

Introduction to Small Claims Court



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Learning Outcomes

After reading this chapter, you will understand:

- What type of action is heard in Small Claims Court
- What the *Courts of Justice Act* is and what it does
- Small Claims Court jurisdiction
- Who may hear and decide Small Claims Court matters
- The purpose of Small Claims Court
- Who may represent a party in Small Claims Court
- Orders for payment of money and costs in Small Claims Court
- Appeals of Small Claims Court trial decisions
- How to read the *Rules of the Small Claims Court*

What Is Small Claims Court?

Small Claims Court is a civil trial court. In Ontario, Small Claims Court is a division of the Superior Court of Justice.

Unlike the Ontario Court of Justice and the Trial Division of the Superior Court of Justice, Small Claims Court has no criminal or quasi-criminal jurisdiction. Jurisdiction is a court's area of legal authority. Small Claims Court hears civil actions only—that is, matters in which one party commences an action against another party or parties for some form of private relief. In Small Claims Court, the relief sought is usually money. Small Claims Court also has jurisdiction to make orders for the return of property that is wrongfully withheld from its owner by another person.

For legal purposes, an **action** is a proceeding brought in a court. The persons involved in the action or proceeding are called the **parties** to the action. Parties to a civil action are also known as **litigants** because they are engaged in civil litigation.

action
a proceeding brought
in a court

party
a person who commences
or defends an action
or proceeding

litigant
a party to a civil action;
someone engaged
in civil litigation

BOX 1.1

WHO MAY LITIGATE?

When we think of the word “person,” most of us think of an individual human being. However, for legal purposes, a corporation is a person and may be named as a party to an action along with individuals.

Other business entities, such as sole proprietorships, partnerships, and unincorporated organizations, may also be named as parties in an action.

In civil actions, the parties to the proceeding usually take the stand as witnesses at the trial of the matter. A sole proprietorship, partnership, or corporation cannot take the stand, so the owners, senior officers, or directors may give evidence on its behalf.

plaintiff
a party who commences
a civil action

defendant
the party who defends
a civil action

The party who commences the action is called the **plaintiff**. The party who defends the action is called the **defendant**. There may be multiple plaintiffs or co-plaintiffs in an action so long as the relief they are seeking from the defendant is based on a common set of facts or issues. There may be multiple defendants or co-defendants in an action if the plaintiff has reason to believe that one or more persons may be liable for the relief sought.

BOX 1.2

NAMING MULTIPLE PLAINTIFFS OR DEFENDANTS

On the plaintiff's claim (Form 7A), there is space on the first page for the name, alias, address, telephone number, and email address of one plaintiff; for the name, LSO number, address, telephone number, and email address of the plaintiff's legal representative; and for the corresponding information of one defendant and the defendant's legal representative, if any. What do you do if there is more than one plaintiff or more than one defendant?

When this happens, tick off the box on the plaintiff's claim (Form 7A) marked “Additional plaintiff(s) listed on attached Form 1A” or “Additional defendant(s) listed on attached Form 1A.” Then fill in the information about the additional parties on Form 1A—Additional Parties and insert it in Form 7A after page 1. See Figures 1.1 and 1.2. See also Small Claims Court Rule 1.06(3)—Additional Parties.

FIGURE 1.1 Plaintiff's Claim (Form 7A)

ONTARIO Superior Court of Justice		Plaintiff's Claim Form 7A Ont. Reg. No.: 258/98	
Seal	Small Claims Court _____ _____ Address _____ Phone Number _____	Claim No. _____	
Plaintiff No. 1			
<input type="checkbox"/> Additional plaintiff(s) listed on attached Form 1A. <input type="checkbox"/> Under 18 years of age.			
Last name, or name of company _____			
First name _____	Second name _____	Also known as _____	
Address (street number, apt., unit) _____			
City/Town _____	Province _____	Phone no. _____	
Postal code _____		Email address _____	
Representative _____		Law Society of Ontario no. _____	
Address (street number, apt., unit) _____			
City/Town _____	Province _____	Phone no. _____	
Postal code _____		Email address _____	
Defendant No. 1			
<input type="checkbox"/> Additional defendant(s) listed on attached Form 1A. <input type="checkbox"/> Under 18 years of age.			
Last name, or name of company _____			
First name _____	Second name _____	Also known as _____	
Address (street number, apt., unit) _____			
City/Town _____	Province _____	Phone no. _____	
Postal code _____		Email address _____	
Representative _____		Law Society of Ontario no. _____	
Address (street number, apt., unit) _____			
City/Town _____	Province _____	Phone no. _____	
Postal code _____		Email address _____	
Les formuliers des tribunaux sont affichées en anglais et en français sur le site www.ontariocourtforms.on.ca . Visitez ce site pour des renseignements sur des formats accessibles.			

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FIGURE 1.2 Additional Parties (Form 1A)

ONTARIO Superior Court of Justice		Page 1A	Additional Parties Form 1A Ont. Reg. No.: 258/98
			_____ Claim No.
<input type="checkbox"/> Plaintiff No.		<input type="checkbox"/> Defendant No.	
Last name, or name of company			
First Name	Second Name	Also Known as	
Address (street number, apt., unit)			
City/Town	Province	Phone No.	
Postal Code		Email address	
Representative		Law Society of Ontario no.	
Address (street number, apt., unit)			
City/Town	Province	Phone No.	
Postal Code		Email address	
<input type="checkbox"/> Plaintiff No.		<input type="checkbox"/> Defendant No.	
Last name, or name of company			
First Name	Second Name	Also Known as	
Address (street number, apt., unit)			
City/Town	Province	Phone No.	
Postal Code		Email address	
Representative		Law Society of Ontario no.	
Address (street number, apt., unit)			
City/Town	Province	Phone No.	
Postal Code		Email address	

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claimant

another word for plaintiff; anyone who commences a claim

infrequent claimant

anyone who files fewer than ten Small Claims Court claims in a Small Claims Court office on or after January 1 in any calendar year

A Small Claims Court plaintiff may also be called a **claimant**. A claimant is a person who commences a claim. In Small Claims Court, claimants are charged filing fees according to the frequency of their court use.

An **infrequent claimant** is anyone who files fewer than ten claims in a Small Claims Court office on or after January 1 in any calendar year. Infrequent claimants are charged \$102 to file a claim.

A **frequent claimant** is anyone who files ten or more claims in a Small Claims Court office on or after January 1 in any calendar year. A frequent claimant is charged \$215 per claim for the tenth and subsequent claims.

Note that the determination is made based on the number of claims filed in a particular jurisdiction in a particular calendar year. For example, if a plaintiff files six claims

in the Toronto Small Claims Court and seven claims in the Brampton Small Claims Court on or after January 1 in a calendar year, by the end of that year the plaintiff will have filed a total of 13 claims. Does this make her or him a frequent claimant? No. She or he remains an infrequent claimant because she or he filed fewer than ten claims in each court office.

If a plaintiff files 13 claims in the Belleville Small Claims Court and eight claims in the Cobourg Small Claims Court on or after January 1 in a calendar year, the plaintiff will be designated a frequent claimant in the Belleville Small Claims Court when she or he files the tenth claim, and she or he will be required to pay higher fees for all court services provided in claims 10 to 13 filed in that court. However, she or he will still be considered an infrequent claimant who is entitled to pay lower fees for claims filed in Cobourg during that calendar year.

frequent claimant

a person who files ten or more claims in a Small Claims Court office on or after January 1 in any calendar year

Access to Justice

Litigation can be an expensive and time-consuming method of resolving a dispute. In the civil courts, the parties themselves bear the costs of litigating. They must pay for legal representation and all other expenses connected with advancing the matter through the court. A civil proceeding in the Superior Court of Justice is governed by complex procedural rules and requirements. This makes it very difficult to advance or defend an action in the Superior Court of Justice without a lawyer's assistance. In other words, your access to justice may depend on whether or not you can afford a lawyer. At the same time, the complicated rules and procedures drive up the cost of legal representation. A plaintiff who is making a claim for \$100,000 does not want to have to pay a lawyer \$75,000 to recover that amount, but that can happen in a lengthy proceeding that is fiercely contested.

