

# Getting Ready for Court

## Small Claims Court Guide #5

If your small claims court case is going to court - whether it's for a settlement conference or a trial - you probably have a lot of questions to ask. This guide will try to answer some of them.

You will receive either a notice of settlement conference or a notice of trial in the mail from the court registry. Most cases will have a settlement conference. If your case is a motor vehicle accident case and only liability for property damage is being disputed, you will go directly to trial. You will not need to have a settlement conference.

Questions 1 through 5 of this guide talk about **the settlement conference**. We will talk about its purpose and what you can do to prepare for it. If all goes well, your case will end there, with a settlement. If not, there will be a trial, so next we'll talk about what happens at trial and how you can get your case ready.

Questions 6 and 7 talk about what will happen at **the trial**. If you have a notice of trial, you should still read questions 1 through 5 as they will help you to prepare your case. When you read these questions, remember you will be at a trial, not a settlement conference.

**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](http://www.ag.gov.bc.ca)) under "Court Services".

### 1. The Settlement Conference

#### What is the settlement conference for?

There are two main purposes for the settlement conference:

- to encourage settlement of cases; and
- if settlement is not possible, to help the parties prepare their cases for trial.

Try to be creative. Think about what you really want from this case. If you're suing a contractor over a job that was not done to your satisfaction, you probably want the work done and done right. If you are the contractor, you will want to at least break even on the job, but you may be willing to apply your profits to a repair job. If you are being sued for money you owe someone, maybe you only need time to pay.

Try not to think so much in terms of "How can I win my case?" Think instead, "What do I want from this case? What does the other side want? Is there any possible solution that we both can live with?" Even if the whole case cannot be resolved, the settlement conference is a good chance to work out an agreement on at least some of the issues, so that the trial will be easier, quicker and less expensive.

If there is to be a trial, the conference is also an opportunity for you to get some answers to questions you may have about the preparation of your case. The judge won't give you legal advice, but you can talk about what evidence you should be prepared to offer at trial. Also, there are a number of orders the judge can make that can help in the preparation of your case.

If there is to be a trial, a date may be set immediately, so bring your calendar or at least be aware of any dates when you would not be available for trial. If the date is not set immediately, you will receive a notice of trial in the mail.

### **Example 1**

*We'll use the same roofer we talked about in guide #2: Making a Claim. Suppose you are a roofer who is being sued for damage caused by a leaky roof. You could ask the judge to make an order that a building inspector - chosen by you - be allowed to inspect the house. Then the inspector could give evidence about the alleged damage.*

### How should I prepare for a settlement conference?

The better prepared you are for your settlement conference, the more you will gain from it. In fact, it is a good idea to do most of your preparation at this time. Then, if you do have a trial, most of your work is done.

What's more, if you are not prepared and the conference cannot be properly conducted because of that - you don't have the necessary documents with you, for example, it can cost you money. The judge can order you to pay the expenses of the other party coming to the conference and you may have to all come back a second time.

### If you are the Claimant

(If you are the defendant, go to the "If you are the defendant" section on page 3 of this guide, unless you have a counterclaim. If so, read this because the same applies to counterclaims.)

If you are the claimant, there are two basic parts to your case:

**First:** You have to prove liability. That means you must prove that the defendant did something wrong to you.

**Second:** You have to prove the amount. It's not enough to prove that the dry cleaner ruined your suit. You have to prove what the suit was worth or what it cost to repair the damage.

The evidence is whatever you will use at trial to prove your case. But you have to think about it now because the judge at the settlement conference will want to know how you intend to prove your case. There are several different kinds of evidence. The most often used are:

- *oral testimony*: a witness comes to court and answers questions at the trial
- *documentary evidence*: documents, such as business records, are presented in court either by a witness or a party
- *photographs*: photographs are sometimes used as evidence if the person who took them can properly identify them

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. The best way to do this is to get out your notice of claim for reference and then make yourself a worksheet.

### **Example 2**

*Suppose your notice of claim says this:*

*What Happened?*

*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.*

*How Much?*

<i>a) Cost of replacing chair</i>	<i>\$479.00</i>
<i>b) Cost of cleaning carpet</i>	<i>135.00</i>
<i>c) Cost of repairing roof</i>	<i>1,250.00</i>
<b><i>TOTAL</i></b>	<b><i>\$1,864.00</i></b>

### **Example 2 continued**

You would prepare a worksheet like this:

#### **FACT**

- A** ZC Roofing put the roof on my house
- B** The roof leaks
- C** The leak was caused by IC's poor workmanship
- D** It will cost \$1,250 to repair the roof
- E** The leak caused damage to my carpets and furniture
- F** It cost \$135 to clean the carpet
- G** It cost \$479 to replace the damaged chair

#### **EVIDENCE**

- A** Signed contract with ZC Roofing and invoice marked PAID"
- B** Photos taken by me
- C** Evidence of building inspector
- D** Estimate from Able Roofers
- E** My own testimony
- F** Invoice from Columbia Carpet Cleaners
- G** Bill of sale from Peg's Furniture Mart

You must bring to the settlement conference all the documents that you will use at trial - if there is one - to prove your case. This would include the contract, invoices, bill of sale and written estimate, if you have it. You won't be expected to produce any witnesses, but you should be prepared to summarize what your witnesses would say if they had to come to court.

