

Making a Claim

Small Claims Court Guide #2

To make a claim in small claims court, you must do two things:

- First, let the court know about your claim.
- Second, let the person you are suing know about it.

The notice of claim is the document you will use to do both.

The notice of claim form is designed for people who are not lawyers. You may find all the help you need on the sheet attached to the front of the form. If you would like more information, this guide is for you. It will answer some often-asked questions and describe, step by step, how to fill out the notice of claim and what to do with it.

For more information about the small claims process, see the other publications in this series, which are listed at the end of this guide. For answers to particular problems or questions, read the small claims court rules or seek legal advice.

Note: From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve small claims court. If the registry where your case is filed is running a pilot project, it might not follow the process in this guide. You can find more information on the pilot project processes from your court registry or online at the Ministry of Justice website (www.ag.gov.bc.ca) under “Court Services”.

1. What is the notice of claim?

The notice of claim is the key to the whole lawsuit. This document tells:

- WHO you are;
- WHO you are suing;
- WHAT happened that led to this lawsuit; and
- WHAT you are asking for.

2. Where do I get a notice of claim form?

Small claims forms are available online or you may wish to use the Filing Assistant. The Filing Assistant will prompt you through a series of questions that will help you complete the notice of claim form. The results of your answers will be put in the form and you can print it and file it at the registry. You could also print the form and complete it manually. If you do not have access to the internet at home, you can go to your local library or your local law library and download the forms there. You can also get one from any small claims court registry or ServiceBC Office. If you can't go there yourself, write and ask them to send you one.

The notice of claim is a special form with several copies attached and they are not all the same. If you use the form provided by the court, you will be sure to have the copies you need. If you are accessing the form from the website, please ensure you complete and print all pages.

3. How do I fill out the notice of claim?

Let's look at an actual notice of claim and go through it step by step.

FROM: If you are the claimant, all you need to put here is your name and your mailing address.

This seems simple, and in most cases, it is, but it's important to make sure you name the right claimant. For

example, if you have a company, should you or the company - or both - be named as claimant? See the examples below to help you decide.

Your mailing address is important because this is where the court will send the reply to your claim and any other notices or other documents in connection with your case.

If your address changes at any time, be sure to notify the court and all other parties to the lawsuit. Otherwise, they will keep sending mail to you at your old address and you won't know what is happening in your case. To do this, you may use the Notice of Change of Address form.

If you are under 19 years of age, you must start the claim through an adult who lives in the province and is willing to act as your litigation guardian. This person must file at the registry a signed consent to act as litigation guardian and certificate of fitness.

If you cannot find an adult willing to assist in this case, you can contact the child and youth services section of the public guardian and trustee. You may contact their office by phone at 604 660-4444 or 1-800-663-7867 or by email at: mail@trustee.bc.ca.

It is important to know that as a minor, if your claim is for personal injury, the adult assisting you must use a lawyer if your claim goes to trial. You may wish to visit this website for further information about lawsuits involving minors http://thelawcentre.ca/self_help/small_claims_factsheets/fact_03.

TO: This is where you will answer the question, "who are you suing?", and give details about the defendant(s).

The address and phone number of the defendant can sometimes be difficult to obtain. However, there are private firms that specialize in finding individuals and these firms can be found in your local yellowpages under 'Investigators'. If you are having trouble locating a defendant for the purposes of service, please refer to our Serving Documents guide.

You may file your claim with an incomplete or incorrect home address and amend your documents at a later time if you determine the correct address.

When filing your claim, it is important to keep in mind Small Claims Rule 1 (2) which governs where to file a claim:

Filing a notice of claim

1(2) A claimant must file a notice of claim and pay the required fee at the Small Claims Registry nearest to where

- (a) the defendant lives or carries on business, or
- (b) the transaction or event that resulted in the claim took place.

You must be very careful when naming the defendant. If it's not exactly right, you may win your case but then be unable to get your money.

The rules about names are strict, but they are not complicated. Here are some rules you may need to know:

Example 1

You hired a roofer to put a new roof on your house. The roof leaks, so you sue Zoro Carey Roofing Ltd. You win the case but they refuse to pay, so you ask the sheriff to go and take some of their goods to sell at auction. Now you find you're out of luck because the company's real name is ZC Roofing Ltd. You have a judgment against the wrong party.