Small Claims Court is intended to improve the public's access to justice by providing a forum for proceedings where the amount claimed is comparatively modest—that is, proceedings where it is not cost-effective for the parties to hire expensive legal representation. Small Claims rules and procedures have been simplified with a view to resolving these matters expeditiously. The court's simplified procedures and forms are intended to be easily understood by self-represented parties.

Keep in mind that "simple" is a relative term. Something that is simple for a person with some legal background and experience can be very confusing for a person without that knowledge. Completing a plaintiff's claim can be extremely difficult for someone who has no experience with legal drafting or court procedure, or whose first language is not English. Issuing the claim and complying with the rules for proper service may be difficult and intimidating for such a plaintiff.

Another thing to consider is the time commitment required by any legal proceeding. Often a self-represented party who works full-time at a day job cannot take three hours off to attend on a motion or a settlement conference—let alone take a whole day off to attend at trial.

It is arguable that, in spite of the best intentions of legislators and the committees who design the rules of civil procedure, many people who appear in Small Claims Court would prefer to have legal representation if they had the resources to pay for it and if it were cost-effective to do so. For litigants who are self-represented, either because they cannot afford legal representation or for other reasons, Small Claims Court provides a comparatively inexpensive and user-friendly forum.

Fee Waiver

Individuals who cannot afford to pay court fees may apply for a fee waiver. For those who are financially eligible, fee waivers may be granted before an action is commenced, at any stage in the proceeding, and during a Rule 20 enforcement of a judgment. Litigation guardians may request fee waivers on behalf of persons under disability.

More information about fee waivers is available at any court office. The fee waiver forms are also available at any court office and on the Ontario Court Forms website.

The Courts of Justice Act

The *Courts of Justice Act*¹ is the statute that establishes and governs the court system in Ontario, from the Ontario Court of Justice to the Court of Appeal for Ontario. The procedural rules for Ontario courts, as well as other matters such as the salaries of provincial court judges and the monetary jurisdiction of Small Claims Court, are contained in the regulations to the *Courts of Justice Act*.

The general principles governing Small Claims Court are set out at sections 22 to 33.1 of the *Courts of Justice Act*. Anyone who practises in Small Claims Court should be thoroughly familiar with these principles.

BOX 1.3

WHAT IS THE COURTS OF JUSTICE ACT?

The *Courts of Justice Act* is a statute. Statutes are laws that are put in place by the federal Parliament in Ottawa or by the legislatures of the provinces and territories.

Federal statutes apply to all of Canada. Provincial or territorial statutes only apply to the province or territory in which they were implemented. The *Courts of Justice Act* is a provincial statute that only applies to the court system in Ontario. Other provinces have similar legislation. Because the court system in each province is set up by that province's legislature, the courts in each province often have different names and different (though similar) procedural rules. For example, in British Columbia, the superior trial court is called the British Columbia Supreme Court. In Alberta, the superior trial court is called the Alberta Court of Queen's Bench.

In Ontario, the superior trial court is called the Ontario Superior Court of Justice. The Small Claims Court is a branch of the Ontario Superior Court of Justice.

legal jurisdiction

the types of matters that a court may hear and the range of orders that a court may impose

monetary jurisdiction

the amount of money that the court may order one party to pay another, not including interest and costs

Monetary Jurisdiction of Small Claims Court

General

Jurisdiction is a court's area of authority. There are three general categories of jurisdiction: legal, monetary, and territorial. **Legal jurisdiction** is the authority to hear certain types of matters and to make certain types of orders. **Monetary jurisdiction**

¹ RSO 1990, c C.43.

is the amount of money that a court may order one party to pay to another, not including pre- and post-judgment interest and costs. **Territorial jurisdiction** is the geographical area over which a court has legal authority. This section deals with monetary jurisdiction only.

Costs are amounts that a court may order one party to pay to another party to reimburse the latter for legal fees and/or disbursements incurred in the course of litigation. Costs are awarded in addition to any other relief, including money damages, that may be ordered. The general rule is that costs are awarded to the successful party.

Legal fees are what you are charged by a lawyer or paralegal for legal representation and advice.

Disbursements are the out-of-pocket expenses of a legal proceeding. Disbursements include court filing fees, charges for service of documents, photocopying charges, experts' reports, postage, courier charges, and so on.

Small Claims Court fees and allowances can be found in the regulations to the *Administration of Justice Act*.² Links to these regulations can also be found at the Attorney General's website under "Court Fees" on the Court Services page and at the e-Laws website (see Figure 1.3). You will find a schedule of Small Claims Court fees in Appendix D to this text.

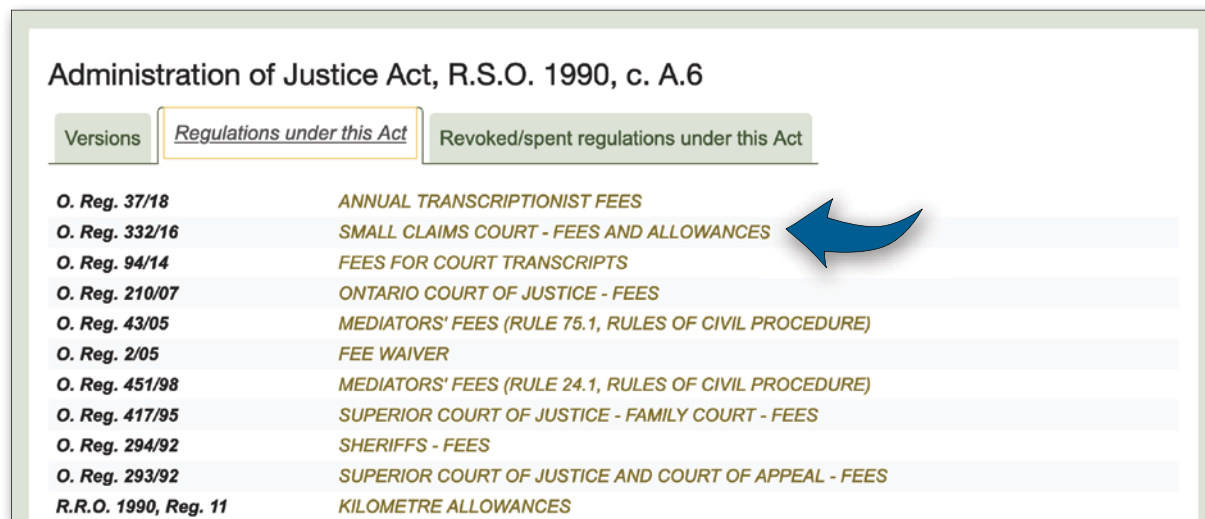
territorial jurisdiction
the geographical area over which a court has legal authority

costs
the expenses connected with a legal proceeding; costs include a party's disbursements, including court filing fees and, if the party is represented, legal fees

legal fees
fees charged by a lawyer or paralegal for legal representation and advice

disbursements
the out-of-pocket expenses of a legal proceeding; these include court filing fees, charges for service of documents, photocopying charges, postage, experts' reports, and so on

FIGURE 1.3 Finding Court Fees and Allowances on e-Laws



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Maximum Recoverable Amount

The monetary jurisdiction of Small Claims Court in Ontario is the maximum amount of money a party may recover in a Small Claims action in Ontario,

² RSO 1990, c A.6. See *Small Claims Court—Fees and Allowances*, O Reg 332/16.

exclusive of interest and costs. It is established by section 23(1) of the *Courts of Justice Act* and by regulations published pursuant to sections 23 and 53. Effective January 1, 2020, the monetary jurisdiction and appeal limit of the Small Claims Court throughout Ontario was increased from \$25,000 to \$35,000, exclusive of interest and costs. “Exclusive of interest and costs” means that interest on the money recovered plus the costs, if any, granted to a party will be awarded in addition to the amount of money ordered to be paid. If the action is for the recovery of possession of personal property, the value of that personal property cannot exceed \$35,000.

