date of judgment) = pre-judgment interest owing

Calculation of simple (not compound) interest is always on the amount owing from time to time as payments are received. For example, if several partial payments are made, the daily interest rate due must be re-calculated after each payment based on the reduced balance owed.

What happens next with the plaintiff's claim

What to do with your claim after it's filled out

You can fill out your claim, pay the fee and file it online using the Small Claims Court E-Filing Service portal delivered by the Ministry of the Attorney General. An easy to follow, step-by-step filing wizard will guide you through the filing process and help you complete and submit the claim. The court will e-mail you your court-stamped claim and instructions for your next steps. For more information and to file online, go to www.ontario.ca/page/file-small-claims-court-documents-online (<https://www.ontario.ca/page/file-small-claims-court-documents-online>).

If you prefer to file your claim in person or by mail, after you have filled out your claim form, the next step is to take or mail the claim and supporting documents, and copies for yourself and each defendant, to the Small Claims Court office. When you file your claim form you will be asked to pay a fee. The clerk will keep the original claim and one copy of the supporting documents in the court file. The copies will be stamped and returned to you. Keep one copy for your records and serve a stamped copy on each defendant. For more information about court fees, refer to "Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) ."

What Small Claims Court office you should file your claim in

If you are filing a plaintiff's claim, you must file your claim in the proper courthouse location. You have a couple of options. You can file your claim in the court that satisfies any of the following criteria:

- the court in the territorial division where the cause of action arose (i.e. where the event took place or problem occurred)
- the court in the territorial division in which the defendant lives or carries on business (if there are several defendants, then it can be the court in the territorial division in which any one of them lives or carries on business)
- at the court's place of sitting that is nearest to the place where the defendant lives or carries on business (if there are several defendants, then it can be the court nearest to the place in which any one of them lives or carries on business).

If you are unsure of which court office handles cases in the area where you want to file your claim you can call the court office where you think you should file the claim and ask the clerk. Court addresses and telephone numbers are available on the Ministry's website at: www.ontario.ca/attorneygeneral (<http://www.ontario.ca/attorneygeneral>) .

Example 10

Referring back to Example 6, your leaky roof is in Barrie and the roofing company's head office is in Whitby. You could file the claim in Barrie (where the problem occurred) or in Whitby (where the defendant carries on business).

How to serve a claim that has been filed

The Rules allow parties to arrange for service of their own claims as follows:

- you can serve the claim yourself
- you can have a friend, a business associate, or a private process server serve the claim for you
- If you have someone representing you they will arrange for service of your claim.

Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information.

Serving the claim outside the court's territorial division

If all the defendants have been, or will be, served with the claim outside the court's territorial division, then the plaintiff (named in a plaintiff's claim) may need to fill out an Affidavit for Jurisdiction [Form 11A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11a/scr-11a-jan21-en-fil.doc>) to prove that the action was, in fact, brought in the proper jurisdiction (subject to any order by the court).

Generally, you are not required to file the affidavit for jurisdiction with the court until you are ready to proceed with certain steps, such as asking for the defendant to be noted in default. However, if you are not certain that you are filing in the correct jurisdiction, you may wish to prepare an affidavit for jurisdiction to bring in with your claim and ask the clerk to review it. This may help to avoid delays and additional costs if you are later unable to prove the claim has been brought in the proper jurisdiction. In that case, you may not be entitled to proceed in the court where you filed your claim.

Example 11

Look back at our roofing company example. Your leaky roof is in Barrie and the roofing company is in Whitby. You choose to file the claim in Barrie where the problem occurred.

You serve your claim on the defendant at its place of business in Whitby and indicate this in your affidavit of service. Because the defendant was served outside of the Barrie court's territorial division, to have the defendant noted in default you would file an Affidavit for Jurisdiction [Form 11A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11a/scr-11a-jan21-en-fil.doc>) in which you indicate that you are entitled to proceed with your action in Barrie because it is where the event (cause of action) took place.

The affidavit for jurisdiction would not be necessary if you had filed your claim in the Whitby court because you would have served the defendant within the Whitby court's territorial division.

Proving the claim was served

One Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx>) is required for each person served. Set out who was served and how service was made. Generally, you are not required to file the affidavit of service with the court until you are ready to proceed with certain steps, such as making a written request to the clerk to note the defendant in default.

How long you have to serve the claim

A claim should be served on each defendant within six months after the date it is issued. This will help you avoid your claim being dismissed for delay by the clerk two (2) years after it was filed.

If necessary, you can ask the court to make an order extending the time for service before or after the two (2) year period has elapsed, and extend the time before the clerk can dismiss the action. To do so, file a Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-aug22-en-fil.docx>). There is a fee for this process. In your affidavit, explain why you need more time to serve the claim. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>)" for more information.

Making changes to your claim after it has been filed

If you have e-filed your claim online through the Small Claims Court E-Filing Service portal and have not yet served your claim, you may amend your claim by returning to the Small Claims Court E-Filing Service portal delivered by the Ministry of the Attorney General. If you wish to amend an e-filed claim after service on the defendant, you may amend your claim through the Small Claims Court Submissions Online portal or at the court office. You can access both online portals at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>).

A plaintiff may amend a claim without paying a fee and without obtaining an order from the court to amend, as long as:

- the amended claim is served on all parties, including any party noted in default
- the amended claim must be filed and served at least 30 days before the originally scheduled trial date, unless, the court, on motion, allows a shorter notice period or a clerk's order permitting the amendment is obtained.

You must file with the clerk a copy that is marked "AMENDED" with any additions underlined and any other changes identified on the amended claim.

However, if you wish to amend your claim when your trial date is less than 30 days away you will need to get an order from a judge or a clerk's order on consent to do so. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>)" for more information.

How long the defendant has to file a defence

The defendant may dispute all or a portion of the claim in his or her Defence [Form 9A]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docx)

[src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docx](https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docx)) . The defendant must serve and file the defence with the court within 20 days of being served with the claim. After the 20-day period has passed, the court office will accept a defence for filing if the defendant has not been noted in default.

If the defendant does not file a defence

If the defendant fails to file a defence with the court and at least 20 days have passed since you served the claim, you can fill out and file a Request to Clerk [Form 9B] ([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc)

[src=http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc](http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc)) asking the clerk to note the defendant in default. You must also file a completed Affidavit of Service [Form 8A]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx)

[src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx](https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx)) for each defendant to show the court that the defendant was served with the claim properly.

If you served your claim on all defendants outside the court's territorial division, you must also file an Affidavit for Jurisdiction [Form 11A] ([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11a/scr-11a-jan21-en-fil.doc)

[src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11a/scr-11a-jan21-en-fil.doc](http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11a/scr-11a-jan21-en-fil.doc)) at this time.

Consequences of noting a defendant in default

The Rules provide that a defendant who has been noted in default cannot file a defence or take any other step in the proceeding, except making a motion to set aside the noting of default, without leave of the court or the plaintiff's consent. A defendant who has been noted in default is not entitled to notice of any step in the proceeding and need not be served with any other document except those required by the Rules, such as: default judgment, amendment of a claim or defence, motion after judgment, and post-judgment proceedings against a debtor.

In some circumstances, a defendant may ask a judge for an order setting aside the noting in default. The plaintiff and defendant may also agree to a clerk's order setting aside the noting in default.

Refer to "Replying to a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/replying-claim>)" for more information on setting aside a noting in default.

If you no longer wish to proceed with a claim and the defendant has not filed a defence.

In some circumstances following service of your claim, you may reach an agreement with the defendant to settle the action outside of court, or you may simply decide not to proceed with your claim.

Where you no longer wish to proceed with your claim and the defendant does not file a defence, you may serve a **Notice of Discontinued Claim [Form 11.3A]** (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_3a/SCR-113A-Jan14-fil-EN.doc) on the defendant and file that notice with proof of service with the court. For more information on service refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ."

The claim may not be discontinued by or against a person under a legal disability (e.g., a person under 18 years of age), except with the court's permission.

When a defence is filed

The court will send a Notice of Settlement Conference to all parties unless the defence contains a proposal for terms of payment for the full amount claimed. The settlement conference should take place within 90 days after the first defence is filed. For more information on settlement conferences, refer to "Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) ."

A defendant who is served with an amended claim is not required to file an amended defence. However, the defendant may choose to file and serve an amended defence to respond to any new allegations made in the claim. Refer to "Replying to a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/replying-claim>) " for more information.

If the defendant files a defence which includes a proposal for terms of payment

The defendant may file a Defence [Form 9A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docx>) which admits part, or all, of the claim and makes a proposal for terms of payment. If the defendant admits all of the claim and his or her proposal is acceptable to you, you are not required to take any further steps in the case. The defendant is required to make payments directly to you in accordance with the proposal.

If the defendant admits only part of the claim and you are satisfied with his or her proposal for terms of payment, you will need to go to a settlement conference, and possibly trial, only for the part of the claim that was not admitted. Refer to "Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) " for more information on settlement conferences and trials.

If you do not agree with the defendant's proposal for terms of payment

If you do not agree with the defendant's proposal for terms of payment, you must request a terms of payment hearing, for which there is no fee. Within 20 days of service of the defence, fill out and file with the court a Request to Clerk [Form 9B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc>) . In the request to clerk form, ask the court to set up a terms of payment hearing because you dispute the defendant's proposed terms of payment contained in the defence. You must also serve a copy of the request form on the defendant.

If you filed your claim online, you may also need to file hardcopies of all filed and e-issued documents with the court at the same time you request your terms of payment hearing.

The court will send both parties a **Notice of Terms of Payment Hearing** setting out the date, time and place for the hearing. The court will also send the defendant a blank Financial Information Form [Form 20I] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/20i/SCR-20I->

Jan14-fil-EN.doc) , if the defendant is an individual and not a business. The defendant must fill out the financial information form and serve it on you before the hearing.

The financial information form cannot be filed with the court.

At the hearing the court may make an order that could differ from the defendant's proposal. If the defendant does not appear at the hearing, the plaintiff may obtain judgment for the part of the claim that the defendant admitted to owing.

If you accept the terms but the defendant does not make the payments as proposed

If the defendant fails to make payment in accordance with the proposal made in the defence, you can serve a Notice of Default of Payment [Form 20L] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/20L/SCR-20L-Jan14-fil-EN.doc>) on the defendant. If the defendant does not make arrangements to pay you within 15 days of being served with the notice, you can fill out and file with the court an Affidavit of Default of Payment [Form 20M] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20m/scr-20m-jan21-en-fil.doc>) along with a copy of the notice of default of payment.

Your affidavit of default of payment form must indicate:

- that the defendant failed to make payment in accordance with the proposal in his or her defence
- that 15 days have passed since the defendant was served with a notice of default of payment
- the amount that has been paid by the defendant and the unpaid balance

The clerk will sign judgment for the unpaid balance of the amount of the claim that the defendant had admitted to owing.

How to obtain judgment where the defendant has been noted in default

If the defendant to a plaintiff's claim fails to file a defence and has been noted in default, you can ask the court to grant you judgment in one of two ways:

- default judgment signed by the clerk (for "liquidated" claims only)
- judge's order for an assessment of damages (for "non-liquidated" claims)

In either situation, you do not have to prove the defendant's liability (i.e. that the defendant does, in fact, owe you something). You only have to prove the amount of the claim (the amount of money that the defendant should pay).

Liquidated claim

A "liquidated" claim is a claim for a set amount owing under a written contract or verbal agreement, such as an unpaid invoice, bounced cheque and/or unpaid loan.

How to get a default judgment signed by the clerk

If the defendant has been noted in default and your claim is a "liquidated" claim, then you can fill out a Default Judgment [Form 11B] (<http://view.officeapps.live.com/op/view.aspx?>

src=<http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11b/scr-11b-jan21-en-fil.doc>) and file it with the clerk.

If the clerk is satisfied with the contents of the default judgment and any supporting documents, the clerk will sign the default judgment for the amount of the claim and interest (if you claimed interest). There is a fee for this process. The clerk will serve copies of the default judgment on all parties.

Once you get a judgment, refer to “After judgment (<https://ontario.ca/document/guide-procedures-small-claims-court/after-judgment>) ” for more information on your next steps.

Non-liquidated claim

A “non-liquidated” claim is a claim for an amount that a judge will need to approve, such as damage to property, personal injury, poor workmanship, and/or termination pay. This type of claim will require an assessment of damages by a judge.

How to get an assessment of damages

If all defendants have been noted in default and your claim is a “non-liquidated” claim, then you can ask a judge to assess damages and make an order. To request this order, you can either file a motion in writing for an assessment of damages, or request an assessment hearing before a judge.

How to make a motion in writing for an assessment of damages

“Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) ” provides detailed information on how to make a motion in writing for an assessment of damages.

How to request an assessment hearing

If you filed your plaintiff's claim online through the Small Claims Court E-Filing Service portal, you can return to this portal to file your request for an assessment hearing. This request (a Request to Clerk [Form 9B] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09b/SCR-09B-Jan14-fil-EN.doc>)) can also be filed through the Small Claims Court Submissions Online Portal.

If you prefer to file your request in person or by mail, you can request an assessment hearing before a judge by filing a Request to Clerk [Form 9B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc>) . The clerk will send a notice of hearing (to the plaintiff only) indicating the date, time and location of the hearing.

An assessment hearing is like a trial except that the defendant is not present and you do not need to prove the defendant's liability. You must prove the amount that the defendant should pay to compensate you. Refer to “Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) ” for more information about how to prepare for an assessment hearing.

Once you get a judgment, refer to “After judgment (<https://ontario.ca/document/guide-procedures-small-claims-court/after-judgment>) ” for more information on your next steps.

If your case has more than one defendant and you are unable to serve one of them

In order to obtain an order on a motion in writing for an assessment of damages or at an assessment hearing, all defendants must have been noted in default. The clerk cannot note a defendant in default if the defendant has not been served. For more information on service refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ."

If the defendant obtains an order setting aside the default judgment

In some circumstances, a defendant may ask a judge for an order setting aside the noting in default or the default judgment that the plaintiff may have obtained. The plaintiff and defendant may also agree to a clerk's order setting aside the noting in default or default judgment. If the noting in default or default judgment is set aside and the defendant files a defence, the case will proceed to a settlement conference and, if necessary, a trial.

Refer to "Replying to a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/replying-claim>) " for more information on this process.

Filing the claim but doing nothing afterward

If you do not take the necessary steps to get final judgment within the time period set out in the Rules, the clerk of the court will make an order dismissing your case for delay.

Unless ordered otherwise, the clerk will dismiss your case if the following conditions are satisfied:

- more than two (2) years have passed since the date the claim was issued (or since the date an order was made extending the time for service of the claim)
- the action has not been disposed of by order or settled
- a motion in writing for an assessment of damages has not been filed
- a trial or assessment hearing date has not been requested

If you are served with an order dismissing your claim for delay and you want to ask the court to set aside the order, you can make a motion before a judge. If all parties consent to having the order set aside, you can file a Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.doc) signed

by all of the parties. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

What happens next with the defendant's claim

The defendant's claim must be filed at the office where the plaintiff's claim was filed. Remember, the defendant's claim must be filed within 20 days after the day on which the Defence [Form 9A]

(<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docx>) is filed

unless you obtain a court order to file it later.

After you have filled out your claim form, the next step is to file the claim and supporting documents, and one copy of each, with the Small Claims Court office where the original action was filed. When you file your claim form you will be asked to pay a fee. For more information about fees, refer to Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) . The clerk will keep the original claim and one copy of the documents in the court file. The copy will be stamped and returned to you. You must then make enough photocopies of the stamped copy to serve on each defendant to your defendant's claim.

It is possible to mail your claim and supporting documents, and one copy of everything, together with the fee to the Small Claims Court. However, if you can, you should take your documents in personally. If the defendant's claim is incomplete, the clerk will inform you so that you can fix the claim on the spot. This way, you will avoid wasting time mailing the documents back and forth with the court.

How to serve defendant's claim after it has been filed

The Rules allow parties to arrange for service of their own claims as follows:

- you can serve the claim yourself
- you can have a friend, a business associate, or a private process server serve the claim for you
- If you have someone representing you they will arrange for service of your claim

Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information.

How to prove the defendant's claim was served

One Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx>) is required for each person served. Set out who was served and how service was made. Generally, you are not required to file the affidavit of service with the court until you are ready to proceed with certain steps, such as making a written request to the clerk to note the defendant in default.

How long the defendant to a defendant's claim has to file a defence

The defendant to the defendant's claim may dispute the claim in his or her Defence [Form 9A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/09a/scr-9a-aug22-en-fil.docxc>) . The defendant to the defendant's claim must serve and file the defence at the court within 20 days of being served with the claim. After the 20-day period has passed, the court office will accept a defence for filing if the defendant to the defendant's claim has not been noted in default.

When a defence to a defendant's claim is filed

The Rules provide that the defendant's claim shall be tried and determined at the trial of the action, unless the court orders otherwise.

If the defendant to the defendant's claim does not file a defence

If the defendant to the defendant's claim fails to file a defence with the court and at least 20 days have passed since you served the claim, you can fill out and file a Request to Clerk [Form 9B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/09b/SCR-09B-Jan14-fil-EN.doc>) asking the clerk to note the defendant in default. You must also file a completed Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx>) for each defendant to the defendant's claim to show the court that the defendant was served with the claim properly.

If all defendants to the defendant's claim were served outside the territorial jurisdiction of the court, you must also file an affidavit for jurisdiction at this time.

How to obtain judgment against a defendant to the defendant's claim who has been noted in default

If a party against whom the defendant's claim is made has been noted in default, the Rules provide the judgment may be obtained against the party only at trial or on motion.

Checklist: Making a claim

Prepare your claim carefully. It will make it easier for all parties to understand who is making the claim and exactly what is being claimed.

1. Fill out a Plaintiff's Claim [Form 7A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) or Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx&wdOrigin=BROWSELINK>) . Attach an Additional Parties [Form 1A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/01a/scr-1a-jan21-en-fil.docx>) if there is more than one plaintiff or defendant, or the defendant is known by more than one name and there is insufficient space on the claim form. Be sure to check the "additional parties" box on the claim form.
2. File both the original claim and supporting documents, and a copy for yourself and each defendant, in person or by mail with the court, or file the claim and supporting documents online using the Small Claims Court E-Filing Service portal.
3. If you filed in person or by mail, the clerk will stamp the documents, keep the original, and return the copies to you. If you filed online, the court will e-mail you confirming your documents have been e-filed or e-issued. Make sure you print from the Ministry's website, or pick up from the court office, the "Guide to Serving Documents" and enough copies of the Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx>) to allow you to complete the affidavits required in step 8.
4. If you are filing a plaintiff's claim, make sure you are filing your claim in the proper territorial jurisdiction.
5. If you are filing a defendant's claim, file your claim with the court office where the plaintiff's claim was filed. Remember it must be filed within 20 days after the defence is filed unless the court orders otherwise.
6. Pay the filing fee.
7. You will need to serve a copy of the claim and supporting documents on each defendant.
8. You will need to have a completed Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-aug22-en-fil.docx>) for each defendant setting out who was served and how service was made. Remember – you are not required to file the affidavit of service with the court until you are ready to proceed with your next step. Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information.

Replying to a claim

Overview

If someone starts an action against you in Small Claims Court, you will receive either:

- a Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx>) ; or
- a Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx>) .

Most people who receive a claim have a lot of questions about what lies ahead. We encourage you to read this guide and "Small claims court: suing someone (<https://www.ontario.ca/page/suing-someone-small-claims-court>) " before you decide what action you want to take. These guides will give you information that may help with some of the decisions you will have to make.

What happens if you ignore the claim

If you ignore the claim it will be assumed that you admit to the truth of what is claimed against you. The plaintiff can then get a judgment against you, with no further notice to you, just as if there had been a trial. The judgment can then be enforced against you. To learn about what enforcement activities are available to the plaintiff to enforce a judgment, refer to "After judgment (<https://ontario.ca/document/guide-procedures-small-claims-court/after-judgment>) ."

Definition of a defence

A Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) is your answer to the claim. It is the form you will use to explain:

- what you disagree with in the claim, and why
- what, if anything, you agree with
- whether you want to propose terms of payment for all or part of the amount claimed

Filing a defence if under 18 years of age

An action against a minor must be defended by a litigation guardian. A litigation guardian is usually a parent or guardian. The litigation guardian must fill out a Consent to Act as Litigation Guardian [Form 4A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/sc%2F04a/scr-4a-jan21-en-fil.doc>) and file it with the court at the time the defence is filed.

If there is more than one defendant in an action

The plaintiff will list the name and contact information for one defendant on the Plaintiff's Claim [Form 7A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F07a%2Fscr-7a-aug22-en-fil.docx>) . For additional defendants, the plaintiff will tick the box on the claim form that indicates "Additional parties listed on attached Form 1A." The rest of the defendants and their contact information will be listed on the Additional Parties [Form 1A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx>) attached to the claim as the second page.

