



**Provincial Court of Saskatchewan**  
Judicial Centre of Saskatoon  
*The Small Claims Act*  
**Small Claims Practice Guide**

## I Contact Information

**Phone:**  
306-933-7054 or 306-933-7053  
**Fax:**  
306-933-5769

**Office Hours:**  
8:30 - 4:30 p.m. Monday to Friday  
Closed daily 12:00 to 1:00 pm  
and Statutory Holiday

**Website:**  
[www.sasklawcourts.ca](http://www.sasklawcourts.ca)

**Saskatoon Small Claims Office:**  
3<sup>rd</sup> Floor, 357 – 3<sup>rd</sup> Avenue South  
Kilborn Entrance (corner 3<sup>rd</sup> & 19<sup>th</sup>)

**Mailing Address:**  
Provincial Court of Saskatchewan  
Small Claims Office  
220 – 19<sup>th</sup> Street East  
Saskatoon, SK, S7K 0A2

**Assistance:**  
Please come to the office Mon - Thurs  
8:30 to 11:00 am or 1:00 to 3:30 pm

### Important Filing Requirements

This Practice Guide contains information about your obligations as a party to a claim in this Court. Failure to comply with requirements within the time frames specified may result in postponement of proceedings, costs, disallowance of pleadings, documents or evidence, costs, and potential dismissal of an action.

**Pay close attention to the obligations in the Court Order to File.**

### General Information Only

This Practice Guide should not be regarded as legal advice. It's intended to provide a general overview of the procedure involving claims in the Provincial Court, Civil Division, pursuant to *The Small Claims Act* in Saskatoon. If you require advice specific to your situation, you may contact a lawyer.

**Acquaint yourself with the information in this Practice Guide.** Prepare the materials, as requested as best you can, before asking Court Staff for assistance.

**For more information go to:** [www.sasklawcourts.ca](http://www.sasklawcourts.ca)

### Motor Vehicle Collisions & Claims for \$5,000.00 or less

XIII Simplified Trial Project applies to claims of \$5,000.00, or less, or motor vehicle collision claims. See XIV Forms, XV Samples and XVI Checklists below.

## II Terms

### 1) *Clear days*

There are repeated references in this Guide to *clear days*. This is important to the calculation of time periods for service of documents. *Clear days* do not include the day on which the document is served or the court date.

## III Plaintiff Information

### A. Should I Sue?

#### 1) Ability to Recover

##### a) Monetary Limits

***THE LIMIT FOR RECOVERY UNDER THE SMALL CLAIMS ACT IS \$20,000.00.***

You may claim in excess of the monetary limit but you may not receive judgment for more than \$20,000.00. The limit upon the Court's jurisdiction is with respect to the amount of the judgment, not to the amount claimed.

**Example:** If you claim \$30,000.00 and the Defendant makes no claim, then the most that you may receive by way of judgment would be \$20,000.00. If, the Defendant counterclaims for \$10,000.00 and the Court finds both claims to be valid, judgment may be granted for \$20,000.00 after the Court has taken into account the counterclaim.

##### b) Limitation Periods

The limitation period for most actions is 2 years. If it has been more than 2 years since you discovered your claim; you may be unable to obtain a judgment in your favour regardless of the strength of your case. Please check *The Limitations Act*, a copy of which is available on the Queen's Printer website, at [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca).

### 2) Enforcing Judgment

- There is no guarantee that you will collect the money on any judgment obtained.
- If you receive a judgment in your favour and the Defendant does not pay voluntarily, any steps to enforce the judgment must be taken by and paid for by you; it is not the responsibility of the courts.
- While some enforcement costs may be added to the amount the Defendant owes you; these costs are paid in advance of enforcement measures being taken.
- Enforcement proceedings must be taken through the Court of Queen's Bench in Saskatchewan, which is separate from the Provincial Court.

### 3) Enforcement Remedies

Pursuant to *The Enforcement of Money Judgments Act*, a Sheriff has authority to do a number of things to collect money owing under a judgment, including the authority to investigate a judgment debtor's assets and debts and, subject to certain exemptions, the authority to seize and sell a judgment debtor's property including: bank accounts, wages, partnership interests, securities, crops, other goods, and lands.

A judgment is valid for 10 years. If registered with the Court of Queen's Bench it may be renewed for further 10 year periods. If the judgment debtor's financial situation improves, enforcement action based on the judgment may be commenced at that time.

Further information on the process for enforcing court orders may be found by going to the *Courts of Saskatchewan* website at <http://sasklawcourts.ca/>. Move your cursor over *Court of Queen's Bench* and from the list revealed, click on: *Enforcing Orders*.

#### B. Starting an Action

##### 1) Demand Letter

Begin by sending a demand letter, by regular mail if you wish, to the Defendant(s). **See *Sample S1 for sample demand letter***. Keep a copy of the letter for your claim in Court. The letter should include:

- i. the date;
- ii. the name and address of the Defendant;
- iii. your name and contact information;
- iv. the nature and amount of the claim, including important background facts;
- v. a deadline for compliance with your demand (at least 14 clear days\*);
- vi. notice that should the claim not be resolved satisfactorily, you intend to file a claim in the Provincial Court of Saskatchewan, Civil Division.

##### 2) Documents to File a Claim

- If you have sent a demand letter, waited 14 clear days\*, and have not received a satisfactory response, you may begin preparing your claim.
- **See** the Checklist, Forms and Samples applicable to your claim to guide you in completing the required Forms.
- ***These items are required by the Court:***
  - i. A copy of the demand letter;
  - ii. A completed Intake Form;
  - iii. If the Plaintiff or Defendant is a corporation; a Corporate Registry "Profile Report";
  - iv. The Statement of Claim;
  - v. A completed Document List;

- vi. \*A Trial Statement;
- vii. The filing fee (\$20.00 for a motor vehicle claim or a % of the sum claimed).

**Note about limitation periods:**

If you are concerned about issuance of the claim before a limitation period, you may prepare the Document List and Trial Statement after issuance of the claim but you will not be given a court date until they also have been prepared and filed with the Court.

***See the Checklist and attached Forms, and Samples applicable to your claim.***

\* **A Trial Statement** is only required for claims in the sum of \$5,000.00 or less and motor vehicle claims. **See XIV, The Simplified Trial Project.**

**3) More on Motor Vehicle Claims**

***See XIV Simplified Trial Project, B. Motor Vehicle Claims for further requirements.***

The Court hears the matter as if it was being told for the first time and is not influenced by the decision or opinions of the SGI adjuster.

The following information and documents are needed:

- i. The full name, address, and postal code of the operators of the vehicles involved in the collision. This information may be provided to you by SGI;
- ii. Letter from SGI indicating that you are at fault (whatever the degree);
- iii. SGI damage estimate or Proof of Loss. A second estimate from a garage of your choice is required if the other party operated an unregistered motor vehicle;
- iv. Any photos of the damage to the vehicle, taken by SGI or you. After the appeal period has expired, it is up to you to retrieve the SGI photos from your court file and return them to SGI;
- v. On 8 ½ by 11 inch paper, a diagram of the collision scene showing: where the collision occurred, labelling streets, avenues, and directions of the vehicles;
- vi. If either of the vehicles is owned by a company, leased, or a taxi, the complete and correct name and address of that company. **See 6) a) ii) below for further information about obtaining a Corporate Profile Report;**
- vii. You may wish to obtain statements written by you or the other party for SGI. These statements are not required but may be relied upon by way of comparison with any subsequent statements.

#### 4) Intake Form

**See the Intake Form, in the Checklist, Forms and Samples package provided by the Court Office.** Provide the correct names, mailing addresses, phone numbers and contact information for the Plaintiff(s) and Defendant(s). Full names must be provided. Initials cannot be accepted. The name and address information is necessary for the Summons which is issued by the Court.

##### a) Addresses – Report Errors / Changes

Correct addresses are essential to proper service and ongoing communication with and between the parties. The parties have an obligation to advise the Court and other party of any errors or changes to the addresses provided on the Intake Form on the court file.

#### 5) Corporate Registry *Profile Report*

See 6) a) ii below - Corporate Defendant.

#### 6) Prepare a Statement of Claim

##### a) Naming Parties

- The names and addresses of the parties (Plaintiff and Defendant) are set out in Summons and the names are repeated in the style of cause of the Statement of Claim and pleadings that follow. Errors or changes to this information must be reported to the Court and the other party.
- These rules for naming parties apply to all pleadings: Statement of Claim, Statement of Defence, Counterclaim, and Third Party Claim.

##### See XV Samples – S4 Clauses Describing Plaintiffs and Defendants

- It is very important to obtain the correct name of a corporate or other party at the outset. If you obtain judgment in one name but the property is held in a different name, you will be unable to enforce the judgment against that property.

##### i) Individual Defendant

- Use the person's legal name. Do not use nicknames or shortened names. **Example:** use 'Robert', not 'Bob', unless you know that 'Bob' is the legal name. Do not use initials. Information Services Corporation will not allow you to register a judgment that contains initials in the person's name.

##### ii) Corporate Defendant

- The name of an incorporated company usually ends with: "Limited", "Ltd.", "Corporation", "Corp.", "Incorporated" or "Inc."

- You need the precise name and confirmation of a registered office in Saskatchewan. The Court requires a Profile Report, available from the Corporate Registry for a fee. If unsure about the precise name or entity number, you may wish to phone first. If you have the correct name or entity number; it may be less expensive and quicker to print the profile report from the website. **See:**

Corporate Registry  
Information Services Corporation (ISC)  
1301 1<sup>st</sup> Ave.  
Regina, SK. S4R 8H2  
Phone: (306)787-2962 Fax: (306) 787- 8999  
[www.isc.ca/corporateregistry](http://www.isc.ca/corporateregistry)  
Email: corporateregistry@isc.ca

- Pursuant to *The Business Corporations Act* of Saskatchewan, a corporation that is not registered under that *Act* cannot commence or maintain a court action in respect of a contract made by it in the course of its business in Saskatchewan. This may be remedied if the corporation becomes registered during the action.
- This has the practical effect of requiring a corporation to maintain current registered status under the *Act* if it wishes to initiate or defend an action.

### iii) Unincorporated Business Defendant

- Name both the business and the owner. **Example:** John Smith carrying on business as John Smith's Plumbing.

### iv) Two or More Defendants

- You may name more than one Defendant if the claims against each are related. **Example:** Mary's Landscaping Ltd. purchased supplies on credit from your business. A director of the company, Mary Green, personally guaranteed payment of the account. The debt is unpaid. You may sue both, naming both as Defendants as follows: Mary's Landscaping Ltd. and Mary Green.

## b) Statement of Claim

The Statement of Claim starts the action and notifies the Defendant of your claim.

**See Checklist and attached Forms and Samples applicable to your claim.**

### i) Style of Cause

- The names and addresses of the parties, (Plaintiff and Defendant), are set out in the top part of the first page in the "style of cause". The style of clause (minus the addresses) is repeated in all pleadings that follow: the Statement of Defence, the Counterclaim, and the Third Party Claim.