The monetary jurisdiction of the Small Claims Court has been increased several times over the past 30 years. Whenever there is an increase in Small Claims monetary jurisdiction, there are actions pending in the Superior Court of Justice—that is, the higher court—that then fall within the Small Claims Court jurisdiction. Section 23(2) of the *Courts of Justice Act* permits an action to be transferred from the Superior Court of Justice to the Small Claims Court in certain circumstances:

Transfer from Superior Court of Justice

23(2) An action in the Superior Court of Justice may be transferred to the Small Claims Court by the local registrar of the Superior Court of Justice on requisition with the consent of all parties filed before the trial commences if,

- (a) the only claim is for the payment of money or the recovery of possession of personal property; and
- (b) the claim is within the jurisdiction of the Small Claims Court.

If one or more parties do not consent, the party seeking the transfer must make a motion to a Superior Court judge for an order authorizing the transfer.

Transfer to Small Claims—Consent

If all parties to an action in the Superior Court of Justice consent to a transfer to Small Claims Court at any time before trial, the party requesting the transfer must obtain written, signed consents from all other parties. The party requesting the transfer then fills out a requisition (Form 4E of the *Rules of Civil Procedure*)³ and files it, along with the written consent of all other parties, at the court office of the Superior Court of Justice. The party requesting the transfer must pay a court fee to transfer the file. The Registrar will then arrange the transfer.

You will find a sample Form 4E at Figure 1.4.

³ RRO 1990, Reg 194.

FIGURE 1.4 Requisition: Rules of Civil Procedure (Form 4E)

FORM 4E
Courts of Justice Act
REQUISITION
(General heading)
REQUISITION

TO THE LOCAL REGISTRAR at *(place)*

I REQUIRE *(Set out a concise statement of what is sought and include all particulars necessary for the registrar to act. Where what is sought is authorized by an order, refer to the order in the requisition and attach a copy of the entered order. Where an affidavit or other document must be filed with the requisition, refer to it in the requisition and attach it.)*

(Date) *(Name, address and telephone number of lawyer or other person filing requisition)*

(The following are examples of different kinds of requisition.)

(Simple requisition)

I REQUIRE a certified copy of the *(identify document by nature and date)*.

(Order attached)

I REQUIRE, in accordance with the order dated *(date)*, a copy of which is attached, a commission authorizing the taking of evidence before the commissioner named in the order and a letter of request.

I REQUIRE, in accordance with the order dated *(date)*, a copy of which is attached, a certificate of pending litigation in respect of the land described in the statement of claim.

(Affidavit attached)

I REQUIRE an order to continue this action with *(name)* as plaintiff and *(name)* as defendants. An affidavit stating that the defendant *(name)* has reached the age of majority is attached.

RCP-E 4E (July 1, 2007)

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Transfer to Small Claims—No Consent

If any parties to an action do not consent—that is, if one or more parties oppose the transfer of an action from the Superior Court of Justice to the Small Claims Court—then, at any time before trial, a party wishing to transfer an action from the Superior Court of Justice to Small Claims Court may bring a motion in the Superior Court of Justice for permission to do so. The party requesting the transfer must contact the court office of the Superior Court of Justice where the action was commenced and obtain a hearing date that is convenient for all parties or their representatives. If the action was brought under the Rule 76—Simplified Procedure, the motion will be made using the simplified procedure motion form (Form 76B). If the action was brought in the ordinary procedure, the motion will be made under Rule 37 using a notice of

motion (Form 37A) supported by affidavit evidence. The motion may be made in writing. See Rule 37.12.1(4) of the *Rules of Civil Procedure*, which permits opposed motions to be made in writing where the issues of fact and law are not complex.

Who May Hear and Determine a Small Claims Court Proceeding?

Section 22(1) of the *Courts of Justice Act* establishes Small Claims Court as a branch of the Superior Court of Justice. Pursuant to sections 22(2) and (3), justices of the Superior Court of Justice may also preside as judges in Small Claims Court matters.

A **justice** is the same as a judge.

justice
in Small Claims Court, a justice is the same as a judge; "justice," "judge," and "Court" are often used interchangeably in reported decisions

Section 24(2) provides that, in addition to judges of the Superior Court of Justice, a proceeding in Small Claims Court may also be heard and determined by a provincial judge, a deputy judge, or a person appointed as a Small Claims Court administrative judge under section 87.2 of the Act.

Superior Court judges are appointed federally by the governor general. Provincial judges are appointed provincially by the lieutenant governor. An appointment to the bench only ends with compulsory retirement at age 75, when a judge retires, is dismissed for serious wrongdoing, becomes incapacitated, or dies.

Deputy judges and Small Claims Court administrative judges are found only in Small Claims Court. Unlike other judges in the Superior Court of Justice and the Ontario Court of Justice, deputy judges and Small Claims Court administrative judges are not granted lifetime appointments. Deputy judges are lawyers who are appointed for a term of three years by a regional senior judge of the Superior Court of Justice with the approval of the attorney general. A deputy judge's appointment is renewable for one or more terms. Small Claims Court administrative judges are appointed for a term of five years by the lieutenant governor in council in consultation with the attorney general. The term may be renewed for a further five years subject to section 87.2(5) of the *Courts of Justice Act*.

Sections 24(2) and (3) of the *Courts of Justice Act* give deputy judges unrestricted authorization to hear and determine any Small Claims Court matter.

General Mandate of Small Claims Court

The general mandate of Small Claims Court is set out in section 25 of the *Courts of Justice Act*:

Summary hearings

25. The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience.

In other words, the parties to a Small Claims Court action are entitled to have a matter resolved in a fair and reasonable way without undue delay and without being hindered or prejudiced by complex, expensive, and time-consuming procedures.

Like all procedural rules for Ontario courts, the *Rules of the Small Claims Court*⁴ are published as a regulation to the *Courts of Justice Act*. The Rules implement the mandate set out in section 25 of the *Courts of Justice Act* by establishing a simplified (or summary)

⁴ O Reg 258/98.

procedure that is designed to be user-friendly for self-represented or unsophisticated users while preserving and protecting the rights of the parties. The basic steps in a Small Claims Court proceeding are the same as those in the Superior Court of Justice (Civil Division), but the Small Claims Court forms and procedures have been simplified and streamlined at every stage.

The *Rules of the Small Claims Court* consist of Rules 1 to 22. Rules 1 to 20 govern all aspects of procedure from commencement of an action to enforcement of orders. Rule 21 sets out the role of referees in Small Claims Court matters.

Rule 22 sets out procedures for money paid into or out of court pursuant to a court order or a statutory provision or rule, or where the payment is made pursuant to a court order under Rule 4.08.

For an overview of Small Claims Court procedure, along with timelines for each step, see Appendix 1.1 to this chapter.