How do dispute the claim

If you want to dispute the claim, you will need to fill out a Defence [Form 9A]

([https://view.officeapps.live.com/op/view.aspx?](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx)

[src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx)) and make one copy for yourself and a copy for every plaintiff and defendant listed on the plaintiff's claim. You must serve a copy of your defence on every other party. File the completed defence form, together with one affidavit of service for each party served, with the court office indicated on the top of the claim.

How much time you have to file a defence

You have 20 calendar days from the date you were served with the claim to file your defence. After 20 days, the plaintiff can have you noted in default. After the 20 days have passed, you may still try to file your defence. Your defence will be accepted for filing as long as the plaintiff has not filed a request to note you in default.

How to fill in the defence

Make sure that you state on whose behalf the defence is being filed. For example, if there is more than one defendant, is the defence being filed on behalf of all of the defendants or just one defendant?

Include names and contact information for all plaintiffs and defendants indicated on the claim. If the claim has more than one plaintiff or defendant you will need to attach an Additional Parties [Form 1A]

([https://view.officeapps.live.com/op/view.aspx?](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx)

[src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F01a%2Fscr-1a-jan21-en-fil.docx)) . Check the box on the defence form that indicates "Additional plaintiffs (or defendants) listed on attached Form 1A."

Write or type your name on your defence form **as it appears in the claim** (e.g. if the claim says "Alex Andrew Wong", the defence should say "Alex Andrew Wong", **not** "Alex Wong"). If your legal name is different from the name used on the claim, indicate the error and state your full legal name in your defence.

If your address is listed incorrectly on the claim, put your correct address on the defence. If you do not provide your correct address, the court and the other parties will continue to send documents to the incorrect address and you will not know what is happening in your case.

Fill in the court address and number file from the plaintiff's claim.

Organize any supporting documents you need to file with the defence. If your defence is based in whole, or in part, on a document, attach a copy of the document to your defence (e.g. a contract or invoice). If you no longer have the document, or cannot find it, state in your defence the reason why the document is not attached.

Review the "Reasons for claim and details" section of the plaintiff's claim. In your defence, give clear, detailed reasons why you dispute the claim. It is often helpful to use separately numbered paragraphs. If the claim has numbered paragraphs, you can write your reply to each paragraph using the same numbers used in the claim.

Try to be brief. You may have many other quarrels with the plaintiff unrelated to the claim, but do not include them here. Do not try to use "legal language." Just make your points clearly and in your own words.

Example 1

You are a roofer. You put a roof on an addition to a customer's house and now the customer is suing you. He says the roof leaked and he had to pay \$1,250 to fix it.

In the "Reasons for claim and details" section of the claim he says:

"I am claiming the following amounts and am attaching my invoices to this claim":

- Cost of replacing water damaged chair = \$479
- Cost of cleaning carpet = \$135
- Cost of repairing roof = \$1,250

You might say, in your "Reasons for disputing the claim and details" section of the defence:

- I do not know about any chair in the area that could have been damaged by a leak from the roof.
- There was only a small rug in the room and it would not cost \$135 to clean it.
- If there was a leak at all, it was caused by faulty shingles.

If you agree you owe the money

You may complete a Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) and, in your defence, you can admit the amount owing and propose a payment date. If you do not file a defence, and the plaintiff takes additional steps in the proceeding, you may be responsible for paying the extra costs incurred by the plaintiff.

You must make your payments directly to the plaintiff. You should keep proof of your payments (e.g. a copy of your cheques or money order stubs).

Example 2

You are the roofer in Example 1. If you admit that you owe the money, you might indicate on the defence form:

"I admit the full claim made against me in the amount of \$1,864 and propose the following terms of payment: \$1,864 on August 1, 2010."

If you agree you owe the money but cannot afford to pay it all right now

You may not be able to pay what you owe because you do not have the money to pay right now. Sometimes instalment payments can be the answer, or a delayed payment date might satisfy both parties.

If you agree that you owe the money claimed, but cannot afford to pay it immediately, you may complete a Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>). In your defence form, you can make a proposal for "terms of payment". This is where you can tell the plaintiff what sort of payment arrangements you want to make, such as weekly or monthly payments.

Example 3

You are the roofer in Example 1. You admit that you owe the \$1,864, but work has been slow lately and you have a lot of other financial obligations. You might indicate on the defence form:

"I admit the full claim made against me in the amount of \$1,864 and propose the following terms of payment: \$300 per month for five months commencing June 1, 2010, and an additional \$364 on November 1, 2010."

If you only agree you owe part of what is claimed

You can also make a proposal for terms of payment for only part of the amount claimed. You would then make payments as proposed and go to a settlement conference and, if necessary, a trial regarding the amount that you do not admit to owing.

When you should start making payments following a proposal

The Rules state that you must make the payments in your proposal as though the proposal were an order of the court. Keep copies of your proof of payment.

Failing to make payments according to your proposal

If you fail to make payment in accordance with the proposal in your defence, and the plaintiff has not disputed your proposal, the plaintiff can serve a Notice of Default of Payment [Form 20L] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F20l%2Fscr-20l-jan14-en-fil.docx>) on you. You must then make arrangements to pay the plaintiff the money owing under the proposal within 15 days of being served with the notice. If you do not, the plaintiff can ask the clerk to sign judgment for the part of the claim that you admitted to owing in your defence.

When the plaintiff does not agree with my proposal

If the plaintiff does not agree with your proposal for terms of payment in your defence, the plaintiff can ask the court to schedule a terms of payment hearing. The plaintiff must file the Request to Clerk [Form 9B] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09b%2Fscr-09b-jan14-fil-en.docx>) asking for the hearing within 20 days after receiving a copy of your defence from you. The plaintiff will also serve this request on you.

The court will send all parties a Notice of Terms of Payment Hearing setting out the date, time and place for the hearing. The court will also send you a blank Financial Information Form [Form 20I] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F20i%2Fscr-20i-jan14-en-fil.docx>) if you, not your business, is being sued. If you are an individual who is being sued, you must fill out the Financial Information Form and serve it on the plaintiff before the hearing.

You cannot file the Financial Information form with the court.

At the hearing, the court may make a payment order that differs from your proposal for terms of payment. If you do not appear at the hearing, the plaintiff may obtain judgment for the part of the claim that you admitted to owing in your defence.

If you do not make the payments ordered at the terms of payment hearing

If you do not make the payments ordered at the terms of payment hearing, the plaintiff may ask the clerk to sign default judgment against you for the outstanding amount, unless the court has ordered otherwise.

If you think the plaintiff should pay

If you believe that you have a claim to make against the plaintiff indicate that in the defence form and file a Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx>) . For example, if the roofer in Example 1 has not been paid in full for the work, he might file a defendant's claim against the customer for the amount owing.

If you think someone else is responsible for the plaintiff's loss

You may believe that you have a claim to make against someone else who, in your opinion, should be responsible for paying the claim. If you wish to make a claim against another party, indicate that in your defence form and complete and file a Defendant's Claim [Form 10A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F10a%2Fscr-10a-aug22-en-fil.docx>) . A defendant's claim is like a plaintiff's claim, except that it is made by the defendant against the plaintiff or someone else.

When you fill out your defendant's claim, you are the plaintiff since you are now the one making a claim. This is referred to as being "a plaintiff by defendant's claim." In your defendant's claim, it is important to correctly identify who you are suing. Refer to "Making a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/making-claim>)" for more information about completing a defendant's claim.

Example 4

The roofer in Example 1 might feel that if the roof does leak, it is because the shingles were faulty. In that case, the roofer might file a defendant's claim against another party, the manufacturer of the shingles. The roofer can say, "I do not agree that there is anything wrong with the roofing job but if there is, then it is the shingle manufacturer who should pay you, not me."

You must file your defendant's claim within 20 days after you file your defence, unless you make a motion and ask the court to allow you to file it later. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>)" for more information about how to make a motion.

What to do with you defence after you have filled it out

After you have filled out your Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) , you must serve a copy of it on each party to the action. An Affidavit of Service [Form 8A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F08a%2Fscr-8a-aug22-en-fil.docx>) must be completed for each party served and filed with the court. The affidavit of service is proof that the defence has been served on each party. Each affidavit of service must be sworn or affirmed by the person who served the documents. There are very specific rules for serving documents. Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information on the rules and procedures relating to service of documents and preparing affidavits of service.

The next step is to file the defence (with any supporting documents and affidavit(s) of service) to the Small Claims Court office where the claim was filed. The address of the court office will be on the top of the claim you receive. You can file these documents online using the Small Claims Court Submissions Online portal. You can access this portal and learn more about e-filing at <https://www.ontario.ca/page/file-small-claims-court-documents-online> (<https://www.ontario.ca/page/file-small-claims-court-documents-online>) . There will be a fee for filing the defence. For more information about court fees, refer to "Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) ."

Another way to file the defence is in person at the courthouse. The clerk will keep the original.

It is also possible to mail your defence, supporting documents and affidavit(s) of service, together with the fee to the Small Claims Court.

Next steps

If you disputed all or part of the claim you will have to attend a settlement conference. The settlement conference should take place within 90 days after the first defence in the case is filed. It is helpful if you advise the court in writing when you file your defence if there are particular days when you cannot attend court during that 90-day period. You **must** attend the settlement conference. Refer to "Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) " for more information.

If you admitted the entire claim and made a proposal for terms of payment, and the plaintiff does not dispute it, no further steps are required as long as you make your payments on time.

Remember, you are free at any stage to try to work out an agreement with the plaintiff, which could settle your lawsuit.

What happens if you are noted in default

If you have been noted in default because you did not file a defence within 20 days of being served with the claim, the plaintiff can obtain default judgment against you without further notice to you. The Rules also provide that once you are noted in default, you cannot file a defence or take any other step except to bring a motion to set aside the noting of default, unless you have the court's permission or the plaintiff's consent.

How to ask for the noting in default or a default judgment to be set aside

There are two ways to do this under the Rules:

1. You may bring a motion to set aside the noting in default or default judgment. The Rules provide that the defendant should bring a motion to set aside a default judgment "as soon as is reasonably possible in the circumstances." The Rules also outline the test that you will have to meet. You should read Rule 11.06 in particular, to make sure that you have addressed all the requirements. In your materials you should explain what your defence is and why you failed to file your defence in time.
2. You may also file a Request for Clerk's Order on (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.doc) Consent [Form 11.2A] in which all parties consent to set aside the noting in default and default judgment. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

If the noting in default and/or default judgment is set aside, you will need to complete and file a Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) .

When you are served with an amended claim

If you are served with an amended claim, you are not required to file an amended defence. However, you may wish to file an amended defence in order to reply to any new claims made.

How to amend your defence

You may amend your defence without paying a fee and without obtaining an order from the court to do so, as long as:

- the amended defence is served on all parties, including any party noted in default
- the amended defence is filed with the court at least 30 days before the originally scheduled trial date, unless the court on motion allows a shorter notice period, or a clerk's order permitting the amendment is obtained

You must file a copy that is marked "AMENDED" with any additions underlined and any other changes clearly identified on the amended defence.

However, if you wish to amend your defence when your trial is less than 30 days away, you will need an order from a judge or a clerk's order on consent to do so. Refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

If you want to settle

For more information about settling a claim, refer to "Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) ."

Checklist: Replying to a claim

1. Review the claim thoroughly.
2. Complete a Defence [Form 9A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) . If you are admitting part, or all, of the claim, make your proposal for terms of payment. For the part of the claim that you dispute, give a full response to what is claimed. It may be helpful to use separately numbered paragraphs. Attach an Additional Parties [Form 1A] (<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fontariocourtforms.on.ca%2Fstatic%2Fmedia%2Fuploads%2Fcourtforms%2Fsc%2F09a%2Fscr-9a-aug22-en-fil.docx>) form, if there is more than one plaintiff or defendant in the case and check the "Additional plaintiff/defendant" box on the defence form. Fill in the court file number from the plaintiff's claim.
3. Organize any supporting documents you need to file with the defence.
4. File both the original defence (with any supporting documents and affidavit(s) of service) and a copy for yourself and each defendant, with the court in person or by mail, or file the defence and documents online

using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) .

5. If you filed online, the court will e-mail you confirming your documents have been e-filed.
6. Remember the defence must be filed within 20 calendar days after you were served, unless the court extends the time. You can try to file your defence after the 20-day period expires. The court office will accept your defence for filing as long as you have not been noted in default.
7. Pay the fee to file the defence.

Serving documents

Overview

A lot of paperwork is involved in most court cases, and it is important that copies of documents get to everyone who needs them.

"Serving" documents means providing copies of documents to all other parties in a court case. Documents must be served at each step in the court process, unless the *Rules of the Small Claims Court* (<https://www.ontario.ca/laws/regulation/980258>) (after this, referred to as the Rules) provide otherwise. By serving the other parties, you are **notifying** them of the step you are taking and of the information you will be presenting to the court, and giving them an opportunity to respond.

The Rules have specific requirements about service of documents. The Rules describe which party must serve a document, how service should be made, how particular kinds of entities (such as corporations or government) may be served, and the timelines for service.

Whether you are serving a Plaintiff's Claim [Form 7A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) or Defendant's Claim [Form 10A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) , or serving other documents (for example, a Notice of Garnishment [Form 20E] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) or Notice of Motion and Supporting Affidavit [Form 15A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>)) this guide will attempt to help you understand the importance of serving the documents properly (as set out in the Rules) and answer some general questions about serving documents.

In Small Claims Court, parties arrange for service of their own documents. You can:

- serve the documents yourself
- have a friend, a business associate, or a private process server serve the documents for you
- have your representative arrange for service of your documents

The person serving the documents should make careful, detailed notes regarding the name of the person served, the date, time, and manner of service made, and any other related details. This will assist later when the person prepares an affidavit of service. An affidavit of service is a sworn or affirmed statement that tells the court who was served, and when and how service was made.

Serving a claim

How to serve a Plaintiff's Claim [Form 7A]

A claim is the first official notice of the case that the defendant (the person you are suing) will have. For this reason, there are special requirements for serving the claim in the Rules. The Rules provide for several specific types of service of a claim. How you serve the claim, and on whom, depends on what type of defendant is being sued (for example, whether the defendant is a person or a company).

Excerpt from the Rules

"Plaintiff's or Defendant's Claim"

"8.01(1) A plaintiff's claim or defendant's claim (Form 7A or 10A) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03."

How long the plaintiff has to serve the claim

A plaintiff's claim and defendant's claim must be served on the defendant within six months after the date the claim is issued by the court. If there is more than one defendant in the case, all defendants must be served within this timeframe.

How the plaintiff can extend the time for service of the claim

A plaintiff can file a motion to request an order to extend the time for service. You must explain to the judge why you were not able to serve the claim within the six months.

Excerpt from the Rules

"Time for Service of Claim"

"8.01(2) A claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed."

Refer to "Motions and clerk's orders" for more information on making a motion.

Serving a claim on a party who is out of province

If the person you are suing normally lives in Ontario but is away (for example, working on a job in Montreal), you can serve the claim on the person in Montreal just as you would if he or she were in Ontario.

If the person lives or carries on business outside of Ontario, you could serve your claim on the person outside of Ontario just as you would if he or she lived or carried on business in Ontario. If you request it, the court may award

additional costs to you to cover any extra expense involved in serving the claim outside Ontario.

If you are unable to serve your claim

When you try to serve your claim, you might find that the party has moved and you cannot find a forwarding address. You might believe that the party knows you are trying to serve the claim and is avoiding you. In either case, you may file a motion to seek an order for substituted service under Rule 8.04. The method ordered by the court is substituted for the method(s) of service allowed for that particular document and on that particular party in the Rules.

Excerpt from the Rules

"Substituted Service"

"8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service."

For more information about making a motion, refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) ."

Types of substituted service of a claim you can ask for

The judge will decide what kind of substituted service will be permitted. Examples of substituted service you might request are:

- leaving the claim with a relative of the defendant
- mailing the claim to the address of the defendant's employer
- posting the claim on the door of a particular residence or other place

Before asking for an order for substituted service, you should already have tried several times to serve the document by the method or methods provided by the Rules. Be prepared to give details of how you tried to serve the claim, what happened and why the method of service you are asking for will succeed.

Example 1

Meera wants to serve Norman with a plaintiff's claim but she cannot find him. She makes a motion for substituted service requesting that the judge make an order allowing her to serve him by giving a copy (in an envelope addressed to Norman) to his mother.

In her affidavit, Meera writes that:

- she does not know where Norman lives, but knows where Norman's mother lives
- she believes the claim will come to Norman's attention if it is served on his mother because she knows that he visits his mother each week and calls her regularly on the telephone

- Norman has indicated to mutual friends that he intends to be at his mother's anniversary party in two weeks

If the court makes an order allowing substituted service, you must serve on the party:

- a copy of the order
- the notice of motion and supporting affidavit
- the claim

In Small Claims Court, an order made by a judge is generally set out in an endorsement record. An endorsement record is the official document that records the judgment or court order.

Service of defence

A defence is your answer to the claim. The Rules provide for several types of service of a defence. How you serve the defence, and on whom, depends on what type of plaintiff is suing you (for example, whether the plaintiff is a person or a company).

Excerpt from the Rules

"Defence and Other Documents"

"8.01(14) The following documents may be served by mail, by courier, by email, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise:"

- A defence
- Any other document not referred to in subrules (1) to (13)

How long a defendant has to serve the defence

You have 20 calendar days from the date you were served with the claim to serve and file your defence. After 20 days, the plaintiff can have you noted in default. After the 20 days have passed, you may still try to serve and file your defence. The court office will accept your defence for filing as long as the plaintiff has not filed a request to note you in default.

Extending the time for service of the defence

The court office will accept your defence for filing as long as the plaintiff has not filed a request to note you in default. If you have been noted in default, the Rules provide that you cannot file a defence or take any other step in the proceeding, except making a motion to set aside the noting of default, without leave of the court or the plaintiff's consent.

Refer to "Replying to a claim" (<https://www.ontario.ca/document/guide-procedures-small-claims-court/replying-claim>) for more information on setting aside a noting in default.

Personal service and alternatives to personal service

Personal service

To serve a document by means of personal service, you, or someone acting on your behalf, will hand the document to the party (for example, the defendant). The person serving the document must first be satisfied that the person being handed the document is in fact the party. If the party refuses to take the document, you can drop it on the floor at his or her feet. The person who serves the document would note this in his or her affidavit of service because it is a related detail.

Excerpt from the Rules

"Personal Service"

"8.02 If a document is to be served personally, service shall be made,"

"Individual"

"(a) on an individual, other than a person under disability, by leaving a copy of the document with him or her;"

"Municipality"

"(b) on a municipal corporation, by leaving a copy of the document with the chair, mayor, warden or reeve of the municipality, with the clerk or deputy clerk of the municipality or with a lawyer for the municipality;"

"Corporation"

"(c) on any other corporation, by leaving a copy of the document with"

- i. an officer, a director or another person authorized to act on behalf of the corporation, or
- ii. a person at any place of business of the corporation who appears to be in control or management of the place of business;

"Board or Commission"

"(d) on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;"

"Person Outside Ontario Carrying on Business in Ontario"

"(e) on a person outside Ontario who carries on business in Ontario, by leaving a copy of the document with anyone carrying on business in Ontario for the person;"

"Crown in Right of Canada"

"(f) on Her Majesty the Queen in right of Canada, in accordance with subsection 23(2) of the *Crown Liability and Proceedings Act* (Canada);"

"Crown in Right of Ontario"

"(g) on Her Majesty the Queen in right of Ontario, in accordance with section 15 of the *Crown Liability and Proceedings Act, 2019*;"

"Attorney General"

"(g.1) on the Attorney General of Ontario, by leaving a copy of the document with an employee of the Crown at the Crown Law Office (Civil Law) of the Ministry of the Attorney General;"

"Absentee"

"(h) on an absentee, by leaving a copy of the document with the absentee's committee, if one has been appointed or, if not, with the Public Guardian and Trustee;"

"Minor"

"(i) on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having his or her care or lawful custody, by leaving another copy of the document with the parent or other person;"

"Mentally Incapable Person"

"(j) on a mentally incapable person,"

- i. if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney,
- ii. if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,
- iii. if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name

and address with the Public Guardian and Trustee and leaving an additional copy with the person;

"Partnership"

"(k) on a partnership, by leaving a copy of the document with"

- i. any one or more of the partners, or
- ii. a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and

"Sole Proprietorship"

"(l) on a sole proprietorship, by leaving a copy of the document with"

- i. the sole proprietor, or
- ii. a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.

Alternative to personal service

If you are unable to serve a document by means of personal service, you may choose an "alternative to personal service." This means that you are choosing another method of service (e.g. at place of residence) permitted by the Rules. See Rule 8.03 below.

Excerpt from the Rules

"Alternatives to personal service"

"8.03 (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with this rule."

"At Place of Residence"

"(2) If an attempt is made to effect personal service at an individual's place of residence and for any reason personal service cannot be effected, the document may be served by,"

- a. a. leaving a copy in a sealed envelope addressed to the individual at the place of residence with anyone who appears to be an adult member of the same household; and

- b. a. on the same day or the following day, mailing or sending by courier another copy of the document to the individual at the place of residence.

