



**BERMUDA Small Claims Procedure
at Magistrate's Court:**
Questions & Answers for Consumers



CONSUMER AFFAIRS

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Promoting Confident Consumers and Responsible Traders



What is Small Claims Court?

Small Claims Court is a way to get legal judgement in civil disputes where the claim for damages is valued at **\$25,000.00** or less. The small claims procedure at Magistrate's Court is convenient and inexpensive. It is faster and more informal than other courts. Lawyers can appear, but the court generally operates without them.

The purpose of this booklet is to provide you with a working guide to the small claims procedure. Read it carefully. It should help you approach the small claims procedure with confidence. If you prepare yourself adequately, you will find that you can present your case effectively even if you have never been in a court of law before. The emphasis is on facts, not on legal technicalities.

A complete **glossary** can be found at the end of this booklet.

This information can only give you a general idea of what is likely to happen. For further information, contact Magistrate's Court at 295-5151 ext. 1225.

This information was compiled by Consumer Affairs in consultation with Magistrate's Court (2005).

Why go to court?

"I'm going to take you to court." These words sound all too familiar. However, you have to decide if it is really worth your time or money. If someone owes you money, and you cannot settle things any other way, you may decide to issue a claim through the small claims court at Magistrate's Court. Some common reasons for issuing a claim are:

- Loan not repaid
- Landlord/Tenant issues
- Poor workmanship
- Damage to property
- Road traffic accident
- Personal injury
- Goods not supplied
- Faulty goods

Small claims court deals with all these types of claims. The small claims system is quick, cheap and easy to use, but it only applies to claims for **\$25,000.00** or less, against a person or company in Bermuda.

How long do I have to make a claim?

You have a certain amount of time in which to file a claim. It depends on the type of claim you are making. This time limit is called the *statute of limitations*, and you must file your claim before the time expires. Claims for personal injury or claims for money damages for breach of contract must be filed within **six years**. The time to recover money for breach of a written promise to pay runs from the date of the breach of the written promise.

Can I settle without going to court?

Issuing a claim should be your last resort. You should first consider other ways to settle the matter. For example, if you are owed money, you could write a letter to the person who owes it, stating how much they owe, what it is for and what steps you have already taken to recover the money. You could include a warning that you will issue a court claim if they do not pay by the date you give them. Sometimes just this warning alone will encourage them to pay and you will not have to go to court. Keep a copy of your letter and any reply. If you have been unsuccessful in settling the dispute with the other person, Consumer Affairs can assist with settling your claim by contacting the person and mediating on your behalf. If it is unsuccessful, then the only other alternative is to pursue it in court.

Will I get my money?

This is something else to consider. The court may not be able to help you get your money if the person or company is:

- Unemployed
- Bankrupt
- Has no money of its own
- Has no personal property and has nothing else of value (i.e. motor vehicle)
- Has ceased to trade or do business
- Has other debts to pay

You may be able to get your money back if you are prepared to accept small installments over a period of time.

IF THE PERSON OR COMPANY IS BANKRUPT, YOU ARE UNLIKELY TO GET YOUR MONEY.

If the person you are claiming from has already been taken to court by others, and has not paid, you may also have little chance of getting your money.

Remember, even if you win your case, the court does not guarantee that you will be able to get the money you are owed.

Further steps will need to be taken in order to receive your money. Sometimes the defendant may be jailed for non-payment of debt.

Can I afford to go to court?

If the person you are suing defends your claim, you may need witnesses to help tell the court what happened. You may have to pay their costs (the money they may have earned that day). If you win, the court may tell the defendant to pay towards those expenses.

You may also need to get a report from an expert such as a doctor or mechanic. You may also need to ask this expert to come to court to give evidence on your behalf. You will have to pay for the expert's expenses and charges. Again, if you win, the court may tell the defendant to pay towards these, too.

If English is not your first language, and you need an interpreter, please inform a court clerk and one will be provided for you but it may cost you a fee for the service.