BOX 1.4

WHAT ARE QUESTIONS OF LAW AND QUESTIONS OF FACT?

A **question of law** is an issue that requires the application or interpretation of a law or legal principle. In both jury and non-jury trials, questions of law are determined by judges.

A **question of fact** is a factual dispute. All actions involve factual disputes. The plaintiff makes a series of assertions, or **allegations**, that tell his version of the story. The defendant then makes a series of allegations that tell her version of the story. Both parties and their witnesses give evidence at trial, and, based on that evidence, the finder of fact decides which allegations to accept as facts, on a balance of probabilities, and which allegations to reject as untrue.

In jury trials, the finder of fact is the jury. Being a court of summary procedure, Small Claims Court does not have jury trials. The judge determines all questions of fact and law.

question of law

an issue that requires the application or interpretation of a law or legal principle; in both jury and non-jury trials, questions of law are determined by judges

question of fact

a factual dispute, to be determined based on the evidence at trial; in jury trials, questions of fact are determined by the jury; in non-jury trials, questions of fact are determined by the trial judge

allegation

an assertion made in a pleading by a party to an action, setting out what she hopes to prove

lawyer

a person who has been called to the Bar of Ontario and who is licensed to practise law in Ontario

paralegal

a non-lawyer who is licensed to provide legal services in permitted areas of practice to clients for a fee in Ontario

Who May Represent a Party in Small Claims Court?

Section 26 of the *Courts of Justice Act* governs persons who may appear as representatives in a proceeding in the Small Claims Court:

Representation

26. A party may be represented in a proceeding in the Small Claims Court by a person authorized under the *Law Society Act* to represent the party, but the court may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of the party if it finds that such person is not competent properly to represent the party, or does not understand and comply at the hearing with the duties and responsibilities of an advocate.

In Ontario, **lawyers** and **paralegals** are licensed by the Law Society to represent persons. Lawyers are persons who have been called to the Bar of Ontario and are licensed by the Law Society of Ontario to practise law in Ontario. Paralegals are

non-lawyer legal representatives who are licensed by the Law Society of Ontario to provide legal services to clients for a fee in Ontario. By-law 4, section 6(2)(2)(i) authorizes paralegals to represent a party before the Small Claims Court.⁵

Paralegals as Officers of the Court

Prior to paralegal regulation, and for the first ten years after regulation, it was unclear whether paralegals were officers of the courts in which they were permitted to appear. In December 2017, **Convocation** endorsed paralegals as officers of the court in every court of record in Ontario in which paralegals are authorized to provide legal services, including the Small Claims Court.

Convocation
The governing body of the
Law Society of Ontario

In its Report to Convocation on this issue, the Paralegal Standing Committee noted that:

Such an endorsement would recognize all Law Society licensees as officers of the court, and would reinforce and confirm the duties that paralegals have as participants in the administration of justice. Such an endorsement would not impact the courts' power to control their own processes, nor would it change the paralegal scope of practice in any way, which is a separate regulatory issue.⁶

As officers of the court, lawyers and paralegals are bound by certain duties, including the duties of candour and fairness, to be honest with and not mislead the court, to act with integrity, and to show respect for the administration of justice. All of these duties and obligations are contained in the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*.⁷ Licensees who fail to observe these duties may be sanctioned by a judge of the Small Claims Court.

Evidence

With respect to evidence that is admissible by the Small Claims Court at a hearing, section 27 of the *Courts of Justice Act* states:

Evidence

27(1) Subject to subsections (3) and (4), the Small Claims Court may admit as evidence at a hearing and act upon any oral testimony and any document or other thing so long as the evidence is relevant to the subject-matter of the proceeding, but the court may exclude anything unduly repetitious.

Same

(2) Subsection (1) applies whether or not the evidence is given or proven under oath or affirmation or admissible as evidence in any other court.

5 Law Society of Ontario, By-Law 4 (amendments current to 27 November 2020), online: <<https://lso.ca/about-lso/legislation-rules/by-laws/by-law-4>>.

6 Paralegal Standing Committee, *Report to Convocation December 1, 2017*, at para 4, online (pdf): <<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-dec-2017paralegal-standingcommitteereport.pdf>> (offline as of January 2021).

7 Law Society of Ontario, *Rules of Professional Conduct* (amendments current to 24 October 2019), online: <<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>>; *Paralegal Rules of Conduct* (amendments current to 27 February 2020), online: <<https://www.lso.ca/about-lso/legislation-rules/paralegal-rules-of-conduct/complete-paralegal-rules-of-conduct>>.

Same

- (3) Nothing is admissible in evidence at a hearing,
- (a) that would be inadmissible by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible by any Act.

Conflicts

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

(5) A copy of a document or any other thing may be admitted as evidence at a hearing if the presiding judge is satisfied as to its authenticity.

Section 27 permits the court to consider any evidence, including **hearsay** evidence, so long as it is relevant and not unduly repetitious, regardless of whether that evidence would be admissible in any other court. The court may also accept as evidence unsworn documents and copies of documents instead of original documents, so long as the court is satisfied that the copy is a true copy of the original.

The general rule with respect to hearsay evidence is that witnesses are not allowed to repeat in court what they were told by a third party if the reason for presenting the evidence is to prove the truth of the contents of the third-party statement. The effect of section 27 is to allow hearsay evidence at Small Claims Court hearings, unless the evidence is subject to exclusion because of privilege or any statutory rules with respect to evidence—for example, as set out in the Ontario *Evidence Act*.⁸ The judge hearing the matter must decide how much weight, or credibility, to give the hearsay evidence.

This relaxed approach to evidence is in keeping with the general mandate of Small Claims Court to provide a forum where parties may have their proceedings resolved in a just, speedy, inexpensive, and simple manner. Where comparatively modest sums of money are involved, unsophisticated or self-represented parties should be able to present their case without being obliged to master complex rules of evidence.

hearsay

unverified, unofficial information gained from a third party rather than from direct knowledge; inadmissible as evidence in most courts, but permissible in Small Claims Court

Other Procedural Matters

Payment Terms

Section 28 of the *Courts of Justice Act* permits a judge to impose terms when making an order with respect to payment of money. A Small Claims Court order may provide for a **lump-sum payment**—that is, the entire amount owing is to be paid in a single payment—or the court may order **installment (or partial) payments**, stating the amount of each partial payment and the date on which it is to be paid.

lump-sum payment

a one-time payment of the full amount owing or a portion thereof

installment (or partial) payments

a partial payment of a sum of money owing, at regular intervals over a period of time, until the amount owed is paid in full

Rule 19—Costs

General

The general rule is that costs are awarded to the successful party in order to reimburse the successful party for legal fees and expenses incurred in the course of litigation. In

⁸ RSO 1990, c E.23.

a Small Claims Court proceeding, a successful party is entitled, at a minimum, to an order that his or her reasonable disbursements, including preparing a plaintiff's or defendant's claim or a defence, and expenses for travel, accommodation, photocopying, and experts' reports, shall be paid by the unsuccessful party (Rule 19.01(1)).

A successful party who is represented by a licensee is entitled to recover his or her reasonable disbursements, as well as an amount for legal fees, from the unsuccessful party.

**BOX
1.5**

REMINDER: FEES AND DISBURSEMENTS

Costs are money amounts that the court orders one party to pay to another party. Costs are awarded in addition to any other relief, such as payment of money or delivery of property that has been wrongfully withheld, that may be ordered.

Legal fees are what you are charged by a lawyer or paralegal for legal representation and advice in a proceeding.

Disbursements are the out-of-pocket expenses of a legal proceeding. These include court filing fees, charges for service of documents, photocopying charges, postage, courier charges, and witness fees.