"Corporation"

"(3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Public and Business Service Delivery (<https://www.ontario.ca/page/ministry-public-business-service-delivery>) , service may be made on the corporation"

- a. a. by mailing or sending by courier a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address and
- b. a. by mailing or sending by courier a copy of the document to each director of the corporation as recorded with the Ministry of Public and Business Service Delivery (<https://www.ontario.ca/page/ministry-public-business-service-delivery>) , at the director's address as recorded with that Ministry.

"When Effective"

"(4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed or verified by courier that it was delivered."

"Acceptance of Service by Lawyer or Paralegal"

"(5) Service on a party who is represented by a lawyer or paralegal may be made by leaving a copy of the document with the lawyer or paralegal, or with an employee in the lawyer's or paralegal's office, but service under this subrule is effective only if the lawyer, paralegal or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance."

"(6) By accepting service, the lawyer or paralegal is deemed to represent to the court that he or she has the client's authority to accept service."

"Service of Claim"

"(7) Service of a plaintiff's claim or defendant's claim on an individual against whom the claim is made may be made by sending a copy of the claim by registered mail or by courier to the individual's place of residence, if the signature of the individual or any person who appears to be a member of the same household, verifying receipt of the copy, is obtained."

"(8) Service under subrule (7) is effective on the date on which receipt of the copy of the claim is verified by signature, as shown in a delivery confirmation provided by or obtained from Canada Post or the commercial courier, as the case may be."

"Crown in Right of Ontario, Attorney General"

"(9) Service of a document on the Crown in Right of Ontario or on the Attorney General of Ontario may be made by emailing a copy of the document to the email address for service specified for the Crown or the Attorney General, as the case may be, on the website of the Ministry of the Attorney General."

"Children's Lawyer"

"(10) Service of a document on the Children's Lawyer may be made by emailing a copy of the document to the email address for service specified for the Children's Lawyer on the website of the Ministry of the Attorney General."

"Public Guardian and Trustee"

"(11) Service of a document on the Public Guardian and Trustee, and any service of a document that involves leaving a copy with the Public Guardian and Trustee, may be made with respect to the Public Guardian and Trustee by emailing a copy of the document to the email address for service specified for the Public Guardian and Trustee on the website of the Ministry of the Attorney General."

One example of an alternative to personal service is provided in Rule 8.03(2)(a) (service at place of residence), which allows you to serve a document in a sealed envelope addressed to the individual at his or her residence by leaving a copy with an adult member of the same household. You must also, on the same day or the following day, mail or send by courier another copy of the document to the individual at the place of residence. Service is effective on the fifth day after the document is mailed or verified by courier that it was delivered.

Example 2

Meera wants to serve Norman with a plaintiff's claim. She knows where he lives and goes in person to his house to deliver the claim to him. In case Norman is not home, she puts the claim in a sealed envelope addressed to Norman.

When Meera knocks on Norman's door a woman answers. Meera asks if Norman is home, but the woman says no. Meera then asks the woman what her name is and if she lives there. The woman says, "I'm Susan Long and yes, I live here." The woman appears to be at least 18 years of age.

Meera hands the envelope containing the claim to Susan. Meera then mails another copy of the document to Norman at his home. Meera makes a note of Susan's name for her affidavit of service.

If Susan had refused to provide her name or say whether or not she lived at Norman's house, Meera could still leave a copy of the claim with her as long as Susan appeared to be a resident of Norman's household and at least 18 years of age.

In another example of an alternative to personal service, Rule 8.03(7) provides that a **claim** can be served by registered mail or courier if the signature of the individual or any person who appears to be a member of the same household, verifying receipt of the copy, is obtained. Rule 8.03(8) provides that service is effective on the day on which receipt of the copy of the claim is verified by signature as shown on the delivery confirmation provided by Canada Post or the commercial courier.

Example 3

Meera wants to serve Norman with a plaintiff's claim. She goes to his house several times to serve it, but no one answers the door. Meera does not know of any other way to contact Norman to find him. She believes Norman lives there because he responded to mail she sent there before.

Meera mails the claim to Norman by registered mail. On the day Norman or his spouse signs for the document, Meera prints off the delivery confirmation including the signature verifying the receipt from the Canada Post website. Meera includes the delivery confirmation with her Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) .

If Meera had sent the claim to Norman by courier, she would include the delivery confirmation with signature provided by the commercial courier company when filing her Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) .

Service of particular documents

How documents (other than the claim) are served

The Rules must be followed when serving court documents. In some cases it is the clerk of the court who will serve documents by mail. However, in most cases it is the party's responsibility to serve his or her own documents on the other parties.

Excerpt from the Rules

"Default Judgment"

"8.01 (4) A default judgment (Form 11B) shall be served by the clerk on all parties named in the claim by mail or by email."

"Assessment Order"

"(5) An order made on a motion in writing for an assessment of damages under subrule 11.03(2) shall be served by the clerk on the plaintiff by mail or by email."

"(5.1) A plaintiff who wishes for service under subrule (5) by mail shall provide a stamped, self-addressed envelope with the notice of motion and supporting affidavit."

"Settlement Conference Order"

"(6) An order made at a settlement conference shall be served by the clerk by mail or by email on all parties that did not attend the settlement conference."

"Summons to Witness"

"(7) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's representative, at least ten days before the trial date; at the time of service attendance money calculated in accordance with the regulations made under the *Administration of Justice Act* shall be paid or tendered to the witness."

"Notice of Garnishment"

"(8) A notice of garnishment (Form 20E) shall be served by the creditor,"

- a. a. together with a sworn affidavit for enforcement request (Form 20P), on the debtor, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
- b. a. together with a garnishee's statement (Form 20F), on the garnishee, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

"Notice of Garnishment Hearing"

"(9) A notice of garnishment hearing (Form 20Q) shall be served by the person requesting the hearing on the creditor, debtor, garnishee, co-owner of debt, if any, and any other interested persons by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03."

"Notice of Examination"

"(10) A notice of examination (Form 20H) shall be served by the creditor on the debtor or person to be examined personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03."

"Financial Statement"

"(11) If the person to be examined is the debtor and the debtor is an individual, the creditor shall serve the notice of examination on the debtor together with a blank financial information form (Form 20I)."

"(12) The notice of examination"

- a. a. shall be served, together with the financial information form if applicable, at least 30 days before the date fixed for the examination; and
- b. a. shall be filed, with proof of service, at least three days before the date fixed for the examination.

"Notice of Contempt Hearing"

"(13) A notice of contempt hearing shall be served by the creditor on the debtor or person to be examined personally as provided in rule 8.02."

"Defence and Other Documents"

"(14) The following documents may be served by mail, by courier, by email, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise:"

- A defence.
- Any other document not referred to in subrules (1) to (13).

General service information

What does the person making service have to provide to the party

The person making service will provide the party (by whatever method of service being used) with a copy of the document. If there is more than one party being served, each party must be served with his or her own copy of the document being served. For example, if you are serving two parties at the same address by mail or by courier, you must send a copy of the document to each party in separate addressed, sealed envelopes. Complete an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) for each party.

If personal service is not required under the Rules, often service of documents will be fairly simple - either sending it by mail or by courier, dropping it off at an office, or having someone serve it for you.

Sometimes distance makes it inconvenient or impossible for you to serve your own documents. Sometimes it may be an awkward or a potentially confrontational situation. If sending the document by mail or by courier is not allowed under the Rules, there are professional process servers who will serve the document for you for a fee. You can get the name of a process server from the yellow pages. A lawyer or paralegal may also be able to recommend a suitable agency.

You could also ask a friend to serve a document for you. If the party you are serving is in another town, you might be able to mail it to a friend there and have him or her serve it for you.

Remember, you will have to file with the court an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) that is signed and sworn or affirmed by the person who has served the document.

Recovering the cost of service

If you are successful in your claim, you may be entitled to recover some costs. Refer to “Getting ready for court (<https://www.ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>)” for more information.

If you served the document by mail or courier and you wish to recover the costs, you must provide the court office with a receipt showing what you paid.

If you hired someone to serve the document for you, you must provide the court office with a detailed invoice or statement setting out the amount paid to have the document served. You can ask for a maximum of \$60 per person to be served regardless of the amount paid or number of attempts made to serve the document, unless the court orders otherwise [Rule 19.01(3)].

Changing address of service

It is up to you to be sure that the court and the other parties in the case always have your proper address so that they can serve documents on you. If your address changes, you must serve written notice of the change on the court and other parties within seven days after the change takes place. Make detailed notes of when and how you served your new address on each party and the court. The court may require an affidavit of service at some future time, so you will need to keep a record of these details.

If you do not advise the court and the other parties of your change of address, they are entitled to serve you with documents at your old address. That will mean you are not fully informed about what is happening in your case. Orders may be made without your knowledge and in your absence.

If you are represented in your case (for example, by a lawyer or paralegal), they must advise the court of your address, telephone number and email address if they stop representing you before the case is over.

When a document is not received, or received late

If a party did not receive a document that was supposed to have been served on him or her under the Rules, or received it after the timeframe allowed under the Rules, the party can bring a motion to the court for the order he or she needs in the circumstances.

For example, where a defendant does not receive the claim but receives a default judgment from the court, he or she may wish to bring a motion to set aside the default judgment and extend the time to file a defence. In another example, if a party received a notice of motion less than 7 days

before the hearing date, he or she may request an adjournment of the motion in order to have more time to prepare. For more information, refer to “Motions and clerk’s orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>)”.

Serving a party under legal disability

A party under “legal disability” means:

- a minor (a person under 18 years of age)
- a mentally incapable person within the meaning of section 6 or section 45 of the *Substitute Decisions Act, 1992* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_92s30_e.htm) or
- an absentee within the meaning of the *Absentees Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90a03_e.htm) .

If a party in an action is a party under legal disability, then he or she must have a litigation guardian. Documents can be served on the party by serving the person named as the litigation guardian.

A minor (a person under the age of 18) may sue someone for any sum up to \$500 without requiring a litigation guardian. A minor who is a plaintiff in an action up to \$500 can be served in the same way as an adult.

Serving a document by mail

Rule 8.01 and the chart in this guide (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents#section-5>) can help you determine whether the document you want to serve can be served by mail. If it can, then the document is considered to be served on the 5th day following the date of mailing.

However, if you served the claim on the defendant by an alternative to personal service by registered mail or courier, you need the signature of the individual, or any person who appears to be a member of the same household, verifying receipt before service is effective. See Part Two of this guide for more information on service of a claim.

You cannot file your affidavit of service until after the date the document is deemed to be served.

Excerpt from the Rules

“Service by Mail”

“8.07 (1) If a document is to be served by mail under these rules, it shall be sent, by regular lettermail or registered mail, to the last address of the person or of the person’s representative that is,”

- on file with the court, if the document is to be served by the clerk;
- known to the sender, if the document is to be served by any other person.

“(2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.”

"(3) This rule does not apply when a claim is served by registered mail under subrule 8.03(7)."

Regular mail includes postal services provided by Canada Post, including Priority and Xpresspost, unless otherwise ordered by a judge.

Serving a document by courier

Rule 8.01 and the chart in this guide (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents#section-5>) can help you determine whether the document you want to serve can be served by courier. If it can, then the document is considered to be served on the 5th day following the date on which the courier verifies to the sender that the document was delivered.

However, if you served the **claim** by an alternative to personal service by having it couriered to the defendant, it is considered to be served on the day the signature verifying receipt of the claim was received. See Part Two of this guide for more information on service of a claim by courier.

You cannot file your affidavit of service until after the date the document is deemed to be served.

Excerpt from the Rules

"Service by Courier"

"8.07.1 (1) If a document is to be served by courier under these rules, it shall be sent by means of a commercial courier to the last address of the person or of the person's representative that is on file with the court or known to the sender."

"(2) Service of a document sent by courier is deemed to be effective on the fifth day following the date on which the courier verifies to the sender that the document was delivered."

"(3) This rule does not apply when a claim is served by courier under subrule 8.03(7)."

Serving a document by email

Rule 8.08 and the chart in this guide (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents#section-5>) can help you determine whether the document you want to serve can be served by email. If it can, then the document is normally considered to be served on the day the email is sent. However, if the document is sent between 4 p.m. and midnight or on a Saturday, a Sunday, or a holiday, then it is considered to be served on the next day that is not a Saturday, Sunday, or holiday.

Unless specified otherwise in the rules, you can email a document to a party or their representative to the last email address they gave you or if this email address was not provided, then their last known email address. You can also email the document to the email address listed for a party's lawyer or paralegal in the Lawyer and Paralegal Directory found on the Law Society of Ontario website (<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal>) .

When you are serving by email, your email must include

- the sender's name, address, telephone number, and email address
- the name of the person or representative being served
- the date and time of the email
- the name and telephone number of a person to contact in the event of a transmission problem

Excerpt from the Rules

"8.08 (1) Except as otherwise specified in any other rule, if a document is to be served by email under these rules, it shall be sent to,"

- a. a. the last email address provided by the person to be served or the person's representative or, if no email address is provided, to the person's or representative's last known email address; or
- b. a. in the case of a lawyer or paralegal whose email address is not provided, the email address for the lawyer or paralegal as published on the Law Society of Ontario's website.

"(2) In the case of a document to be served by the clerk by email, the document shall, except as otherwise specified in any other rule, be sent to the email address provided for under subrule 1.05.2 (1)."

"(3) The email message to which a document served by email in accordance with these rules is attached shall include,"

- a. a. the sender's name, address, telephone number, and email address
- b. a. the name of the person or representative being served
- c. a. the date and time of the email
- d. a. the name and telephone number of a person to contact in the event of a transmission problem

"(4) Service of a document by email is deemed to be effective"

- a. a. on the day the email is sent

- b. a. if the email is sent between 4 p.m. and midnight, on the following day

Proving a document has been served

The person who served the document must fill out an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) setting out who was served, and when and how service was made. Generally, you are not required to file the affidavit of service with the court until you are ready to proceed with your next step, or a judge orders that it must be filed. For example, if you want to ask the clerk to note the defendant in default, you would file your affidavit of service of the claim at the time you make the request.

If a copy of a document has been served on more than one person, then you would need to complete an affidavit of service for each person served.

If you have a paralegal or lawyer, they can use a Certificate of Service [Form 8B] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) instead of an Affidavit of Service to prove that they served a document or arranged for it to be served. Only paralegals and lawyers are allowed to use a Certificate of Service.

Filling out an affidavit or service

- To fill out an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>), follow the instructions on the form. You must describe:
 - the name of the person who served the document (e.g. you or a representative or friend) and where they are from
 - the name of the person who was served
 - when the document was served (day, month and year)
 - where the document was served (e.g. house number, apartment number, street name, city, and province)
 - what document was served (e.g. a claim, defence, or notice of motion)
 - the method of service (e.g. by personal service, service at place of residence, service by registered mail, courier, regular lettermail, or email)
- If you served the documents, then you must fill it out. If you had another person serve the documents, then that person must fill out the affidavit of service.
- The affidavit must be signed and either sworn or affirmed by the person who served the documents in front of a person authorized to take oaths and affirmations (i.e. a commissioner for taking affidavits). The commissioner will:
 - ask the person making the affidavit to swear or affirm that the information in the affidavit is true,
 - ask that person to sign the affidavit, and
 - sign the affidavit as sworn or affirmed.

Do not sign the affidavit before going to the commissioner or get anyone else to sign it. If someone else served your documents, they must go to the commissioner and both sign and swear or affirm the affidavit in front of the

commissioner. For more information about swearing affidavits, see “ Tips on completing forms in Small Claims Court (<https://ontario.ca/document/guide-procedures-small-claims-court/tips-completing-forms-small-claims-court>) ”.

It is a criminal offence to swear or affirm an affidavit you know is false.

Determining when service was effective so a defendant can be noted in default

If the defendant fails to serve and file a defence within 20 days of being served with the claim, you can ask the clerk to note the defendant in default. When calculating the 20-day time period, count the number of days following the date that service was effective by excluding the first day and including the last day. If the last day falls on a Saturday, a Sunday, or a holiday, the period ends on the next day that is not a Saturday, Sunday, or holiday.

For example:

If you served your claim by:	I served the claim on:	Rule that applies:	Effective date of service:	I can ask the clerk to note the defendant in default on:
Personally handing the claim to the defendant.	June 1st	Service is effective immediately	June 1st	June 22nd
Leaving a copy of the claim at the defendant's place of residence with an adult member of the same household and mailing or couriering a copy the same or next day. See rule 8.03(2).	June 1st	Service is effective the 5th day after the claim was mailed or verified by courier that it was delivered. See rule 8.03(4).	June 6th (or June 7th, if the claim was sent the following day)	June 27th or June 28th
Service on a corporation by mailing or couriering a copy of the claim to the corporation or attorney for service and to each director. See rule 8.03(3).	June 1st	Service is effective the 5th day after the claim was mailed or verified by courier that it was delivered. See rule 8.03(4).	June 6th	June 27th

If you served your claim by:	I served the claim on:	Rule that applies:	Effective date of service:	I can ask the clerk to note the defendant in default on:
Leaving a copy of the claim with the defendant's lawyer or paralegal, or an employee in the lawyer or paralegal's office and receiving a signature on the back page of the document as acceptance of service. See rule 8.03(5).	June 1st	Service is effective on the date of acceptance indicated on the back page of the document. See rule 8.03(5)	June 1st	June 22nd
Sending a copy of the claim by registered mail or by courier to the defendant's place of residence and obtaining a signature verifying receipt. See rule 8.03(7).	June 1st	Service effective on the date on which an individual verifies receipt of the copy of the claim by signature, as shown in a delivery confirmation. See rule 8.03(8).	June 4 because that day a person verified receipt of the copy of the claim by signature (as shown in a delivery confirmation)	June 25th

Service chart

The chart below lists the service requirements and time limits for specific documents you may need to serve in your case. It is a summary based on the Rules as they exist at the date of this guide. It is provided for your convenience only. You should always refer to the actual Rules.

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
Plaintiff's Claim (Form 7A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)	Party making the claim	<ul style="list-style-type: none"> Personal service (requirements depend on the 	Within 6 months after date issued (or longer with leave of court)

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<p>Defendant's Claim (Form 10A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)</p> <p>r. 8.01(1), (2) (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980258_e.htm#s8p01s2) r. 10.02</p>		<p>type of person served) [r. 8.02]</p> <ul style="list-style-type: none"> • Alternative to personal service [r. 8.03] • Substituted service (with leave of court) [r. 8.04] <p>Note: Rule 8.03(7) sets out a specific alternative to personal service applicable only to claims. The other alternatives to personal service can also be used (depending on the type of party).</p>	
<p>Defence (Form 9A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 9.01(a) r. 10.03(a)</p>	Defendant	<ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	On every other party within 20 days of being served with the claim, or defendant's claim, as the case may be

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<p>Summons to Witness (Form 18A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)</p> <p>r. 8.01(7)</p>	<p>Party who requires the presence of the witness</p>	<p>On witness, together with attendance money, by</p> <ul style="list-style-type: none"> • Personal service only (requirements depend on the type of person served) [r. 8.02], <p>and</p> <p>a copy of the summons (without attendance money) on other parties, if the witness is summoned in relation to their written statement or document under r. 18.02(3), by</p> <ul style="list-style-type: none"> • Personal service (requirements depend on the type of person served) [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	<p>At least 10 days before the trial date, and attendance money must be paid or tendered to the witness when the summons is served, as set out in the affidavit of service or lawyer or paralegal's certificate of service.</p>
<p>Notice of Garnishment (Form 20E) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)</p> <p>r. 8.01(8) r. 20.08(6)</p>	<p>Creditor</p>	<p>On the debtor together with a sworn Affidavit for Enforcement Request (Form 20P) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) , by:</p>	<p>On the debtor within 5 days of service on the garnishee</p>

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
<p>and</p> <p>Notice of Renewal of Garnishment (Form 20E.1) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)</p>		<ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] <p>and</p> <p>On the garnishee together with a Garnishee's Statement (Form 20F) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) by:</p> <ul style="list-style-type: none"> • Personal service [r. 8.02 (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980258_e.htm#s8p02)] • Alternative to personal service [r. 8.03 (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980258_e.htm#s8p03s1)] • Mail [r. 8.07 (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_980258_e.htm#s8p07s1)] • Courier [r. 8.07.1 (http://www.e-laws.gov.on.ca/html 	

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
		/regs/english/elaws_regs_980258_e.htm#s8p07p1s1]	
Notice of Termination of Garnishment (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) (Form 20R) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 20.08(20.2)	Creditor	On the garnishee and the clerk by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] 	Immediately after the amount owing under the order is paid
Garnishee's Statement (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) (Form 20F) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 20.08(13)	Garnishee	On creditor and debtor, by <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	File with the court within 10 days after service of notice of garnishment
Notice of Garnishment Hearing (Form 20Q) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 8.01(9)	Person requesting the hearing	On creditor, debtor, garnishee, co-owner of debt (if any) and any other interested persons by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 	-

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
r. 20.08(15.1)		8.03] <ul style="list-style-type: none"> • Mail [r. 8.07] • Courier [r. 8.07.1] 	
Notice of Examination (Form 20H) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) and Financial Statement (Form 20I) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 8.01(10), (11), (12) r. 20.10(3)	Creditor	On debtor (together with a blank Financial Information Form (Form 20I) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) if the debtor is an individual) or the person to be examined by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] 	At least 30 days before the date fixed for the examination Notice of examination shall be filed with proof of service at least 3 days before date fixed for examination.
Notice of Contempt Hearing (provided by clerk) r. 8.01(13) r. 20.11(3), (6)	Creditor	On debtor or person to be examined by: <ul style="list-style-type: none"> • Personal service only (requirements depend on type of person served) [r. 8.02] 	Affidavit of Service/Lawyer or Certificate of Service filed at least 7 days before the date of the hearing
"Amended" claim or defence r. 8.01(14) r. 12.01(2)-(3)	Party making amendment	On all existing parties, including parties noted in default , by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] 	Filing and service at least 30 days before the originally scheduled trial date, unless: <ul style="list-style-type: none"> • the court, on motion allows a shorter notice period, or

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
		<ul style="list-style-type: none"> • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] <p>On any newly added parties that have not been served with the claim previously, by:</p> <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03, including r. 8.03(7)] 	<ul style="list-style-type: none"> • a clerk's order permitting the amendment is obtained under subrule 11.2.01(1)
<p>Notice to Co-owner of Debt (Form 20G) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) r. 20.08(14) r. 8.01(14)</p>	Creditor	<p>On co-owners of the debt, together with a copy of the Garnishee's Statement (Form 20F) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) , by:</p> <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	Promptly ("forthwith")

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
Notice of Discontinued Claim (Form 11.3A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/)	Plaintiff	On all defendants served with the claim by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] 	After time for filing defence has elapsed (and no defence is filed) Subsequently file with proof of service.
Notice of Motion and Supporting Affidavit (Form 15A) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) (other than motion for assessment order) r. 15.01(3), (6) r. 8.01(14)	Party filing motion	Prior to Judgment: On every party who has filed a claim and any defendant who has not been noted in default, by <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08], or After Judgment: On all parties, including those noted in default, by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] 	At least 7 days before the hearing. Filed with proof of service at least 3 days before the hearing date.