A. If you are suing an individual:

Use the person's full name. Initials are not enough.

Say: ROBERT JOHNSON

Not: R.W. JOHNSON.

Do not use titles such as Mr., Miss or Dr.

Say: JOHN WILLIAMS and BETH WILLIAMS

Not: Mr. and Mrs. WILLIAMS.

Do not use brackets in the names.

Say: PING CHUNG also known as JENNIFER CHUNG

Not: JENNIFER (PING) CHUNG

B. If you are suing a company incorporated in British Columbia:

Usually you can tell if you are dealing with an incorporated company because its name will end in Limited (Ltd.), Corporation (Corp.), or Incorporated (Inc.). To get the correct name and address of the registered office, you must request a company search. This can be obtained from:

Corporate Registry, 940 Blanshard Street, Victoria, B.C.

Mailing Address: PO Box 9431 Stn Prov Govt, Victoria, B.C. V8W 9V3

Website: www.bcregistryservices.gov.bc.ca/bcreg/corppg/crsearch.page#how

There is a fee for a company search, which must be enclosed with the request. Phone 250 387-5101 for details. (If you are calling from outside the Victoria area, you can avoid incurring long-distance charges by contacting Enquiry BC at 604 660-2421 from Vancouver or 1-800-663-7867 from elsewhere in B.C. and ask to be transferred to 250 387-5101.)

A company search of a B.C. corporation can also be done at your ServiceBC office, or through a title service listed in the Yellow Pages of your phone directory.

The registered office may not be the place where the company carries on business, but the registered office address is the one you will put on the notice of claim. You must file a copy of the company search at the registry when you file your notice of claim. The cost of the search can be added to your claim by the registry.

Example 2

In the roofing company example we mentioned earlier, the unsatisfied customer was suing Zoro Carey Roofing Ltd. because that was the name on the invoice provided and Zoro Carey did the installing of the leaky roof. Even though Zoro Carey installed the roof, the defendant would still be ZC Roofing Ltd. Because the agreement to install the roof was with the company.

In the "To" column on the notice of claim, the customer would list ZC Roofing Ltd. as the defendant.

There are some cases, though, where both the company and the principal of the company would be defendants. These are cases where the principal has something to do with the case, beyond just being the principal of the company.

Example 3

ZC Roofing Ltd. applied for a credit application at a roofing supply company but the credit application is denied without a personal guarantee from Zoro Carey. Zoro signs the guarantee and, by doing so, is agreeing to pay the debt personally if ZC Roofing Ltd doesn't. If the roofing supply company decides to sue, the defendant in the action would be: ZC Roofing Ltd. and Zoro Carey.

C. If you are suing a company incorporated outside British Columbia:

You should do a company search before filing the notice of claim. The company search will help you obtain the correct legal name of the corporation. Having the correct legal name will increase your ability to enforce a judgment if the court rules in your favour.

D. If you are suing a business which is not an incorporated company:

Contact your local business licence office at city hall and ask for the correct name of the business and the name of the owner. You will want to name both the business and the owner so that if you get a judgment you can collect from either of them. You may use "c.o.b.a." as a short form for "carrying on business as" if you wish.

Example 4

Zoro's wife, Ann, has her own landscaping business. It is not an incorporated company. If one of her suppliers wants to sue her because she didn't pay a bill, the supplier should name as the defendants" ANN CAREY, carrying on business as ANN'S LANDSCAPING, and ANN'S LANDSCAPING.

E. If you are suing a partnership:

This is very much like suing a business. Name the partners and the partnership.

Example 5

If Ann, in the above example, was in partnership with her sister Joan, then the defendants would be: ANN CAREY and JOAN KOSKI, c.o.b.a. A/J LANDSCAPING, and A/J LANDSCAPING

F. If you are suing a society:

This is also *very* much like suing a business. You must obtain a printout of a search showing the most recent address of the society. The search is done through the Corporate Registry, and you can get the telephone number and address from the section above which deals with suing a company incorporated in British Columbia.