Ordinarily, a costs award does not reimburse the successful party for all of her or his legal fees connected with the litigation. In Small Claims Court, the costs that may be awarded by the court to a successful party are subject to the *Courts of Justice Act* and the *Rules of the Small Claims Court*. See the discussion below.

The clerk shall assess—that is, determine the amount of—the successful party's disbursements in accordance with Rules 19.01(3) and (4) and Ontario Regulation 332/16 to the *Administration of Justice Act*, which sets out Small Claims Court fees and allowances (Rule 19.01(2)). The amount assessed for effecting service of a document shall not exceed \$60 (Rule 19.01(3)). The amount assessed for preparing a plaintiff's or defendant's claim or a defence shall not exceed \$100 (Rule 19.01(4)). The clerk's assessment of disbursements is subject to review by the court.

If the successful party is represented by a paralegal, lawyer, or student-at-law, the court may award a reasonable representation fee at trial or an assessment hearing (Rule 19.04).

If the successful party is self-represented, the court may order that the unsuccessful party pay to the self-represented successful party an amount not exceeding \$500 as compensation for inconvenience or expense (Rule 19.05).

If the court is satisfied that a party, successful or unsuccessful, has unduly complicated or prolonged an action or has otherwise acted unreasonably, the court may order the party to pay compensation to another party (Rule 19.06).

Any order for costs made pursuant to Rule 19 is subject to section 29 of the *Courts of Justice Act*, which states:

Limit on costs

29. An award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of

justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding.

Note that section 29 addresses costs *other than disbursements*—that is, costs for legal representation only. Note also that the calculation of maximum costs available is based on the amount claimed, *not* the amount of the judgment awarded by the court. Finally, keep in mind that the amount of costs addressed in section 29 is a *maximum* amount. The court has discretion to award a lesser amount, based on the circumstances of individual cases. The court has *no* discretion to award more than the maximum stated in section 29 unless it is necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding.

Fifteen per cent of the current Small Claims Court maximum monetary jurisdiction of \$35,000 is \$5,250. In order to obtain an award of costs other than disbursements in that amount, a party must:

- be represented;
- claim \$35,000 in the plaintiff's claim or defendant's claim;
- be successful at trial;
- have incurred legal fees of at least \$5,250;
- during submissions as to costs, produce persuasive evidence (e.g., a bill of costs with supporting documentation, such as invoices) that the amount of the costs other than disbursements payable in the proceeding is \$5,250 or more; and
- during submissions as to costs, persuade the judge that, in all of the circumstances, the maximum award of costs is appropriate.

You will find a sample bill of costs at Appendix 9.3 at the end of Chapter 9.

Appeals

Section 31 of the *Courts of Justice Act* addresses appeals:

Appeals

31. An appeal lies to the Divisional Court from a final order of the Small Claims Court in an action,

(a) for the payment of money in excess of the prescribed amount, excluding costs; or

(b) for the recovery of possession of personal property exceeding the prescribed amount in value.

The prescribed amounts for purposes of paragraphs (a) and (b) are established by Ontario Regulation 626/00 to the *Courts of Justice Act*,⁹ which also establishes the monetary jurisdiction of the Small Claims Court:

Jurisdiction

1(1) The maximum amount of a claim in the Small Claims Court is \$35,000.

(2) The maximum amount of a claim over which a deputy judge may preside is \$35,000.

⁹ See *Small Claims Court Jurisdiction and Appeal Limit*, O Reg 626/00.

Appeal limit

- 2(1) For the purposes of clause 31(a) of the Act, the prescribed amount is \$3,500.
- (2) For the purposes of clause 31(b) of the Act, the prescribed amount is \$3,500.

Note that whether or not a party may appeal depends on how much they claimed originally, not how much they were awarded at trial. If the amount claimed was \$3,500 or less, there is no right of appeal to the Divisional Court.¹⁰

The Divisional Court is the appellate branch of the Superior Court of Justice. Appeals to the Divisional Court are governed by Rule 61 of the *Rules of Civil Procedure*.

Paralegals are not allowed to appear in the Superior Court of Justice at present. The parties to an appeal may be self-represented or represented by a lawyer.

The Rules of the Small Claims Court

What Are They?

As was discussed above, the *Courts of Justice Act* establishes the court structure for all courts in Ontario. The rules of the various courts are published as regulations to the *Courts of Justice Act*.

The rules of each court establish its procedural requirements. You must be thoroughly familiar with the processes of the courts and tribunals before which you appear because failure to comply with procedural requirements may result in prejudice to your client.

How to Use the Rules

The most important thing to remember about rules of procedure is this: no matter how familiar you think you are with a court's process, no one can remember everything all the time. If you are contemplating a particular procedure, it is advisable to go to the applicable rule or rules and carefully review the contents.

If you cannot remember the rule number for a particular rule that you wish to review, think about the underlying issue. Is it commencement of an action? Proper service of a particular document? Whether Remembrance Day is a holiday for purposes of the *Rules of the Small Claims Court*? Timelines for service of written statements and documents prior to trial?

Having determined your issue, go to the table of contents for the *Rules of the Small Claims Court*. Often, you will be able to find the applicable rule by looking at its title.

Whenever you are appearing for a client in Small Claims Court, you should have a copy of the Rules with you so that you can refer to them if the need arises. You should never appear before any court or tribunal without having a copy of the rules of that court or tribunal handy.

Rule 1—General

Rule 1 deals with general matters that are not specifically covered by other rules.

¹⁰ See *Action Auto Leasing v Robillard and Payne*, 2011 ONSC 3264 (Div ct).

Definitions (Rule 1.02)

Rule 1.02 contains a list of definitions to be used when interpreting and applying other rules. For example, in order to understand Rule 4—Parties Under Disability, you must know what “disability” means in the context of a Small Claims Court proceeding. You will find the definition of “disability” in Rule 1.02.

Whenever you take a procedural step in a Small Claims Court matter, you are required to give the other parties **notice** that you are doing so. Notice is usually given by service of documents on other parties for the procedural step you are contemplating in order to make them aware that a procedural step is about to take place. The **notice period** is the minimum amount of time you have to serve the documents on other parties, as prescribed by the Rules. Rule 3.01 of the *Rules of the Small Claims Court* provides that when calculating a notice period, you exclude the first day and include the last day of the period. The ordinary operation of addition and subtraction will take care of this when calculating the time period. Rule 3.01 also states that if the last day of the notice period falls on a holiday, the period ends on the next business day that is not a holiday. If you are not sure whether a particular day is a holiday for purposes of calculating a notice period, you must consult the definition of “holiday” in Rule 1.02.

In Small Claims Court, “order” means an order or a judgment. A self-represented person is a person who litigates without the assistance of a lawyer, paralegal, or student-at-law.

notice

making a party aware of a pending procedural step or other matter; usually done by service of documents on other parties

notice period

the period of time established by the Rules for serving documents on other parties to give them notice of a pending procedural step or other matter

BOX 1.6

CONSULTING THE RULES OF THE SMALL CLAIMS COURT

Rupert Burdock has been retained to act for the defendant in a Small Claims Court action for recovery of an unpaid debt of \$15,000 plus interest and costs. Rupert’s client was served with the plaintiff’s claim on September 1, and she came to Rupert’s office to discuss the matter on September 10. She insists that she has a good defence to most of the claim and produces several documents which suggest that a substantial portion of the debt had been paid.

September is a busy month for Rupert, a sole practitioner whose speciality is landlord and tenant law. He puts the copy of the plaintiff’s claim with the supporting documentation into his inbox, where it slowly gets buried under a stack of paper.