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
		<ul style="list-style-type: none"> • Courier [r. 8.07.1] • Email [r. 8.08] 	
Order made on Motion without Notice r. 15.03(2) r. 8.01(14)	Party who obtained order on motion without notice	On all affected parties, together with a copy of the notice of motion and supporting affidavit used on the motion, by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	Within 5 days after order signed
Request to Clerk (Form 9B) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) for a terms of payment hearing r. 8.01(14) r. 9.03(3)	Plaintiff	On defendant by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	Within 20 days after service of a defence in which terms of payment are proposed
Written submissions in relation to a possible order to stay or dismiss an action (not a prescribed form) pursuant to r. 12.02(4)	A party who receives a copy of the plaintiff's or moving party's submission	On the plaintiff and, if requested, on any other party by: <ul style="list-style-type: none"> • Mail [r. 8.07(1)] 	Within 10 days after receiving the plaintiff's written submissions in response to the court's notice that it is considering making the order

Document and Service Rule(s)	Who Serves*	How Service May be Made	Time for Service
Completed Financial Information Form (Form 20I) (https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/) (for an examination hearing or terms of payment hearing) r. 9.03(4.3)	Defendant served with notice of Terms of Payment hearing or debtor who is an individual and who is served with a Notice of Examination (where the debtor is an individual)	On the plaintiff who requested the terms of payment hearing or the creditor who requested the examination hearing by: <ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	Completed Financial Information Form (Form 20I) must be served on plaintiff/creditor, but <u>not filed with the court</u>
Other Documents r. 8.01(14)	Party	<ul style="list-style-type: none"> • Personal service [r. 8.02] • Alternative to personal service [r. 8.03] • Mail [r. 8.07] • Courier [r. 8.07.1] • Email [r. 8.08] 	-

[*] ^ Service by the party includes service by their representative.

Motions and clerk's orders

Overview

A motion is a process for requesting that a judge make an order. Generally, a party will make a motion to have a matter addressed before judgment, or in some circumstances after judgment or to support an enforcement process. Usually, a motion is a hearing in court before a judge.

There is one type of motion that can be made “in writing.” It is called a “motion in writing for assessment of damages” which can be made by the plaintiff when all defendants have failed to file a defence and have been noted

in default. For a motion in writing, the plaintiff does not have to attend court for a hearing. Instead, the documents filed should provide the court with everything the judge needs to make a decision.

The *Rules of the Small Claims Court* (<http://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) (after this, referred to as the Rules), also allow the clerk of the court to grant certain orders on consent of all the parties. This is called a clerk's order.

Motions

A motion is a process that is used to make a request to a judge for an order. You can “make a motion” to ask for an order to:

- resolve an issue in the case
- get direction on how to proceed in the case
- change an order that has already been made

Motions can be very helpful to the parties in a dispute. However, depending on the stage of the proceeding, motions may also lead to the case taking longer. There is a fee to file a motion. For more information about fees, refer to “Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) .”

Examples of motions

You may need to make a motion for a judge’s order before the settlement conference, or after the settlement conference but before trial.

Example 1

You are a roofer. You put a roof on an addition to a customer’s house and now the customer is suing you over a leaky roof and water damage to a rug and chair. You go to the court office to file your defence. The clerk tells you that you cannot file it because the plaintiff had you noted in default for failing to file your defence within 20 days after he served you with the claim.

You just received the claim in the mail 3 days ago. You could make a motion to ask the judge to set aside the noting in default and allow you to file your defence. In the supporting affidavit you would explain when you received the claim and that you want to file a defence.

Other times, a party may need to make a motion to get a judge’s order after the trial.

Example 2

You were a defendant in a Small Claims Court action. At trial the plaintiff was awarded judgment for \$1,000 against you. You didn’t have savings to pay the plaintiff so the plaintiff had your wages garnished.

You have now paid off the \$1,000 and you want to clear your credit record. You could remind the creditor of his obligation under the rules of court to fill out the Notice of Termination of Garnishment form and send it to the garnishee and the clerk of the court. You could then get a copy of the completed form from the clerk and send it to the credit reporting agencies.

If the creditor refuses to fill out that form, you would then have to make a motion to ask the judge for an order stating that you paid the debt in full. You could ask the court to order the creditor to pay your costs for making the motion because he was responsible for completing the notice of termination of garnishment and refused to do so. Once you received your judgment, you could send a copy to the credit reporting agencies that have you on file.

Other examples of motions that you may wish to make are listed on the Notice of Motion and Supporting Affidavit [Form 15A] (<https://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-aug22-en-fil.docx>) .

Who can make a motion

Anyone who is a party in the case can make a motion. The person who makes the motion is called the “moving party.” The person who responds to the motion is called the “responding party.”

In special circumstances, a judge may allow a person who is not a party to the action to make a motion because the person’s interests would be affected by the outcome of the case. For example, a person who has been served with a summons to witness may make a motion challenging the summons and wants an order to be excused from attending.

How to make a motion

To make a motion you must file a Notice of Motion and Supporting Affidavit [Form 15A]

(<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) .

How to fill out the notice of motion and supporting affidavit form

In the notice of motion and supporting affidavit, you tell the court and the other parties to the action who is making the motion and what you (the moving party) are asking the court to decide.

For in person hearings, you must specify the date, time and place for the hearing of the motion on the notice of motion form. To get this information, contact the clerk of the court (or the court’s scheduling office) by telephone or in person. The telephone number is at the top of the documents you have received. Fill in the information given to you by the clerk to complete your form.

In the supporting affidavit section of the form, you will give information that supports your request for an order on motion. In the supporting affidavit, you will:

1. State the order (or orders) that you are requesting
2. Give the reasons why you think the court should make the order requested. Usually you would set out your reasons (i.e. , statements of fact) in numbered paragraphs. Try to make each statement of fact short and to the point. Often, one sentence is enough
3. If you need additional pages, attach them to the affidavit. Put a page number on the bottom of each additional page and the total number of additional pages (for example, “Page 1 of 5”) and initial each page
4. Attach a copy of any document you refer to in your affidavit, if it is available. You may wish to refer to the first document you intend to attach to your affidavit as “Exhibit A.” If you have more than one document attached to the affidavit you can label them “Exhibit A,” “Exhibit B,” and so on. On the first page of the “Exhibit” itself, you could print the following information:

"This is Exhibit A referred to in the affidavit of (insert your name) sworn or affirmed on (_____, 200_) by (signature of the commissioner for taking affidavits)."

5. You must swear (or affirm) that the statements in your affidavit are true and sign it in front of a commissioner for taking affidavits. Your affidavit can be sworn before:

- a Small Claims Court or ServiceOntario staff member who has been appointed a commissioner for taking affidavits (there is no fee for this service)
- a lawyer or paralegal licensed by the Law Society of Ontario
- a notary public
- any other person who has been appointed a commissioner for taking affidavits in connection with court documents

The commissioner for taking affidavits will date and sign the affidavit and each document attached to it.

It is a criminal offence to knowingly swear a false affidavit

What to do when you've completed a notice of motion and supporting affidavit

Once you have completed your notice of motion and supporting affidavit, you must serve a copy of it on each party to the action except for any defendant who has been noted in default. The notice of motion and supporting affidavit must be served **at least 7 days** before the motion hearing and filed with at the court **at least 3 days** before the motion hearing. If you wish, you can serve the notice of motion and supporting affidavit on the parties before you file the original at the court office.

An Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-jan21-en-fil.doc>) must be completed for each party served and filed with the court **at least 3 days** before the motion hearing. The affidavit of service is proof that the notice of motion and supporting affidavit (including any attachments) has been served on each party. Each affidavit of service must be sworn or affirmed by the person who served the documents.

There are very specific rules for serving documents. Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information on the rules and procedures relating to service of documents and preparing affidavits of service.

If you are unable to serve all parties 7 days before the motion hearing or file your materials 3 days before the motion hearing, contact the court office and ask what to do next.

If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents **at least 3 days** before the motion hearing.

Hearing a motion without notifying the other parties

In very limited circumstances, a judge may make an order that it is not necessary to give notice of the motion to the other parties. For example, a plaintiff may make a motion without notice to seek an order for substituted service because he or she has not been able to serve the defendant with the claim by personal service and wants an order allowing another method of service.

You must still file the notice of motion and supporting affidavit with the court even if you are making the motion without notice to the other party.

If you make a motion without notice, the judge will usually first decide whether or not you should be permitted to make the motion without notifying the other side. If the judge decides that notice is required, you will need to obtain a date for the hearing and serve all the documents on the other party as explained in this guide.

Remember, a party who obtains an order on motion without notice must serve a copy of the judge's order on every affected party, together with a copy of the notice of motion and supporting affidavit used on the motion, within five days after the order is signed. For more information, refer to "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ."

A party who is affected by an order obtained on motion without notice may make a motion to set aside or change the order within 30 days after being served with the order.

Responding to a motion

If you have been served with a notice of motion and supporting affidavit and you disagree with what it says, you can respond to it by filing an Affidavit [Form 15B] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15b/scr-15b-jan21-en-fil.doc>) . This is called a "responding affidavit" because you are responding to what the moving party has said in his or her notice of motion and supporting affidavit. For example, in your affidavit you may set out different statements of fact that you want the judge to consider when hearing the motion. If you refer to a document in your affidavit, you should attach a copy if it is available.

Your responding affidavit must be served on every party who has filed a claim or defence. File your responding affidavit at the court, together with one affidavit of service for each party served, at **least 2 days** before the hearing date.

If you cannot attend on the date set for the motion

If you are unable to attend on the date set for the motion, you can ask the court to adjourn the motion and reschedule it on another date. Contact the court office for assistance.

If the judge allows the request and makes an order, the clerk will notify the parties of the new motion date.

If the motion is not adjourned before the scheduled date you, or someone on your behalf, must attend the motion to request the adjournment. If a judge allows the request and makes an order adjourning the motion, the clerk will notify the parties of the new motion date.

Attending a motion by telephone or video conference

A motion can be heard or conducted by telephone or video conference if facilities for a telephone or video conference are available at the court. A party can file a Request for Telephone or Video Conference [Form 1B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/01b/SCR-01B-Jan14-fil-EN.doc>) , indicating the reasons for the request. If the judge grants the request, the court will make the necessary arrangements and notify the parties.

Making a request to attend by telephone or video conference

If you are the party making the motion, you should file your request when you file your motion with the court. If you are the responding party, you should file your request as soon as possible after you receive the notice of motion.

If you think a party is trying to delay the proceeding by making unnecessary motions

Rule 15.04 of the Rules provides that:

“If the court is satisfied that a party has tried to delay the action, add to its costs or otherwise abuse the court’s process by making numerous motions without merit, the court may, on motion, make an order prohibiting the party from making any further motions in the action without leave of the court.”

If you think that a party has made a large number of motions in order to increase costs or delay the progress of the case, you can make a motion under Rule 15.04 of the Rules to ask the court to make an order stopping the other party from making more motions unless the party has the court’s permission to do so.

Requesting costs

Depending on the circumstances, if you are the successful party at the motion, you can ask the court to order the other party to pay some costs to you. The Rules and the *Courts of Justice Act* (<https://www.ontario.ca/laws/statute/90c43>) address costs issues.

Checklist: Making a motion

If you are making a motion:

1. Schedule a hearing date, time and place with the Small Claims Court clerk.
2. Fill out the Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) , including the date, time and location of the hearing.
3. At least 7 days before the hearing date, serve the notice of motion and supporting affidavit on the responding party or parties (refer to “Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ” for more information).
4. At least 3 days before the hearing date, file with the court the notice of motion and supporting affidavit and an Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-jan21-en-fil.doc>) for each party served.
5. Pay the filing fee.
6. If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents **at least 3 days** before the hearing date.

If you are responding to a motion:

1. Fill out an Affidavit [Form 15B] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15b/scr-15b-jan21-en-fil.doc>) to respond to the moving party’s notice of motion and supporting affidavit.
2. If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents **at least 3 days** before the hearing date.

3. At least 2 days before the hearing date, serve your affidavit on every party who has filed a claim or defence and file it with the court together with an Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-jan21-en-fil.doc>) for each party served.

Remember, an Affidavit [Form 15B] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15b/scr-15b-jan21-en-fil.doc>) must be sworn by the person making the affidavit. An Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-jan21-en-fil.doc>) must be sworn by the person who served the documents.

A motion in writing for an assessment of damages

There is one type of motion that can be made “in writing” under the Rules. It is called a “motion in writing for an assessment of damages.”

If all defendants have been noted in default and your claim is an “unliquidated” claim, then you can ask for an order from a judge for an assessment of damages. To get this order, you can either file a motion in writing for an assessment of damages or request an assessment hearing before a judge. Refer to “Making a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/making-claim>)” and “Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>)” for more information about assessment hearings.

If you choose to make a motion in writing for an assessment of damages, you do not have to attend a hearing before a judge. The documents you file should provide the court with everything you think will be required for a decision to be made.

When you can make a motion in writing for an assessment of damages

You may make a motion in writing for an assessment of damages where:

- all defendants in the claim have been served with the claim
- no defendants have filed a defence
- all defendants have been noted in default

If one or more defendants have not been served with the claim, you cannot obtain an assessment of damages against any defendants who have been served, because all defendants must be noted in default. The clerk will not note a defendant in default if he or she has not been served with the claim. For more information, refer to “Serving documents.” (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)

If one or more defendants has filed a defence, you cannot obtain an assessment of damages against the other defendants. You will need to attend a settlement conference and, if necessary, a trial.

How to make a motion in writing for an assessment of damages

If you filed your plaintiff’s claim online using the Small Claims Court E-Filing Service portal delivered by the Ministry of the Attorney General, you can return to this portal and file a notice of motion for an assessment in writing. This document can also be filed online through the Small Claims Court Submissions Online portal. You can access both

portals at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) . You can also file a Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) with the court office in person or by mail. There is a fee for this process. Be sure to fill out the part “B” of the notice of motion form that reads:

“B. This motion in writing for an assessment of damages is made by _____ (insert name of plaintiff) who asks the court for an order assessing damages against _____ (insert name of defendant(s)) who have/has been noted in default.”

It is not necessary to serve a defendant who is noted in default with the notice of motion.

In the affidavit, you must set out the reasons why the motion should be granted and attach any relevant documents.

The judge will review the notice of motion and affidavit and may do one of the following:

- grant judgment
- make an order requesting you to provide another affidavit
- make an order requiring you to attend an assessment hearing

A copy of the court order or the endorsement record containing the order will be emailed to you if you filed online or mailed to you if you have provided the clerk with a stamped self-addressed envelope.

Example 3

Your neighbour accidentally broke your basement window and you had it repaired by ABC Windows for \$700. Your neighbour refuses to pay you, so you file a claim at Small Claims Court. Your neighbour fails to file a defence and you make a written request to the clerk to note her in default. You need a judge to assess the amount of damages that she owes you, but you don’t want to take time off work to attend an assessment hearing.

Instead, you file a notice of motion in which you indicate that it is a motion in writing for an assessment of damages. You set out the reasons why your neighbour owes you money in your supporting affidavit. You attach the invoice from ABC Windows marked “paid” along with two other higher quotes you got from other window repair shops.

The judge reviews your written materials and grants judgment. The clerk emails the order to you or mails the order to you in the stamped self-addressed envelope that you gave to the clerk when you filed your motion.

Example 4

Referring back to Example 3, instead of making the order, the judge reviewing your motion in writing for an assessment of damages notes that \$700 seems to be a lot of money for repairing a basement window. She decides she does not have enough information. She orders you to file another affidavit giving more explanation about the age and type of the window, and the damage done to it by the defendant.

You file another affidavit explaining that you had custom windows installed in your basement just last year. You also explain that your neighbour backed her car into the window when driving out of your mutual driveway causing

damage to the window frame in addition to breaking the glass. You attach photographs of the repaired window to show that repairs were also made to the window frame.

The judge reviews your additional affidavit and makes an order. The clerk emails the order to you or mails the order to you in the stamped self-addressed envelope that you gave to the clerk when you filed your motion.

If the judge orders you to attend an assessment hearing you should contact the court office to schedule the hearing. Refer to “Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) ” for information about preparing for an assessment hearing. Preparing for an assessment hearing is very similar to the process for preparing for trial.

Checklist: Motion in writing for assessment of damages

If you are bringing a motion in writing for an assessment of damages:

1. Fill out Part B of the Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) and attach documents referred to in the affidavit. This form does not need to be served on the defendants because they have been noted in default. This form also does not need a hearing date because you do not need to attend the motion.
2. Swear/Affirm the affidavit before a commissioner for taking affidavits.
3. If you filed your claim online through the Small Claims Court E-Filing Service portal, return to this portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) to file your documents and pay the filing fee. If you did not file your claim online, file your Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) and supporting documents at the court together with a stamped self-addressed envelope or file your documents using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) .
4. If you filed your motion online, within 14 days you must mail or deliver to the court your Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-jan21-en-fil.doc>) and all other e-filed and e-issued documents in your case.

An Affidavit must be sworn by the person making the affidavit.

Clerk's orders on consent

Small Claims Court clerks can make orders only in the specific circumstances set out in the Rules. These orders can only be made if the written consent of all parties has been provided to the clerk. The clerk makes the order based on the Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.doc) filed with the court. No hearing is required.

The consent form must state that no party who would be affected by the order is under legal disability, and that all parties to the action have received a copy of the request for clerk's order on consent form.

Provided that the above criteria are met, it may be more cost-effective and efficient for the parties to get a clerk's order than to make a motion for a judge's order.

What kind of orders the clerk can make

The clerk can make an order only for the following:

- amending a claim or defence where the originally scheduled trial date is less than 30 days away (otherwise see Rule 12 for amendments)
- adding, deleting or substituting a party where the originally scheduled trial date is less than 30 days away
- setting aside a noting in default or default judgment against a party, and any specified step to enforce the judgment that has not yet been completed
- restoring a matter that was dismissed under Rule 11.1 to the list
- noting payment is made in full satisfaction of a judgment or terms of settlement
- dismissing an action

See Rule 11.2 of the Rules for further details.

How to request a clerk's order on consent

To request a clerk's order on consent:

1. Fill out the Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.doc) indicating which of the above listed orders you want.
2. Ask each party to sign the request for clerk's order on consent form in the presence of his or her witness. If a party is being added or substituted, the signature of that new party is also required. If a party is being deleted, that party must also sign. If all parties do not consent, the clerk cannot make the order requested. If a party has been noted in default, his or her consent is not required.
3. Give each party who has signed the form a copy. The form states that each party has received a copy of the form, and that no party who would be affected by the order is under legal disability.
4. File the completed request for clerk's order on consent form with the court together with a stamped self-addressed envelope in person or by mail, or file the request for clerk's order on consent using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) .
 - The clerk will review the documents and, if the legal requirements of the Rules are met, the clerk will sign the order. The clerk will email or mail a copy of the order to a party who requested it if a stamped self-addressed envelope was provided.

