

# SMALL CLAIMS COURT IN MANITOBA

**Presented to:** Manitoba Bar Association  
Young Lawyers' Section

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# Important Legal Resources

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- ❑ QB Court Registry: <http://web39.gov.mb.ca/Registry>
- ❑ *The Court of Queen's Bench Small Claims Practices Act*, C.C.S.M. c. C285 (“the Act”): [C.C.S.M. c. C285 \(gov.mb.ca\)](http://gov.mb.ca/C.C.S.M.c.C285)
- ❑ Court of Queen's Bench Rule 76 governs Small Claims: [Court of Queen's Bench Rules \(gov.mb.ca\)](http://gov.mb.ca/Court_of_Queen's_Bench_Rules)
- ❑ Manitoba Regulation 258/2014: [Regulations \(Consolidated\) \(gov.mb.ca\)](http://gov.mb.ca/Regulations_(Consolidated))
- ❑ Forms: [Court of Queen's Bench Forms \(gov.mb.ca\)](http://gov.mb.ca/Court_of_Queen's_Bench_Forms)
- ❑ Small Claims Website: [Small Claim Information - Manitoba Courts](http://gov.mb.ca/Small_Claim_Information_-_Manitoba_Courts)
- ❑ Court fees: [Small Claim Information - Manitoba Courts](http://gov.mb.ca/Small_Claim_Information_-_Manitoba_Courts)



# What is a Small Claim?

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- A claim for an amount of money that does not exceed \$15,000.00 (excluding interest, costs and disbursements)
- Disputes over liability resulting from a Motor Vehicle Accident can also be heard in Small Claims Court
- Claims may include general damages up to \$2,000.00

Note: there are certain claims involving several types of disputes that Small Claims cannot hear. Refer to section 3(4) of the *Small Claims Practice Act* or the website for the full list:

[C.C.S.M. c. C285 \(gov.mb.ca\)](http://gov.mb.ca/C.C.S.M.c.C285)

[Small Claim Information - Manitoba Courts](#)

# Commencing a Small Claim (Form 76A)

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- *The Court of Queen's Bench Small Claims Practices Act*, s. 6(1)
- To initiate a claim, fill out Form 76A
- On the form:
  - ▣ Use correct legal names of **ALL** parties on the claim
    - Conduct a Companies Office (1010-405 Broadway, Winnipeg) search of the parties' business name(s), partnership(s) or corporation(s)
      - ▣ [Companies Office | Entrepreneurship Manitoba \(gov.mb.ca\)](#)
        - On-line resources may be available through your office
  - ▣ \$15,000 limit on claims (waive excess amount)
  - Ensure you prove the **entire** amount of the loss
    - ▣ **See:** *Manitoba Public Insurance Corp. v. Day & Ross Inc. and Martin*, 2004 MBQB 277 (Schulman, J.):
      - [2004 MBQB 277 \(CanLII\) | Manitoba Public Insurance Corp. v. Day & Ross Inc. and Martin | CanLII](#)
      - Set out particulars of the claim
  - ▣ Select proper place of hearing : Rule 76.08 (amended)
    - Where the defendant lives OR where the loss occurred OR by agreement
  - Note: fill out details on Schedule A (or attach to claim) but do not attach any supporting documents when filing Form 76A. This will be done later

# Filing the Small Claim

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- File the completed form at the applicable courthouse
- When you file the claim, you will receive a court date 90 days out from the date of filing
  - ▣ First appearances are done by teleconference
    - In Winnipeg – these occur on Mondays at 9:00 am
    - Other regions vary – the Deputy Register will inform you upon filing
- Once filed, serve the claim

# Service of the Small Claim

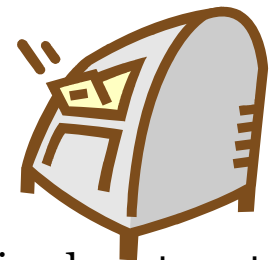
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*The Court of Queen's Bench Small Claims Practices Act*, s. 21(1) – see handout provided