If you have a lawyer and your claim is for less than \$25,000.00, you will usually have to pay for his fees yourself, even if you win your case. You should also bear in mind that although the court may make a judgment in your favour (orders the defendant to pay you), the court will not automatically take the steps to make sure that the money is paid. If the defendant does not pay, you will have to ask the court to take action (enforce the judgment), for which you will have to pay another fee.

Can I afford the time?

Many cases are not defended and the way in which claims for money (less than \$25,000.00) are dealt with is designed to allow you to do this yourself. You must realize that if your claim is defended (the defendant disputes your claim), you will have to take time to prepare your case. The judge may not proceed with your case if you have not properly prepared for it. By preparation, it means putting together copies of all relevant documents or photographs, or securing the attendance of witnesses. Then you have to take the time to attend the court hearing. Even if you win your case, you may have to spend more time and court fees completing forms to get the judgment enforced.

Will I need a lawyer?

Usually, claims for over \$25,000.00 or claims for compensation (also called damages) may require a lawyer. In case of a simple debt, you may not consider it necessary to consult one. Other types of claims such as personal injury

can be more complicated and it may be preferable to get professional advice and help, no matter what the value of your claim is.

He who alleges must prove. This is a popular saying among lawyers. It means you must have the evidence to support your claim. To save you time and money, consult with a lawyer to ask if it is worth your time making a claim and if it is, how best to prepare for it, what evidence you need and what amount of damages to ask for.

Free legal advice is available every Thursday from 5.30 p.m. – 7.30 p.m. at The Centre, 3 Angle Street, Hamilton, on a first come, first served basis.

What additional help can I expect if I have a disability?

If you have a disability that makes going to court difficult, you need to provide a doctor's certificate for the Magistrate to cover the particular date.

What if I need further help and advice?

Court staff can only advise you on court procedures, give you the forms you need and assistance filling them in. They cannot give you legal advice such as whether you have a good case or from whom you should be claiming.
*The Legal Aid Office is located at
 129 Front Street, Hamilton
 T: 297-7617 F:295-6670*

If you decide to go ahead and make a claim, read *How to Make a Claim*.



How do I make my claim and what forms do I need?

To start a claim, you must go to the Magistrate's Court, 23 Parliament Street, Hamilton. Ask for the green **Ordinary Summons**, the form you use to start a claim against a person or company. You need to complete it in **triplicate** (3 copies). You, as the plaintiff, must supply the following information:

- The full name, date of birth, street address and postal code, telephone number(s) and place of employment of the person you are claiming against, also known as the defendant.
- The amount you are claiming, called debt or damages.
- Your full name, date of birth, street address and telephone number(s).
- Details of the claim: state clearly and as simply as possible (in English), what you want the court to give you and why you should get it. For example, "I paid Mr. Smith \$3,000.00 to install air conditioning and he didn't do it". You must show the **date** the claim arose.
- Any **photocopies** of receipts, accident reports, work orders, contracts, etc., relevant to your claim.

Once you have completed the paperwork, file all copies with the court and pay the fee. One copy will be kept for use in court and the other copy is for the defendant. If there are multiple defendants, then you will have to complete a green form for **each** of them.

What are the types of defendants?

There are three types of defendants:

1. INDIVIDUALS

Use the full name(s). For example, John Rodney Smith not J. Smith.

2. UNINCORPORATED BUSINESSES OR PARTNERSHIPS

Use the name of the owner doing business as (d/b/a) the name of the business. An example would be John Smith and John Doe d/b/a Doe's Contracting Services. If the business is a partnership, you must find out the names of the partners and serve notice on each partner individually.

3. CORPORATIONS

Use the correct business name. For example, Doe's Contracting Services Ltd.

How much will it cost and how do I pay?

The fee you will pay to the court will depend on the amount you are claiming. The clerk will determine the amount of money you owe for the summons. Generally, there is a court fee charge and a service fee charge. The service fee pays the bailiff for delivery of the summons.