Example 5

Referring back to Example 1, imagine you are the roofer. You put a roof on an addition to a customer's house and now the customer is suing you over a leaky roof and water damage to a rug and chair. In your defence you stated that Len's Shingles Ltd. is responsible for the damage because the shingles you installed were faulty. You also brought a defendant's claim against Len's Shingles Ltd.

The originally scheduled trial date is less than 30 days away and you now realize that the company's name is actually Leonard's Shingles Ltd. You ask Leonard's Shingles Ltd. to agree to be substituted as a party for "Len's Shingles Ltd." on your claim form. (If the originally scheduled trial date was more than 30 days away, you could simply amend your defendant's claim under Rule 12 of the *Rules of the Small Claims Court* (<https://www.ontario.ca/laws/regulation/980258>) .)

If Leonard's Shingles Ltd. agrees, you can prepare a request for clerk's order on consent for Leonard's Shingles Ltd. and the plaintiff to sign. You would give them a copy of the completed form and then file the original at the court together with a stamped self-addressed envelope or file each document online using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) . The clerk would then review the documents and make the order.

If the clerk refuses to sign the clerk's order

The clerk may refuse to make a clerk's order if:

- the criteria set out in Rule 11.2 (discussed above) are not met;
- the consent of all parties is not obtained
- the form is incomplete.

When the clerk refuses to sign an order, the clerk will serve a copy of the request for clerk's order, with reasons for the refusal, on all parties.

Depending on the reasons the clerk gives for refusing to grant the order, the party can either amend the documents and re-submit the request for clerk's order on consent, or make a motion before a judge for an order.

Example 6

In Example 5 above, if Leonard's Shingles Ltd. does not consent to be substituted as a party, the clerk cannot sign the order. In this case, you must make a motion before a judge to make the substitution. Refer to Part One of this guide on how to make a motion.

Checklist: Requesting a clerk's order on consent

1. Fill out the Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.doc) .
2. Ask each party, including any party being added, substituted or deleted within 30 days of the original trial date to sign the form in the presence of his or her witness.
3. After you get the form signed, but before you file it with the court, provide everyone who signed it with a copy.
4. File the request for clerk's order on consent form with the court together with a stamped self-addressed envelope in person or by mail, or file the request for clerk's order on consent using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) .

Getting ready for court

Overview

If your Small Claims Court case is going to court – whether it is for a settlement conference, assessment hearing or trial – you will probably have a lot of questions. This three-part guide will try to answer most of them.

Settlement conference

If the defendant files a defence, the parties will receive a notice of settlement conference from the court office indicating the date, time and location of the settlement conference. A settlement conference should be held within 90 days after the first defence is filed.

The purpose of a settlement conference is to:

- resolve or narrow down the issues in the action
- expedite the disposition of the action (that is, to help to resolve the dispute faster)
- encourage settlement of the action
- assist the parties with effective trial preparation
- provide full disclosure between the parties of the relevant facts and evidence

Try to be reasonable. Think about what you want from your case, but also determine what you can “live with.” Think about what is acceptable to you. For example:

- If you are suing a contractor over a job that was not done to your satisfaction, you probably want the work done and done right
- If you are the contractor, you will want to at least break even on the job, but you may be willing to apply some of your profits towards repair work
- If you are being sued for money you owe someone, maybe you agree that you owe the money and only need more time to pay

Try not to think in terms of winning and losing. Think instead, "What is my 'bottom line' in this case? What is the minimum acceptable to the other side? Is there any possible solution that we both can live with?"

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

If there is going to be a trial, the settlement conference is also an opportunity to help you get prepared for the trial. The judge may make recommendations about your case. Also, there are a number of orders the judge might make.

At the end of the settlement conference, if the parties do not settle the case, the Rules provide that the judge will give the clerk a memorandum listing the issues remaining in dispute, matters agreed on, and information related to scheduling. The memorandum will be provided to the trial judge. The judge who conducts your settlement conference will not preside at the trial.

After the settlement conference, the clerk will provide the parties with a copy of the Endorsement Record/Order of the Court, either in person, by mail or by email. The Endorsement Record/Order of the Court contains any orders that the judge made at the settlement conference. Remember, the settlement conference and any settlement discussions between the parties are private and cannot be disclosed to others, unless you have the consent of all of the parties to do so.

Who attends a settlement conference

A judge usually presides at the settlement conference. The parties **must** attend, but the witnesses **do not** attend. If any of the parties has a representative, the representative may attend as well but the parties must always be there.

The people who attend must have the authority to settle the case. For example, if one of the parties is a company, or if a party requires another person's approval before agreeing to a settlement, then that party must arrange to have ready telephone access to the other person throughout the conference.

If you would like to have someone other than your representative attend to support you, you must ask the judge for permission at the start of the settlement conference.

If you cannot attend on the date set for a settlement conference

If you are unable to attend on the date set for the settlement conference, you can ask the court to adjourn the settlement conference and reschedule it on another date. Contact the court office for assistance.

If the judge allows the request and makes an order, the clerk will notify the parties of the new settlement conference date.

If the settlement conference is not adjourned before the scheduled date you, or someone on your behalf, must attend the settlement conference to request the adjournment. In determining the adjournment, the judge may also consider fixing costs against the party requesting the adjournment. If a judge allows the request and makes an order adjourning the settlement conference, the clerk will notify the parties of the new settlement conference date.

Attending a settlement conference by telephone or video conference

A settlement conference can be heard or conducted by telephone or video conference if the facilities are available at the court. A party can file a Request for Telephone or Video Conference [Form 1B]

(<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/01b/SCR-01B-Jan14-fil-EN.doc>) . Make the request as soon as you are aware you need this arrangement and indicate the reasons for your request. If the judge grants the request, the court will make the necessary arrangements and notify the parties.

Not attending a settlement conference

If you do not attend the settlement conference, an order can be made against you, including an order requiring you to pay the other party's costs. The judge can also order you to attend an additional settlement conference.

In the event that a defendant fails to attend a settlement conference, a second settlement conference may be scheduled. If the defendant fails to attend again, the judge can order final judgment in the case. No trial will be held.

Preparing for a settlement conference

Get organized. The better prepared you are for your settlement conference, the more you may gain from it. Being well prepared may make it possible for you to avoid the expense and risks of having to go to trial. It is a good idea to do most of your preparation before the settlement conference. If you do have a trial, you will simply have to refresh your memory and make sure that you take into account any recommendations or orders made by the judge at the settlement conference.

More importantly, if you are not prepared and the settlement conference cannot be properly conducted, it could cost you money. For example, if you do not have the necessary documents with you, the judge could order you to

pay the other party's expenses for having to come to the settlement conference, and then everyone might still have to come back a second time.

If you are the plaintiff:

There are two basic parts to your case if you are a plaintiff (proving either a plaintiff's claim or a defendant's claim):

1. **You have to prove liability.** That means you must prove that the defendant did something wrong to you for which you should be compensated.
2. **You have to prove the amount owing.** For example, it is 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.

"Evidence" is whatever you will use at trial to prove your case. You have to think about it now because how you intend to prove your case will likely be discussed at the settlement conference. There are several different kinds of evidence. Those most often used are:

1. Oral testimony: a witness comes to court and answers questions at the trial. Witnesses **do not** attend settlement conferences.
2. Documentary evidence: documents, such as business records and written estimates, are presented in court either by a witness or a party.
3. Expert reports: reports prepared by an expert in the field (e.g., a building inspector).
4. Photographs: photographs are sometimes used as evidence if the person who took them can properly identify them.

Try to break down your case into individual facts and decide what evidence you will use to prove each point. The best way to do this is to review the claim form and defence form closely. Use these documents as a reference and then make a worksheet from them.

Well in advance of the court date, each party must decide if there is any document **not** attached to his or her claim or defence form that the party wants to use at trial to prove his or her case. If so, at least 14 days before the date scheduled for the settlement conference, the document must be served on every other party and filed with the court. Make detailed notes of when and how you served the document in case the court requires you to file an affidavit of service sometime later.

In our example, the documents would include the contract, invoices, bill of sale and written estimates. Some of these documents would already have been attached to the plaintiff's claim and served on the defendant. Any new documents (for example, the report prepared by the building inspector or copies of photographs) would have to be served on the defendant and filed with the court at least 14 days before the settlement conference.

The clerk will send each party a blank List of Proposed Witnesses [Form 13A]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13a/scr-13a-jan21-en-fil.doc)

[src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13a/scr-13a-jan21-en-fil.doc](http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13a/scr-13a-jan21-en-fil.doc)) together with the Notice of Settlement Conference. At least 14 days before the date of the settlement conference, the plaintiff and the defendant must fill out the form and serve it on each other as well as any other party involved **and** file the documents with the court. You should not bring any witnesses to the settlement conference, but you should be prepared to briefly explain what your witnesses will say if they come to the trial.

For example, you would not bring the building inspector but you could say, "The building inspector told me that the reason the roof leaks is because the flashing was not properly installed and the shingles around the chimney and

eaves have to be removed and replaced."

Example 1

We will use the same roofer example that we talked about in the "Making a claim." You will recall that you hired a roofer to put a new roof on your house. The roof leaks, so you sue ZC Roofing Ltd.

Worksheet

Suppose your claim says this in the "Reasons for Claim and Details" section:

1. ZC Roofing Ltd. put a new roof on my house at 123 King Street, Barrie, ON.
2. The roof leaks and ZC Roofing Ltd. has refused to fix it.

My furniture and carpeting were damaged and I had to hire another roofer to fix the leak.

Cost of replacing chair: \$479

Cost of cleaning carpet: \$135

Cost of repairing roof: \$1,250

Total: \$1,864

You could prepare a worksheet like this:

FACT	EVIDENCE
ZC Roofing put the roof on my house	Signed contract with ZC Roofing and invoice marked "PAID"
The roof leaks	Photos taken by me
The leak was caused by ZC's poor workmanship	Report of building inspector Evidence of foreman from YZ Roofing who repaired the roof.
It will cost \$1,250 to repair the roof	Estimates from three roofing companies
The leak caused damage to my carpets and furniture	My own testimony and photos taken by me
It cost \$135 to clean the carpet	Invoice from Columbia Carpet Cleaners
It cost \$479 to replace my chair	Bill of sale from Peg's Furniture Mart for new chair

A good way to organize your papers to ensure nothing is overlooked is to cross-index them with your worksheet. To do this:

- paperclip each document to a page in a three-ring binder
- mark each of the pages in the upper right-hand corner with the letters from your worksheet
- make the worksheet the first page in the binder, to serve as a Table of Contents

If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents with the court **at least 14 days** before the settlement conference.

If you are the defendant replying to either a plaintiff's claim or a defendant's claim:

Begin by closely reviewing the claim and your defence. For example:

- Do you disagree with the plaintiff's version of "Reasons for Claim and Details?" Make a note of exactly what you agree or disagree with and be prepared to briefly explain why to the judge.
- Do you disagree with the amount that the plaintiff says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.
- Do you agree you owe what the plaintiff claims, but simply cannot pay it all at once? If that is the case, bring proof of your financial situation (e.g. recent pay stubs and last year's income tax return). Be prepared to tell the judge what sort of payment terms you are capable of making. If you can pay something right away, all the better.
- Do you agree that you may owe the plaintiff some money, but not the amount claimed? If that is the case be prepared to explain the reasons for your position and what you think would be reasonable.

Example 2

Suppose you agree to pay the plaintiff \$1,000. You might say, "I will pay \$200 today, and then \$200 at the end of each month until it is paid."

Here are a few other things to keep in mind:

First, has the correct defendant been named in the claim?

Example 3

In Example 1, the plaintiff had a contract with ZC Roofing Ltd. If he named Zoro Carey as the defendant (the one who owns the company and did the work) and not the company, Mr. Carey could reply to the claim by saying that he did not enter into an agreement with the plaintiff in his personal capacity and therefore the plaintiff has no case against him.

Second, if the plaintiff has suffered the damage described, has it been proven that it was your fault?

Third, carefully examine the amount of the claim. Is the plaintiff asking for a much more expensive chair to replace the original one that was old and worn? Can this be justified?

Organize your case following the process described earlier in this guide for the plaintiff. Use a worksheet listing the points you wish to make and the evidence you will use to prove those points. Refer to the worksheet in Example 1.

You must serve on the plaintiff any document that was not already attached to your defence and file it with the court at least 14 days before the settlement conference. You must also complete a List of Proposed Witnesses [Form 13A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13a/scr-13a-jan21-en-fil.doc>) , serve it on the plaintiff and file it with the court at least 14 days before the settlement conference.

Finally, like the plaintiff, you must come to the settlement conference prepared, or risk having to pay the other side's expenses.

What happens at a settlement conference

The settlement conference will usually be held in an office or meeting room. This is a less formal procedure than a trial and all parties will sit at a table with the judge. The settlement conference is a private meeting. Members of the public are not allowed.

Judges may conduct settlement conferences in different ways, but usually the judge will say a few words and then ask each party to give a brief summary of his or her case. You do not need to write this out in full but you should have a list of the points you wish to make. If you made a worksheet, use that.

If all parties agree on a final settlement, the judge may make an order which disposes of the case and you will not need to go to trial. If a settlement is not reached, the settlement conference is an opportunity to try to resolve some issues before the trial and to assist in preparing for the trial.

Example 4

Going back to the claim in Example 1, the parties might agree that the carpet damage was not the roofer's fault, because the homeowner had agreed to remove it before the roof was repaired. They might also agree that the chair was old and only worth \$150. They will have a trial but it will be shorter and simpler because they only have to deal with issues about the \$1,250 repair job.

Once the settlement conference is completed, the clerk will provide the parties with a copy of the Endorsement Record/Order of the Court.

The clerk will also provide each party with a Notice to Set Action Down for Trial that states that one of the parties must request a trial date and pay the fee for setting the action down for trial. Failure to set the action down for trial will result in the clerk eventually making an order dismissing your claim for delay.

Rule for claims less than \$3,500

If the claim is for less than \$3,500 (\$3,500 is the minimum claim that can be appealed according to O. Reg. 626/00 under the *Courts of Justice Act*), there is a special procedure available to parties who consent to it. The parties can file a signed Consent [Form 13B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/13b/SCR-13B-Jan14-fil-EN.doc>) (before or at the settlement conference) indicating that they wish to have final judgment at the settlement conference. If the parties do not reach a settlement the judge can then make a final judgment at the settlement conference. If you consent to this procedure, this will be the final judgment in your case and you will not have to attend again for a trial, or pay the trial fee.

Settling the case after the settlement conference

Even though you have been through a settlement conference and your case has been set for trial, it does not mean that you have to go to trial. If you keep talking to one another after the settlement conference, and you agree to settle, you can fill out and sign a Terms of Settlement [Form 14D] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14d/SCR-14D-Jan14-fil-EN.doc>) . File the terms of settlement, signed by all parties, as soon as possible in order to notify the court that the action has been settled. If a trial date has been scheduled, notify the court of the settlement before the scheduled trial date, if possible.

If one party fails to abide by the terms of the settlement, the other party can make a motion to the court to either:

- ask for judgment in the terms of the settlement
- go to trial as if there had been no settlement

Offer to settle

An "Offer to Settle" is the name given to a formal written offer made by one party to the other party. Either party can make a written offer to settle to the other party at any time until a judge disposes of the case. The party may use the Offer to Settle [Form 14A] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14a/SCR-14A-Jan14-fil-EN.doc>) , or may write a letter setting out the terms of the offer.

If you have made or received an offer to settle and it has not been accepted, **you cannot file the offer to settle at the court office.**

If you have made or received an offer to settle and it has not been accepted **you must not mention the offer to settle or any negotiations relating to it to the judge during the trial** until a final disposition has been made of all issues of liability and relief, except for costs.

I want to discuss settlement with the other party. Do I have to make an offer to settle?

No. The offer to settle process is a special process which may be used, but it is not required. The use of the offer to settle has several important consequences which are discussed below. If you and the other party want to settle your case, it is not necessary to use the offer to settle process.

The simplest way to settle an action is to talk with the other side until you come to an agreement. Write down the details and sign your agreement in the presence of a witness who also signs the document. You may use the Terms of Settlement [Form 14D] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14d/SCR-14D-Jan14-fil-EN.doc>) noted above and file it with the court.

However, if you are not sure that the other side is willing to settle, you can make a written offer to settle using the Offer to Settle [Form 14A] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14a/SCR-14A-Jan14-fil-EN.doc>) . Keep in mind that you do not have to use this form, but it is provided for your convenience.

What to do if you receive an offer to settle

Carefully consider **any** written offer that is made to you.

If you do not accept an offer to settle, and if the offer to settle was made at least 7 days before trial, there is a chance that you could end up being penalized with an order for costs made against you. For example:

- the judge may order extra costs **against a defendant** who rejects an offer to settle when the judgment at trial is as favourable as, or more favourable than, the plaintiff's offer to settle, or
- the judge may order costs **against a plaintiff** when the judgment is as favourable as, or less favourable than, the defendant's offer to settle.

An offer to settle which is not accepted may be disclosed to the trial judge only when all issues of liability and relief have been determined, and only costs remain to be determined.

Example 5

Referring back to the claim in Example 1, the parties are scheduled to go to trial over whether the \$1,250 repair job is necessary.

The plaintiff sends the defendant a letter with an offer to settle for \$1,000 so that he can avoid the time and expense of trial. The offer to settle is made in writing and is served on the defendant more than 7 days before the trial date. The defendant does not accept the offer to settle.

At trial the judge finds for the plaintiff and awards the plaintiff judgment for \$1,250 plus costs of \$75. After the judge gives the judgment, the plaintiff shows the judge his offer to settle. The judge then awards the plaintiff an additional \$75 in costs because the defendant failed to accept the offer to settle.

In an alternative example, the defendant makes an offer to settle for \$850 plus costs. The offer to settle is made in writing and is served on the plaintiff more than 7 days before trial. The plaintiff does not accept the offer to settle.

At trial the judge awards the plaintiff \$750. After the judge gives the judgment, the defendant shows the judge his offer to settle. The judge awards the defendant costs of \$100.

Remember, an offer to settle may be accepted until the time specified in the offer, or until the judge makes a final decision in the case, if no time for expiry is specified in the offer.

Making an offer to settle

You can make a written offer to settle using the Offer to Settle [Form 14A]

(<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14a/SCR-14A-Jan14-fil-EN.doc>) . Keep in mind that you do not have to use this form, but it is provided for your convenience.

You can specify a date after which the offer is no longer available for acceptance. If the offer has not been accepted by that date, the offer is deemed to have been withdrawn. If you change your mind and want to withdraw your offer to settle before that, you can serve a Notice of Withdrawal of Offer to Settle [Form 14C]

(<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14c/SCR-14C-Jan14-fil-EN.doc>) on the party to whom the offer was made. However, you cannot withdraw your offer if the party has already accepted it.

If the other party wishes to accept your offer, he or she must do so in writing and serve the acceptance on you. The party can complete an Acceptance of Offer to Settle [Form 14B] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/14b/SCR-14B-Jan14-fil-EN.doc>) or write a letter. Once the offer to settle is accepted, the settlement is then binding on both you and the other party.

What to do if an offer to settle isn't accepted

If you have made or received an offer to settle, and it has not been accepted, **you cannot file the offer to settle at the court office, and you must not mention the offer to settle during the trial.** You may only mention the offer to settle when the judge has decided all issues of liability and relief, except costs.

If you made a written offer to settle that was not accepted, you may bring it with you to the trial to show the judge **after** a final judgment on all issues of liability and relief, except costs, has been made in the case.

Trial

The difference between a settlement conference and a trial

There are a number of differences between a settlement conference and a trial. A settlement conference is a private discussion between the parties, with the assistance of the judge. The purpose is to see whether the parties can agree on a settlement. A trial is a public process where each party tells his or her own side of the case to a judge who makes a decision about the issues in the case. You will have a different judge at the trial than you have at the settlement conference.

Sworn evidence may be heard from witnesses at a trial. At a settlement conference the parties simply tell the judge what the witnesses would say if they were present.

Preparing for trial

If you followed the information in this guide about preparing for the settlement conference, much of your work is already done. Start by going back and reviewing these documents:

- the claim
- the defence
- the defendant's claim (if any)
- your worksheet
- the settlement conference endorsement record (containing court orders made at the settlement conference)
- any direction given or recommendations made by the judge at the settlement conference
- any documents or other evidence you may have

You will likely be the main witness for your case, and you may be asked to tell your story, so prepare what you will say. Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who does not know you or the other people involved. Make a list of all the points you want to cover.

The plaintiff should be prepared to start by telling the judge briefly what the case is about, remembering to mention any facts the parties have agreed to.