## ii) Body of the Claim

- It briefly states essential information about the claim. The Statement of Claim should only contain enough information to identify the nature of your claim and the relief being sought. It should not contain evidence or tell a story.
- ***If your claim fits within the criteria for the Simplified Trial Project; you will have the opportunity to elaborate or describe your claim in a narrative fashion in the Trial Statement, discussed below.***

**See Checklist and attached Forms and Samples applicable to your claim.** A claim should be organized into numbered, concise paragraphs along these general lines:

- i. State the Plaintiff(s) name, city, town or area of the province where the Plaintiff(s) resides or operates a business. **Example:** The Plaintiff, John Doe, resides in Saskatoon, Saskatchewan.
- ii. State the Defendant(s) name, city, town or area of the province where the Plaintiff(s) resides or operates a business. **Example of a Corporate Defendant:** The Plaintiff, A Snow Removal Ltd., is a company incorporated in Saskatchewan with a registered office at Saskatoon, and carries on business in Saskatchewan.
- iii. State the date, place and names of the persons directly involved with respect to any agreement or incident upon which the claim is based.
- iv. Provide a brief outline of the claim. This is a summary of the key points in the claim and should be concise enough to fit into one or two paragraphs.
- v. State what went wrong with the original purchase, agreement or contract and essentially why the claim is being made.
- vi. Refer to the demand letter by date and advise what was asked of the Defendant.
- vii. In the last paragraph, in point form, outline what the Plaintiff is claiming.

### **Example:**

THE PLAINTIFF THEREFORE CLAIMS:

- a) Judgment in the sum of (*the value of your claim*),
- b) Interest pursuant to *The Pre-Judgment Interest Act* (or agreement);
- c) Costs for issuance of this claim (*your filing fee*), and;
- d) Costs incidental to this claim.

(Plaintiff's signature) \_\_\_\_\_  
(Plaintiff's name is typed here)

## 7) Document List

All parties to an action must file with the Court and exchange a Document List with the numbered documents attached.

### a) Relevant Documents Disclosed

You must file and exchange copies of all relevant documents, including photos and diagrams, which you may seek to rely upon at trial, or which may be in your possession or control that another party may seek to rely upon at trial.

### b) Complete a Document List

- Number and list on the Document List (***See Checklist and attached Forms and Samples applicable to your claim***), in chronological order, all relevant documents.
- A numbered copy of each document, bearing the same number as on the Document List, must be attached to the Document List. A copy of this completed Document List must be filed with the Court and provided to all parties before the first appearance and case management.

### c) File / Exchange before Court

#### **Avoid adjournment due to late exchange of the Completed Document List**

- Plaintiffs must provide a copy of the Document List and corresponding numbered documents attached, to the Court and the Defendant(s), when serving the Defendant(s) with the Summons and Statement of Claim, no less than 10 clear days\* prior to the case management date or first appearance, whichever applies. ***Please try to serve the Defendant(s) at least 20 clear days\* in advance of this date, to avoid an adjournment.***
- Defendants must provide a copy of a Document List, with corresponding numbered documents attached, to the Court and the Plaintiff(s), 10 clear days\* prior to the first appearance and case management date.
- Should the Defendant(s) be served with the Summons, Statement of Claim and the Plaintiff(s)' Document List and documents less than 20 clear days\* prior to the case management or first appearance date indicated in the Summons, an ***adjournment may be requested and granted.*** In any event, the Defendant(s) must file and exchange the completed Document List and documents in advance of the case management date or first appearance, whichever occurs first.
- Any relevant documents created or discovered after the above time limits must be filed and given to the other party immediately, and should be filed and given to the other party 10 clear days\* prior to the next case management or trial date, whichever occurs first.

- A Document List may be revised or amended at a later time, provided there is sufficient notice to the other party.

#### **d) Failure to File / Exchange**

**The Plaintiff will not receive a court date for first appearance until a completed Document List has been filed with the Court.**

Failure to file and exchange a completed Document List or document(s) subsequently discovered may have the following consequences:

- Being denied the opportunity to rely upon or file a document(s) with the Court;
- Dismissal of pleadings;
- Costs against the defaulting party (**See VIII Costs**);
- Adjournment of the case management / trial.

**The originals of all documents, if available, should be presented at trial.**

#### **8) Trial Statement**

##### **a) \$5,000.00 or Less and Motor Vehicle Claims**

Each Plaintiff and Defendant must file, and exchange a Trial Statement for:

- Claims for \$5,000.00 or less and
- Motor vehicle collision claims

**See Part XIV, The Simplified Trial Project.**

##### **b) Failure to File / Exchange**

A Plaintiff will not receive a court date until the Trial Statement is filed with the Court. Failure to file and exchange a Trial Statement in a timely way may result in:

- Being denied the opportunity to file a Trial Statement;
- Dismissal of the Statement of Claim, Defence, Counterclaim, or Third Party Claim, as the case may be;
- An order for costs against the offending party (**See VIII Costs**);
- Adjournment.

##### **c) What is a Trial Statement?**

- A Trial Statement is a narrative account of relevant events and circumstances. **See Checklist and attached, Forms and Samples applicable to your claim.**
- Pleadings, including: the Statement of Claim, Statement of Defence, Counterclaim and Third Party Claim, are intended to very concisely set out the nature of the claim and the relief being sought. They are not to include evidence.

#### d) Purpose

- It is important that the opposing party and the Judge understand your claim and the information to support it. The other party is entitled to know about the evidence that you intend to provide and the Court may conduct the case management and trial more efficiently and effectively, if much of the information on which you rely has been prepared and provided in advance.
- This is important for proceedings under the Simplified Trial Project where the Court plans to conduct trials in a simpler manner in a specified time period.

#### e) Complete a Trial Statement

- **Each Plaintiff(s) and Defendant(s) must complete one. Expect to be asked to adopt your Trial Statements at the trial.**
- **Specify the source of the information contained in the Trial Statement.**  
**Example:** in an action concerning installation of windows, you may rely on a statement made to you by someone who subsequently redid the work. When referring to that statement, you should clearly state the source. You may state, for instance: "I believe that John Smith, the installer who subsequently replaced the windows will say that . . ."
- **If referring to a document in the Trial Statement, identify it by the number given to it in the Document List.**

#### Organize your Trial Statement as follows:

- i. Number the paragraphs, in the order the events occurred.
- ii. Concisely state the facts that you wish the Court to consider.
- iii. State the amounts you're claiming or disputing and why.
- iv. Advise as to those aspects of the other party's case that you dispute and why.
- v. When referring to something said or done by another person, give that name.
- vi. Refer to documents by the number given in the Document List.
- vii. Refer to witnesses by name.
- viii. Names your proposed expert witnesses for trial. Specify areas of expertise.
- ix. Initial at the bottom of each page and date and sign your name on the last page.
- x. Typed or printed, it should not exceed:

1,500 words or 6 pages for claims of \$5,000.00 or less, and  
750 words or 3 pages in length for motor vehicle claims.

Note: The average typed page, depending on lay-out, contains 250 – 300 words.

#### **f) Motor Vehicle Claim Trial Statements**

Include, the following information, where applicable:

- i. vehicles**  
ownership, registration, make, model, and year of each vehicle;
- ii. names**  
the owners and drivers of each vehicle, as well as passengers and their location;
- iii. collision site** date, time and place - intersection, highway, parking lot – number of lanes;
- iv. traffic signs & conditions**  
traffic lights, stop signs, weather, road, visibility and lighting conditions;
- v. immediately before the collision**  
direction, speed, and location (which lane) of each vehicle, when you first noticed the other vehicle;
- vi. at the time of the collision**  
estimated speed of the vehicles and use of signal lights, brakes, horn, etc.;
- vii. damages sustained**  
point and nature of impact;
- viii. diagram**  
a diagram of the collision should be attached.

#### **9) Filing Fees**

There is a fee for issuing your claim. It may be paid by cash, cheque or Interac. Cheques are payable to the Provincial Court – Civil Division. The fee is based upon the amount of your claim:

<b>Amount of Claim</b>	<b>Filing Fee</b>
<b>\$2,000.00 or less</b>	<b>\$20.00</b>
<b>\$ 2,001.00 - \$10,000.00</b>	<b>1% rounded to nearest dollar to a maximum of \$100.00</b>
<b>\$10,001.00 - \$20,000.00</b>	<b>\$100.00</b>

## 10) Issuing Summons and Assigning Court Date

- When your claim is filed in the Small Claims Office, the claim will be assigned a claim number, and a Summons will be prepared and issued by the Court.
- A court date will be set before a Judge for a first appearance and Case Management Conference.
- It is the Plaintiff's responsibility to prepare the accompanying required documents **A court date will not be given until these documents have also been filed with the Court. See III B. 2) Starting an Action.**
- It is the Plaintiff's responsibility to serve the Summons and any other Court required documents on each Defendant named in the claim.
- **Mark the court date in your calendar** and try to serve the Defendant at least 20 clear days\* before the court date in the Summons. The minimum time for service under *The Small Claims Act* is 10 clear days\*. The Court recommends service at least 20 clear days\* in advance so that the Defendant can properly prepare. To avoid an adjournment being granted; serve the Summons as soon as possible.

## IV Service of Court Documents

**See Checklist and attached Forms and Samples applicable to your claim. More Affidavit of Service forms for different modes of service are included in this Package.**

- This section applies to service of documents, including the:
  - Summons and Statement of Claim;
  - Statement of Defence\*;
  - Statement of Defence and Counterclaim;
  - Third Party Claim;
  - Court Orders including Order to File;
  - The Small Claims Practice Guide;
  - Defendant's Checklist ;
  - Other Required Documents, including:
    - Document List;
    - Trial Statement;
- The Court may require service of additional or other documents to assist in the preparation for case management and/or trial. This is addressed below and you may receive additional direction from the Civil Division Office.
- The Court may permit service of the Statement of Defence, and Statement of Defence and Counterclaim, and accompanying documents by ordinary mail (at the address of the Plaintiff indicated in the Summons), as discussed below if mailed in sufficient time to give the Plaintiff at least 10 clear days\* before the next court date.

**\*Note:** Use of the Dispute Note has been discontinued. It is a Statement of Defence by another name.

- *The Small Claims Act* permits the Defendant to present a Counterclaim orally at the case management or trial. The Court does not encourage this because it can be unfair to the other party and may interfere with the orderly management of proceedings. The presiding judge has the discretion to adjourn proceedings or impose other remedies including the payment of costs. **See VIII Costs.**

### 1) Why is service necessary?

- When you make a claim either as a Plaintiff, a Defendant with a Counterclaim, or as a Defendant making a Third Party Claim, you have the responsibility of providing a copy of the claim to the person(s) against whom the claim is made and providing the Court with verification that they have received a copy.
- Judgment may only be granted against such a person; if you have satisfied the Court that the claim was served upon the person.

### 2) When do I serve?

Service must be done in a timely fashion so that the person(s) being served has sufficient time to prepare for case management and/or trial.