- process server
- personal service
- leaving with a person who appears to be at least 16 years old at the residence (not workplace)
- mailing by prepaid registered mail to last known residence (not workplace)
  - Note:
    - If claiming against a company – can send to the business and ATTN: (insert director)
    - Where no home address – can put c/o and undertake to personally serve

Time limit for service: *The Court of Queen's Bench Small Claims Practices Act*, s. 6(3)

- Within 30 days of filing the claim
- Note:
  - Each named party must be served separately
  - Courier are not acceptable
  - Xpresspost – can only be done for US defendants
  - If the claim is for a MVA (Sample B), MPI **must also** be served (at any service department or their legal department in Cityplace)



# Proof of Service

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*The Court of Queen's Bench Small Claims Practices Act, s. 6(2.1)*

1) Form 76B - Declaration of Service

- <http://web2.gov.mb.ca/laws/rules/76be.pdf>

**Note:** If you served by registered mail, attach the red and white Canada Post receipt and the confirmation from Canada Post Website

- [www.canadapost.ca/web/en/home.page](http://www.canadapost.ca/web/en/home.page)

OR

2) Form 4D – Sworn/Affirmed Affidavit of Service

- <http://web2.gov.mb.ca/laws/rules/4de.pdf>

- Prepare a separate Declaration of Service/Affidavit of Service for each party
- File the Declaration of Service/Affidavit of Service prior to the court date

# Order Extending Time (Form 76C)

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*The Court of Queen's Bench Small Claims Practices Act, s. 6(3)*

- <http://web2.gov.mb.ca/laws/rules/76ce.pdf>
- The applicant for an OET should explain why there has been a delay in service and what efforts have been made to locate/serve the party
- If granted, obtain the OET from the Registry and serve it with the Small Claim (will extend for 30 days)
- Only the most recent OET need be served
- An OET is required anytime service needs to be extended
  - For claimants and defendants
- NOTE: When extending the time, a new court date is required
  - Contact the courthouse for a new date prior to filing out the form





# Order for Subservice

*The Court of Queen's Bench Small Claims Practices Act, s. 21(2)*

- Prepare an affidavit of attempted service as evidence that reasonable efforts have been made to serve by registered mail and personally
  - Note: will need to show 2 personal service attempts (2 different dates AND times) as well as 1 registered mail attempt. Tip – check the Family and Criminal court registries for activity
- The applicant for subservice should establish how the document will most likely come to the attention of the party to be served
- A copy of the Order for subservice must be served with all other required documents
- Examples of subservice: newspaper publication (not frequently granted), posting on door of residence, ordinary mail, Facebook

# Defence (Form 76D)

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Court of Queen's Bench Rule 76.05(1)

- <http://web2.gov.mb.ca/laws/rules/76de.pdf>

- Defendants who wish to dispute the claim **MUST** file a Defence
  - ▣ The Defence sets out the defendant's position and may narrow the issues and may promote settlement

- Be prepared to proceed at the hearing

(Claimant: If you have not received a Defence, check the on-line Court Registry prior to the hearing to see whether it was filed and obtain a copy prior to the hearing, if possible)

# Defence and Counterclaim (Form 76E)

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*The Court of Queen's Bench Small Claims Practices Act, ss. 4 and 5*

- <http://web2.gov.mb.ca/laws/rules/76ee.pdf>
- Some defendants may wish to file Defence and make a Counterclaim against the claimant
- A simple statement outlining what the counterclaim is for
- File and serve the counterclaim well before the hearing date to avoid an adjournment
- \$15,000 limit for Small Claims Court (s. 4)
- Claim and counterclaim are heard together on the same day
- If counterclaim is in excess of \$15,000 or is joined with another remedy:
  - Defendant may waive the excess or the remedy to proceed in Small Claims
  - or
  - The Court Officer will adjourn the hearing for at least 30 days for the defendant to commence an action in the Court of Queen's Bench (s. 5(1))
  - A true copy of the Q.B. originating process must be filed on the Small Claim at least 5 days prior to the adjournment date
  - The Small Claim is then deemed discontinued

# Third Party Proceedings

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*The Court of Queen's Bench Small Claims Practices Act*, s. 8.7(1) and 8.7(2)