G. If you are suing more than one defendant:

You may name more than one defendant if the claims against each of them are related - as in our examples above. If you need to, you can divide the "TO:" space in half and use each half for one defendant, like this:

			NOTICE OF CLAIM IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (Small Claims Court)	
TO: the name, address and telephone number of the person(s) or business(es) your claim is against.	Defendant One		Defendant Two	

H. If it was an auto accident that led to your claim:

You may want to name as defendants both the driver and the registered owner or lessee of the vehicle, if the vehicle was leased. You can get the owner's name and address by asking your ICBC claims adjustor or by sending the licence plate number, the date of the accident and the claim number (or as many of these items as you can) to: ICBC, Vehicle Records Search, 151 West Esplanade, North Vancouver, B.C. V7M 3H9. There is a fee for this information, which must be enclosed with the request. Telephone 604 661-2233 or 1-800-464-5050 for details.

If you are suing for damages from an automobile accident, you must also serve a copy of the notice of claim on ICBC. The easiest way to do this is by registered mail. The address is:

ICBC Legal Department, #800 - 808 Nelson St., Vancouver, B.C. V6Z 2L5

You must prove to the court that you've served ICBC. Complete the certificate of service that is printed on one of your copies of the notice of claim and take or mail it to the registry with the proof of service. They won't set a date for settlement conference or do anything else on your file until they have that proof of service. Claims for liability who was at fault for an accident) go directly to trial without a settlement conference.

Claims for Personal Injury

If your claim is for personal injury, read booklet #5: [Getting Ready For Court](#), specifically the section entitled: Special Rules for Personal Injury Claims.

If you are claiming damages for injury to yourself, you must file a certificate in the small claims court regis-

try which says that you are ready to discuss settlement of your entire claim at a settlement conference. This certificate must be filed within six months of the date you served the notice of claim on the defendant and it must have attached to it all medical and other reports and records you intend to rely on to prove your claim for expenses and losses. Then, you must mail the certificate and copies of all attached documents to the other side (usually ICBC). If you're not ready to discuss settlement within the six months, you may ask the registrar to extend the time limit.

I. If you are suing the Province of British Columbia:

You should name as a defendant:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA.

This is the legal name of the province of British Columbia.

WHAT HAPPENED?

This is the part where you tell what the case is about. You should think about this and try to put down only the facts that are necessary to make your case.

You do not say, "I have invoices from Ace Carpet Cleaners to prove that the carpet was damaged." That is evidence - what you will use to prove the claim. It doesn't belong here.

You don't have to use "legal language". Just tell what happened. That doesn't mean you can leave out essential details. The defendant has to know exactly what the claim is about. Also, the judge will read this document to learn about your case. Notice that in our example the address of the house is given. The roofer will have no trouble knowing which job this case is about.

Example 6

The customer who was suing the roofer (see Example 1) might say this:

ZC Roofing Ltd. put a new roof on my house at 123 King Street Vancouver, B.C. The roof leaks and ZC Roofing Ltd. has refused to fix it. My furniture and carpeting were damaged and I had to hire another roofer to fix the leak."

WHERE?

You may have already answered this question in the "What Happened?" section. It is here so the court registry staff can be sure that you are filling your claim at the right court registry. (We'll explain what that means later.)

You don't need the complete address here - the name of the city or town will do. If the case involves a breach of contract, tell where the contract was made or where the payments were to be made.

WHEN?

Again, you may have already answered this. There are time limits to most legal actions, and they can be quite complicated. It all depends on what kind of claim you have.

If you think you might be running out of time and you are not sure what the time limit is, you may want to seek legal advice.

If you have tried to settle your differences and that hasn't worked, do not delay in making your claim.

HOW MUCH?

This is where you tell what it is you want from the defendant. If your claim has more than one part, separate them and show what you are claiming for each part. Be sure to make it clear how you arrived at the amounts you are claiming.