**The minimum time for service by the Plaintiff under *The Small Claims Act* is 10 clear days\* before the date indicated on the Summons. The Court recommends 20 clear days service\*.**

- The Court recommends service by the Plaintiff(s) of the Summons and all other required documents - 20 clear days\* before the date indicated on the Summons. 20 clear days\* should allow the Defendant(s) sufficient time to prepare, file with the Court and exchange with the Plaintiff(s), their: Statement of Defence and Counterclaim, Document List, and Trial Statement, where applicable, 10 clear days\* before the case management.
- If you are unable to serve the Defendant in time, you must advise the Small Claims Office. A new date will be given and a new Summons prepared at no additional cost. This will allow more time in which to serve the Defendant.

**Note:** A process server may need extra time to get the material to the Defendant.

**Clear Days:** This is important to the calculation of time periods for service. *Clear days* do not include the day on which the document is served or the court date.

### 3) Who and what do I serve?

#### a) Plaintiff's Documents for Service

The following is served upon the named Defendant(s):

- The Summons – *provided by the Court* – states the address, date and time when court attendance is required;
- The Statement of Claim;
- The Document List, attaching copies of the corresponding numbered documents;
- The Trial Statement, (required for claims for \$5,000.00 or less and motor vehicle claims. **See** XIV Simplified Trial Project);
- The applicable Checklist, *provided by the Court*;
- The Small Claims Practice Guide, *provided by the Court*;
- Order to File, *provided by the Court*

**To be served, at least 10 clear days\* and preferably 20 clear days\* before the court date** (first appearance / case management date) **indicated on the Summons.**

The Defendant(s) cannot be expected to serve their documents 10 clear days\* beforehand unless they receive 20 clear days\* notice.

#### b) Defendant's Documents for Service

This package is served upon the named Plaintiff(s) and includes:

- Statement of Defence (not required for motor vehicle collision claims);
- Document List, attaching copies of the corresponding numbered documents;
- Trial Statement, (required for claims for \$5,000.00 or less and motor vehicle claims. **See** XIV Simplified Trial Project).

**To be served 10 clear days\* before the court date** (first appearance / case management) **indicated on the Summons.**

#### c) Defence and/or Counterclaim

If you believe that you have a claim against the Plaintiff, you should file a complete Statement of Defence and Counterclaim. If you initially file a Statement of Defence and later wish to file a Counterclaim, it is sufficient to then file and exchange a Counterclaim. **See the Checklist, Forms and Samples package applicable to your claim.**

If you earlier filed and exchanged a Statement of Defence and later add a Counterclaim, it is not necessary to file and exchange the documents below unless there has been a change in your position or the information. Consider whether you need to file and exchange an amended Statement of Defence, Document List, and Trial Statement.

This package is served upon the Plaintiff(s) and includes:

- the Statement of Defence and/or the Counterclaim;
- the Document List, attaching copies of the corresponding numbered documents;
- a Trial Statement (required for claims for \$5,000.00 or less and motor vehicle claims).

**To be served 10 clear days\* before the next court date (case management / first appearance / trial date).**

The Statement of Defence and/or Counterclaim may be served with less than 10 clear days\* notice, at the direction of the Court. It may even be presented orally at case management or trial; however the Court may adjourn proceedings and may order costs (**See VIII Costs**) against you should it find that you could have presented these pleadings earlier and/or the Plaintiff is disadvantaged or inconvenienced.

#### **d) Third Party Claim**

This package is served upon the Defendant(s) named in the Third Party Claim, as well as the Plaintiff named in the Statement of Claim and all other parties to the action, and includes:

- The Summons to the Defendant by Third Party to come to Court at the address, date and time stated;
- The Third Party Claim;
- All court documents previously served and filed with the Court, including: the Statement of Claim, Statement of Defence and/or Counterclaim;
- The Document List, attaching copies of corresponding numbered documents,
- A Trial Statement (required for claims for \$5,000.00 or less and motor vehicle claims);
- The applicable Checklist, provided by the Court Office.

**It must be served at least 20 clear days\* before the next court date or as directed by the Court.**

#### **4) How do I serve?**

- It is important to file proof of service with the Court in the form of an affidavit as soon as service has been carried out. **See Checklist and attached Forms and Samples applicable to your claim. More affidavit of service forms for the different methods of service are listed in the Contents.**
- When making a claim against a person or corporation it is essential that you provide the Court with proof of service. It is essential to proceeding with your claim and you may obtain default judgment against them should they not come to Court in answer to your claim.
- There are several methods for service of court documents and the Affidavit of Service used depends upon the method. You use different methods of service

with different parties. If unsuccessful with one method, you may carry out service with another method. You may arrange for another person to carry out service, provided they are 18 years of age or older.

#### **a) Parties Served Separately**

- Each opposing party must be served with your court documents (includes: the Summons and Statement of Claim, Statement of Defence and/or Counterclaim, and the Third Party Claim).
- The Plaintiff must serve each party separately and provide proof of service upon each. If there are two Defendants, an individual and a corporation or the Defendants are married, each must be served separately and proof of service for each must be filed with the Court. The same applies to a Defendant who is serving two or more Plaintiffs or Defendants by Notice of Third Party Claim.

#### **b) Serving Corporations**

- Service can be carried out by leaving a copy of the court document with any officer or director of the corporation, a clerk, manager, agent or other representative at, or in charge of, any office or any other place where the corporation carries on business in Saskatchewan.
- You may also serve a corporation by registered mail, certified mail, or by delivering the document to the registered office or any attorney of the corporation, appointed under *The Business Corporations Act*.
- The corporate “Profile Report” provides the names of the officers and directors of the corporation, the address of the registered office, as well as the name of any attorney appointed with respect to an extra-provincial corporation, pursuant to *The Business Corporations Act*.

#### **c) Serving Minors**

If you have named someone who is under 18 years of age as a party to the proceedings, you must serve the minor as well as a parent, guardian, or other adult with whom the minor resides, as the case may be.

#### **d) Best Method**

##### **Can I serve by ordinary mail?**

The Court may allow the Defendant to serve the Statement of Defence and/or Counterclaim on the Plaintiff by ordinary mail, provided it is sent within the time required. If the Plaintiff does not acknowledge receipt; the Defendant may be required to prove service. This is why service by a means which allows for proof is the best method of service.

## e) File Affidavit of Service

- After the court document(s) have been served; prepare an Affidavit of Service.
- If service has been by registered mail or fax, a *Proof of Receipt* must be attached to the Affidavit of Service.
- The person who served the court document(s) must complete the Affidavit of Service before a Commissioner for Oaths stating that he/she served the document(s). *There is a Commissioner of Oaths at the Small Claims Office who may witness the affidavit.*

**The Affidavit of Service must be filed with the Small Claims Office right away.** It is important that the Court know when the documents have been served as it must decide whether the matter may proceed on the court date provided.

**See XV B. 2) Forms for the different types of Affidavits of Service.**

## f) Keep a Copy for Your Records

Keep a copy of the court documents that have been served and filed and the Affidavit of Service for your records.

## 5) Methods of Service

### a) Personal Service

- Personal service involves giving one copy of each document directly to the party being served. The party does not have to sign anything. You just have to hand the copy of the document(s) to the party and say “This concerns a claim made against you”. If he/she refuses to accept it; you may leave the claim as close to the person as possible.
- ***The person who actually carried out the service must complete the Affidavit of Service before a Commissioner of Oaths. There is a Commissioner of Oaths at the Small Claims Office who may witness the affidavit.***

### b) Registered Signature Mail Service

- For more information contact Canada Post at 1-866-607-6301 or online at: <http://www.canadapost.ca/tools/pg/manual/PGregister-e.asp>.
- You must provide the Court with signed proof that the Defendant received the claim. This comes from Canada Post in the form of a *tracking document*. It contains a Tracking Number which is the same as the Item No. on the Customer Receipt. The tracking document can be obtained online, with the Item No. at:

<http://www.canadapost.ca/cpotools/apps/track/personal/findByTrackNumber?execution=e3s1>

or by contacting Canada Post Customer Service at 1-888-550-6333 within 60 days and asking them to provide you with a copy by fax or mail.

- If serving by registered mail – There are two reasons to serve right away:
  - The party may not attend at the post office promptly to pick up the document(s).
  - If the party does not pick up the document(s) you may try another form of service. If you are unable to serve within the time required by the Court, your case will have to be adjourned.

#### **c) Fax Service**

- You may serve by fax. To provide the Court with proof of service, you require a copy of the transmission record/journal generated by the fax machine. It indicates the date of transmission and that the transmission was successful.
- This has not proven to be the most reliable form of service, unless between lawyers. This form of service is better suited to service of documents once the action has been initiated and is not generally sufficient for default judgment.

#### **d) Courier Service**

- Service may be carried out by courier. An Affidavit of Service by Courier must include: the date of pick-up by the courier, the bill of lading, the tracking number and expected date of delivery. Courier service is better used for service of documents once an action has begun. As proof of service is not initially provided by the courier, it is not generally sufficient for default judgment.

#### **e) Process Server**

- You may employ a process server or the Sheriff's Office for a fee. Process servers are listed in the yellow pages under Bailiffs and the Sheriff's Office is located at the Court of Queen's Bench (306-933-5170). ***The process server should provide you with an appropriate Affidavit of Service.***
- It is your responsibility to ensure that the Affidavit of Service is filed with the Court as proof of service. Keep receipts or invoices for these services for presentation to the Court when your costs are being discussed.
- If the process server is unable to serve the court documents an affidavit or invoice may be obtained from the process server and may be referred to when seeking an order for substitutional service.
- If the costs of service were increased due to the distances travelled or the number of attempts at service; this may be explained in an affidavit or invoice and referred to when seeking an order for costs. ***See below: f) Difficulty with Service and h) Reimbursement for the Cost of Service?***

#### **f) Service on a Lawyer**

- A court document may be served by leaving a copy with a party's lawyer if the lawyer accepts service by signing a copy of the document, indicating that he or she is the lawyer for that person.

#### **g) Service outside Saskatchewan**

- A document may be served outside Saskatchewan, without a court order, in the same circumstances in which it would be allowed in the Court of Queen's Bench. More information may be obtained from the Small Claims Office.

#### **h) Service by Ordinary Mail**

- Initiating pleadings, including: the Statement of Claim, Statement of Defence and Counterclaim, Counterclaim, and Third Party Notice must be served by a method which allows proof of service. This is so because you are putting the other party on notice of the substance of your claim.
- Documents which are filed and exchanged during the proceedings such as: the Document List and the Trial Statement may be served by ordinary mail. If you encounter problems with proof of service it may be necessary to re-serve using a method which permits proof of service. **Note:** The Trial Statement is only required for claims for \$5,000.00 or less and for motor vehicle collision claims.
- The Court does not expect you to incur unnecessary costs. You must use your best judgment as to the most appropriate method of service.

#### **i) Late Notice of a Counterclaim**

- *The Small Claims Act* allows a Defendant to serve and file a Counterclaim on as little as 3 days notice before case management or trial and it may be presented orally at trial; however if it takes the Plaintiff by surprise, the Judge may adjourn the proceedings and impose costs. To avoid inconvenience, service in writing, in keeping with this Small Claims Practice Guide is recommended.