Remember, under no circumstances should either party mention to others anything about discussions at the settlement conference. Also remember that under no circumstances should either party mention to the judge anything about an offer to settle that has not been accepted. The offer to settle can only be discussed when the trial is over and all issues of liability and relief, except costs, have been determined.

If possible, try to go to court and watch some cases being tried. Small Claims Courts are open to the public. Unless the judge orders otherwise you are allowed to sit and watch any day the court is in session.

How to behave in court

There are special rules about how to behave in court:

- The judge in Small Claims Court is called "Your Honour"
- Everyone stands when the judge enters or leaves the courtroom
- You must stand whenever you are speaking to the judge or the judge is speaking to you. You will also stand while questioning your witnesses
- Remember, it is improper for you to attempt to have any out-of-court communication with a judge unless the judge specifically orders it

There are signs posted in the courthouse about other behaviours which are not permitted. You must abide by these rules to show respect for the court.

Evidence you can present at trial

Evidence that may help prove your case at trial might include: documents, records (including audio or visual records), or written statements.

Examples of documents which might be used as evidence include: hospital records, medical reports, financial records, receipts, bills, estimates, photographs identified by the person who took them, and other documents that show the party's loss or property damage.

The Rules provide for copies of written statements, documents and records to be served on all parties at least 30 days before the trial date. You may have already served most of this material before the settlement conference.

If you serve on another party a written statement or document described in subrule 18.02(2) of the Rules, you must include:

- the name, telephone number and address for service of the witness or author
- if the witness or author is to give expert evidence, you must also include a summary of his or her qualifications

Example 6

Referring back to Example 1, the plaintiff in this case would serve the written statement of the building inspector indicating that the leak was caused by ZC's poor workmanship. The plaintiff would also include the inspector's name, telephone number, address for service and a summary of the inspector's qualifications.

If you want to ask questions of the author of another party's written report or document, you can summons the author as described below in the discussion about witnesses. You must also serve a copy of your summons to witness form on all parties in the case. If you do not, a party who has not been served may request an adjournment of the trial and, if granted, you may be ordered to pay costs.

You should bring the original documents and at least three copies of each document to the trial. The original may be entered by the court as an exhibit. The copies are for the judge, the other party (or parties) and yourself.

Check with the court office prior to the scheduled trial date to ensure that any equipment you may require is available in the courtroom (e.g. a television and VCR if you have footage that you would like to show the judge). You may be required to bring the necessary equipment with you.

What witnesses you can have

When you are thinking about possible witnesses, remember that the best witnesses are usually those who have personal, first-hand knowledge of the facts. You may also want to have expert witnesses that you think will assist your case, for example, a report of the building inspector. The judge will determine what evidence given by the witness will be allowed.

Think carefully about the questions you will ask your witness in order to get the evidence you think you will need, and write those questions down.

It is okay for you to review the questions with your witnesses beforehand, but you must not tell them what to say. Be sure to tell them this so they won't be concerned if they are asked in court whether they've discussed the case with you.

At the trial, witnesses will be required to swear or affirm that they will tell the truth.

Ensuring witnesses come to court

You can fill out and file a Summons to Witness [Form 18A] (<http://view.officeapps.live.com/op/view.aspx?src=http://www.ontariocourtforms.on.ca/forms/scc/18a/SCR-18A-Jan14-fil-EN.doc>) form. The court will issue the summons. There is a fee to issue the summons.

The summons to witness must be served personally on the witness at least 10 days before the trial date together with attendance money. Attendance money includes a witness fee and travel expenses. Refer to "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) " and "Small claims court fees" (<https://www.ontario.ca/page/fees-small-claims-court>) " for more information.

You may be required to file an Affidavit of Service [Form 8A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/08a/scr-8a-jan21-en-fil.doc>) to prove service of the summons and attendance money so make sure you keep a record of the details such as the date, time, and address where the summons was served.

Example 7

Referring back to Example 1, the plaintiff in this case wishes to have the foreman from YZ Roofing, who was in charge of the repair of the roof, testify about the problems with the original roofing job and the work required to repair the roof.

The defendant would ask the court clerk to issue a blank summons to witness form for each witness and pay the fee.

Once he filled in the witness details for the witness, he would make a photocopy for himself and then personally serve the original summons to witness form on the witness together with attendance money.

Then, from his copy, he would make enough photocopies to serve on every other party.

Remember that it is your responsibility, and in your own best interests, to make sure your witnesses attend. You do not have to serve a summons on the witness, but if you do not and your witness does not appear, you may have to proceed without the witness.

If a witness fails to attend trial after being properly served with a summons to witness and attendance money, the trial judge may issue a warrant for his or her arrest.

If the court finds a party has abused the power to summons a witness, the judge may order the party to pay money to the witness to compensate him or her for inconvenience and expense.

If a witness requires an interpreter

If a witness who is summonsed requires an interpreter, the court will provide an interpreter from English to French or French to English or visual language interpretation.

It is the responsibility of the party summonsing the witness to arrange for interpretation for other languages. Failure to do so may result in an adjournment of the trial and an award of costs against you.

The court will provide an interpreter for other languages to parties who have qualified for a fee waiver.

For more information see “Small claims court: suing someone (<https://www.ontario.ca/page/suing-someone-small-claims-court>) .”

Disagreeing with what a witness says

When you are in court, when it is the other party’s turn to say what happened or ask his or her witness questions, you should not interrupt.

When a witness for the other side has finished giving evidence, the judge may allow you to ask the witness questions.

If you cannot be ready in time, or cannot attend, the date set for the trial?

If you do not attend at trial, judgment may be granted against you or your claim may be dismissed. If you have a very good reason for being unable to attend on the date set for trial, you can ask the court to adjourn the trial and reschedule it to another date. Contact the court office for assistance. If the judge allows the request and makes an order, the clerk will notify the parties of the new trial date.

If the trial is not adjourned before the scheduled date, you or someone on your behalf must attend court on the trial date to request the adjournment. In determining the adjournment, the judge may also consider fixing costs against the party requesting the adjournment. If a judge allows your request and makes an order adjourning the trial, the clerk will notify the parties of the new trial date.

If an adjournment is granted and a new trial date is set, make sure you notify all of your witnesses about the new date. It may be necessary for you to prepare and serve a summons with the new date on the witness together with attendance money.

If a trial has been adjourned two or more times, any further adjournment may be made only on motion, with notice to all parties who were served with a trial notice, unless the court orders otherwise. Refer to “Motions and clerk’s

orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

Judgement

The judgment is the decision of the judge who heard your case. Usually, a judge in Small Claims Court will give judgment in court right after both sides have finished presenting their cases. Sometimes, however, the judge may not give the judgment right away but will give the decision later (this is called reserving judgment). In this case, a copy of any reasons for judgment or an endorsement record will be mailed or emailed to each party when the judgment is made.

A judgment is an order of the court; it is not a guarantee of payment. Refer to "After judgment (<https://ontario.ca/document/guide-procedures-small-claims-court/after-judgment>) " for information about what you can do to attempt to collect your money or property after you get your judgment.

Appealing a judgement

You can appeal a judgment to a higher court if the amount of the judgment, not including court costs, is more than \$3,500, or there is an order directing recovery of personal property valued at more than \$3,500. This is set out in section 31 of the *Courts of Justice Act* and O. Reg. 626/00 under the *Courts of Justice Act*.

An appeal is based on your belief that a judge made a significant mistake. It is not an opportunity to retell your story. The judge who hears the appeal will not hear any new evidence; he or she will rely entirely on the transcript of the trial and the court record.

For more information about appeals, see the guides to Divisional Court available at Divisional Court locations and on the ministry's website at www.ontario.ca/attorneygeneral (<http://www.ontario.ca/attorneygeneral>) . The Ontario Courts website at www.ontariocourts.ca (<http://www.ontariocourts.ca/>) also contains useful information. From the home page:

- click on "Superior Court of Justice". The Divisional Court is a branch of the Superior Court of Justice.

Judgment against a party who did not appear at trial

In some circumstances, a party who did not appear at trial may make a motion to set aside or vary the judgment obtained against them. The motion must be made within 30 days after becoming aware of the judgment, unless the court extends the time. See "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information on making a motion.

Asking for a new trial

In very limited circumstances, which are set out in the Rules, a party can ask for a new trial. A motion for a new trial must be made within 30 days after the final order at the trial, unless the court orders otherwise. To do so, serve and file:

1. A Notice of Motion and Supporting Affidavit [Form 15A] (<http://view.officeapps.live.com/op/view.aspx?src=http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/15a/scr-15a-nov15-fil-en.doc>) setting out your reasons for asking for a new trial. Refer "Motions and clerk's orders" for more information.
2. A document proving that you have made a request to an authorized court transcriptionist to make a transcript of the reasons for judgment and any other portion of the proceeding that is relevant. You can obtain a transcript by accessing the List of Authorized Court Transcriptionists at www.courttranscriptontario.ca

(<http://www.courttranscriptontario.ca/>) and contacting an authorized court transcriptionist to place the transcript order. Transcripts are subject to fees. Refer to "Small claims court fees" (<https://www.ontario.ca/page/fees-small-claims-court>) " for more information.

3. If available, a copy of the transcript must, at least three days before the hearing date, be served on all parties who were served with the notice of trial, and be filed with proof of service (the transcript must be *both* served and filed at least three days before the hearing date). For information on service, see "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ".

Under the Rules, you may request a new trial only where:

- there was a purely arithmetical (mathematical) error in the determination of the amount of damages awarded at trial
- there is relevant evidence that was not available to the party at the time of the original trial and could not reasonably have been expected to be available at that time

If your request for a new trial is based on a mathematical error, your affidavit must show the calculation error in the judgment and the correct calculations. For more information about requesting a new trial, refer to Rule 17.04 of the *Rules of the Small Claims Court* (<http://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) .

Checklist: Getting ready for trial

Follow this checklist when getting ready for your trial:

1. Review the claim, defence (if any) and any other documents that have been filed.
2. Review the results of your settlement conference. Make a note of all points that were agreed to which are no longer in dispute and any direction given by the judge.
3. List the points you need to prove.
4. Consider how you will prove each point.
5. Gather the original documents you need and organize them in logical order.
6. If you have not already done so, serve on all other parties the documents and witness statements that you will use at least 30 days before trial, and include contact information and the address for service for each document's author.
7. Contact any witnesses you decide are necessary.
8. If you decide to summons any witness(es), serve a copy of the summons on each witness, together with attendance money, at least 10 days before the trial
9. Obtain statements from expert witnesses, if any, and serve copies on the other parties together with the expert's contact information, address for service, and qualifications.
10. Prepare a list of questions for your witnesses.
11. Prepare a list of questions that you would like to ask the witnesses for the other party or parties.
12. On your trial date, dress appropriately and give yourself plenty of time to travel to the courthouse and find your courtroom.

If you have prepared your case well, you will be much more relaxed in court and you will be able to present your case to its best advantage.

Assessment hearing

Where a defendant does not file a defence to a claim for a non-liquidated amount, the plaintiff can ask the clerk to note the defendant in default and request an assessment hearing before a judge to prove the amount the defendant owes. A non-liquidated claim is a claim where the amount in dispute is not fixed under a clear and distinctly stated agreement (for example, damage to property or a personal injury). For more information, refer to "Making a Claim (<https://ontario.ca/document/guide-procedures-small-claims-court/making-claim>) ."

You may also make a motion in writing for an assessment of damages, rather than scheduling an assessment hearing. For information about motions in writing for an assessment of damages, refer to the "Motions and Clerk's Orders ."

Preparing for an assessment hearing

An assessment hearing proceeds as a trial except the defendant is not present. Because the defendant did not file a defence, the defendant is considered to have admitted the claims you made against him or her. As a result, you do not have to prove the defendant's liability (i.e. that the defendant does, in fact, owe you something). You must only prove the amount that the defendant should pay to compensate you.

The information about preparing your case in Parts One and Two of this guide will help you prepare for an assessment hearing. It is a good idea to prepare your case as suggested in Parts One and Two.

If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents with the court **at least 3 days** before the assessment hearing date.

After judgment

Overview

Some people think that when the trial is over and the judge's decision is made or a default judgment is obtained, the successful party (for purposes of this guide, the creditor) will automatically be paid (by the debtor) and that is the end of the case.

Obtaining a judgment is sometimes just the beginning for both parties. A judgment is an order of the court; it is not a guarantee of payment.

If you are a creditor, there are many different tools available to help you collect the money you are owed under the order. This guide will give you general information about what you may have to do after you have your judgment in order to enforce (attempt to collect) it.

If you are a debtor who has lost your case and now has to pay, this guide will provide some general information and tell you what some of your options are. For example, if you do not have money or assets available with which to pay the judgment, or if you disagree with the judgment made, you may wish to take some of the steps outlined in this guide.

Before we get into the details on specific enforcement processes, the rest of this overview will give you some more general information on enforcing judgments.

In this guide, you will see many references to making or filing a motion. A motion is a process used to make a request to a judge for an order. For more information about motions, refer to "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) ."

Collecting money following a judgment in a Small Claims Court action

There are a number of procedures available to the parties, but it is up to the parties to commence the different enforcement procedures available.

What can be done as soon as judgment is given to collect the money owed under the judgment

You can start taking enforcement steps immediately after judgment is given. However, whether your judgment was made by a judge after a trial or settlement conference, or whether it was obtained by default, the best place to start is often with a simple written request for payment. You can send a letter to the debtor (the one who owes the money) asking for prompt payment. Be sure to include the address where payment can be made. Set a reasonable deadline, taking into account whether payment will likely come by mail, and any other circumstances you may know about. Keep a record of the payments you receive.

If the letter asking for payment is unsuccessful and/or you are unable to reach a mutually satisfactory agreement with the debtor, you will have to take other steps to enforce your judgment. Generally, the faster the creditor acts, the better the results will be.

The next step you take will depend on the information you have about the debtor's assets and ability to pay. If you have sufficient information, you can take an enforcement step immediately. If you do not know where the debtor banks, what assets he or she has, or where he or she may work, you could begin the enforcement process by requesting an examination hearing.

You should read the entire guide before deciding what methods of enforcement will work best in attempting to collect your judgment.

What the debtor can do as soon as judgment is given

You may receive a letter from the creditor asking for prompt payment after judgment has been given at trial, at the settlement conference, or by default. Once you are aware of the judgment, you should contact the creditor immediately.

If you are able to pay the full amount of the judgment, send your payment to the creditor at the address provided in the claim or letter. If you are unable to pay the judgment in full, you should still contact the creditor to make arrangements for payment. Be sure to let the creditor know if there are any circumstances which affect your ability to pay right away, and make a proposal for paying the judgment within a reasonable timeframe. Be prepared to negotiate with the creditor until you are able to reach a payment schedule that is acceptable to both parties. Keep copies of proof of any payments you make.

If you are unable to continue meeting payment arrangements that you have agreed to, you should notify the creditor and try to make other mutually satisfactory arrangements.

What the debtor can do if they disagree with the judgment

If the judgment was obtained by default, you should refer to “Replying to a claim (<https://ontario.ca/document/guide-procedures-small-claims-court/replying-claim>) ” for information on how to ask the court to set aside the default judgment. If the judgment was obtained at trial, you should refer to “Getting ready for court (<https://ontario.ca/document/guide-procedures-small-claims-court/getting-ready-court>) ” for more information on your possible next steps.

Enforcing orders of boards, tribunals, agencies or other courts be in Small Claims Court

The orders of some boards, tribunals and agencies, as well as other levels of court in Ontario can be filed and enforced in the Small Claims Court (e.g., orders under the *Residential Tenancies Act* (http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060516_e.htm) , *Employment Standards Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm) , and the *Provincial Offences Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm)). Once the order is filed, for enforcement purposes, the order is treated as an order of the court. Refer to section 19 of the *Statutory Powers Procedure Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s22_e.htm) for more information. These orders can be filed online using the Small Claims Submissions Online portal (<http://www.ontario.ca/page/file-small-claims-online>) .

Where a party files an order from a board, tribunal or agency for enforcement and the order is in a foreign currency (e.g. U.S. dollars), conversion of the amount to Canadian dollars takes place when the enforcement and execution of the order takes place. For more information, refer to section 121 of the *Courts of Justice Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.htm) .

The *Criminal Code of Canada* (<http://laws.justice.gc.ca/en/C-46/index.html>) provides that in criminal court either a judge of the Ontario Court of Justice or Superior Court of Justice can order an offender to pay money to a person under either:

- a restitution order under section 738 (<https://laws-lois.justice.gc.ca/eng/acts/c-46/section-738.html>) or 739 (<https://laws-lois.justice.gc.ca/eng/acts/c-46/section-738.html>)
- a condition of probation under section 732.1 (<https://laws-lois.justice.gc.ca/eng/acts/c-46/section-732.1.html>)
- a condition of a conditional sentence under section 742.3 (<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-195.html>)

Where an offender fails to pay the amount ordered, the person entitled to the money can file the order at Small Claims Court if the amount ordered is \$35,000 or less. For enforcement purposes, the order is treated as a judgment of the court rendered against the offender. There is no fee charged to file the *Criminal Code* order or for issuing and filing any enforcement process related to it. However, mileage and disbursement expenses incurred by the enforcement office will be charged.

Once the order has been filed with the Small Claims Court, it can no longer be enforced in the office of the criminal court where it was made.

Enforcing an order from another Canadian province or territory

An order originating from another Canadian province or territory (other than Quebec) may be filed in accordance with the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5. (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90r05_e.htm) , and may then be enforced. You must get permission from the Small Claims Court before the order may be filed in Ontario. You can make the request for

permission by filing a Notice of Motion and Supporting Affidavit [Form 15A]

(<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) along with a certified copy of the order you wish to file in Ontario at the Small Claims Court office where you wish to have your order filed.

In your supporting affidavit, explain why you wish to file the order for enforcement in Ontario. Details about how the matter proceeded through the court in the other province or territory, including how and when the debtor was served with any documentation and if they defended themselves in the original matter should also be provided. You are not required to attend at the motion, but may do so if you wish. You will be notified by the court if the court permits you to file your order in a Small Claims Court in Ontario for enforcement. There is a fee to file these orders. Refer to “Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) ” for more information.

Once filed, for enforcement purposes, your order will be treated as a judgment of the court rendered against the debtor.

Collecting from a debtor

As a creditor, you may have to enforce the judgment. In order for you to collect, the debtor must have one of the following:

- money
- assets that can be seized and sold
- a debt owing to the debtor by a third party (e.g., bank account, employment income) that can be garnished

If the debtor does not have the ability to pay immediately, you may choose to wait. The person may get a job in a few months, for example. You will still have your judgment and you can attempt to collect it then through a notice of garnishment (see Part Two of this guide).

If you do choose to enforce an order through one of the processes outlined below, it is your responsibility to contact the court and the enforcement office(s) when the debt has been paid in full. This will stop any unnecessary enforcement steps by the court or enforcement office.

Entering a private dwelling to enforce a judgement

Enforcement staff can only use force to enter a private dwelling if the order for the writ specifically authorizes the use of reasonable force. Full details can be found under section 20(2) of the *Execution Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e24_e.htm) .

Interest on money claimed

For information on claiming and calculating pre-judgment interest (interest before judgment), see the “Making a claim ” (<https://ontario.ca/document/guide-procedures-small-claims-court/making-claim>) ”.

After judgment, interest is called post-judgment interest. If your claim is successful, post-judgment interest accrues automatically on the amount owing to you under the judgment.

Calculating post-judgment interest

You can calculate the amount of post-judgment interest owing as follows:

$(\text{total judgment amount}) \times (\text{post-judgment interest rate \%}) \div (365 \text{ days per year}) \times (\text{number of days from date of judgment to date payment received}) = \text{post-judgment interest owing}$

Example 1

Juan got a Small Claims Court judgment for \$5,000. The pre-judgment interest rate was 10% and 60 days passed from the date his claim arose until the date judgment was given.

Pre-judgment interest would be calculated as follows:

$\$5,000 \times 10\% \div 365 \text{ days per year} \times 60 \text{ days} =$

\$82.19 pre-judgment interest owing (this amount will not change once it has been calculated)

Juan was paid the total amount of his outstanding judgment (which includes pre-judgment interest) 240 days after he received the judgment. The post-judgment interest rate was 5%.

Post-judgment interest would be calculated as follows:

$\$5,082.19 \times 5\% \div 365 \times 240 \text{ days} = \$167.09 \text{ post-judgment interest owing}$

Calculation of simple (not compound) interest is always on the amount owing from time to time on the amount of the judgment (debt + pre-judgment interest) and costs awarded at the time of judgment that continue to reduce as payments are received.

Interest calculations must be performed after every payment is received as the daily (per diem) interest accumulating on the judgment and/or costs awarded at the time of judgment may be reduced as a result of the payment applied.

For example, if several partial payments are made, the daily interest rate due must be re-calculated after each payment based on the reduced balance owed. This is true for both pre-judgment and post-judgment interest.