A **default judgment** is obtained by a plaintiff against a defendant who has been properly served with a plaintiff’s claim but fails to file a defence within the required time. Early in October, Rupert’s client phones him to say that she just received a default judgment against her in the mail. She wants to know what is going on. Rupert assures her that he will get right back to her. He digs the plaintiff’s claim out of his inbox and picks up his copy of the *Rules of the Small Claims Court*.

What does Rupert learn? For each of the following issues, provide the rule number and a brief comment on its content.

1. What is the time for service of a defence to a plaintiff’s claim?

default judgment

a judgment obtained by a plaintiff against a defendant who has been properly served with a plaintiff’s claim but fails to file a defence within the required time

(Continued on next page.)

2. What are the consequences for the defendant of Rupert's failure to serve the defence within that time period?
3. What is the procedure for correcting Rupert's error?

This series of errors could have been prevented by reviewing the applicable Rules when Rupert was first consulted in the matter and then by noting the approaching deadline for service and filing of the defence in his tickler system.

A tickler system is a list of tasks with deadlines for their completion. The deadline for a task may be a statutory limitation period or a procedural deadline set by the rules of a tribunal. A tickler system also contains "tickle" or bring-forward dates notifying you that a deadline is approaching and that you should start working on a task in order to get it completed before the deadline.

As it is, Rupert's mistake has caused procedural delay and possible prejudice toward his client by way of a costs award. Arguably, he is also in breach of Rule 3.01(4) of the *Paralegal Rules of Conduct* because he failed to represent the client in a conscientious, diligent, and cost-effective manner and because he failed to ensure that all applicable deadlines were met.

Interpretation of the Rules (Rule 1.03)

Rule 1.03(1) states the general principle that governs application of the Rules:

General Principle

1.03(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the *Courts of Justice Act*.

Matters Not Covered in Rules

(2) If these rules do not cover a matter adequately, the court may give directions and make any order that is just, and the practice shall be decided by analogy to these rules, by reference to the *Courts of Justice Act* and the Act governing the action and, if the court considers it appropriate, by reference to the *Rules of Civil Procedure*.

liberally construed
interpreted without undue emphasis on strict compliance with all procedural requirements and technicalities of the Rules, with a view to bringing about a resolution that is just and fair to all parties within a reasonable time

To paraphrase Rule 1.03(1), the Rules shall be **liberally construed** with a view to obtaining a just (fair), expeditious (speedy), and inexpensive resolution of every proceeding on its merits. Note that Rule 1.03(1) makes specific reference to section 25 of the *Courts of Justice Act*, discussed above.

"Liberally construed" means that the court may apply the Rules in a way that is not strictly provided for in the language on the page but which is in keeping with the court's mandate under section 25 to hear and decide matters without needless procedural delay, with a view to bringing about a fair and just resolution within a reasonable time.

Rule 1.03(2) provides further direction with respect to interpreting the Rules with reference to matters that are not mentioned in the Rules or that are not covered in sufficient detail by the Rules.

HOW TO READ THE RULES

When taking any procedural step, you must be careful to look at all the relevant rules. This may seem slightly confusing at first, but it gets easier as you become more familiar with Small Claims Court procedures. Continuing with the example from Box 1.6, let's look at some rules and subrules that are relevant when making arrangements for the set aside motion.

As you already know, Rules 11.05 and 11.06 permit Rupert to bring a motion for an order setting aside the noting in default and default judgment against his client. Because he missed the deadline for filing a defence, another thing Rupert will request from the Court on the motion is an order extending the time for filing a defence. Rule 3.02(1) authorizes the Court to make this kind of order.

If Rupert is not sure what forms to use on the motion, he will need to consult Rule 15, which governs motions. He will find the name and number of the form to use at Rule 15.01(1).

Rule 15.01(2) tells Rupert that he must obtain a hearing date for the motion before serving the notice of motion on the other party. Rule 15.01(3) tells him the minimum number of days before the hearing date that the motion must be served on the other party. If he is not sure how to calculate the notice period, he must read Rule 15.01(3) together with Rule 3.01—Computation. He may also wish to clarify the definition of “holiday” in the list of definitions at Rule 1.02. Finally, he must check Rule 8—Service to find out how a motion may be served on another party, what document he must use to prove service, and how much time he has to file that document with the Court.

How many rules and subrules did you count?

Orders on Terms (Rule 1.04)

Rule 1.04 authorizes the court to impose terms and give directions when making an order, so long as the terms and directions are just.

Electronic Filing, Issuance of Documents (Rule 1.05.1)

In August 2014, the Ministry of the Attorney General launched a pilot project allowing preparation and submission of Small Claims Court forms online. On May 5, 2016, the Ministry announced that, going forward, all types of claims, including unliquidated claims and claims for return of personal property, may be filed electronically.¹¹

Rule 1.05.1 sets out some general principles with respect to electronic filing and issuing of forms.

If the *Rules of the Small Claims Court* permit or require a document to be filed or issued electronically, the document may be issued by the clerk dating, signing, and sealing with an electronic version of the seal of the court or by using the software authorized by the Ministry of the Attorney General (Rules 1.05.1(1), (2)).

Where a document is filed and/or issued electronically, by using the authorized software, the requirement for a signature is satisfied by an indication on the

¹¹ Ministry of the Attorney General (Ontario), News Release, “Ontario Expands Small Claims Court Online Service” (5 May 2016), online: <<https://news.ontario.ca/mag/en/2016/05/ontario-expands-small-claims-court-online-service.html>>.

document by the software that the document has been electronically filed or issued or both, as the case may be (Rule 1.05.1(4)).

The date of filing and issuing is the date indicated for the document by the authorized software or by the clerk, if issued by the clerk (Rule 1.05.1(5)), unless the document is filed and issued outside of business hours, in which case the date of filing and issuing is the next business day (Rule 1.05.1(6)).

If you electronically file an affidavit or other signed or certified document under the Rules, you shall:

- keep the original of the document for three years, until the clerk requests that the original be filed, or until the Rules require that the original document be filed, whichever is earliest (Rule 1.05.1(7)(a)); and
- file the original document on the clerk's request (Rule 1.05.1(7)(b)).

In the event of an inconsistency between a document filed electronically by a person using the authorized software and any other information provided by the same person using the authorized software:

- the electronically filed document prevails (Rule 1.05.1(9)(a)); and
- the clerk may request written clarification of the inconsistency from the person (Rule 1.05.1(9)(b)).

Electronic Court Documents, Communications, Signatures (Rule 1.05.2)

The court or clerk may send any document in electronic format by email to the most recent email address indicated for the person in the applicable court file or, in the case of a lawyer or paralegal whose email is not indicated in the court file, the email address as published on the Law Society of Ontario's website (Rule 1.05.2).

Electronic Signatures

Documents may be signed with an electronic signature (Rule 1.05.2(4))⁴, which means electronic information that a person creates or adopts in order to sign a document and is attached to or associated with it (Rule 1.05(5)).