For example, if you are owed \$2,000.00, then the court fee will be \$30.00 and the service fee will be

\$20.00. Therefore, you will have to pay \$50.00.

If you choose to deliver the summons yourself, then you will only need to pay \$30.00. You will also need to provide an "affidavit of service" to prove you have served the summons.

You will need to pay the fee in advance (cash, cheque or credit card) before the summons can be issued.

What happens next?

Once you have paid for the issuance of the summons, the cashier will give you a receipt. The receipt will show your court date and time.

You can deliver the summons to the defendant yourself. You should only choose this option if there is no threat of violence, or if the defendant is unlikely to deny service of the summons.

If you choose to have the bailiff serve the defendant with the summons, you must have the correct information. If you have given insufficient or incorrect information, the bailiff will not be able to serve the summons to the defendant. In that case, you will lose your fee and you will need to start over.

You will be given a date to appear in Court. If the bailiff was able to serve the summons, the clerk will mail your copy of the summons to you confirming that it was served. You should keep in contact with the bailiff in case he was unsuccessful in serving the

summons. You will need to keep in contact with the bailiff for a new court date.

In the event that the defendant avoids service of the summons (runs away or refuses to answer the door), or has barriers to service (vicious dogs), you may ask the court for substitute service. The clerk will assist in taking the proper steps.

What can the defendant do when he receives the claim?

The defendant can:

- Do nothing, (not respond to the summons)
- Admit that the whole or part of the claim is owed
- Dispute (defend) the whole or part of your claim

What if the defendant does not respond to the summons?

If the defendant does not respond to the summons by appearing in Court on the day of your hearing, you can ask the Magistrate for a judgment. If the Magistrate agrees, you will win your case by the defendant's default.

What if the defendant wants to settle?

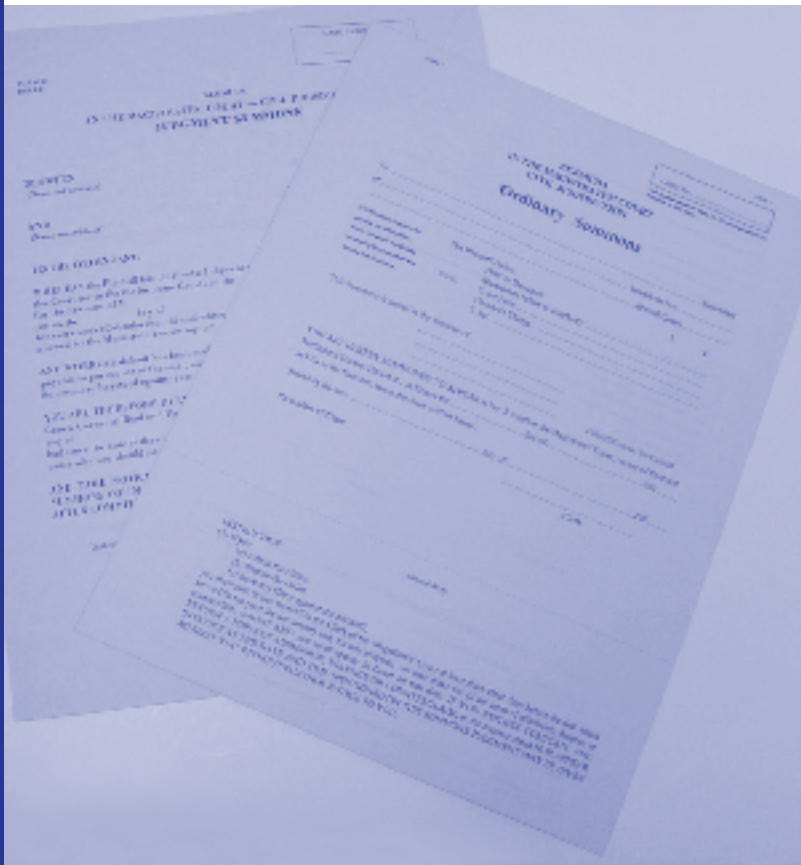
Once the defendant has been served with the summons you have issued, he or she may

decide to contact you with a settlement. If you come to an agreement and receive all of your money, you are responsible for informing the Court. The defendant should also pay your court fees. A form of cancellation is provided.