Example 7

Look back at Example 6. The claimant in that case might fill out the "How Much?" part like this:

a) Cost of replacing chair	\$479.00
b) Cost of cleaning carpet	135.00
c) Cost of repairing roof	1,250.00
TOTAL	\$1,846.00

Example 8

A supplier is suing a customer for payment of a bill. The notice of claim might say, in the "How Much" section:

a) invoice dated May 1, 1987	\$849.00
b) interest at 24% per annum, pursuant to contract, from May 1, 1987 to the date of filing and	220.00
c) annual interest	
TOTAL	\$1,069.00

A note about interest:

If you and the defendant had agreed on the rate of interest, this is the rate you must use if you are claiming interest - and it must be expressed as an annual rate. In Example 8, a term of the sale was that interest would be charged at two per cent per month or 24 per cent per year. The amount of interest that had accumulated up to the date of filing is calculated. Then a separate claim is added for the amount of interest that will add up between the filing date and the date the payment order is made. You don't have to actually do this calculation - just say that you are claiming annual interest.

If there was no agreement about interest, or if there was but you do not claim it, you will still be entitled to the rate of interest allowed under the Court Order Interest Act. This rate is set by the government and reviewed every six months. It is generally lower than the prevailing interest rates. You do not need to calculate it until it's time to file your payment order.

4. What if the defendant owes me more than \$25,000?

You might have a claim for something more than \$25,000, but still want to make it in small claims court. You can do that if you are willing to reduce the amount you are claiming to \$25,000. Just say on the notice of claim, in the "How Much?" section, "I am abandoning the amount of my claim that is over \$25,000."

The \$25,000 limit applies to the total of everything you are claiming, including the value of any goods you might be asking for. But it does not include interest and expenses. So, if your claim was for a debt of \$25,500, you could abandon the \$500 and claim \$25,000 plus interest and expenses. (The expenses you can claim in small claims court are very limited - generally, they amount to no more than the filing fee and a service fee.)

If you do abandon part of your claim, to bring it under the \$25,000 limit, you may not sue for it in another court or another small claims action. Once you have abandoned it, that part of your claim is gone and you can't sue for it again.

There are two possible exceptions:

- **IF** the defendant should make a counterclaim against you, and take it to Supreme Court; or
- **IF** the judge in the Small Claims Court transferred your claim to the Supreme Court, you would then have the chance to make your claim there in the higher amount.

5. Is that all there is to the notice of claim?

You will see there is a space for "Filing Fees" and "Service Fees" just under your "Total". The registry staff will fill these in for you.

The filing fee is the amount you will have to pay to the registry when they accept your notice of claim. If you win your claim, the defendant will have to pay this back to you. The amount allowed for the service fee varies depending on how you serve the notice of claim. There is another guide called Serving Documents that will give you more information about this. Again, if you win, you can usually get the service fee back from the defendant.

The registry staff will fill in the "Total Claimed". Under that figure are two boxes labelled 'Debt' and "Other Than Debt". The registry staff will fill these in as well.

6. What do I do with my notice of claim, after I've filled it out?

You can file the completed notice of claim form by mail at the court registry nearest to either:

- where the defendant lives or carries on business; or
- where the event that led to the claim happened.

Contact information for court registries can be found at www.ag.gov.bc.ca under "Court Services". Please ensure the appropriate filing fee is enclosed if filing by mail. Cheques can be made payable to the Minister of Finance. Certain registries currently accept filings by facsimile. You can find out more about fax filing at www.ag.gov.bc.ca under "Court Services".

In addition, registries allow electronic filing of documents (a fee is charged) through Court Services Online (CSO) at <https://justice.gov.bc.ca/cso/index.do>. To eFile with CSO, a client must have a registered account with CSO and accept the user agreement. In addition, a client must have either a BCeID account with a registered credit card or BC Online account. More information on obtaining a BCeID or BC Online account can be found in the following websites: www.bceid.ca/ and www.bconline.gov.bc.ca/. You can find further information about eFiling on the [CSO website](#). If you need any assistance with CSO, contact information is listed on the Contact Us link at the top right-hand corner of the home page.

Remember, if you are suing a company or a society, you must also have a copy of the search along with your notice of claim. You may pay the filing fee by cash, personal or company cheque, certified cheque, money order or bank draft, payable to the Minister of Finance.

7. How do I know which registry to take it to?

You have to file your claim in the small claims court registry nearest to either:

- where the defendant lives or carries on business; or
- where the event that led to your claim happened.