Example 2

Karen got a Small Claims Court judgment for \$5,000. The pre-judgment interest rate was 10% and 60 days passed from the date her claim arose until the date judgment was given.

Pre-judgment interest would be calculated as follows:

$\$5,000 \times 10\% \div 365 \text{ days per year} \times 60 \text{ days} =$

\$82.19 pre-judgment interest owing (this amount will not change once it has been calculated)

Karen requests the issuance of a garnishment 300 days after she obtained judgment and advises that she received a payment of \$2,000 from the debtor 240 days after she received the judgment. The post-judgment interest rate was 5%.

Post-judgment interest would be calculated as follows:

- post-judgment interest owing from the judgment date to the date when the payment was made (day 240)-
 $\$5,082.19 \times 5\% \div 365 \times 240 \text{ days} = \167.09
- post-judgment interest owing from date the payment was made (day 240) to the date she requested the garnishment (day 300) $\$5,082.19 + \$167.09 - \$2,000.00 = \$3,249.28 \times 5\% \div 365 \times 60 \text{ days} = \26.71

The total amount owing would be $\$3,249.28 + \$26.71 = \$3,275.99$ (plus fees for enforcement)

When the creditor needs to file a Certificate of Judgment

The court where the judgment is made is often called the originating court. Sometimes, the debtor lives or carries on business within the area of a court other than the originating court. In this case, before the creditor can get either a notice of garnishment or notice of examination from the court in that jurisdiction, a Certificate of Judgment [Form 20A] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20a/scr-20a-jan14-fil-en.docx>) is required. The creditor may also request the issuance of a certificate of judgment if they wish to have it for their records, or where required as proof of judgment (e.g., may be required by sheriff as proof of judgment where sale of land is requested). The certificate of judgment must be requested and issued by the originating court and filed in the court office where the judgment will be enforced. There is a fee for issuing each certificate of judgment.

Example 3

Meera sued Norman in Brockville Small Claims Court and the judge made a judgment in her favour for \$1,500. Meera knows that Norman has now moved to Ottawa.

Meera will now need to request a certificate of judgment from the Brockville Small Claims Court and file it with the Ottawa Small Claims Court if she wishes to file either a notice of garnishment or a notice of examination.

Meera could then garnish Norman's bank account, for example, by filing a notice of garnishment with the Ottawa Small Claims Court.

What the parties should do if the judgment has been paid in full

As noted above, if you are the creditor and you have chosen to enforce an order through one of the processes outlined in this guide, it is your responsibility to contact the court and the enforcement office(s) to advise that the debt has been paid in full and to stop or withdraw any enforcement steps. If the debt is paid in full under a notice of garnishment, you must immediately serve a Notice of Termination of Garnishment [Form 20R]

(<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20r/scr-20r-may19-en-fil.docx>) on the garnishee and on the clerk.

If you are the debtor, once you have paid all you owe to the creditor under the judgment, you can fill out a Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.docx).

On this form, check the box that indicates that you are requesting a clerk's order noting "payment has been made in full satisfaction of an order or terms of settlement." Each party must sign the form in the presence of his or her witness. This form must be filed with the court. Refer to "Motions and clerk's order

(<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

If the creditor is unavailable or unwilling to complete the notice of termination of garnishment form or sign the Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.docx) , you can make a motion to the court for an order stating that payment has been made in full satisfaction of the debt. There is a fee for this process.

Examination Hearing

Preparing for an examination hearing

A creditor can request an examination hearing if there is a default under an order for the payment or recovery of money.

An examination of the debtor gives both the court and the creditor information about the debtor's financial situation. It may be that the creditor wants to enforce an order through garnishment and needs to know where the debtor works or banks. The examination may give the creditor the information needed to request a garnishment. The creditor can also examine a person other than the debtor to get information about the debtor's assets.

At the hearing, the debtor or other person should be prepared to answer questions about the debtor's employment, any property the debtor owns such as motor vehicles or land, and about all bank branches where the debtor has an account, including accounts which may be held jointly with another person. It may later prove helpful if both the creditor and the person being examined take notes during the examination.

A judge may also make orders at an examination, for example an order as to payment.

Attendees of an examination

The creditor and the person to be examined (usually the debtor) **must** attend the examination. Representatives may also attend. The examination will be conducted under oath. The public will not be allowed to attend unless the court orders otherwise.

How the creditor begins the examination process

The procedure is:

1. You fill out a Notice of Examination [Form 20H] (<https://view.officeapps.live.com/op/view.aspx?src=https://ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20h/scr-20h-aug22-en-fil.docx>) indicating the person to be examined (usually the debtor). If the debtor is a company, name the person who has the information you need. For example, you could name an officer or director of the corporation, a partner in the partnership or the sole proprietor.
2. You fill out an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) in support of a request for a notice of examination.
 - a. e. This form generally describes:
 - b. f. the details of the court order you are enforcing
 - c. g. payments that have been made to date
 - d. h. the amount still owing

3. You file the notice of examination and affidavit with the court in person, by mail or online using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) , along with a Certificate of Judgment if necessary (see “When does the creditor need to file a Certificate of Judgment?” above). There is a fee for filing the notice of examination. The court clerk signs the notice, sets the date and returns your copy. Make sure you print or pick up from the court office enough affidavit(s) of service to allow you to fill out an affidavit to prove service on each debtor or person to be examined.
4. You serve the notice of examination on the debtor or other person to be examined at least 30 days before the hearing. If the debtor to be examined is an individual, you will also need to serve a blank Financial Information Form [Form 20I] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20i/scr-20i-jan14-en-fil.docx>) . If the debtor is a business, no financial information form is required.

If you cannot serve the debtor at least 30 days before the scheduled date of the hearing, call the court office for more information.

5. You fill out an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) with the court proving service on the debtor or person to be examined and file it at the court at least 3 days prior to the date set for the examination. The notice of examination must be served by personal service or an alternative to personal service. See “Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ” for more information.
6. If you filed your claim online you may also need to file in hardcopy all e-filed and e-issued documents in your case together with the notice of examination.
7. You attend the examination hearing on the date set by the court. The debtor (or other person) can be examined in relation to:
 - a. e. the reason for non-payment
 - b. f. the debtor’s income and property
 - c. g. the debts owed to and by the debtor
 - d. h. the disposal the debtor has made of any property either before or after the order was made
 - e. i. the debtor’s present, past and future means to satisfy the order
 - f. j. whether the debtor intends to obey the order or has any reason for not doing so
 - g. k. any other matter pertinent to the enforcement of the order

See “Tips on completing forms in Small Claims Court (<https://ontario.ca/document/guide-procedures-small-claims-court/tips-completing-forms-small-claims-court>) ” for more information on completing forms. Refer to “Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) ” for information on fees.

What the debtor (or other person) needs to do before the examination hearing

The debtor or any other person to be examined should be prepared to answer questions and provide documents in relation to the examination.

A debtor who is an individual (i.e. not a corporation) must fill out the Financial Information Form [Form 20I]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20i/scr-20i-jan14-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20i/scr-20i-jan14-en-fil.docx](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20i/scr-20i-jan14-en-fil.docx)) and serve it on the creditor before the hearing. The debtor must also bring a copy of the completed form to the hearing and give it to the judge. A financial information form provides a snapshot of the debtor's income, expenses, debts and assets.

The form is not filed with the court. The debtor must also bring to the hearing documents that support the information given in the form.

What happens to the Financial Information Form (Form 20I) given to the judge at the after the examination hearing

The judge at the examination hearing may consider the information you provide in the Financial Information Form and any supporting documents when making a decision at the examination hearing. You should ask the courtroom clerk to return these documents to you after the hearing has finished because they may not be available for you to pick up after the hearing. The Financial Information Form and supporting documents do not belong in the court file. Court files are available for public viewing, unless an order of the court provides otherwise.

Taking other steps to enforce a judgment if a payment schedule is ordered at the examination hearing

If, at the examination, the court orders a periodic payment schedule, the debtor must make the payments in the amounts and on the dates ordered in the schedule. As long as those periodic payments are made, the creditor cannot do anything else to enforce the judgment, other than issue a writ of seizure and sale of land.

What creditor can do if the debtor fails to make a payment under a periodic payment order or makes a partial payment

If the debtor fails to make a payment or makes only a partial payment, you can serve on the debtor and file with the court a Notice of Default of Payment [Form 20L] ([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20l/scr-20l-jan14-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20l/scr-20l-jan14-en-fil.docx](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20l/scr-20l-jan14-en-fil.docx)) and

an Affidavit of Default of Payment [Form 20M] ([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20m/scr-20m-jan21-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20m/scr-20m-jan21-en-fil.docx](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20m/scr-20m-jan21-en-fil.docx)) .

An order for periodic payment terminates 15 days after you serve the debtor with the notice of default of payment, unless a Consent [Form 13B] ([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13b/scr-13b-jan14-fil-en.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13b/scr-13b-jan14-fil-en.docx](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/13b/scr-13b-jan14-fil-en.docx)) in which you waive the default, is filed with the court within the 15-day period. You are then free to proceed with another method of enforcement.

Example 4

Meera sued Norman, and the judge made a judgment in her favour for \$1,500. At the examination hearing, the judge then ordered Norman to pay \$100 to Meera on the first day of each month.

As long as Norman makes those payments on time, Meera cannot do anything to enforce the order except file a Writ of Seizure and Sale of Land.

But if Norman misses a payment, Meera can file an affidavit of default of payment swearing to the default, the amount paid (if any) and the balance owing, and serve it on him.

If Norman and Meera do not file a consent in which Meera waives the default, 15 days later Meera could then file the documents necessary to commence any other enforcement processes to collect the total amount owed to her.

What happens if the debtor (or other person) attends an examination hearing but refuses to produce documents or answer questions

If the debtor or other person attends the examination but refuses to produce documents or answer questions, the judge may order the person to attend a contempt hearing to determine whether the person is in contempt of court.

The Small Claims Court will schedule a time, date and place for the contempt hearing. The clerk will provide the creditor with the notice of contempt hearing. The creditor must serve the notice on the debtor or other person who has been ordered to attend the contempt hearing by means of personal service. Once service is made, an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) must be filled out, sworn (or affirmed) and filed with the Small Claims Court at least 7 days in advance of the hearing date. Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information.

The creditor and the debtor (or other person) must attend the contempt hearing.

Asking the court to cancel a contempt hearing ordered for failure to produce documents or answer questions

If you are ordered to attend a contempt hearing for failing to produce documents or answer questions you must attend the contempt hearing. If you have changed your mind and are now willing to produce documents or answer questions, tell the judge at the hearing. Bring the documents with you to the contempt hearing.

What happens if the debtor (or other person) does not attend the examination hearing

If the debtor (or other person) does not attend the examination hearing, the judge may order the person to attend a contempt hearing to determine whether the person is in contempt of court.

The Small Claims Court will schedule a time, date and place for the contempt hearing. The clerk will provide the creditor with the notice of contempt hearing. The creditor must serve the notice on the debtor or other person who has been ordered to attend the contempt hearing by means of personal service. Once service is made, an Affidavit of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) must be filled out, sworn (or affirmed) and filed with the Small Claims Court at least 7 days in advance of the hearing date. Refer to "Serving documents (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>)" for more information.

The creditor and debtor (or other person) must attend the contempt hearing.

Asking the court to cancel a contempt hearing ordered for failure to attend the examination hearing

If you want to ask the court to cancel the contempt hearing that was ordered because you failed to attend the examination hearing, you may file a Notice of Motion and Supporting Affidavit [Form 15A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) before the date of the contempt hearing. In your affidavit and at the motion hearing, ask the judge to rescind (reverse) the order for a contempt hearing. Explain the reasons why you failed to attend the examination hearing and that you are willing to attend a rescheduled examination hearing.

If the motion cannot be heard before the date of the contempt hearing, or if the motions judge refuses to grant your request, you must attend the contempt hearing.

Paying the whole amount of my debt to the creditor

If you have been ordered to attend a contempt hearing and you did not get the order to attend the contempt hearing set aside on a motion, you **must** attend even if, in the meantime, you have paid your debt to the creditor. This is because you have been ordered to the contempt hearing for your behaviour in court (<abbr title="for example">e.g.</abbr>, refusing to answer questions or provide documents) or for your failure to attend the examination hearing, not for failing to pay the debt. Paying the debt does not expunge (remove) the contempt.

What happens at a contempt hearing

A contempt hearing is a serious matter. At the contempt hearing, you will be given an opportunity to explain your actions and any reasons for them. The judge may order you to attend an examination hearing. The judge may also make an order that you are to be jailed up to five days for contempt of court. If you do not attend the contempt hearing, orders may also be made against you.

When the judge orders a Warrant of Committal for contempt

If the judge orders the debtor or other person to be jailed for contempt of court, the clerk will issue a Warrant of Committal [Form 20J] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20j/scr-20j-jan21-en-fil.docx>) directed to the police. The warrant authorizes the police to take the individual named in the warrant to the nearest correctional institution and hold him or her there for the time specified in the warrant.

If you are found in contempt of court at the contempt hearing and a warrant of committal is issued, you or your representative may ask the court to set aside the warrant and the finding of contempt by filing a Notice of Motion and Supporting Affidavit [Form 15A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) at the Small Claims Court. In your supporting affidavit and at the motion hearing, explain to the judge the reasons why the contempt order should be set aside.

Getting legal advice before a contempt hearing

A lawyer or paralegal is in the best position to advise you about your legal rights and responsibilities. If you wish to consult an Ontario lawyer or paralegal, you may contact the Law Society Referral Service operated by the Law Society of Ontario. The Law Society Referral Service can provide you with the name of a lawyer or paralegal in your area, who will provide a free initial consultation of up to 30 minutes to help determine your rights and options.

If you would like to be referred to a lawyer or paralegal, you may submit a request to the Law Society Referral Service by completing the online request form at www.lawsocietyreferralservice.ca (<http://www.lawsocietyreferralservice.ca/>) .

A crisis line is available Monday to Friday, 9:00 am to 5:00 pm. The crisis line is intended for people who are unable to use the online service, such as those in custody, in a shelter, or in a remote community without access to the internet. The phone number for the crisis line is 416-947-5255 (toll free 1-855-947-5255).

Information about how to be referred to a lawyer or paralegal through the Law Society's Referral Service is available at www.lsrinfo.com (<http://www.lsrinfo.com>) . You may also use the Law Society's Lawyer and Paralegal Directory, which may be viewed at www.lawyerandparalegal.directory (<http://www.lawyerandparalegal.directory>) .

Notice of Garnishment

If a court has ruled in your favour and you have not received payment, you can claim/demand money owed to the debtor by someone else. This is called garnishment. Most often, people garnish wages or bank accounts.

The rules for garnishment are contained in the *Rules of the Small Claims Court* (<http://www.ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) . The rules on garnishment are strict and have to be followed carefully.

Section 7 of the *Wages Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90w01_e.htm) restricts the amount of wages that can be garnished. In addition, there are some exemptions from garnishment. For example, employment insurance, social assistance and pension payments cannot be garnished, even if the funds have been deposited into an account at a financial institution.

There are also specific time limits and extra steps to garnish the wages of an employee of the federal government, a military member of the Canadian Armed Forces or an employee of the provincial government.

For information about the process of garnishing the wages of a federal government employee, you can use the Checklist for Applicants – Garnishment, Attachment and Pension Diversion Act (<http://www.justice.gc.ca/eng/fl-df/enforce-execution/list-liste.html>) to help guide you through the garnishment process under Part I of the federal *Garnishment Attachment and Pension Diversion Act* (<http://lois-laws.justice.gc.ca/eng/acts/G-2/FullText.html>) .

For more information about garnishing the wages of a member of the Canadian Armed Forces, you can refer to Chapter 207 of the Queen's Regulations and Orders (<http://www.forces.gc.ca/en/about-policies-standards-queens-regulations-orders-vol-03/ch-207.page>) .

For information about the process of garnishing the wages of a provincial government employee, you can refer to the O. Reg. 210/19: "Garnishment" under the *Crown Liability and Proceedings Act, 2019* (<https://www.ontario.ca/laws/regulation/190210>) .

Example 5

Norman has not made any attempt to pay the judgment in spite of receiving a letter requesting payment from Meera. Meera decides to garnish his bank account. (She knows where he does his banking from a cheque he gave her.)

She gets an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) and a Notice of Garnishment [Form 20E] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20e/scr-20e-jan21-en-fil.docx%20>) , and fills out and files both documents. The court returns her copies. She makes additional copies and takes one to the bank and serves the manager by giving a copy to her. She then serves Norman and files with the court affidavits of service proving service on the garnishee (the bank) and the debtor (see "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) ").

She finds out that there was \$100 in Norman's bank account and that money has now been paid into court. The payment will be held for 30 days and then paid out equally to all Small Claims Court creditors who have filed a garnishment against Norman, including Meera.

Information needed to proceed

If you are garnishing wages, you must know the correct legal name and address of the employer. If the name of the employer is not correct, the employer may have a case for ignoring the order. For information on how to search a corporation or registered business name, you can visit the ServiceOntario (http://www.ontario.ca/en/services_for_residents/index.htm) website or contact the Companies Helpline, Ministry of Government and Consumer Services at 416-314-8880 or toll free in Ontario at 1-800-361-3223.

There is a fee payable to that Ministry for the search and the search will not be conducted over the phone.

If you are garnishing a bank account, you must know the name and address of the branch where the debtor banks.

How a creditor begins the garnishment process

The procedure is:

You must have the notice of garnishment issued by the clerk within 6 years after the court made the order you are trying to enforce or make a motion to have it issued later.

1. You fill out an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) in support of a notice of garnishment.

This form describes:

- a. l. the details of the court order you are enforcing
 - b. m. the amount still owing
 - c. n. that someone else (the garnishee) does or will owe money to the debtor
 - d. o. the address of the garnishee
2. You fill out a Notice of Garnishment [Form 20E] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20e/scr-20e-jan21-en-fil.docx%20>) . If there is more than one garnishee, you must fill out a separate notice of garnishment and affidavit for enforcement request for each garnishee.
 3. You file the affidavit and notice of garnishment with the court or file each document online using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) . There is a fee for filing the notice of garnishment. The court clerk signs ("issues") the notice of garnishment and returns your copy. You can serve the documents on the garnishee and the debtor personally, by courier, or by mail. One affidavit of service must be completed for each person served.
 4. You serve the notice of garnishment and a blank Garnishee's Statement [Form 20F] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20f/scr-20f-may19-en-fil.docx>) on the garnishee (that is, the bank, the employer, or whoever you have named in the notice). The usual practice is to serve the garnishee first and then serve the debtor.

5. You serve the notice of garnishment and a copy of the affidavit for enforcement request on the debtor. You must do so within 5 days of serving the garnishee.
6. You then fill out and file two Affidavits of Service [Form 8A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) with the court: one proving service on the garnishee and the other proving service on the debtor.
7. The garnishee pays the money to the court (if there is any money).

See the “Tips (<https://ontario.ca/document/guide-procedures-small-claims-court/tips-completing-forms-small-claims-court>)” sheet at the end of this guide for more information on completing forms. Refer to “Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>)” for information on fees.

Co-owner of the debt

A co-owner of debt is a person who is also entitled to a portion of the debt payable to the debtor (e.g., in the case of a joint bank account). Where there is a co-owner, up to 50% of the indebtedness, subject to an order of the court, may be garnished.

The garnishee (the person who owes the debt to the debtor) is required to identify any co-owners of debt in the Garnishee’s Statement [Form 20F] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20f/scr-20f-may19-en-fil.docx>). The creditor is then required to serve the co-owner or co-owners of debt with a Notice to Co-owner of Debt [Form 20G] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20g/scr-20g-jan21-en-fil.docx>) and the garnishee’s statement.

When the garnishee pays the money into court

Any money paid into court will be deposited in the court’s account in trust for the creditor. In order to pay the money out, the clerk needs proof that the creditor served the notice of garnishment on the debtor. These are a few of the things that the creditor should keep in mind:

- Make sure you file your affidavits of service (of the notice of garnishment) with the court.
- The clerk will hold the first payment for 30 days. After that, unless one of the situations set out below occurs, the clerk will send a cheque to the creditor or creditors.
- The money will be divided equally between all Small Claims Court creditors in that location who have garnishments filed against the same debtor and have not been paid in full.
- All subsequent payments received from the garnishee will be paid to the eligible creditor(s) as they are received.

The payout of money may be affected by certain circumstances, such as the following:

- a garnishment hearing has been requested
- a notice of motion has been filed, for example, a motion to set aside default judgment or a motion for a new trial
- a “Sheriff’s Demand” for the funds has been received, in accordance with the *Creditors’ Relief Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_10c16b_e.htm) (**Note:** The demand only attaches to funds

that are in the court at the time the demand is filed with the clerk and will result in the clerk providing the sheriff with the funds that were subject to the demand)

- a court order delaying payment is made
- a written notice of a stay of proceeding under the *Bankruptcy and Insolvency Act* (<http://laws.justice.gc.ca/en/B-3>) has been filed
- in some circumstances where the judgment for which the garnishment was issued has been appealed

Renewing a garnishment when a debt is not paid in time

You can renew your notice of garnishment before it expires. A notice of garnishment remains in force for 6 years from the date it was issued by the court and for a further 6 years from each renewal. You must file a Notice of Renewal of Garnishment [Form 20E.1] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20e1/scr-20e1-jan21-en-fil.docx>) with the court together with a completed affidavit of enforcement request.