What if the defendant decides to dispute part or all of the claim?

If the defendant decides to dispute your claim, the Magistrate will order a new date for both parties to appear in court for a trial. The new date may be several weeks or months in the future, so it is important you make a note of the new date and time. You will not be receiving any reminders from the Court. If you fail to attend, the case could be dismissed.

Read A Claim Has Been Made Against Me.



What should I do when I receive a summons?

First of all, **DON'T IGNORE IT – ACT QUICKLY**. If you do nothing, it could result in a judgment being made against you without further notice. This could make it difficult for you to obtain credit.

How do I reply to a summons?

Your court date is usually six weeks after the summons has been issued. Therefore, if you receive a summons to appear in court for a claim that has been made against you, you must appear in court on that date.

What should I do if I agree that I owe the plaintiff the amount claimed?

You should pay the amount claimed **and** the court fees to the plaintiff. If you pay in cash, get a paper receipt and hold on to it. Do not pay the fees to the court unless there is an outstanding warrant or writ against you. The plaintiff is responsible for notifying the court that he has been paid the amount claimed.

What if I agree that I owe the money, but cannot afford to pay it right now?

You should contact the plaintiff and attempt to work out a plan of payment by installments and a payment schedule.

What should I do if I feel I don't owe all the money?

If you feel you owe some and not all of the amount claimed, then you should pay the lesser amount to the plaintiff and file a dispute as to the rest.

It is important to bear in mind that the plaintiff may not accept the lesser amount from you and it will be up to the magistrate to decide. Make sure you have any documents, receipts or letters to support your position.

What should I do if I feel I don't owe any money at all?

If you want to defend the claim then you must file a written defense. It must be filed at least **three days** before the hearing. There is a small form attached to the summons, but it is better to use a full sheet of paper to explain the defense in simple language. For example: "I do not owe my landlord any rent. I lived there for 36 months and have all my receipts and cancelled cheques to prove that I paid every penny."

You still have to appear in court on the appointed court date.

What should I do if I feel that someone else is responsible for all or part of the claim?

Again, you need to file a written defense at least **three days** before the hearing stating the reasons for bringing the third party into the action, the amount of the plaintiff's claim for which you feel the third party is responsible and the name and full address of the third party. The clerk will assist in the filing of a third-party notice.

You still have to appear in court on the appointed court date. The Magistrate will decide what part of the claim is your responsibility. If he agrees that a third party is responsible for all or part of the claim, it is up to the plaintiff to have a summons issued.

What if I feel the plaintiff owes me money?

You must file a counterclaim against the person or company. And you must supply all the relevant information (see How to Make A Claim). You and the defendant (formerly the plaintiff) will be given a date for your claim to be heard.

Read *Coming to a Court Hearing*.



What should I do to get ready for the hearing?

Make sure you know the date for your hearing. Hearings usually take place on Fridays at 9:30 a.m.

If at any time before the hearing is due to take place, you and the defendant(s) agree to settle your dispute, you must let the court know immediately. You need to complete a cancellation form, confirming that the dispute has been settled. Give the case number and date of the hearing.

What do I do on the day of the hearing?

On the day of your hearing, arrive on time at Magistrate's Court. Your hearing will not start before the time you have been given. Whilst every effort will be made to keep to that time, it may not always be possible and you may have to wait.

When you arrive at the court, report to the receptionist or court clerk. You will be told in which court the hearing will be held and where to wait. If at any time you need to leave the waiting area, you must tell the court clerk or person involved in your case where you can be found.

Hearings usually take place in Court Room Three.

What happens at the hearing?