### **6) Difficulty with Service?**

#### **a) Substitutional Service**

- If you have investigated in a number of ways and the whereabouts of the party you wish to serve remains unknown, you may apply to a Judge for an order of substitutional service.
- If you have made repeated efforts to serve in one or more of the methods discussed above and you believe that the Defendant may be avoiding service, you may seek an order for substitutional service.

## b) Substitutional Service Application

Prepare this information for the Court:

- If you do not know the whereabouts of the individual; list all efforts to ascertain the whereabouts, all information that you have regarding the location of persons with whom that person may be in contact, and any costs to you of attempting to serve the court documents.
- If you know where the party may be found but efforts to carry out service are perhaps being frustrated by the individual or circumstances beyond your control; list all efforts to serve the individual and the costs to you of attempting to serve the court documents.
- A proposal for an alternate means of providing notice of your claim, such as:
  - service upon a family member of someone else with whom you believe the party is in regular contact;
  - delivery to the last known address of the party;
  - a notice in a newspaper.

Speak to the staff at the Small Claims Office about bringing such an application.

## 7) Provide Correct Address for Service

- Correct addresses are essential to proper service and ongoing communicating with and between the parties. The parties have an obligation to advise the Court and other party of errors or changes to the addresses provided on the Court file.

## 8) Reimbursement for Cost of Service

You may seek an order of reimbursement for the costs of service. **Example:**

If you produce an invoice from a private process server, the Judge will want to be satisfied that service in this manner was necessary and that the costs are reasonable having regard to all of the circumstances, including the amount of the claim and the alternative methods of service available, such as service by registered mail. You must satisfy the Judge that the costs were reasonably incurred before you may be awarded all or any of your costs.

Consider service by registered mail before using a process server. **See VIII Costs.**

- The Court staff may provide you with additional direction regarding service.
- The required forms and samples of these documents may be found with the Checklist applicable to your claim and in this Practice Guide.

## V Defendant Information

### A. Your Options

#### 1) Mediation

If the parties to the dispute wish to mediate your case, a mediator may be provided, at no charge. In mediation, a neutral facilitator will meet with all parties and help them discuss the issues and identify options for resolving the conflict. ***Mediation is available in the Judicial Centre of Saskatoon only.***

#### a) How does mediation work?

- You have the chance to work out a solution that is agreeable to both sides in a less adversarial setting. You are in control of the terms of any agreement.
- Both parties agree to the mediation process and attend voluntarily.
- The parties can agree on the date of mediation.

#### b) The Process

If you think you'd like to try mediation, within one week of receiving the Summons, call the Dispute Resolution Office at 306-933-7864. A mediator may answer your questions and help you decide if this is right for you. Any party to the dispute may suggest mediation but both parties must agree to participate.

- If you decide to mediate, the Dispute Resolution Office will contact the other party to see if there is an agreement to mediate. It will then set up an agreeable time to meet. Meanwhile, the court proceedings may be adjourned.
- If you decide not to mediate, your action will proceed in the normal course: first appearance, Case Management Conference and trial.
- If you participate in mediation but do not reach agreement, you may proceed to a Case Management Conference as scheduled, and to trial.
- If you reach agreement you have several options, including:
  - the action may be adjourned until the agreement is carried out;
  - you may seek the Court's assistance in resolving outstanding issues, such as a schedule for payment; or
  - the agreement may be filed with the Court with a request for a consent judgment.

**Speak to the Small Claims Office before pursuing one of these options.**

## 2) Proposal for Settlement

You have a number of options, including:

- If you agree with the claim; there is no need to proceed to Court. You can contact the Plaintiff and simply pay the claim.
- If you agree with only some parts of the claim, you may attend the case management and a Judge may assist you in resolving the remaining issues.
- If you wish to pay the claim over time but you're unable to agree upon how it will be done, you may attend the case management and seek the help of a Judge.
- If payment in installments is agreed upon, the court proceedings may be adjourned for so long as the payments are being paid on time.

Describe your settlement agreement in writing, referring to the court proceedings by number. It should be dated and signed by each party, in the presence of a witness.

**If you settle; advise the Small Claims Office immediately; so that the claim can be discontinued and any court date may be reassigned.**

## 3) Dispute the Claim

### a) Prepare a Statement of Defence

- If you dispute the claim, complete a Statement of Defence (The Court is no longer using the Dispute Note), serve a copy on the Plaintiff, and file it with the Court as soon as possible and in any event, 10 clear days\* before the date set for case management or first appearance, as applicable. Failure to do this may result in an order for costs against you and/or adjournment of the case management, first appearance, or trial.
- The Statement of Defence allows the Plaintiff and the Court to have a clear understanding of what it is about the Statement of Claim, you dispute.
- In completing the Statement of Defence, respond to the claims of the Plaintiff. In numbered paragraphs, begin by referring to each paragraph of the Statement of Claim, stating whether or not you agree and if you don't agree, stating why. Continue in subsequent numbered paragraphs, if necessary, to state concisely your reasons for disputing the claim.

**See the Checklist and attached Forms and Samples applicable to your claim.**

## 4) Make a Counterclaim

- If you think the Plaintiff owes you money, you may wish to make a Counterclaim.

- The monetary limit for a Counterclaim is \$20,000.00. You may claim in excess of the monetary limit but you may not receive judgment for more than \$20,000.00. The limit upon the Court's jurisdiction pertains to the amount of the judgment, not to the amount claimed. **See III A. 1) a) Monetary Limits.**

**See III Plaintiff Information for more guidance.**

**Example of a Counterclaim:**

- The Plaintiff sued for the balance of an unpaid renovation bill. You wish to defend the claim because the work was not satisfactory. As you paid someone else to fix the mistakes made by the Plaintiff, you wish to claim that additional cost from the Plaintiff. As you have a defence to the Plaintiff's claim and a claim of your own, they may be combined in a Statement of Defence and Counterclaim.
- **See IV Service of Court Documents.** You should serve the Statement of Defence and Counterclaim on the Plaintiff, no later than 10 clear days\* prior to the first appearance / case management / trial date.
- A Counterclaim may be served at a later date, if allowed by the Court. It may be presented orally at case management or trial, but the Court may adjourn proceedings and may order costs (**See VIII Costs**) against you if you could have presented the Counterclaim earlier and/or the Plaintiff is disadvantaged or inconvenienced. The Court is concerned with fairness to all parties.

**See Checklist and attached Forms and Samples applicable to your claim.** The Statement of Defence and Counterclaim may be contained in one document or two, if the Counterclaim is done at a later time.

**a) Counterclaim**

The Counterclaim must contain the following (found in the Summons):

- Name(s) and address(es) of the Plaintiff(s);
- Name(s) and address(es) of the Defendant(s);
- Date and time of the next court date.

**b) Statement of Defence and Counterclaim**

Please complete the Statement of Defence and Counterclaim as follows:

**i) Statement of Defence portion**

- **See V A. 3) a) Prepare a Statement of Defence.**

## ii) Counterclaim portion

- In numbered paragraphs, provide a concise outline of the circumstances that support the Counterclaim, containing dates, times, locations, etc.
- State the exact amount you are claiming by Counterclaim.
- Number each page.
- Date and sign at the bottom of the Statement of Defendant's Counterclaim.
- Print the Defendant's name under the signature line.
- Provide the address for service.
- Make 3 copies of the Statement of Defence and Counterclaim.

***See Checklist and attached Forms and Samples applicable to your claim.***

## c) Prepare a Document List

**See** III B. 7) for assistance. **See** also XV Checklist, Forms and Samples.

## d) Service of Defence Documents

**See** VI a) and b). Serve the Plaintiff at least 10 clear days\* before the first appearance / Case Management Conference with the following:

- Statement of Defence or Statement of Defence and Counterclaim, as appropriate.
- Document List. **See** III B. 7) for assistance.
- Prepare for the Case Management Conference. **See** VI immediately below.

### Note:

- If the claim is for \$5,000.00 or less or it is a motor vehicle collision, you must also prepare a Trial Statement. **See** XIV below.
- The Order to File.

## VI Case Management Conference

### 1) Documents to File / Serve Beforehand

#### a) The Plaintiff

**At least 10 clear days\*** and preferably 20 clear days\* prior to the first appearance/ case management you should have filed and served on the Defendant the

Summons, Statement of Claim, Completed Document List and corresponding documents (**See** III B. 7 Completing the Document List), and the applicable Checklist and Small Claims Practice Guide (provided by the Court Office).

- If the claim is for the sum of \$5,000.00 or less, you must have filed and served a Trial Statement as well. **See XIV A. Claims for \$5,000.00 or less, below.**
- If it concerns a motor vehicle claim, you must have filed and served a Trial Statement as well. **See XIV B. Motor Vehicle Claims, below.**

## **b) The Defendant**

**At least 10 clear days\*** prior to the Case Management Conference you must file with the Court and send to the Plaintiff:

- If you dispute the claim, a Statement of Defence, and if you have a claim against the Plaintiff, a Counterclaim, and
- A Document List with corresponding documents. (**See** III B. 7 Completing the Document List). While documents may be presented to the Court for the first time at trial; the Judge may not allow it, particularly if there has been more than one missed deadline and/or late presentation is prejudicial to the Plaintiff.

## **2) Late Filing / Exchange of a Document**

The Judge may allow you to file the document however:

- The case management may be adjourned;
- You may be ordered to pay the reasonable expenses of the other party associated with the adjournment;
- The Statement of Claim, Statement of Defence, Counterclaim, or Third Party Notice, depending upon whether you are a Plaintiff, Defendant or Third Party, may be dismissed;
- It will depend on how important the document is to the other party and whether it affects the ability of the other party to proceed;
- If you have questions about this, contact the staff at the Small Claims Office.

## **3) Attending the Case Management**

- All parties to the action must attend and have the authority to settle.
- You may be accompanied by a lawyer or agent.
- Witnesses are not required and should not be brought to the case management unless the Judge has permitted it.

- You may bring a support person with you to the case management but it is up to the Judge to decide who remains in the Case Management Conference room.
- On the day of the Case Management Conference, go to the room listed on the Summons or the waiting room across from the case management room and a clerk will approach you.
- You may be allowed to attend by phone. This is usually allowed when a party lives or works a significant distance from the Court. Personal attendance is more conducive to settlement discussions.

**If you do not attend the case management,** your Statement of Claim, Statement of Defence, Counterclaim, or Third Party Notice, may be dismissed and/or judgment and costs may be ordered against you.

#### **4) What Happens at Case Management?**

The Case Management Conference is managed by a Judge. You will be encouraged to discuss the issues in an open but courteous manner. Direct your remarks to the Judge rather than the other party; this will help you remain objective and courteous.

##### **a) Two Goals of Case Management**

1. Explore the possibility of settlement so that a trial may not be necessary.
2. Discuss trial management which may include:
  - determining those issues which you can agree upon and for which you will not require proof;
  - employing a mutually agreed upon expert;
  - determining steps to be taken including:
    - exchanging additional information,
    - discussing the evidence required (witnesses and documents), and
    - determining the amount of trial time that is required.