- Where the defendant may be entitled to contribution or indemnification from a person who is not a party to the claim
- The request must be made at the hearing
- Third Party Order is granted by the judge or Court Officer
- Contain a simple statement of the nature of relief sought
- Set out the new hearing date
- The defendant is to serve the third party with the Third Party Order, the Small Claim and an NOA as per s. 21(1) of the Act

Note: There is no Queen's Bench Form for Third Party Claims in Small Claims Court – we have provided a template for you

## Default – Where no Defence or Defence and Counterclaim filed (Forms 76E.1\*-76E.5)

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- When the parties have all been served, if no defence is filed within 20 days by the defendant(s), the claimant can obtain default judgment
- How to obtain default:
  - ▣ Go to courthouse
  - ▣ Note defendant in default
  - ▣ Proceed to desk default hearing
    - Court date will then get deleted
- NOTE: defendant(s) can apply to get default set aside to proceed to hearing

# Who Hears a Small Claim

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## *The Court of Queen's Bench Small Claims Practices Act*

- Claims will be heard by a Court Officer, unless the government is a party, a person or entity specified in the regulations is a party, or the Court Officer directs that, in the interests of the administration of justice, the claim will be heard by a judge
  - Anything the judge or Court Officer considers relevant may be admissible, regardless of whether it would be admissible under the laws of evidence
  - Evidence at hearing is recorded
  
- How to Address Court Officers:
  - Hearing Officers are referred to as “Mister Hearing Officer” “Madam Hearing Officer”
  - QB Judges are referred to as “My Lord”, “My Lady”, “Justice [last name]”

# First Appearances

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- Winnipeg appearances– occur on Mondays at 9:00 am
  - ▣ Via teleconference – phone number will be assigned when claim is filed
  - ▣ Other regions may be different
- At the first appearance, the Court Officer will look to see if the parties can reach settlement
- If parties cannot settle then a date will be set for trial

# Default - Absence at First Appearance (Forms 76E.1-76E.5)

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- If defendant does not call in for first appearance
  - ▣ Can obtain default judgment (defendant can get this set aside)
  
- If claimant does not call in for first appearance
  - ▣ Claim is dismissed - to resurrect, the claimant will have to refile and start process again
  - ▣ If a claimant does not call in, then costs can be awarded against them
  - ▣ In the case of a counterclaim – the main action (claim put forward by claimant) is dismissed. The claimant will be in default for the counterclaim, but can apply to set the default aside



# The Hearing Process

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- 1) Introduction by the Court Officer, explaining the process
- 2) Claimant's case
- 3) Defendant's case
- 4) Claimant's closing arguments
- 5) Defendant's closing arguments
- 6) Court Officer's decision



## Notes:

- There are no opening arguments
- If you cannot attend the hearing on the scheduled date and the other party has not consented to an adjournment, your client or a representative of your firm must appear to request an adjournment; if not, default judgment could be granted against your client

# Adjournments

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- A party may ask for adjournments when consented to by all parties
  - ▣ To do so in Winnipeg and for St. Boniface – call the courthouse to obtain a new date
  - ▣ Email the Small Claims Court Coordinator with:
    - The file number
    - Name of the parties
    - Stating original court date and new court date
  - ▣ All parties must be cc'd on the email
  - ▣ The Coordinator will reply to all parties confirming details
  - ▣ NOTE: Other regions may have different process

# Effective Advocacy: Court Officer's Perspective

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*The Court of Queen's Bench Small Claims Practices Act, s. 1(3)*

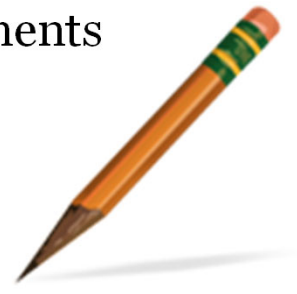
- The object and purpose of Small Claims Court – “expeditious, informal and inexpensive”
- Be courteous to the Court, all parties and witnesses
- Come prepared to discuss settlement
- Be prepared to consent to amendments to the style of cause
- Avoid unnecessary appearances; consent to an adjournment when necessary
- Exchange documents ahead of time; agreeing to certain facts will promote a quicker and more efficient hearing

