

## **Small Claims Court: A Complete Guide for New Advocates**

**Course Summary:** This two-day course provides a complete overview of the Small Claims Court (SCC) process and is taught by a seasoned civil litigator. Our instructor will discuss the steps and strategy involved in the first client meeting, preparation of pleadings, attendance at the settlement conference, pre-trial proceedings, the trial day, and its aftermath. The course will also address dealing with self-represented litigants and ethical issues that arise in this type of litigation. This is a complete guide for the everyday SCC lawyer and paralegal!

### **Course Outline:**

Day 1: 4 Hours

#### **1. Introduction**

#### **2. Paralegal/Lawyer - Client Relationship**

2.1 Standards of Professional Competence

2.2 Advising Clients

2.3 Professional and Ethical Duty of Confidentiality

2.3.1 Confidential Information

2.3.2 Disclosure with Client Authority

2.4 Conflicts of Interest

2.5 Client Identification and Verification

2.5.1 Compliance with By-Law 7.1

2.6 Communicating with the Client

2.6.1 General

2.6.2 Advising Clients You Are a Lawyer/Paralegal

2.6.3 Initial Client Consultation

2.6.4 Interviewing Strategies

2.6.5 Client Service

2.7 Client File Management

2.7.1 General

2.7.2 Setting Up a File System

2.7.3 Closing Out Client Files

## 2.8 The Lawyer/Paralegal and the Administration of Justice

- 2.8.1 Practising with Civility
- 2.8.2 Abuse of the Court Process
- 2.8.3 Communications with Unrepresented Parties
- 2.8.4 Communications with Witnesses of Opposing Party
- 2.8.5 The Lawyer/Paralegal as a Witness
- 2.8.6 Communicating with Witnesses at Different Stages of Giving Evidence
- 2.8.7 Encouraging Respect for Legal Institutions
- 2.8.8 Responding Appropriately to Client Dishonesty or Fraud
- 2.8.9 Dealing with Self-represented Litigants

## 3. Acting for the Plaintiff

### 3.1 Preliminary Considerations

- 3.1.1 How Proceedings are Commenced
- 3.1.2 Finding the Defendant(s) - Name Search and Financial Circumstances
- 3.1.3 Service of Documents
- 3.1.4 Notice and Delivery Requirements
- 3.1.5 Small Claims Court Jurisdiction

### 3.2 Commencing the Action

- 3.2.1 Quantifying Damages - unliquidated/liquidated
- 3.2.2 Naming Parties to the Proceeding
- 3.2.3 Party under Disability
- 3.2.4 Ethical Advocacy
- 3.2.5 Drafting the Plaintiff's Claim
- 3.2.6 Commencing the Proceeding
- 3.2.7 Service of Documents

### 3.3 Default Proceedings

- 3.3.1 Noting a Defendant in Default
- 3.3.2 Calculating Pre-Judgment Interest under the *Courts of Justice Act*
- 3.3.3 Dismissal by Clerk
- 3.3.4 Discontinuance

## 4. Acting for the Defendant

### 4.1 Drafting the Defence

### 4.2 Drafting the Defendant's Claim

- 4.2.1 Additional Parties
- 4.2.2 Cross-Claim against Plaintiff

### 4.3 Proposal of Terms of Payment

- 4.3.1 No Dispute by Plaintiff
- 4.3.2 Dispute by Plaintiff

4.4 Amendment, Striking Out, Stay, and Dismissal

4.5 Procedural Consequences of a Noting on Default

**DAY 2: 4 hours TOTAL**

**5. Pre-Trial Orders - Motions**

5.1 Concept of Motions

5.2 Preparing Motion Materials

5.3 Different Types of Motions and Forms

5.3.1 No Further Motions Without Leave of the Court

5.3.2 General Power to Stay, Dismiss Motion

5.3.3 Request for Clerk's Order on Consent

5.3.4 Notice of Motion and Supporting Affidavit

5.3.5 Types of Motions

5.4 When Leave of the Court is Required

5.5 Hearing Motions

5.5.1 Method of Hearing

5.5.2 Motion in Writing for Assessment of Damages

5.6 Relevant Jurisprudence

5.6.1 Inspection of Property – *Riddel v. Apple Canada Inc.*, 2017 ONCA 590

5.6.2 R12.02 Motions to Strike – *Andrukhiv v. Serco Des Inc.*, 2017 ONSC 3172

**6. Offers to Settle and Settlement Conferences**

6.1 Encouraging Settlement

6.2 Negotiating Settlement

6.3 Settlement Conferences

**7. Assessment Hearings, Trials, and Motions After Trial**

7.1 Assessment Hearings

7.2 Trial

7.2.1 Opening Statement

7.2.2 Evidence at Trial

7.2.3 Closing Statement and Legal Submissions

7.2.4 Examination of Witnesses

7.3 Exhibits

7.4 Trial Book

7.5 Trial Procedure

7.6 Submissions as to Costs

7.7 Motions for New Trial

7.8 Appeal of a Small Claims Court Judgment

## **8. Enforcing Court Judgments**

8.1 General

8.1.1 Types of Creditors

8.1.2 Calculating Post-Judgment Interest

8.1.3 Consolidation Order

8.1.4 Enforcement of Orders Made in Another Canadian Province or Territory

8.1.5 Certificate of Judgment

8.2 Appeals

8.3 Enforcing an Order

8.4 Questions and Answers