##### **b) Bring Your Calendar for Trial Date**

- If the Judge directs that the matter proceed to trial a date may be set at that time.
- Bring your personal calendar and know the availability of your witnesses.

##### **c) Different Judge for Trial**

Should you proceed to the trial following the case management; a different Judge will be assigned. The trial judge will not be influenced by discussions at the case management.

##### **d) Settlement Notes Sealed**

If the Judge takes notes, about what is said during settlement discussions, these notes will not be available to the trial Judge.

## e) Trial Management Notes

If settlement discussions are not successful, the Judge will discuss trial management. The Judge may make notes about a number of trial matters such as: the issues to be tried, the number of witnesses, the handling of documents, any agreements about the facts, and orders made. It is necessary that the trial judge receive these notes. While the trial judge determines the procedure at the trial, such plans surrounding trial management are usually acceptable to the trial judge.

## 5) Length of Case Management

The Case Management Conference lasts about 45 minutes but you allow up to 2 hours. Several Case Management Conferences are set each morning and afternoon and discussions may take a little longer than planned.

## 6) Adjournment

Case managements may be continued to another date for several reasons, including:

- One or both parties came unprepared;
- Further discussions or actions may assist in settlement;
- Further steps are required before the parties are trial ready;
- The time set aside for trial is longer than one day and in that event, the trial will be case managed again approximately 2 ½ months prior to the trial date.

## 7) Judge's Directions

If the Judge gives directions and adjourns the case management or sets a trial with directions, the directions will be placed on the court file with a copy to each party. **See J2 - Case Management Adjournment and Direction and J3 - Trial Notice and Direction.**

## 8) Preparation

Bring all relevant documents, including photos, so that there may be a full discussion and understanding of your position. You should have filed and exchanged the Document List and corresponding documents. **See III b) 7) Completing the Document List.** Review your case and that of the other party and try to anticipate questions.

### **Be prepared to prove you claim and obtain judgment**

If the other party does not attend the case management; you may be in a position to obtain judgment so be prepared to present your claim and produce relevant documents to support the amount of your claim.

## 9) Settlement at Case Management

Your settlement may be recorded as an agreement or as a final judgment of the Court. If lawyers are involved, the Judge may ask them to complete the necessary settlement documents. Court proceedings may be adjourned pending completion of settlement.

## 10) If You Don't Settle

If settlement cannot be achieved, the Judge will likely turn to case management discussions, outlined above.

## 11) Case Management for Longer Trials

A lot can happen between case management and trial. You may be required to meet once again for a case management prior to a trial set for one day or more to:

- Determine if there is a renewed interest in settlement discussions, and
- Discuss case management and confirm trial readiness

Attendance is required for this case management as for all court attendances, unless waived by a Judge.

## VII Trial

### Simplified Trial Project may apply

- If the Statement of Claim is for the sum or \$5,000.00 or less, or it concerns a motor vehicle collision, **see** XIV Simplified Trial Project as it will apply.

### Judge Determines the Trial Procedure

- The Judge ultimately determines how a trial will proceed. The following notes are general guidelines only.

#### 1) Preparing for Trial

##### a) Initial Preparation

Begin your preparation immediately after being advised of the trial date:

- **Make sure** you will be available and notify all of your witnesses of the trial date. Subpoena witnesses if you have any doubt about their appearing voluntarily.
- **Follow up** on anything that arose out of the case management and comply with any direction from the Judge.

- **Review** all of the information that has been filed with the Court and exchanged with the other party, including:
  - the pleadings such as the Statement of Claim, the Statement of Defence and Counterclaim;
  - the documents attached to the List of Documents;
  - the Trial Statements (if the Simplified Trial Project applies); and
  - advice or instructions received at the case management from the Judge.

**Contact the Small Claims Office immediately about problems concerning witnesses or documents:**

- If you discover that you or a witness will not be available on the trial date, or
- A document that you intend to rely upon at trial has not been filed with the Court or exchanged with the other party.

**b) Closer to Trial**

In the weeks before the trial, repeat all of the steps outlined above and:

- Make brief notes of the important points to be covered at the trial concerning:
  - your testimony
  - the testimony of your witnesses
  - the testimony of the other party or its witnesses
  - questions that you anticipate coming from the other party or the Judge.

You may refer to these notes but you may not read from them during your own testimony.

- Organize the documents that will be discussed by each witness. A witness should be presented with the document which has been marked by the Court as an exhibit. **See below - f) The Document List and Exhibits.**
- When preparing notes, start at the beginning. **Example:** If you are claiming faulty workmanship on your house, you might prepare the following:
  1. address where work was done,
  2. repairs required to be done,
  3. date of first contact with the Defendant,
  4. the agreement reached, including:
    - if the agreement is written or verbal
    - when and where the agreement was reached
    - the price agreed upon
    - the work to be completed
    - the completion date
  5. reasons why you are not satisfied with the work,
  6. further dealings with the other party about remedying the problems,

7. measures taken to remedy the problems and the cost to you.

## **2) Trial Day**

### **a) Be on time**

- Be on time for Court and ready to proceed. If you are late, your claim may be dismissed or judgment granted in your absence, as the case may be. Contact the Small Claims Office if something unforeseen delays your attendance.

### **b) Attendance of Witnesses**

- Unless prior arrangements have been made with the Court, such as for testimony by phone, witnesses should attend at the beginning of the trial. If this is a problem for a witness, you may raise it at the Case Management Conference or with the Small Claims Office staff. With the exception of experts, witnesses are typically asked to remain outside the courtroom until it is their turn to testify.

### **c) Review Materials**

- If the required procedure has been followed by the parties, the trial Judge and the other party will have some understanding of your case, obtained from the materials on the court file and as exchanged.

## **3) Presenting Your Case**

### **a) Courtesy**

- It is essential that you remain courteous throughout the proceedings. The Judge recognizes that this can be difficult when representing yourself, however it is important to effective presentation of your case. Witnesses and the other party respond more positively to courteous behaviour.

### **b) Decision Based on the Evidence**

- The Judge decides the case based upon the evidence presented at the trial in the courtroom. This includes the testimony of witnesses and the documents admitted into evidence. The Judge will not have information from the case management. You may not refer to discussions about the case that took place during case management and you should not raise failed settlement negotiations.

### **c) Simplified Trial Project - Trial Statements**

- If the Simplified Trial Project applies, the Judge will also have access to your Trial Statement; expect to be asked to adopt the contents. You should not have to repeat that information, if it's clear and all within your knowledge. You may be asked questions that arise from it or are not covered.

- If you have new or different information to give the Court, you should advise the Judge before adopting the statement. The Trial Statement and any further answers to questions posed by the Judge and the other party will then become part of your case.

**See XIV Simplified Trial Project.**

**4) Presenting the Evidence**

- Each party to the action has the opportunity to present their case.
- The Plaintiff begins his/her case first, presenting witnesses and documents, as the Court permits. Then the Defendant proceeds in the same fashion.
- Each witness is asked questions by the party that called them and then the opposing party has the opportunity to cross-examine.
- If you are representing yourself, the question and answer approach is not followed. You simply present your answer in an orderly fashion.
- The trial judge may ask questions. This is often done for clarification.
- After all of the evidence has been presented the parties may be asked by the trial judge to present their arguments. Argument is restricted to the evidence including testimony that the Judge has received
- A case is generally proved or disproved based on the testimony of witnesses and the presentation of documentary evidence. The Judge may only make a decision based on the evidence which is admitted at the trial.
- Evidence may be in the form of oral testimony or documents. Documents may include anything on paper pertaining to the case, diagrams, and photos. Physical evidence is typically presented with the aid of photos.
- Presentation of documents may take place at the outset of the trial with the filing of the Document List and the accompanying documents as a group. The documents may be shown to witnesses with personal knowledge of those documents and the Judge will determine admissibility of the documents, i.e. will decide whether the documents form part of evidence on the trial.
- As a party to the action, you should generally testify first. It is best to begin the case with a relatively full picture of the circumstances.
- Other witnesses, who may support your testimony or testify about one aspect of your case, should follow your testimony. Some allowance for testifying out of order may be made for expert witnesses or witnesses under time constraints.

## **Simplified Trial Project Procedure modifications**

This procedure will be modified by the Simplified Trial Project, should your claim be for \$5,000.00 or less or involve a motor vehicle claim.

### **5) Witnesses**

- Prior to testifying in Court, all witnesses must swear an oath to tell the truth or affirm that they will tell the truth. If you give false evidence, having been sworn or affirmed, you may be charged with the criminal offence of perjury.
- The Plaintiff's case is presented first, followed by the Defendant's case. Each witness will be examined first by the party presenting them (examination-in-chief) and then may be questioned (cross-examination) by the other party. The Judge may also ask questions of the witnesses at any time.
- It may be important to produce a witness who may corroborate or "back-up" the testimony of another witness; however, it is the quality of the evidence, not the number of witnesses that determines the outcome. The Judge will ultimately determine whether a witness will be allowed or is necessary.
- The Court is interested in evidence pertaining to this claim, not evidence concerning another claim that may have involved the opposing party. It is not likely that the trial judge will allow a party or witness from another claim to testify in your action about their experience with the opposing party.

#### **a) Examination-in-chief**

##### **Do not ask leading questions about matters that are disputed**

When questioning your own witnesses, you must let the witness tell the story. Unless you are asking them something that is not in dispute, you should not ask a question for which the answer is simply yes. That is a "leading question". Leading questions are usually only allowed with respect to matters that are not in question.

**Example of a permissible leading question:** The time, date and place of a vehicle accident, are not usually in dispute and may be asked in a leading fashion – Did the accident take place on 22<sup>nd</sup> St. West in Saskatoon, Saskatchewan at 2:10 p.m.?

**Example of an impermissible leading question:** Did the Defendant admit to you that he was at fault for the accident?

#### **b) Cross-examination**

##### **Leading questions are permitted in cross-examination**

When you question the other party's witnesses you may ask leading questions, but they must not exceed acceptable bounds of court decorum. Frame your questions

as questions and keep them short and to the point. You must allow the witness to complete their answer before asking another question. Your role is to ask questions at this stage, not to give evidence.

**There are two key reasons for cross-examination:**

- questioning a witness regarding their testimony about which you disagree, and
- to obtain evidence which is helpful to your case.

**If the Simplified Trial Project applies to your case**, the Judge may conduct all or most of the questioning and ask you and the other party if there are any further questions. This project applies to claims for \$5,000.00 or less and motor vehicle collision claims.

## **6) Document List and Exhibits**

### **a) Copies of Documents**

- When referring to a document, everyone in the courtroom must be able to see it so as to follow along. Bring copies of the documents you wish to enter into evidence. **Bring the original**, if available, plus a copy for each of the following:
  - the witness(es) who discusses the document
  - the Judge
  - the other party
  - yourself

### **b) Document Lists at Trial**

- If you have documents or exhibits (such as invoices or photographs) to support your claim, these should have been organized in a Document List with corresponding numbers.
- For ease of reference and simplicity, the Document List with the attached numbered documents may be presented to the Judge at the outset of the trial.