# Effective Advocacy: Counsel's Position (Step-by-Step Guide)

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- \* **Starting Point:** Consider cost-effectiveness -- does this case call for settlement?
- 1. Diarize court date and set time lines (9:00 a.m. and 1:30 p.m. in most cases)
- 2. Interview your witnesses at the earliest opportunity
  - outlines the factual strengths and weaknesses of your case
  - subpoena witnesses (See Slide 24)
- 3. Collect all documentation that *may* be relevant to your case, including proof of damages
- 4. Research the law (statutes and cases)
- 5. Confer with members of your firm/colleagues for input
- 6. Prepare questions of all witnesses and opening/closing arguments
  - Anticipate questions of opposing side
- 7. Prepare all witnesses

REVIEW YOUR CASE, PRACTICE, AND PRACTICE AGAIN.



# Settlement

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- If the court date is nearing, but the parties believe a settlement can be reached, the parties can obtain a new court date to continue discussions
- Call the courthouse to obtain a new date
  - ▣ Email the Small Claims Court Coordinator with:
    - The file number
    - Name of the parties
    - Stating original court date and new court date
  - ▣ All parties must be cc'd on the email
  - ▣ The Coordinator will reply to all parties confirming details. This can be done until claim is discontinued
  - ▣ NOTE: this is for Winnipeg and St. Boniface - other regions may have different process

# Subpoena (Form 53A)

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*The Court of Queen's Bench Small Claims Practices Act, s. 8.9*

□ Form 53A - Subpoena:

- <http://web2.gov.mb.ca/laws/rules/53ae.pdf>

- Completed Subpoena and Requisition to be filed at the court office
- Sealed subpoena and attendance money to be served personally on witness at least 3 days before the hearing or it may not be enforceable

Tariff B: <http://web2.gov.mb.ca/laws/rules/qbr2e.php#TB>  
\$36.25 per half day plus travel allowance

# Evidence at the hearing (Technical Issues)

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- Parties or witnesses may testify by telephone, video conference, or other means, Rule 76.09(1)
  - Preliminary approval is required by the registrar, Rule 76.09(2)
  - Send letter to the Registrar explaining why the party/witness ought to be granted approval to testify (other than in person)
  - If preliminary approval is given, you will generally have to provide your client's documents to all the parties and the Court before the hearing (ensure careful review of documents beforehand)
  - The Court Officer who ultimately hears the claim has the discretion to decide whether the party or witness must attend the hearing in person
  - The request must be submitted weeks in advance
- Arrange for interpreters, if required, well in advance
- Interpreters in the two official languages are provided through the court upon request
- For all other languages, arrangements may be made through the Language Bank of the Immigrant Centre Manitoba Inc. (100 Adelaide Street, Winnipeg MB R3A 0W2, Phone: 204-943-9158); there may be a fee

# Tips

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## ***Where do you sit?***

- Claimant's lawyer is seated on the left side of the courtroom
- Defendant's lawyer is seated on the right side of the courtroom

## ***Who can be present in the courtroom during the hearing?***

- The parties
- Experts
- Non-party witnesses who have already testified
- Any others / members of the public

## ***Also:***

- Have copies of your documents in **triplicate** → for the court and the other party
- Parties are responsible for arranging for any video / audio equipment (please bring own technology you are relying upon)
- Provide the Court Officer with a counsel slip or business card to ensure you receive a copy of the Certificate of Decision and Summary of Reasons



# Formulating your argument

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- Prepare your argument **before** the hearing
- Listen carefully to the testimony and take notes
- Be flexible - adjust your argument to reflect the evidence heard (if you require a few extra minutes to do so, ask the Court)
- Explain how the evidence and law support your position
- Explain how detrimental evidence and law do not apply or should be discounted
- Provide relevant case law and legislation for the Court Officer and the other side
- Ultimately, explain why you are entitled to the relief sought (the claimed amount, or a dismissal of the claim)