To find a court registry, consult your telephone directory under "Court Services" in the provincial government blue pages or look for the information online at <http://www.gov.bc.ca/justice/>.

Example 9

Look back at our roofing company example. If your leaky roof is in Vancouver and the roofing company is in Surrey, you have a choice. You could file the claim in Vancouver (where the event happened) or in Surrey (where the defendant carries on business).

8. Once I've filed the notice of claim, what do I do next?

The next step is to let the defendant know about your claim. You do this by giving them the defendant's copy of your notice of claim. (This is called "serving" the notice of claim.) You can do this by registered mail.

If you don't want to use the mail, you can serve the notice of claim by handing it to the defendant personal-

ly. You can do this yourself or you can have somebody else do it for you. This might be a friend, who would do it as a favour, or it might be a professional process server, who would charge a fee.

If you have someone serve it for you, be sure that the person completes the certificate of service that is printed on the back of one of your copies of the notice of claim. Along with the notice of claim, you also must serve a blank reply form which the defendant can use to reply to your claim.

There are special rules for serving a notice of claim on companies, partnerships and other businesses, municipalities and the Government of British Columbia. There are also rules for serving someone who is a minor or who is out of the province or hard to find. (See guide #4: [Serving Documents](#) for information.)

For information about serving documents relating to a *Strata Property Act* dispute, refer to the *Strata Property Act* (Section 64). Generally, court actions relating to the interpretation of the act, and the duties and obligations of various parties in a strata development cannot be brought in small claims court. However, the strata corporation may sue an owner or tenant, and may file an arbitrator's decision and order for costs in small claims court if:

- the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court (\$25,000); and
- the action or decision is in respect of:
 - debt or damages;
 - recovery of personal property;
 - specific performance of an agreement relating to personal property or services;
 - relief from opposing claims to personal property.

For further information relating to strata property disputes, please refer to the Strata Property Act Resources and Guides at <http://www.housing.gov.bc.ca/strata/guides.htm>.

9. How soon do I have to get my notice of claim to the defendant?

You have a year to do this. After that time, your notice of claim will expire. If you wanted to continue after that time, you could apply for a renewal.

10. What happens next?

After receiving your notice of claim, the defendant may contact you directly and offer to pay the claim or try to settle the case in some way. You are free to make whatever arrangements you want at any time. Just because you have filed a notice of claim with the court, does not mean that you must continue with the lawsuit.

If you are satisfied with what the defendant offers, you should withdraw your claim. If the defendant offers payments, you could write an agreement as a consent order and file it at the registry. This can be enforced if payment stops.

If the defendant files a reply and agrees to pay all or part of the claim, but you don't agree with how it is to be paid, you can file a payment order and ask for a payment hearing so that the court can set a payment schedule.

If the defendant files a reply disputing your claim, the registry will send you a copy of it and set a date for a settlement conference.

The defendant normally has 14 days from the date the notice of claim was served to file the reply. (A defendant who with the notice out of province has 30 days.)

To learn more about what to expect at the settlement conference, read guide #5: [Getting Ready for Court](#).

If the defendant does nothing, you can ask the court to give you a default order, which is enforceable just like an order made by a judge following a trial.

How can I get more information?

This is one in a series of guides available. The guides can be found online at www.ag.gov.bc.ca/courts/small_claims/index.htm. The other titles in the series are:

1. What is Small Claims Court
2. Making a Claim
3. Replying to a Claim
4. Serving Documents
5. Getting Ready for Court
6. Getting Results
7. Court Mediation for Small Claims Up to \$10,000
8. Mediation for Claims between \$10,000 and \$25,000

The people behind the counter at any small claims registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer many of your questions about small claims court procedures.

To contact a court registry, consult your telephone directory under “Court Services” in the provincial government blue pages or look for the information online at www.gov.bc.ca/justice

This guide provides an overview of the significant provisions of the *Small Claims Act* and the Small Claims Rules.

It is not intended as a substitute for the act or the rules, which should be examined for specific information.

You can find links to the *Small Claims Act* and rules at www.ag.gov.bc.ca/courts/small_claims/index.htm.

This information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

You may also wish to consult Clicklaw at www.clicklaw.bc.ca for additional legal information.