### **c) Admissibility of Documents**

- Though your documents have been presented at the outset of the trial with the Document List, the Judge may rule that a document may not be admitted as evidence in the trial; it may be irrelevant or unreliable. If a document is not admitted, the Judge will not rely upon it when making a decision.
- When showing a document to a witness during testimony, show the document which has been marked as an exhibit or if the document has not yet been marked as an exhibit, show the witness the document which you intend to have

marked as an exhibit. Refer to it by number in your Document List or the exhibit number assigned to it by the Court; they may be the same or different.

- The Judge will provide further guidance, as needed.

#### **d) Diagrams**

- Photos and diagrams can be very helpful when describing your evidence. It is ideal to prepare a diagram in advance and that it be prepared on paper which is 8 ½ by 11 inches (letter size paper), because the diagram may easily be fitted on the court file.

#### **e) Photos**

- Photos should be identified by the person who took them, or a person who was present when they were taken, and has personal knowledge of the item represented by the photo. The witness should be asked if the photo is an accurate depiction.
- All exhibits entered into evidence are kept by the Court until the appeal period has passed. If no appeal is taken, the exhibits can be returned by court order.
- Please number photos. You may refer to them as a package of photos numbered 1 – 10 for the Document List. **Example:** 10 Photos, numbered 1 - 10 of the Plaintiff's vehicle. Use the date that the photos were taken.

### **7) Evidence by Agreement**

- Evidence may be presented by agreement. This may be discussed at the case management conference or at the outset of the trial.
- The parties may reach such an agreement on their own and advise the Judge, but this should be done in writing to avoid misunderstanding.
- At the trial the Judge may invite the parties to indicate their agreement regarding the filing or admission of routine evidence.

### **8) Burden of Proof and Credibility**

- In a civil case, the Plaintiff bears the burden of proving its claim. If there is a Counterclaim, the Defendant bears the burden of proving the Counterclaim.
- The trial Judge will consider and weigh all of the admitted evidence. In order that the Judge may find in your favour, you must be found to have proven your case “on a balance of probabilities”, or better than on a “50-50” basis.

- This does not mean that a Judge need accept all of your evidence or that of the other party. The Judge may find that you have only proven part of your case “on a balance of probabilities”.
- The Judge may not accept some or all of the evidence presented by a witness or in a document, for a variety of reasons, including that:
  - a witness may not be believed,
  - a document may not be sufficiently clear, and
  - the evidence may not be sufficiently reliable or clear.

In that event the Judge may, when weighing the evidence, find that you have not proven your claim “on a balance of probabilities”.

## 9) Reliability and Relevancy

The Judge determines whether evidence that you plan to submit is relevant and reliable. If the Judge rules it inadmissible; you must accept that ruling and move forward.

- Hearsay evidence is typically excluded. It may be admitted, after the Judge has found that it is both necessary and reliable evidence. Invoices from reliable businesses, printed on their stationery, may be admitted, at the discretion of the trial judge. Hearsay is discussed further below.
- The Judge may also rule that a line of questioning is not relevant. **Example:** If you invite a witness that has previously employed and been unhappy with the carpentry services of the Defendant; the Judge would likely not permit that testimony as it has no bearing on the dispute between you and the Defendant.

## 10) Hearsay

The Judge will be watching for the best evidence. This is why hearsay testimony is usually excluded and the original of documents should be produced at trial. Here are some general guidelines about hearsay:

- Witnesses may not testify as to what “someone” else told them, unless that “someone” was the opposing party.
- A party or a witness may not produce letters, sworn affidavits or written reports authored by someone else.
- The best evidence is first-hand evidence which can be challenged by the other party. That includes the person who has first-hand knowledge of what they testify to – they saw it or heard it first-hand. If the opposing party said something relevant to your case to you or someone you know, that may be repeated at trial by the person who heard the statement. However, if another person, such as a cabinet maker who examined your cupboards, told you that the work was

negligent, you cannot repeat what the cabinet maker told you; he / she must testify to it for it to be admissible.

- It is best not to rely upon hearsay evidence. Only in exceptional circumstances is hearsay allowed by the Judge.
- The most frequent type of hearsay evidence that people seek to present and which may be allowed is with respect to invoices that have been paid or estimates that have been prepared in writing on the letterhead or invoice forms of an established business.
- **Questions about hearsay evidence are best raised at the case management** or at the beginning of the trial. The staff at the Small Claims Office may be able to give general advice.

## 11) Arranging for Witnesses

### a) Expert Witnesses

#### **When is an expert witness needed?**

- When a case involves an area of expertise which is not ordinarily shared by the general public, such as the expertise of an engineer or journeyman mechanic, the Judge at trial may allow that witness to be qualified as an expert witness to provide opinion evidence. The Judge must accept the qualifications of the witness before allowing this evidence.

**Example:** Should the Judge qualify a witness to give expert testimony about the repair of a motor vehicle, that witness may then give an opinion about proper repair procedures and if he or she has seen the vehicle, opinion evidence may be permitted about the repair work performed and any needed repair work.

#### **Tell the Judge at the case management if you have an expert witness**

- If you wish to present an expert witness, you must tell the Judge at the case management hearing.

#### **Provide a summary or CV of the expert's qualifications**

- Obtain from the expert witness, a summary which lists: his/her qualifications, including: education, experience and courses attended.

#### **Provide the expert's report or a summary of the expected testimony**

- Provide the opposing party with either a written report authored by the expert or a summary of the anticipated testimony of the expert. This information must be provided to the opposing party with your Document List (**See III B. 7**)), or as may be directed by a Judge at case management or otherwise.

## **An expert witness must be qualified by the trial judge**

- You must also advise the trial judge, of the area of expertise about which you propose that your expert may testify. Questions may be put to the witness, at the trial judge's direction by the parties and the Judge, before he or she is allowed to give expert testimony.

## **An expert witness may sometimes hear the testimony of other witnesses**

- Sometimes it is important that an expert witness hear the testimony of the other witnesses as that may form the basis for their opinion evidence. You should raise this with the Judge at the case management. You should also discuss this with the Judge at the outset of the trial as often a decision is made at that time to exclude witnesses until they testify and an exception may be made.

## **b) Testifying by Phone**

- Witnesses may testify by phone, with the permission of the Court. Expert witnesses, or witnesses who do not live or work in the city are often permitted to testify by phone. This is done for the convenience of the witnesses, and in order to keep the costs of presenting a case, to the minimum.
- There are practical concerns about a witness testifying by phone, particularly if they will be referring to documents or photographs. The practicalities may be discussed at the case management or with the staff at the Small Claims Office.
- If you receive preliminary permission to present a witness by phone, the trial Judge may still require the witness to appear in person, especially if testimony by phone proves unsatisfactory. The Court usually requires the presence of witnesses at trial if their testimony concerns facts which are disputed.

## **c) Subpoenas**

- If you are concerned about whether a witness will attend the trial voluntarily; you should serve them with a subpoena. If a witness has not been subpoenaed you are not likely to receive an adjournment if they fail to attend.
- Subpoenas are issued free of charge at the Small Claims Office but you will have to pay a fee to your witness. The Small Claims Office staff may advise you regarding the amount payable to your witness.
- If you want a witness to bring documents that you do not have, tell the Small Claims Office staff when requesting the subpoena and discuss it with the witness.
- One copy of the subpoena is given directly to the witness along with the witness fee. If you seek reimbursement for the witness fee, be prepared to give the trial Judge a receipt for the fee or other proof.

## 12) Argument

- Once all parties have presented their evidence, each party may be invited by the Judge to sum up his or her position.
- Argument as at this stage of the proceedings must be based upon the evidence presented to the Court and any appropriate legal point you wish the Court to consider.
- If something has not been presented as evidence, you may not refer to it in argument.
- It may be useful to make a list of points you wish to cover for argument when organizing your evidence before trial. It is often evident to the Judge what the arguments will be and in that event your remarks may be quite brief.

## VIII Costs

### Small Claims jurisdiction to award Costs

Costs are typically awarded at the conclusion of the trial, although, in some circumstances they may be awarded at the case management. Costs are limited under *The Small Claims Act*. When awarded, costs can be a reflection of the monetary value of the claims. Lawyer-related costs may not be awarded.

The Judge determines whether costs should be ordered and in what amount.

### A party may be required to pay costs in some circumstances, including:

- if a case management or a trial was adjourned because a party was not prepared;
- if a party has not filed and exchanged; a Statement of Defence, Document List, document, or Trial Statement as required by the Court;
- if a party has not complied with a court order;
- if a witness was allowed to testify by phone and costs were incurred;
- upon an application to set aside a judgment; or
- upon being unsuccessful at trial.

There may be an element of deterrence or reparation in an order for costs that may be influenced by the actions of the other party, but this is quite rare.

### Some specific expenses may be compensated for by way of costs, including:

- The cost of filing a Statement of Claim
- The reasonable costs of service  
This applies to service of documents for which the Court requires service, including the Statement of Claim and Statement of Defence.
- Witness fees which accompany subpoenas

- Reasonable expenses of a party, such as travel and other out-of-pocket costs  
This is likely restricted to a court appearance when another party is to blame for a matter not proceeding.

**Do not expect to be compensated by way of costs for the following:**

- Lawyer-related costs
- preparation time, travel time, or inconvenience
- phone, fax, and copying charges, and preparation of photos or diagrams
- lost wages or child care expenses incurred for case preparation or trial attendance.

**Note:** References to costs in this section do not apply to enforcement proceedings in the Court of Queen’s Bench.

## **IX Judgment**

- Judgment may be obtained at two stages of the proceedings: case first appearance, case management and trial.
- It is important to come to both the trial and the first appearance / case management, prepared to prove your case. If the Defendant has been served and does not appear at the first appearance / case management or trial, the Plaintiff may be in a position to obtain default judgment. Depending on the nature of the claim and the Judge’s preference, you may be asked to testify under oath about your case or you may receive judgment on the basis of the claim and the documents filed with the Court.
- At the conclusion of the case, the Judge may decide immediately or alternatively, may “reserve” his/her decision. In this event, you will receive a written judgment in the mail, often with reasons. Be sure that the court clerk has your current mailing address if the case has been reserved.

## **X Adjournments and Settlements**

### **1) Adjournments**

When a date is set for case management or trial, the Court expects that the matter will proceed as scheduled. These dates are set after consultation and so it is your responsibility to make a request for an adjournment as soon as the need arises and that the request be for a good reason. A case may not be adjourned, even if the parties agree, without the permission of the Court. Costs may also be imposed upon a party that causes or seeks an adjournment, in some circumstances. **See VIII Costs.**

## 2) Settlements Out of Court

If your claim is settled out of Court before the assigned court date, please notify the Small Claims Office as soon as possible. The Court may reassign the case management or trial time. Written notice is required to cancel or withdraw your claim. It is the Plaintiff's responsibility to notify the Defendant should they decide to cancel or withdraw the claim.