# The Decision

- In most cases, the Court Officer may deliver an oral decision at the end of the hearing or reserve their decision (most likely)
- The deputy registrar mails the Certificate of Decision and Summary of Reasons to counsel and the parties approximately 1 to 2 weeks after the hearing
- Small Claims is court of record; transcripts may be obtained
- Court Officers may grant default judgment under *The Court of Queen's Bench Small Claims Practices Act*:
  - ▣ If the defendant does not appear, section 9(2); OR
  - ▣ If the claimant on a counterclaim does not appear, section 20(2)
  - ▣ The party must still prove the claim or counterclaim on its merits in a default

# Costs and Disbursements

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- Calculate costs, disbursements and interest; submit calculations and supporting invoices at the hearing
- If you are the successful party and the Court Officer does not address costs and interest, ask; you have nothing to lose!

## Costs & Disbursements

- \$500 on a contested hearing, if successful  
*The Court of Queen's Bench Small Claims Practices Act, s. 14(1)*
- Filing fee  
<http://www.manitobacourts.mb.ca/court-of-queens-bench/procedure-rules-and-forms/fees/small-claims/>
- Fees for service
- Other reasonable disbursements

# Prejudgment Interest

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## Interest Calculation (*The Court of Queen's Bench Act*, ss. 78 and 80)

- Prejudgment interest rate is the quarterly rate in which the claim was filed (not when the cause of action arose)
- Prejudgment interest is calculated at the above rate from the date on which the cause of action arose to the date of judgment
- (See Court Registry, [www.jus.gov.mb.ca](http://www.jus.gov.mb.ca) Prejudgment and Postjudgment Interest Table)
- Example:
  - Principal x Interest Rate = Interest for 1 year (365 days)
  - Interest for 1 year ÷ 365 days = interest for 1 day (daily interest)
  - daily interest x # of days = prejudgment interest

# *Small Claims Practices Act*

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- ❑ **\*\*This presentation focuses on small claims filed on or after July 1, 2020\*\***
- ❑ Defendant who does not appear at hearing after being properly served may have a decision made in their absence and may file an application to set aside the decision, at which time a date will be set for the hearing of the application
- ❑ The Court Officer or judge can set aside the decision, with valid reasons
- ❑ If set aside, there will be a new hearing; if not set aside, decision is final and not subject to appeal
- ❑ Appeal from decision made by Court Officer may go to QB on a question of law or jurisdiction, with leave of judge
- ❑ Judge to direct conduct of appeal
- ❑ There is no further appeal on this decision
- ❑ An appeal from a decision of a judge who hears the claim at first instance may be brought to the Court of Appeal with leave on a legal point

# Appealing a Decision

*The Court of Queen's Bench Small Claims Practices Act*, ss. 11 and 12

- ❑ A decision may be appealed to The Manitoba Court of Queen's Bench on a question of law or jurisdiction, with leave of a judge. Review your notes from the hearing and the reasons for the Court Officer's decision
- ❑ If you decide to appeal, an Application for Leave to Appeal and Notice of Appeal (Form 76K) must be filed within **30 days** of the date on the Certificate of Decision
- ❑ If your client failed to appear, he or she must file an Application to Set Aside Decision (Form 76I) to have the decision set aside by a Court Officer (or judge, depending on who had conduct).
- ❑ Service upon the respondent must be effected no later than **20 days** after filing the Application and must include the filed Form 76K and the appointment form issued by the Registrar.
- ❑ The judge's decision on appeal is final and not subject to further appeal.

# Ethical Issues

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- Although small claims court is less formal than the Court of Queen's Bench Civil Division, it is still a court
- You are an officer of the court in small claims court and the Code of Professional Conduct applies
- Be frank and candid with the court; if you mislead the court there may be disciplinary consequences
- Disclose facts and law not favourable to your client's position
- Do not appear as both counsel and as a witness; counsel may make submissions on default matters, however should have their client and witnesses present for contested hearings

# Questions?

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- Contact Information of Small Claims Coordinator
  - Jay Buddick
  - Email: [Jay.Buddick@gov.mb.ca](mailto:Jay.Buddick@gov.mb.ca)
  - 204-945-5383