When your name is called, you stand and indicate your presence by saying "Here, Your Worship." If the defendant has not appeared in Court, the defendant may have a good excuse for missing the court hearing and the Magistrate can give him/her another chance **OR** you may ask the Magistrate if you can have a judgment. If he or she agrees, you win your case.

If the defendant is present, then he or she will also stand

when called. If he or she agrees to your claim, you will receive judgment and the defendant will be ordered to pay.

If the defendant disputes your claim, and offers a counterclaim, the magistrate will order a new date for both parties to appear in court for a trial. This date could be several weeks or months in the future. Make sure your witnesses know the date and time of the hearing, too.

A counterclaim means that he wants you to pay him and that should you lose, you will have to pay his claim and court costs.

What happens at the trial?

Again you should arrive on time and be seated in the proper court room. Normally, there is a list of cases to be heard that day posted outside of each court room. The list will tell you where your case is taking place. Make sure your witnesses are present.

Members of the public are allowed to be present at a hearing, but in certain circumstances, the judge may decide that it should be heard in private. However, a hearing in private would be very rare.

The Magistrate will want to hear the plaintiff first. Make notes detailing what you want to say. Keep them handy so you can refer to them.

You must have with you all the documents and photographs (evidence) you want to use at the hearing. It helps if you have them in the order you want to use them, and have copies to give to the Magistrate.

You may call any witnesses and ask them questions that will bring out the information you want the Court to hear. You must realize the defendant and the Magistrate will be

entitled to ask your witnesses questions as well.

What if the defendant has a lawyer and I don't?

If you do not have a lawyer but the defendant does, the Magistrate has a duty to assist you with your case and to ensure that the defendant's lawyer does not take advantage of your limited experience and knowledge.

When will the Magistrate make his decision?

After the Magistrate has heard from both of you, he or she will normally tell you what decision has been reached. The Magistrate will either dismiss your claim (you did not win) or order the defendant to pay. The amount you have been awarded will usually include the costs you initially paid to get the claim started.

If the Magistrate needs more time to reach a decision, you will be informed.

What if I don't agree with the Magistrate's order?

If you disagree with the Magistrate's order, you may be able to appeal the decision. This means a Supreme Court Judge will look at the case and decide if the original decision was right.

However, you must have proper grounds for making an appeal. It is advisable that you do not take this step without *first getting some advice from a lawyer*. Free legal advice is available every Thursday evening, 5:30 p.m. – 7:30 p.m. at the Centre on Angle Street in Hamilton.

Read I Have a Judgment, but the Defendant Has Not Paid.



What happens now that a judgment has been made against me?

You must pay the plaintiff the money that is owed.

What should I do if I agree that I owe the plaintiff the amount claimed?

You should pay the amount claimed **and** the court fees to the plaintiff. Do not pay the fees to the court unless there is an outstanding warrant or writ against you. The plaintiff is responsible for notifying the court that he has been paid the amount claimed.

What if I agree that I owe the money, but cannot afford to pay it right now?

You should contact the plaintiff and attempt to work out a plan of payment by installments and a payment schedule.

What should I do if I feel I don't owe all the money?

If you feel you owe some but not all of the amount claimed, then you should pay the lesser amount to the plaintiff and file a dispute as to the rest.

It is important to bear in mind that the plaintiff may not accept the lesser amount from you and it will be up to the judge to decide. Make sure you have any documents, receipts or letters to support your position.

What should I do if I feel I don't owe any money at all?

If you want to defend the claim then you must file a written defense. It must be filed at least three days before the hearing.

There is a tiny form attached to the summons, but it is better to use a full sheet of paper to explain the defense in simple language. For example, "I do not owe my landlord any rent. I lived there for 36 months and have all my receipts and cancelled cheques to prove that I paid every penny."

You still have to appear in court on the appointed court date.

What should I do if I feel that someone else is responsible for all or part of the claim?

Again, you need to file a written defense three days before the hearing stating the reasons for bringing the third party into action, the amount of the plaintiff's claim for which you feel the third party is responsible and the name and full address of the third party.