**See Form F11, Notice to Cancel Action.**

## XI Application to Set Aside a Judgment

If your claim was dismissed because you missed a court appearance or default judgment has been given against you in your absence, you may apply to set aside this judgment, pursuant to s. 37 of *The Small Claims Act*, which provides:

- 37(1) Subject to subsection (2), if there has been no appeal from a judgment pursuant to this Act, any party to the action may, within 90 days after the date of judgment, apply to the court for a summons to set aside the judgment and rehear the matter if:
- (a) the party applying to set aside the judgment did not appear at:
    - (i) the case management conference at which the judge gave judgment; or
    - (ii) the trial at which the judge gave judgment;
  - (b) the party applying to set aside the judgment submits an affidavit setting out:
    - (i) the party's reasons for not appearing; and
    - (ii) if the party is a Defendant or a third party, that the party has a valid defence to the claim or third party claim, as the case may be, made against him or her; and
  - (c) in the opinion of the judge:
    - (i) the party applying to set aside the judgment has a reasonable excuse for not appearing; and
    - (ii) if the party is a Defendant or a third party, the party has a valid defence to the claim or third party claim, as the case may be.
- (2) The court may, in exceptional circumstances, allow an application to be made pursuant to subsection (1) after the expiry of 90 days from the date of judgment.
- (3) For the purposes of subclause (1)(c)(ii), the defence is not valid if the judge considers that the defence:
- (a) is without reasonable grounds;
  - (b) discloses no triable issue; or
  - (c) is frivolous, vexatious or an abuse of the court's process.
- (4) On the return date of a summons issued pursuant to subsection (1), the judge may set aside the judgment on any terms as to costs that the judge considers appropriate and give any directions that the judge considers necessary respecting the rehearing of the matter.
- (5) If the judgment is set aside pursuant to subsection (4), any certificate of judgment that is entered pursuant to subsection 35(3) is vacated.

**See XV Forms, and the form entitled *Application to Set Aside a Judgment*.**

A Summons and the Application must be served upon the other party at least 10 clear days\* before the hearing date in the Summons. A completed Affidavit of Service must be provided to the Court before the hearing may proceed.

**There is a 90 day deadline** for making the application. This deadline may only be extended in the most exceptional circumstances upon application to a Judge.

## **XII Appeal**

A judgment of the Court may be appealed by either party within 30 days of the date of the judgment. No steps may be taken to enforce the judgment until this period has expired. If you wish to appeal, contact the Court of Queen's Bench immediately to ensure the processing of the appeal within this time frame.

### **Preparing, Serving, and Filing the Notice of Appeal**

To appeal the decision, you must, before the 30<sup>th</sup> day has expired:

- complete the Notice of Appeal found in XIV Forms;
- serve a copy on the Respondent; and
- file the original Notice of Appeal with proof of service at the Local Registrar's Office located at:

**The Court of Queen's Bench**  
520 Spadina Crescent East  
Saskatoon, SK, S7K 2H6

- bring the filing fee of \$10.00.

The staff at the Court of Queen's Bench Office may advise about methods of service.

**Failure to file on or before the 30 day deadline will result in rejection of the Notice of Appeal. You may apply to the Court of Queen's Bench for an extension.**

In the Notice of Appeal state the grounds for your appeal, in other words, the legal errors made by the trial judge in reaching the decision. The appeal will be heard by a Queen's Bench Judge who will review the record of the proceedings (the transcript) but will not, except in very exceptional circumstances, hear new evidence.

**You must request and pay for the transcript of the trial.** The form letter, (**See XV Forms**), requesting the transcript, must be completed and delivered to the Small Claims Office which will forward your request to Transcript Services. You will receive an estimate of the cost of preparing the transcript and this sum must be deposited with Transcript Services before the transcript will be prepared and the appeal may be heard.

The most pertinent provisions of *The Small Claims Act* are set out below:

39(1) A party may appeal a judgment made pursuant to this Act to the Court of Queen's Bench within 30 days after the date of judgment, or within any further time, not exceeding 150 days, that the Court of Queen's Bench may allow.

(2) An appeal is commenced by filing with the local registrar of the Court of Queen's Bench at the judicial centre nearest to the place where the trial was held:

- (a) a notice of appeal;
- (b) proof of service of the notice of appeal on the opposite party or the party's lawyer;
- (c) a copy of the certificate of judgment; and
- (d) a copy of the request for a transcript of the proceedings.

(3) A notice of appeal must set out the grounds of the appeal, and:

- (a) where the appeal is by a defendant who did not serve and file a notice of counterclaim before trial, must set out briefly the details of the defendant's defence and of any counterclaim; and
- (b) where the appeal is by a third party, must set out briefly the details of the third party's defence.

(4) Subject to subsection (9), the appellant shall file with the local registrar at the judicial centre mentioned in subsection (2) a transcript of the evidence heard by the judge.

(5) Where the transcript mentioned in subsection (4) is not filed within six months after the day on which the notice of appeal is filed, the appeal is deemed to be dismissed unless an order extending the time for filing the transcript is made before the expiration of the six-month period by a judge of the Court of Queen's Bench on an application by the appellant.

(6) If a judge of the Court of Queen's Bench extends the time for filing the transcript pursuant to subsection (5) and the transcript is not filed before the expiration of that extended period, the appeal is deemed to be dismissed.

(7) On receipt of the transcript, the local registrar of the Court of Queen's Bench shall enter the appeal for hearing at the judicial centre where the appeal is filed.

(8) When an appeal is filed pursuant to this section, execution of the judgment and all other proceedings in the action are stayed until the appeal is determined unless a judge or a judge of the Court of Queen's Bench orders otherwise.

(9) Where a judge of the Court of Queen's Bench is satisfied that a transcript cannot be provided for the appeal, the judge, on application by the appellant, may:

- (a) order that the matter be returned to the court for a new trial; or
- (b) make any other order that the judge considers appropriate.

### **Order on Appeal**

42 A judge of the Court of Queen's Bench, on hearing an appeal pursuant to section 39, may:

- (a) allow the appeal and give the judgment that the trial judge should have

- given;
- (b) dismiss the appeal; or
- (c) order that the action be returned to the court for a new trial.

## **XIII Enforcement**

### **1) Enforcement Proceedings**

Enforcement proceedings may be taken after the expiration of 30 days from the date noted at the bottom of your Certificate of Judgment provided no appeal from the Civil Division judgment has been filed.

### **2) Steps to Enforce Judgment**

Civil Division judgments under *The Small Claims Act* may only be enforced through the Court of Queen's Bench. Provided the appeal period has passed, should you wish to enforce your judgment; contact your lawyer or the Court of Queen's Bench, Local Registrar's Office for further information at:

Court of Queen's Bench  
520 Spadina Crescent East  
Saskatoon, Saskatchewan, S7K 2H6  
Phone: 306- 933-5135

## **XIV Simplified Trial Project**

### **A. Claims for \$5,000.00 or Less**

*The procedures in the Small Claims Practice Guide apply to claims for \$5,000.00 or less, with the following modifications.*

#### **1) Application of Simplified Trial Project**

- These guidelines apply to all claims, for \$5,000.00 or less. However, these guidelines do not apply to institutional debts.
- These claims will be case managed on the first appearance court date.

#### **2) Effective Case Management / Trial**

- It will be presumed that a ½ day or less will be sufficient trial time. A case may be set for more than a ½ day on the direction of a Judge. In that event the case management will be adjourned to about 10 weeks prior to the trial.
- As the trial has been shortened, compliance with the Simplified Trial Project procedures must be strictly complied with. The parties must come to the case management well prepared so that the trial may proceed in a simplified form.

### 3) Timely Service

To facilitate preparation for an effective case management and trial, the:

- i. Summons (provided by Court Office);
- ii. Statement of Claim;
- iii. Trial Statement;
- iv. Document List with numbered documents;
- v. Applicable Checklist (provided by Court Office);
- vi. Small Claims Practice Guide (provided by Court Office);
- vii. Order to File (provided by Court Office).

must be served by the Plaintiff upon the Defendant, at least 10 clear days\*, but should be served 20 clear days\*, before the first appearance / case management date, to allow the Defendant to respond with his/her obligations 10 clear days\* before the first appearance / case management date.

- The Court prepares the Summons and provides the documents as indicated.
- The Plaintiff prepares the remaining documents.
- **See** the Table of Contents of this Small Claims Information Package for directions concerning preparation of documents, manner, and proof of service.

***The Summons and date for first appearance / case management will not be given to the Plaintiff until he/she has filed all of the required documents with the Court.***

### 4) Documents Required

The Plaintiff and Defendant must file and send to each other, the following:

#### a) Trial Statement

- A Trial Statement is prepared by and signed by each of the parties. It provides supporting information about the claim. Please type or print. Do not exceed 1,500 words or 6 pages. The average typed page contains 250 – 300 words.
- If you are the Plaintiff, you should already have filed and served the Trial Statement together with the Summons, Statement of Claim, Document List and other documents provided by the Court Office. **You will not be given a court date until you complete and filed all of your documents with the Court.**
- ***See III B. 8) The Trial Statement and see the Checklist, Forms and Samples package applicable to your claim.***

#### b) Document List

- A Document List, with corresponding numbered documents attached.

- You must file and exchange copies of all relevant documents, including photos and diagrams, which you may seek to rely upon at trial, or which may be in your possession or control that another party may seek to rely upon at trial.
- The Document List must be available at the first appearance / case management. It is important for effective discussion and the other party is entitled to timely access to those documents.
- More information about the Document List may be found at III 7) Completing the Document List. **See** XV Checklists, Forms and Samples.

## 5) Defendant's Obligations

The Defendant must file with the Court and serve on the Plaintiff:

- Statement of Defence, if he/she intends upon disputing the Plaintiff's claim;
- Counterclaim, as may be appropriate in the circumstances;
- Trial Statement;
- Document List.

10 clear days\* prior to the first appearance / case management date.

### a) The Counterclaim

The Defendant must file a Statement of Defence if he/she is disputing the claim. In deciding whether to also file a Counterclaim, the Defendant may consult V A. 3) Dispute the Claim and 4) Make a Counterclaim as well as XV Checklists, Forms and Samples.

## 6) Documents Created or Discovered Late

Any documents created or discovered after the specified time limits, must be filed and provided to the other party 10 clear days\* prior to the next case management or trial date, and in any event immediately, whichever happens first.

## 7) Compliance with Obligations

Failure to comply with the requirements of the Simplified Trial Project may be addressed by a Judge in a number of ways at the case management or trial, including:

- an order for costs against the offending party (**See** VIII Costs);
- an adjournment;
- a direction that a document may not be filed or that an argument or claim may not be advanced at trial; and
- dismissal of a Statement of Claim, Statement of Defence, Counterclaim, or Third Party Notice, as the case may be.

## 8) Case Management

Case management will be conducted on the first appearance court date.

## **a) Orders at Case Management**

The Judge conducting the case management may order, among other things:

- the filing and exchange of documents or information;
- attendance for a subsequent case management;
- the issues to be determined in fact and law at trial;
- the number and identity of witnesses to be permitted at trial, including a single independent expert witness and the arrangements to retain;
- oral or written evidence to be presented at trial having regard to s. 28.1 of *The Small Claims Act, 1997*, considered credible and trustworthy, including invoice and repair estimates;
- revision of the Trial Statement in preparation for trial;
- such other orders designed to facilitate an effective trial process.