E-Filing Service Portal (Rule 1.05.3)

Documents may be filed or issued (only if all documents have been filed only through the Small Claims Court E-Filing Service Portal (Rule 1.05.3(5)), with a valid email address, through the authorized Ministry of the Attorney General's E-Filing Service Portal. Documents include:

- Plaintiff's claim (Form 7A), if any interest payable in relation to the claim is no greater than 35 percent and the defendant is not a person under disability (Rule 1.05.3(3))
- Amended plaintiff's claim (Form 7A)
- Affidavit of service (Form 8A)
- Request to clerk (Form 9B)
- Affidavit for jurisdiction (Form 11A)

- Default judgment (Form 11B)
- Notice of discontinued claim (Form 11.3A)
- Notice of motion and supporting affidavit (Form 15A) requesting a motion in writing for an assessment of damages

Submission Online Portal (Rule 1.05.4)

Any document that may or must be filed under these rules, may be filed electronically through the Small Claims Court Online Portal, if it accepted by the clerk (Rule 1.05.4(5) subject to the following exceptions (Rule 1.05.4(4)):

- Plaintiff’s claim (Form 7A) unless the prescribed filing fee is not required
- A document filed for the purposes of Rule 20.07 (writ of seizure and sale of land)

Telephone and Video Conferences (Rule 1.07)

If a court has facilities for telephone or video conferencing, a settlement conference, a motion, or all or part of an examination of a debtor or other person under Rule 20.10 may be heard or conducted by telephone or video conference (Rules 1.07(1), (1.1)).

To schedule a telephone or video conference, a party must file a request in Form 1B with the court, giving reasons for the request (Rule 1.07(2)). Before granting the request, the judge must consider whether the **balance of convenience** favours the party requesting the telephone or video conference or that of any party opposing it, plus any other relevant matter (Rule 1.07(3)). A court applying the balance of convenience test will balance the prejudice toward one party of denying the relief asked for against the prejudice toward an opposing party if the relief is granted.

If the balance of convenience favours the party requesting a telephone or video conference, the request will be granted, and the court will make the necessary arrangements and notify the parties (Rule 1.07(4)).

On motion by a party opposing a telephone or video conference, an order granting a telephone or video conference may be set aside or varied by a judge presiding over the proceeding or over a step in the proceeding (Rule 1.07(5)).

Ceasing to be a Representative (Rule 1.09)

A representative, on ceasing to represent a person in a proceeding, will notify the court in writing of the person’s last known address, the person’s telephone number and email address, if any.

balance of convenience

a common law test; a court applying this test will balance the prejudice toward one party of denying the relief asked for against the prejudice toward the opposing party if the relief is granted

BOX 1.8

WHAT DOES “LIBERALLY CONSTRUE” REALLY MEAN?

No matter how carefully procedural rules are drafted, they cannot cover every possible situation that arises. Sometimes there is a “gap” in the rules—that is, there is no language that deals directly with a particular issue. Sometimes the existing language is ambiguous—that is, it can be read as having more than one meaning.

(Continued on next page.)

construe
interpret

strict construction
reading and application of a rule using its exact, technical meaning; also known as “narrow construction”

liberal construction
reading and application of a rule beyond the precise meaning of the language in order to implement the principles behind the Rules

To **construe** the language of a rule (or, for that matter, a statute or a legal document such as a will or contract) means to interpret it—that is, to read it and decide what it means. Construe is the verb. Construction is the noun.

Strict construction (also known as narrow construction) means that the language of the rule is read and applied using its exact, technical meaning. An example of strict construction would be the definition of “holiday” in Rule 1.02. If the rule says that, in a Small Claims Court proceeding, certain days are holidays, then they are holidays. It does not matter whether you, as a defendant, have to work on Saturdays and Sundays, New Year’s Day, Good Friday, and Easter Monday—they are still holidays as far as the *Rules of the Small Claims Court* are concerned.

Liberal construction (also known as equitable construction) means that, when applying the Rules, the court goes beyond the exact meaning of the language in order to implement the principles behind the Rules, as stated in section 25 of the *Courts of Justice Act* and Rules 1.03(1) and (2).

Let’s consider service of a plaintiff’s claim, which is governed by Rules 8.01(1), 8.02, 8.03, and 8.04. The rules of service are complex and can be very confusing for self-represented parties. When interpreting these rules, the court may not insist on strict technical compliance, so long as it is clear that the plaintiff has made good-faith efforts to deliver the claim to the defendant, and the defendant has received the claim.

What if the way the plaintiff serves the claim is in strict technical compliance with the Rules, but the defendant never receives it? Let’s say that the plaintiff uses an alternative to personal service, Rule 8.03(2)—Service at Place of Residence. The plaintiff leaves the claim in a sealed envelope addressed to the defendant with an apparent adult member of the household and mails a copy to the defendant on the same day. This is proper service under the Rules. However, for one reason or another, the defendant does not receive the claim. After the 20-day period for filing a defence set out in Rule 9.01 has passed, the plaintiff notes the defendant in default. When served with the default judgment, the defendant brings a motion to set aside the noting of default.

At the hearing of the motion, can the plaintiff rely on technical compliance with the letter of the law—as set out in Rules 8.03(2) and 9.01—to argue that the defendant’s motion should be dismissed?

The plaintiff may make the argument, but the court is unlikely to deny the defendant her or his right to be heard, based on a narrow, technical argument of this nature. Instead, the court will look at what is fair in all of the circumstances when coming to its decision. If appropriate, the court may compensate the plaintiff for any inconvenience, delay, and expense attributable to the defendant with an order that the defendant pay the plaintiff some costs.

Procedure in the civil courts tends to be forgiving in that it makes allowances for errors by parties or their legal representatives. Legal representatives should not use this as an excuse for carelessness. Know your rules and stay on top of your deadlines. If you are too busy to give a client’s case the attention it needs, refer the matter to another paralegal with expertise in the area, or to a lawyer.

Rule 2—Non-Compliance with the Rules

Rule 2 complements Rule 1.03. Rule 2 states:

Effect of Non-Compliance

2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute.

Court May Dispense with Compliance

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time.

If you make a mistake, it does not mean that a particular procedural step, document, or order has no legal force and effect. Instead, the court may grant appropriate relief on such terms as are just to all parties. This often means that the party who made the mistake requiring correction may be granted appropriate relief but may also have to pay some costs to other parties for inconvenience and expense, or the court may make any other appropriate order to address possible prejudice to other parties.

Rule 3—Time

When calculating a period of time for a procedural step, you shall comply with Rule 3.01, which states:

Computation

3.01 If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted 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.

If you use a table of days (see Table 5.2 at page 209) to calculate time periods, the ordinary operation of arithmetic (addition or subtraction) has the effect of eliminating the first day and including the last day.

If you are not sure whether the time period ends on a day that is a holiday, refer to the definition of “holiday” in Rule 1.02(1).

The court has discretion to lengthen or shorten the time prescribed by the Rules for doing anything, on such terms as are just (Rule 3.02(1)).

The time prescribed by the Rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties (Rule 3.02(2)).

Closing Comment

You need to know the *Rules of the Small Claims Court* well if you propose to practise in this area or if you are working under the supervision of someone who practises in this area (e.g., in debt collection). The most important thing to remember is this: when unsure, do not guess. Read your Rules.

CHAPTER SUMMARY

Small Claims Court is a division of the Ontario Superior Court of Justice. It is a civil trial court with jurisdiction to hear actions for money in amounts up to \$35,000, excluding interest and costs, or for recovery of property with a value of \$35,000 or less.

Small Claims Court is intended to improve the public's access to justice by providing a forum with simplified rules and procedures where claimants may have their matters resolved in a just, speedy, inexpensive, and simple manner.

The *Courts of Justice Act* sets up the court system in Ontario. Sections 22 to 33.1 of the *Courts of Justice Act* set out the general principles governing Small Claims Court, including who may be a judge of Small Claims Court (s 24); monetary jurisdiction (s 23 and O Reg 626/00); the general mandate or purpose of Small Claims Court (s 25);

legal representation (s 26); evidence (s 27); installment orders for payment of money (s 28); costs (s 29); and appeals (s 31).

The *Rules of the Small Claims Court* are published as a regulation to the *Courts of Justice Act*. The Rules are designed to implement the court's mandate to determine in a summary way all questions of law and fact and make such order as is considered just and agreeable to good conscience, as set out in section 25 of the *Courts of Justice Act*.