You still have to appear in court on the appointed court date. The judge will decide what you are responsible for and if he or she agrees that a third party is responsible for all or part of the claim, it is up to the plaintiff to have a summons issued if necessary.

What if I feel the plaintiff owes me money?

You need to complete in triplicate, the green **Ordinary Summons** against the person or company. And you must supply all the relevant information. (see *How to Make Your Claim*). You and the defendant (formerly the plaintiff) will be given a date for your claim to be heard.

What happens now that a judgment has been made against me?

You must pay the money that you owe.

Who receives the money?

You must pay the plaintiff. This is the person or business who made the claim against you. If the judgment tells you to pay by installments, ask the plaintiff or his or her representative about the best way to pay.

How do I pay?

Always use a method of payment which gives you proof that you have paid. You can set up a standing order with your bank for the money to be paid from your account directly into the plaintiff's account. Or you can write a cheque and mail it to the plaintiff. Always send your name, address and contact number with your payment. It is not a good idea to send cash. However, if that is the only method available for you then you should keep a record of the payments you have made and ask for a receipt from the plaintiff.

When do I pay?

You must pay the plaintiff by the date on the judgment. If you are behind or late with payments, the plaintiff can take steps to make you pay. This may mean you have to pay more costs.

Will I be able to get credit now?

It could affect your credit rating with others.

What if I cannot afford to pay anything towards the judgment?

If you have no income and you cannot pay anything towards the judgment, you can ask the court for a stay of judgment meaning, you pay nothing for the moment. It may not always be granted.

If you do nothing at all once you have received the judgment, or you do not keep up with the payments, the plaintiff can ask the court to enforce the judgment. Remember if you do nothing at all, you may have to pay more later.

Glossary

Bailiff – an officer of the court who usually delivers summonses and enforces the orders of the court, especially warrants.

Breach of Contract – violation of a contract by failing to perform one's contractual obligations.

Claim – assertion of an existing right.

Contract – basically an agreement between two or more people which creates an obligation to do, or not do, something. The agreement creates a legal relationship of rights and duties. If the agreement is broken, then the law provides certain remedies. There are three factors necessary to create a contract:

1) an offer, 2) acceptance, and 3) consideration. One party makes an offer, the second party must accept the offer and there must be consideration exchanged. Consideration has to be something of value.

Counterclaim – a claim introduced by the defendant against the plaintiff in the same action and arising out of the same circumstances.

Court Costs – fees paid to a court to handle administrative matters.

Covenant – a binding agreement entered into between two or more persons.

Damages – usually given for breach of contract, for example, for the non-performance of a written or verbal agreement; or of a covenant to do or not to do a particular thing.

Defendant – the person against whom a claim is made.

Default Judgment – judgment for the plaintiff against the defendant due to the defendant's not having filed a dispute to the plaintiff's claim.

Dispute – to call into question or disagree over.

Judgment – the order of the judge who decides the case in favour of one party or the other.

Judgment Creditor – the successful party to whom money is owed by virtue of the judgment.

Judgment Debtor – the unsuccessful party who owes money by virtue of the judgment.

Judgment Summons – a notice to the defendant to appear in court.

Magistrate – title of the judge in Magistrate's Court.

Notice – simply means knowledge of a fact.

Plaintiff – one who brings legal action against another.

Redress / Remedy – right or recourse to recover money.

Service – delivery of a legal document to the person (s) concerned.

Signed Judgment – where the Magistrate issues a default judgment in favour of the plaintiff because the defendant has not disputed the claim.

Statue of Limitations – a legal deadline by which a plaintiff must start a lawsuit.

Summons – a legal notice or witness summons to appear in court at a specific time.

Witness Summons – an order to a witness to appear in court at a specific time.

Third Party – a person who is not one of the parties to a contract, but is brought (joined) in the case.

Your Worship – the way to address the magistrate presiding over the case in Court.



While every attempt has been made to ensure the accuracy of any advice given, neither Consumer Affairs nor the Government can accept legal responsibility.





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