## **b) Adjournment**

The Judge conducting a case management may adjourn to another court date and may continue to manage the case.

## **c) Trials 1 Day or Longer**

All trials set for 1 day or longer will be adjourned from the initial case management to a chamber date for a further case management to be heard approximately 10 weeks prior to the trial date to determine:

- if the trial will proceed at the scheduled time;
- if the time scheduled for trial remains appropriate;
- if there is a renewed possibility of settlement; and
- any other practical matters, as appropriate.

## **9) Conduct of Simplified Trial**

### **a) Judge Determines the Process**

This will be done, with a view to the most effective means of ascertaining relevant information having regard to: the directions and orders of the case management judge, the pleadings, documents filed, trial statements, testimony, and the time allotted for trial. The parties should anticipate that:

- The Judge may at the outset, notwithstanding the content of the pleadings, clarify the extent of the claims or issues to be explored and the witnesses, to be heard.
- The parties, and possibly their witnesses, may be sworn in at the beginning and the Judge may conduct all or some of the questioning.
- The parties may be asked to adopt their trial statements under oath.

- The Judge may ask the parties, before the evidence is concluded, if there are any questions or areas that should additionally be covered by the judge.
- The trial judge may adjourn the trial for continuation, as appropriate.
- This procedure applies whether or not one or all parties are represented by counsel.

## **B. Motor Vehicle Claims**

***The procedures in the Small Claims Practice Guide apply to claims concerning motor vehicle collision claims, with the following modifications.***

***See XV Checklists, Forms and Samples for the forms and samples discussed..***

### **1) Application**

- These guidelines apply to all motor vehicle collision claims.
- Motor vehicle collision claims will be case managed on the first appearance court date.

### **2) Trial Time**

- The trials will be scheduled at the rate of 2, each ½ day that the Court presides.
- Given the restrictions on trial time, compliance with the procedures in this Part must be strictly complied with. The parties must come to the trial prepared so that the trial may proceed in a simplified form.

### **3) Service**

To facilitate preparation for an effective trial, the:

- i.** Summons (provided by Court Office);
- ii.** Statement of Claim;
- iii.** Trial Statement;
- iv.** Document List with numbered documents;
- v.** Checklist for Motor Vehicle Collision claims (provided by Court Office);
- vi.** Small Claims Information Package (provided by Court Office);
- vii.** Order to File (provided by Court Office).

must be served by the Plaintiff upon the Defendant, at least 10 clear days\*, but should be served 20 clear days\*, before the first appearance court date.

The Court prepares the Summons. The Plaintiff prepares the remaining documents. **See III B. 2) to 8)** for directions.

***A court date will not be given until the Plaintiff has filed all of the required documents with the Court.***

#### **4) Plaintiff and Defendant Obligations**

The Plaintiff and Defendant must file and serve upon each other the following:

##### **a) Trial Statement**

- A Trial Statement is prepared by and signed by each of the parties. It provides supporting information about the claim. A typed version is preferred but not mandatory and the length should not be more than 750 words (3 pages).
- If you are the Plaintiff, you should already have filed and served the Trial Statement together with the Summons, Statement of Claim, Document List and documents, and Checklist for Motor Vehicle Collision Claims.
- ***See III B. 8) The Trial Statement and the Checklist, and attached Forms and Samples applicable to your claim.***

**Note:** The average typed page, depending on lay-out, contains 250 – 300 words.

##### **b) Document List**

- A Document List, with corresponding numbered documents attached.
- You must file and exchange copies of all relevant documents, including photos and diagram, which you may seek to rely upon at trial, or which may be in your possession or control that another party may seek to rely upon at trial.
- This requirement applies to all documents, which must be available at the case management so as to have effective discussions and avoid surprise or inconvenience to the other party.
- More information about the Document List **see** III B. 7) Completing the Document List. **See** XV Checklists, Forms and Samples.

##### **c) Witnesses**

- It is up to the parties to arrange for the testimony of a witness.
- The Judge may not allow the testimony of a witness if it would not assist in determining the issue at trial. If you have questions about this, you may call the Small Claims Office.
- ***See VII 11) Arranging For Witnesses*** regarding testifying by phone and subpoenas.

## 5) Defendant's Obligations

The Defendant must file and exchange, prior to the first appearance court date:

- i. A Trial Statement;
- ii. A Document List.

**Note:** The Plaintiff is required to file and serve the Defendant with these documents with the Summons, Statement of Claim and the Motor Vehicle Collision Claims Checklist.

### a) No Statement of Defence - Trial Statement

Given that a motor vehicle claim is largely based on the facts, the Defendant need not provide a Statement of Defence. The Trial Statement is essential however, as it provides the Court and the Plaintiff with an understanding of the Defendant's position.

## 6) Noncompliance

Noncompliance with the requirements set out in this section, B. Motor Vehicle Claims, may be addressed by a Judge in a number of ways, including:

- an order for costs\* against the offending party;
- adjournment;
- a direction that a document may not be filed or that an argument or claim may not be advanced at trial; and
- dismissal of the Statement of Claim, Counterclaim, or Third Party Notice, as the case may be.

**See VIII Costs**

## XV Checklists, Forms and Samples

### A. Use of Checklists, Forms and Samples

Checklists, Forms and Samples for the Plaintiff and Defendant in three categories:

1. Claims over \$5,000.00,
2. Claims \$5,000.00 or Less, and
3. Motor Vehicle Collision Claims,

have been packaged for your convenience. Begin with the Checklist applicable to your claim, review the Forms and Samples and go to the Small Claims Practice Guide for greater detail.

#### 1) Checklists

Six Checklists have been created to assist you. You may begin with the Checklists, turn to the attached Forms and Samples applicable to your claim and then to the Small Claims Practice Guide for added details. These Checklists are:

- C1.P – Plaintiff Checklist – General Claims
- C1.D – Defendant Checklist – General Claims
- C2.P – Plaintiff Checklist – Claims \$5,000.00 or Less
- C2.D – Defendant Checklist - Claims \$5,000.00 or Less
- C3.P – Plaintiff Checklist – Motor Vehicle Collision Claims
- C3.D – Defendant Checklist – Motor Vehicle Collision Claims

## 2) Forms and Samples - The Difference

The forms provided set out the format for documents to be filed with the Court. There are several reasons for prescribed forms, including that they:

- provide clear and sufficient notice of the particulars of a claim and the relief that is sought. This is especially true of pleadings.
- ensure that the same required information is provided by all parties involved in court proceedings.
- provide identification and predictability so that the parties and the Court know what to look for in a document.

Samples illustrate the kind of information that may be included in the forms.

## 3) Forms - What to include

Organize and limit the information you include in court forms. With the exception of the Trial Statement (required for Motor Vehicle Collision claims and Claims for \$5,000.00 or less – **See XIV** Simplified Trial Project), evidence is not to be included in pleadings.

- Pleadings such as a Statement of Plaintiff's Claim and the Statement of Defence are intended to be very concise and clear about the nature of the claim or dispute so as to fairly put the other party on notice of your position.
- The Court is looking for sufficient information in a form, especially in pleadings, so that it and the other party may clearly understand your position and so that an informative response may be given.
- While the format is important to the Court, you may expand upon the size of the form to include all of the information needed to properly complete the form.
- Remember to number all paragraphs - this permits easy reference.

## 4) Forms - What Not to Include

- Do not provide a summary of your case in pleadings. That must be left for discussions at case management or evidence at trial. The exception to this is the Trial Statement which is required in the Simplified Trial Project (**See XIV**).

- Do not include details about settlement negotiations, conversations or correspondence in pleadings.
- Do not attach documents which you may rely upon to support your position.
- Do not make personal comments about parties or witnesses in the proceedings.

## 5) Samples

- The Samples in this Small Claims Practice Guide are intended to assist you in completing the forms. The information to be provided will vary with each individual case.

## B. Lists of Checklists, Forms and Samples

***All of these documents are discussed in this Package and may be obtained from the Court. You have been given a selection most useful to your type of action.***

### 1) Checklists

- C1.P – Plaintiff Checklist – General Claims
- C1.D – Defendant Checklist – General Claims
- C2.P – Plaintiff Checklist – Claims \$5,000.00 or Less
- C2.D – Defendant Checklist - Claims \$5,000.00 or Less
- C3.P – Plaintiff Checklist – Motor Vehicle Collision Claims
- C3.D – Defendant Checklist – Motor Vehicle Collision Claims

### 2) Forms

- F1 – Intake Form
- F2 – Document List
- F3 – Trial Statement
- F4 – Statements of Plaintiff’s Claim
  - F4.1 – Statement of Plaintiff’s Claim – General Use
  - F4.2 – Statement of Plaintiff’s Claim – Motor Vehicle Claim
- F5 – Statement of Defence
- F6 – Counterclaim
  - F6.1 – Statement of Defence and Counterclaim
- F7 – Affidavits of Service
  - F7.1 – Personal Service
  - F7.2 – Service by Registered Mail
  - F7.3 – Service by Fax
  - F7.4 – Service by Courier
  - F7.5 – Service by Ordinary Mail
  - F7.6 – Personal or Registered Mail
  - F7.7 – Ordinary or Registered Mail
- F8 – Third Party Claim
- F9 – Application to Set Aside a Judgment

F10 – Notice of Appeal  
F10.1 – Transcript Letter  
F11 – Notice to Withdraw Action

### **3) Samples**

S1 - Demand Letters  
    S1.1 – Demand Letter – General  
    S1.2 – Demand Letter – Motor Vehicle Claim  
S2 – Document List  
S3 – Trial Statements  
    S3.1 – Trial Statement – Claims \$5,000.00 or Less  
    S3.2 – Trial Statement – Motor Vehicle Claim  
S4 – Clauses describing Plaintiffs & Defendants  
S5 – Statements of Plaintiff’s Claim  
    S5.1 – Statement of Claim – Motor Vehicle Claim  
    S5.2 – Statement of Claim – Goods  
    S5.3 – Statement of Claim – Services  
    S5.4 – Statement of Claim – Loan  
    S5.5 – Statement of Claim – NSF Cheque  
    S5.6 – Statement of Claim – Workmanship  
    S5.7 – Statement of Claim – House Transaction  
S6 – Statements of Defence  
    S6.1 – Statement of Defence – General  
    S6.2 – Statement of Defence – Workmanship - See S5.6 Claim  
S7 – Statement of Defence and Counterclaim – Services - See S5.3 Claim  
S8 – Third Party Claim – Workmanship – See S5.6 Claim

### **4) Judges’ Orders and Court Forms**

J1 - Orders to File  
    J1.1 – Order to File – General Application  
    J1.2 – Order to File – \$5,000.00 or Less Simplified Procedure  
    J1.3 – Order to File – Motor Vehicle Simplified Procedure  
J2 – Case Management Adjournment & Direction  
J3 – Trial Notice & Direction  
J4 – Judge Case Management Report