A licensee practising in Small Claims Court should be familiar with its procedural rules. This does not mean that you must have them memorized, but you should know them well enough so that, when you are not sure about a procedural point, you know where to look in the Rules to find the answer.

KEY TERMS

action, 2	hearsay, 13	monetary jurisdiction, 6
allegation, 11	infrequent claimant, 4	notice, 17
balance of convenience, 21	installment (or partial) payments, 13	notice period, 17
claimant, 4	justice, 10	paralegal, 11
construe, 22	lawyer, 11	party, 2
Convocation, 12	legal fees, 7	plaintiff, 2
costs, 7	legal jurisdiction, 6	question of fact, 11
default judgment, 17	liberal construction, 22	question of law, 11
defendant, 2	liberally construed, 18	strict construction, 22
disbursements, 7	litigant, 2	territorial jurisdiction, 7
frequent claimant, 5	lump-sum payment, 13	

REVIEW QUESTIONS

1. Annette Calandra Fox and Chinua Falim Achebe live at 1832 Friendly Crescent, Unit 2, Anytown, Ontario L8H 2K4 TEL: 289 111 2233. They commence an action for recovery of an unpaid debt of \$7,000 owed to them by Michael John Gover, also known as Mick, and Aanya Shastri Gover, who live at 12 Lansdowne Court, Anytown, Ontario L9K 3L5 TEL: 289 222 3344. The claim will be filed at the Anytown Small Claims Court, 47 Any Avenue East, Anytown, Ontario K1L 2X5 TEL: 905 111 2186.

Please complete page 1 of a plaintiff's claim (Form 7A). Name one plaintiff and one defendant

and check the boxes to indicate that an additional party or parties are listed on the attached Form 1A. Complete the Form 1A by naming one plaintiff and one defendant who were not named previously and checking the boxes to indicate their roles. Leave the space for the claim number blank. It will be filled in when the plaintiff's claim is completed, issued, and assigned a claim number by the Small Claims Court clerk. To find the forms, Google Rules of the Small Claims Court Forms.

2. The numbered company 353428 Ontario Inc. is registered in Ontario. Its business address is

Suite 1105, Commercial Tower, Adelaide Street West, Anytown, Ontario M6Y 2T9. The company is commencing an action in the Anytown Small Claims Court against William John Weston and Louise Alma Weston for unpaid invoices in the amount of \$11,387.43. The Westons' address is 13782 Crisscross Crescent, Anytown, Ontario K9L 3M5. Their telephone number is 289 111 5648. You will find the address of Anytown Small Claims Court in Question 1, above.

The numbered company 353428 Ontario Inc. has retained Albana Mezini to represent it in the proceeding. The contact information for Albana Mezini is Mezini Mikullovc Chani Professional Corporation, Attn. Albana Mezini, 108 Forrest Avenue, Suite 300, Anytown, Ontario M6K 5M2 TEL: 289 890 1276, EMAIL: a.mezini@mcprocorp.com. Her Law Society number is 11234N.

Please complete pages 1 and 1A of the plaintiff's claim for the plaintiff. When doing so, keep in mind that Ms. Mezini will be the contact person in this matter. As a matter of confidentiality, no information about her corporate client should appear on page 1 except its name. As in Question 1, leave the claim number blank. It will be filled in when the plaintiff's claim is completed, issued, and assigned a claim number by the Small Claims Court clerk.

3. What is jurisdiction?

4. What is an action? What types of actions does Small Claims Court hear?
5. What is the *Courts of Justice Act*? What is its purpose?
6. What is the monetary jurisdiction of Small Claims Court? Does the maximum amount that can be claimed include interest and costs?
7. What is the difference between costs, legal fees, and disbursements?
8. What is the general mandate of Small Claims Court? Please provide the statutory authority.
9. Who may appear as a representative of a party in Small Claims Court? Please refer to the *Rules of the Small Claims Court*, the *Courts of Justice Act*, and By-Law 4 of the *Law Society Act* when answering this question.
10.
 - a. What is hearsay evidence?
 - b. What is the general rule with respect to hearsay evidence?
 - c. What is the general rule with respect to hearsay evidence in Small Claims Court? Please provide the statutory authority.
11. What is the general principle governing interpretation of the *Rules of the Small Claims Court*? Please provide the number of any rule(s) you are relying upon in support of your answer.
12. What is the general rule with respect to the amount of costs payable by one party to another party in Small Claims Court? Please provide the statutory authority.

APPENDIX 1.1

Overview of Small Claims Court Procedure and Timelines

Procedural step	Time period	Start date	Authority
Issue plaintiff's claim	2 years* *Several statutes require that an injured party give notice to the alleged defendant(s) before commencement of a claim. See the discussion in Chapter 3 of statutory notice periods in Box 3.3 and of Bill 118 in Box 3.5.	The day the claim is discovered	<i>Limitations Act, 2002</i> , SO 2002, c 24, as amended, ss 4, 5
		"Claim" is defined as "a claim to remedy an injury, loss or damage that occurred as a result of an act or omission."	<i>Limitations Act, 2002</i> , s 1
		In debt collections, the date of default. If the debtor acknowledges liability in respect of a claim for payment of a liquidated sum, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made.	<i>Limitations Act, 2002</i> , s 13(1)
Serve plaintiff's claim	6 months Court may extend time for service before or after 6-month period ends	The day the claim is issued	R 8.01(2)
Serve and file defence to plaintiff's claim	Personal service: 20 days from service of claim	The day personal service takes place	R 9.01
	Alternative to personal service: 20 days from day service becomes effective	Depends on method of service	
	Substituted service: By court order	By court order	R 8.04
Issue defendant's claim	20 days	The day the defence is filed	R 10.01(2)(a)
	After 20 days have expired but before trial or default judgment, with leave of the court	By court order	R 10.01(2)(b)

APPENDIX 1.1 *Concluded*

Overview of Small Claims Court Procedure and Timelines

Procedural step	Time period	Start date	Authority
Serve defendant's claim	6 months Court may extend time for service before or after 6-month period ends	The day the claim is issued	R 8.01(2)
Serve and file defence to defendant's claim	20 days	The day service of defendant's claim becomes effective	R 10.03
Default proceedings	Noting in default: Immediately after the time for filing a defence has expired, if no defence to a plaintiff's claim or a defendant's claim has been filed		R 11.01(1)
	Default judgment, debt, or liquidated demand: In a plaintiff's claim, if a defendant has been noted in default, the clerk may sign default judgment for all or part of the amount claimed, including interest if claimed.		R 11.02(1)
Settlement conference <i>Note: This date is set by the clerk</i>	90 days	The day the first defence is filed	R 13.01(3)
Offer to settle	May be made any time up until the court makes a final order. May be accepted any time up until the offer is withdrawn or expires, or the court makes a final order.		R 14.03(3)
Request a trial date	ASAP by a party upon receipt of notice from the clerk stating that a party must request a trial date if the matter does not settle within 30 days after the settlement conference.		R 13.07
Motion for new trial	30 days	The day the final order is made	R 17.04
Appeal to Divisional Court <i>Note: The Divisional Court is the appellate branch of the Superior Court of Justice</i>	30 days	The day the order appealed from is made	<i>Courts of Justice Act, s 31</i> <i>Rules of Civil Procedure, r 61.04(1)</i>
	At present, licensed paralegals are not allowed to appear on appeals to the Divisional Court. If your client indicates that she wishes to appeal an order, you should advise her of the 30-day window and recommend that she seek the services of a lawyer.		