When the debt has been paid in full but the notice of garnishment hasn't expired

Once the amount owed by the debtor has been paid to the creditor, the creditor must immediately serve a Notice of Termination of Garnishment [Form 20R] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20r/scr-20r-may19-en-fil.docx>) on the garnishee and on the clerk of the court.

If the creditor fails to file the notice of termination of garnishment form, the debtor can fill out a Request for Clerk's Order on Consent [Form 11.2A] (http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/11_2A/scr-11-2a-jan21-en-fil.docx) . On this form, check the box that indicates that you are requesting a clerk's order noting "payment has been made in full satisfaction of an order or terms of settlement." Each party must sign the form in the presence of his or her witness. This form must be filed with the court. Refer to "Motions and clerk's order (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>) " for more information.

If the creditor is unavailable or unwilling to complete the notice of termination of garnishment form or sign the request for clerk's order on consent form, you can make a motion to the court for an order stating that payment has been made in full satisfaction of the debt. There is a fee for this process.

Garnishment hearing

A garnishment hearing is a hearing before a judge about issues arising from the garnishment. A garnishment hearing can be requested by a debtor, creditor, co-owner of debt, or garnishee, or any other interested person.

What the debtor can do if money is being garnished

If you are the debtor and you do not agree with a notice of garnishment that has been served on you, you can request a garnishment hearing.

You can also request a garnishment hearing if the garnishment means a real financial hardship for you. At the hearing you can ask a judge for an order to increase the amount of wages that is exempt from garnishment under the *Wages Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90w01_e.htm) . For example, if the

percentage of your wages that is exempt from garnishment is increased, less money will be deducted from your wages.

What the co-owner of debt can do if funds are being garnished

A co-owner of debt can request that the clerk schedule a garnishment hearing before a judge. A co-owner of debt must request the garnishment hearing within 30 days after the notice to co-owner of debt is sent in order to be able to dispute the garnishment.

Requesting a garnishment hearing as a creditor

Any interested person, including the debtor or garnishee, may request that the clerk schedule a garnishment hearing before a judge. For example, you may receive a garnishee's statement that you disagree with, or you may believe that monies are not being fully and properly remitted by the garnishee. The garnishee has 10 days to pay the court clerk after being served with the notice of garnishment, or 10 days after the debt of the garnishee to the debtor becomes payable, whichever is later. After the 10 days have passed, you can request a garnishment hearing. However, where the notice of garnishment is served on the Crown in Right of Ontario, the notice is deemed to have been served 30 days after the actual date of service (O. Reg. 210/19: "Garnishment" under the *Crown Liability and Proceedings Act, 2019* (<https://www.ontario.ca/laws/regulation/190210>)). In this situation, you would have to wait 40 days to request a garnishment hearing.

Scheduling a garnishment hearing

The person requesting the hearing must fill out and file a Notice of Garnishment Hearing [Form 20Q]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20q/scr-20q-jan21-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20q/scr-20q-jan21-en-fil.docx](https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20q/scr-20q-jan21-en-fil.docx)) .

These are the steps to follow:

1. Call the court office to get a hearing date to put on the form.
2. Complete the form and serve a copy of it on the creditor, debtor, garnishee (<abbr title="for example">e.g. </abbr> the bank or employer), co-owner of debt, if any (<abbr title="for example">e.g. </abbr> person who has a joint bank account with the debtor), and any other interested person that you know of (<abbr title="for example">e.g. </abbr> any other person affected by the garnishment order). Please refer to "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>) " for more information.
3. File the original notice of garnishment hearing with the court or file the notice of garnishment online using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) before the hearing date. There is no fee to file this notice.
4. If you filed your claim online, you may also need to file in hardcopy all e-filed and e-issued documents in your case together with the notice of garnishment hearing.

Writ of Seizure and Sale of Personal Property

If the debtor has been ordered by the court to pay the creditor money but he or she has not paid, the creditor can ask the enforcement office to take specific personal possessions belonging to the debtor and sell them at public auction so that the money can be used to pay the judgment debt.

The costs of this procedure can be relatively high. The creditor risks paying these costs with no chance of recovery if the debtor does not have any goods worth seizing and selling, and other enforcement remedies fail. It is a good

idea to confirm beforehand whether this procedure will be worthwhile.

Debtor's goods exempt from seizure by the creditor

Under the *Execution Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e24_e.htm) , a debtor is entitled to certain exemptions from seizure of personal property such as:

- clothing (up to a certain amount)
- household furniture, utensils, equipment, food and fuel (up to a certain amount)
- tools and instruments used in the debtor's business (other than tillage of the soil or farming) (up to a certain amount)
- tools, books and instruments used for the tillage of the soil or farming and livestock, fowl, bees and seed (up to a certain amount)
- one motor vehicle worth less than the specified amount

The debtor has a right to choose the goods that make up the exemptions.

Full details of the exemptions under the *Execution Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e24_e.htm) and its regulations are available on the e-Laws website at: www.e-laws.gov.on.ca (<http://www.e-laws.gov.on.ca/>) .

How a creditor begins the writ of seizure and sale of personal property process

The procedure is:

1. You fill out an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) in support of a writ of seizure and sale of personal property.

This form describes:

1. the details of the court order you are enforcing; and
 2. the amount still owing.
2. You fill out a Writ of Seizure and Sale of Personal Property [Form 20C] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20c/scr-20c-jan21-en-fil.docx>) .
 3. You file the affidavit and writ of seizure and sale of personal property with the court where you obtained your judgment or file each document online using the Small Claims Court Submissions Online portal at www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) . Court staff will issue the writ and return the issued writ to you to file in the enforcement office. There is a fee for issuing the writ in the Small Claims Court.

You must have the writ issued within 6 years after the court made the order you are trying to enforce or make a motion to have it issued it later.

4. You file the issued writ at the enforcement office. You must advise the enforcement office in writing what property you want seized and give detailed information that will allow enforcement staff to locate and seize the specific property. You can set this information out in a Direction to Enforce Writ of Seizure and Sale of Personal Property [Form 200] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/200/scr-200-jan14-en-fil.docx>) and file it at the enforcement office.
5. You pay an enforcement fee and a deposit to the enforcement office to cover the anticipated disbursements (expenses) to enforce the writ. Disbursements are costs of enforcement likely to be incurred and may include such things as freight, insurance, locksmith, storage, mileage and advertising of the sale of the goods seized. If the amount of the deposit you pay is used up prior to the disposition of the goods, you will be asked to replenish the deposit.

The enforcement office has a general duty to act reasonably and in good faith towards all parties, including both the debtor and the creditor. The enforcement office can refuse to act if the estimated costs of executing the writ of seizure and sale are greater than the debtor's equity in the property to be seized. The purpose of seizure is to sell property to satisfy the judgment debt, not to punish the debtor.

6. Enforcement staff will seize and store the items until a public auction is held. The goods will be sold at the public auction.
7. Proceeds from the public auction will be paid into court and paid out to creditor(s) who initiated the enforcement process once the enforcement office has calculated the net amount of proceeds.

See the "Tips (<https://ontario.ca/document/guide-procedures-small-claims-court/tips-completing-forms-small-claims-court>)" sheet at the end of this guide for more information on completing forms. Refer to "Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>)" for information on fees.

Having a motor vehicle, snowmobile or boat seized

If the creditor is requesting that a motor vehicle, snowmobile or boat be seized, he or she must also provide the court with proof that the following searches have been made:

- *Personal Property Security Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p10_e.htm) search and *Repair and Storage Liens Act* (http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90r25_e.htm) search to show whether there are any liens or other securities registered against the vehicle, the amounts of the liens or securities, and whether there is enough equity in the vehicle for it to be seized and sold;

For information about how to conduct these searches, visit the ServiceOntario (http://www.ontario.ca/en/business/STEL02_163188) website or contact the Companies Helpline, Ministry of Government and Consumer Services at 416-314-8880 or toll free in Ontario at 1-800-361-3223. Please note that there is a fee payable to that ministry for the search and the search **will not** be conducted over the phone.

- Vehicle abstract to prove that the vehicle is owned by the debtor;
- For a motor vehicle only: An up-to-date copy of a used vehicle information package, which can be obtained from the Ministry of Transportation. (This should not be more than one week old.)

(Information about where vehicle abstract searches or used vehicle information packages may be obtained is available on the ServiceOntario website.)

How long a writ lasts

The writ will expire six years from the date it is issued, unless you renew it for an additional six-year period. A writ may be renewed before it expires by filing a Request to Renew a Writ of Seizure and Sale [Form 20N]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx](https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx))

with the enforcement office. Each renewal is valid for six years from the previous expiry date. There is a fee to file a writ. Refer to "Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>)" or the enforcement office for more information.

Writ of Seizure and Sale of Land

A creditor can file a writ of seizure and sale of land against a debtor in any county or district where the debtor may own land (including a house). The writ would encumber any land presently owned or land which may be purchased in the future by the debtor in the county(ies) or district(s) where the writ is filed. If you wish to enforce the writ in more than one location, you must issue a separate writ for each location and file it there.

The writ of seizure and sale of land can be very effective in the long run since it will be difficult for the debtor to sell or mortgage the land until the debt is paid.

In addition, if another creditor has a writ filed in the same enforcement office against the same debtor and is actively enforcing it, you will share, on a pro-rata basis (divided on a proportionate basis depending on the amount of each debt), in any money paid into the enforcement office (sheriff) from any enforcement activity taken against the debtor.

Note, however, that the enforcement office has a general duty to act reasonably and in good faith towards all parties. The enforcement office can refuse to act if the estimated costs of executing the writ of seizure and sale are greater than the debtor's equity in the property to be seized.

The writ can be filed whether or not the debtor owns land at the time of filing. However, if you prefer not to file until you are certain the debtor owns land, for a fee you can do a name search at the land registry or land titles office (visit the ServiceOntario (http://www.ontario.ca/en/information_bundle/land_registration/content/STEL02_165696) website for a list land registry/titles offices) located in the area where you think the debtor may own property.

When the land can be sold

Four months after filing the writ with the enforcement office you can direct the enforcement office (sheriff) to seize and sell the land, but the actual sale cannot proceed until the writ has been on file for six months. Contact the enforcement office to determine what will be required to commence with the seizure and sale of land.

The enforcement office can only sell the portion of the land that the debtor actually owns. Mortgages, liens and encumbrances may reduce the value of the property that is available to be seized and sold by the enforcement office. Creditors should determine, before proceeding with this process that the debtor actually has equity (difference between what a property is worth and what the owner owes against that property) available to be sold.

The sale of land is a complicated and costly process, and commencing this process requires a large initial deposit for expenses associated with the sale.

Creditors should consider other less costly enforcement options before directing the enforcement office to proceed with seizing and selling the debtor's equity in the land.

How long the writ lasts

The writ will expire six years from the date it is issued, unless you renew it for an additional six-year period. A writ may be renewed before it expires by filing a Request to Renew a Writ of Seizure and Sale [Form 20N]

([http://view.officeapps.live.com/op/view.aspx?](http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx)

[src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx](https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20n/scr-20n-jan14-en-fil.docx))

with the enforcement office. Each renewal is valid for six years from the previous expiry date. There is a fee to file and renew a writ.

Beginning the Writ of Seizure and Sale of Land process

The procedure is:

1. You fill out an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) .

This form describes:

- a. f. the details of the court order you are enforcing;
- b. g. the amount still owing; and
- c. h. the county or district where the debtor owns land.

2. You fill out a Writ of Seizure and Sale of Land [Form 20D] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20d/scr-20d-jan21-en-fil.docx>) .

3. You file the affidavit and writ in the court where you obtained judgment. Court staff will issue the writ and return the original to you to file in the enforcement office. You must have the writ issued within six years after the court made the order you are trying to enforce or make a motion to have it issued it later. If you wish to file a writ in more than one county or district, you will require an additional affidavit and writ for each location. There is a fee for issuing the writ in the Small Claims Court and a fee for filing it in the enforcement office.

Help for someone involved in a seizure and sale of land

Any party involved in a seizure and sale of land may choose to get legal advice. If you wish to consult an Ontario lawyer or paralegal, you may contact the Law Society Referral Service operated by the Law Society of Ontario. The Law Society Referral Service can provide you with the name of a lawyer or paralegal in your area, who will provide a free initial consultation of up to 30 minutes to help determine your rights and options. If you would like to be referred to a lawyer or paralegal, you may submit a request to the Law Society Referral Service by completing the online request form at www.lawsocietyreferralservice.ca (<http://www.lawsocietyreferralservice.ca/>) .

A crisis line is available Monday to Friday, 9:00 am to 5:00 pm. The crisis line is intended for people who are unable to use the online service, such as those in custody, in a shelter, or in a remote community without access to the internet. The phone number for the crisis line is 416-947-5255(toll free 1-855-947-5255). Information about how to be referred to a lawyer or paralegal through the Law Society's Referral Service is available at www.lsr.info (<http://www.lsr.info/>) . You may also use the Law Society's Lawyer and Paralegal Directory, which may be viewed at www.lawyerandparalegal.directory (<http://www.lawyerandparalegal.directory/>) .

Writ of Delivery

When a person or business has personal property that does not belong to him or her and refuses to return it to the rightful owner, the owner can request a court order for a writ of delivery. This writ authorizes enforcement staff to take the specific items and return them.

What information property owner needs to get started

You must provide the court with a full description of the personal property, i.e. serial numbers, make, model, photographs (if available), the exact location where the items can be found and proof of ownership, where applicable.

What a person who possesses goods can do if they are served with an order and writ of delivery, and disagrees with the order

If you are served with an order for a writ of delivery, you may make a motion to the court in relation to the order. See "Motions and clerk's orders (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>)" for more information.

However, the goods may still be seized unless you have a court order rescinding the writ of delivery.

How the owner begins the writ of delivery process

The procedure is:

1. Once a judge grants the order for a writ of delivery, you fill out an Affidavit for Enforcement Request [Form 20P] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20p/scr-20p-jan21-en-fil.docx>) and Writ of Delivery [Form 20B] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20b/scr-20b-jan21-en-fil.doc>) .

The affidavit form describes:

- a. i. the details of the court order you are enforcing (i.e. , interim order or final judgment);
- b. j. exact details of the specific personal property you want returned to you and where it can be located; and
- c. k. your statement that the personal property in question has not been returned.

The court will sign the writ and return the writ and affidavit to you to take to the enforcement office.

2. File with the enforcement officer the issued writ, a copy of the affidavit of enforcement and a copy of the order granting the writ of delivery with the enforcement office. There is a fee for this process, including a fee for mileage.

The enforcement office will contact you with a date and time when the writ will be executed and advise you of any arrangements that you will need to make before the enforcement date such as:

- a. l. that enough resources are available to retrieve the personal property in an efficient and timely way.
- b. m. Depending on the size of the personal property, you may be asked to hire movers or rent a vehicle large enough to transport it.

c. n. You may also need to hire a locksmith to get access to the personal property to be seized.

For example, if property to be seized must be dismantled prior to removal from a person's possession, you should hire enough people to dismantle it quickly. You are responsible for making and paying the costs of these arrangements.

3. An enforcement officer will carry out the seizure of property in accordance with the order on the execution date identified and if the property is located, return it to you.

What the owner can do if the item(s) cannot be located

If the personal property referred to in a writ of delivery cannot be found or taken by an enforcement officer, you can ask the court, by filing a notice of motion, for an order directing an enforcement officer to seize any other personal property owned by the debtor.

If you obtain this type of order, enforcement staff will keep the personal property until the judge makes an order for its disposition (<abbr title="for example">e.g.</abbr>, orders the sale of the property). You must pay any additional costs to execute the order or store the personal property during this time.

Consolidation Order

If you are a debtor and you have more than one outstanding Small Claims Court judgment against you, you can apply to the Small Claims Court where you live for a consolidation order. If granted, this order would combine the judgment debts and set up a schedule of repayments for all creditors named in the order. As long as you make the payments as ordered, no other enforcement measures can be taken against you to collect the debts included in the order, except each creditor could seek issuance of a Writ of Seizure and Sale of Land [Form 20D] (<http://view.officeapps.live.com/op/view.aspx?src=https://www.ontariocourtforms.on.ca/static/media/uploads/courtforms/scc/20d/scr-20d-jan21-en-fil.docx>) and file it with the enforcement office (sheriff).

How a debtor can get a consolidation order

To ask for a consolidation order, file a Notice of Motion and Supporting Affidavit [Form 15A] (<https://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) listing the judgments against you, your debts, your income from all sources and any family support obligations. The notice of motion and affidavit must be served on each creditor at least seven days before the scheduled motion date. For more information about motions, see the "Motions and clerk's orders" (<https://ontario.ca/document/guide-procedures-small-claims-court/motions-and-clerks-orders>). For more information about service, refer to "Serving documents" (<https://ontario.ca/document/guide-procedures-small-claims-court/serving-documents>).

At the hearing, a judge will hear evidence about your income and expenses and may make an order combining your debts and order payments to be made in installments.

Remember, a consolidation order terminates immediately if:

- an order for payment of money is obtained against you for a debt incurred after the date of the consolidation order
- if you are in default under the terms of the order for 21 days

If the order is terminated, no further consolidation order can be made until a year has passed from the date of the termination.

Tips on completing forms in small claims court

1. **BE NEAT.** These are court documents. All court forms must be typed, handwritten or printed legibly. It may cause delays if your forms cannot be read. Forms are available at court offices and at the following website: www.ontariocourtforms.on.ca (<http://www.ontariocourtforms.on.ca/>) .
2. How to **COUNT DAYS FOR TIMELINES** in the *Rules of the Small Claims Court* (<http://ontariocourtforms.on.ca/en/rules-of-the-small-claims-court-forms/>) :

When calculating timelines in the Rules, count the days by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday. The court can order, or the parties can consent to, the shortening or lengthening of the time prescribed by the Rules. Holidays include:

- any Saturday or Sunday
- New Year's Day
- Family Day
- Good Friday
- Easter Monday
- Victoria Day
- Canada Day
- Civic Holiday
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day
- any special holiday proclaimed by the Governor General or the Lieutenant Governor

If New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday. If Christmas Day falls on a Saturday or Sunday the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday.

3. At the top of the forms, fill in the **NAME AND ADDRESS OF THE COURT** where you are filing the documents.
4. Once court staff provides a **COURT FILE NUMBER**, make sure it is written on the upper right-hand corner of **ALL** your documents.
5. You can fill out your documents and file them online using the Small Claims Court E-Filing Service portal or the Small Claims Court Submissions Online portal delivered by the Ministry of the Attorney General. The court will

e-mail you confirming your documents have been e-filed or e-issued. For more information and to file online, go to www.ontario.ca/page/file-small-claims-online (<http://www.ontario.ca/page/file-small-claims-online>) . If you prefer to file your documents in person or by mail, bring enough **COPIES** of your completed forms to the court office. Usually you will require one copy for each party who must be served and one copy for your own records. In most cases, the court will keep the original form. There is a fee to have copies made at the court office. Refer to "Small claims court fees (<https://www.ontario.ca/page/fees-small-claims-court>) " for more information.

6. **COURT FEES** must be paid to issue and file specific documents. Refer to "Small claims court fees | ontario.ca (<https://www.ontario.ca/page/fees-small-claims-court>) for more information. Fees are payable in Canadian funds, and can be paid by cash, cheque or money order payable to the Minister of Finance. Where available, fees can also be paid by debit or credit card. If you cannot afford to pay court filing or enforcement fees, you may request a fee waiver. The fee waiver applies to most fees in Small Claims Court proceedings. More information about fee waiver is available at any court office and on the Ministry of the Attorney General website at www.ontario.ca/attorneygeneral (<http://www.ontario.ca/attorneygeneral>) .

7. An **AFFIDAVIT** can be sworn or affirmed before:

- a Small Claims Court staff member who is a commissioner for taking affidavits (there is no fee for this service)
- a lawyer or paralegal licensed by the Law Society of Ontario
- a notary public
- a person who has been appointed a commissioner for taking affidavits

These individuals are authorized to commission oaths.

You should come to the commissioner with identification and the unsigned document. The commissioner will ask you to swear or affirm that the information in the affidavit is true and will ask you to sign the affidavit. The affidavit **must** be signed in front of the commissioner (whether in person or by videoconference), since they will certify that it was sworn or affirmed in their presence.

NOTE: It is a criminal offence to swear or affirm an affidavit you know is false.

8. If your **ADDRESS FOR SERVICE** changes, you must serve written notice of the change on the court and all other parties within seven (7) days after the change takes place.