For example, you won't bring the building inspector to the settlement conference but you could say, "The building inspector told me that the reason the roof leaks is that the flashing was not properly installed and the shingles around the chimney and eaves have to be removed and replaced."

A good way to organize your papers is to paperclip each of them to a page in a notebook or a three-ring binder and mark each of the pages in the upper right hand corner with the letters from your worksheet. The worksheet could be the first page in the book and serve as a Table of Contents.

### **If you are the Defendant**

Begin by looking again at the notice of claim and at your reply. Do you disagree with the claimant's version of "What Happened?" Make a note of exactly what it is you disagree with and be prepared to tell the judge what, if anything, you agree with.

Do you disagree with the amount that the claimant says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.

Do you agree to pay what the claimant claims, but simply can't pay it all at once? If that's the case, bring with you some evidence of your financial situation—recent pay stubs, for example, and last year's income tax return. Then tell the judge what sort of payment terms you would need. If you can pay something right away, all the better.

### **Example 3**

*Suppose you agree to pay the claimant \$1,000. You might say. I'll pay \$200 today, and then \$200 at the end of each month until it's paid."*

There are a few other things to keep in mind if you are the defendant:

**First:** Has the correct defendant been named?

### **Example 4**

*In Example 2, the claimant had a contract with ZC Roofing Ltd. If he named Zoro Carey as the defendant - the one who owns the company and did the work - and not the company. Mr. Carey would have a defence.*

**Second:** If the claimant has suffered the damage described, has it been proven that it was your fault?

**Third:** Carefully examine the amount of the claim. Is the amount really justifiable? Is the claimant looking to be put in a better position than before the damage was suffered? For example, is he asking for a brand new chair to replace one that was old and worn?

You can organize your case much as described for the claimant, with a worksheet listing the points you wish to make and the evidence you will use to prove those points.

Like the claimant, you must bring to the settlement conference any documents that you want to use as evidence. And like the claimant, you must come prepared to the settlement conference or risk having to pay the other side's expenses.

## **2. What will happen at the conference?**

You will go into an office or meeting room and sit at a table with the judge. Some courthouses don't have extra rooms so settlement conferences may be held in a courtroom, but the same procedure applies. In any case, this will be a private meeting. Members of the public are not allowed.

The judge will say a few words and will likely ask each of you to give a brief summary of your case. You don't need to write this out in full, but you should have a list of the points you wish to make. If you've made a worksheet, use that.

The judge may then lead you both into a discussion of what, if anything, you could agree on. Ideally, you would agree on the final result and the judge would make that order and that would be the end of it. Or, you might agree on some of the issues and leave others for the trial.

### *Example 5*

*Going back to the notice of claim in Example 2, the parties might agree that the carpet damage was not the roofer's fault, because the homeowner had agreed to remove it. They might also agree that the chair was an old one and only worth \$150. They will have a trial but it will be shorter and simpler because they only have to deal with whether the \$1,250 repair job is necessary.*

### **Who attends the settlement conference?**

The judge will be there as well as a clerk, to take notes. The parties must attend. If anyone has a lawyer, the lawyer may attend as well but the client must always be there.

If one of the parties is a company, then the company's representative must be one who has authority to settle the claim.

If you would like to have someone attend with you for support, ask the judge's permission at the start of the conference.

### **What if I don't come to the settlement conference?**

If you don't attend the conference, an order can be made against you. If you are the defendant, this could be an order that you pay the full amount of the claim. If you are the claimant, it could be an order dismissing your claim. The judge can also order that the case go to trial and set a trial date in the absence of one of the parties.

### **What if I can't be ready - or can't attend - on the date set for the conference?**

If you can't have all your documents ready in time for the settlement conference, or if you have a good reason for being unable to attend on the date set, ask the registrar to postpone your conference to another date. Be sure that the registrar has notice - in writing - at least seven days before the date set. If the registrar doesn't think that you tried your best to be ready, you may still be required to keep the appointment.

If you cannot attend in person, you may make a written application to the registrar to attend by telephone.

### **3. 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 registry, 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 that 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, ask the registrar to extend the time limit.

You may not want to invest a lot of time and effort in proving what your damages are if you're not sure you can prove that the defendant is responsible. On the other hand, you won't want to worry about proving liability if the defendant will admit it. In a personal injury case, either side may ask for a settlement conference on the issue of liability alone.

### **4. Special Rules for Young Persons Claiming Personal Injury**

If you are under 19 years of age and are involved in a personal injury claim, the adult assisting you as your litigation guardian must use a lawyer and must have the consent of the Public Guardian and Trustee to settle any claim.

### **5. Offers to settle**

Even though you have been through a settlement conference and your case has been set for trial, it doesn't mean that you have to go to trial. Within 30 days after the settlement conference, either party can make a written offer to settle to the other party. You must serve the offer personally or by registered mail.

For example, if you are the claimant and you received an offer, and you find it is acceptable, you have 28 days from the day you received it to serve a written acceptance of offer on the other party. After that, by filing the offer to settle and the acceptance of offer in the registry, it becomes a payment order and the trial is cancelled.

If an offer is not accepted, after a trial the judge can impose a penalty of up to 20 per cent of the amount of the offer on the party who rejected the offer if the outcome of the trial is much the same as the offer.

It is important to note that the judge can't be told about the offer until a final decision on the amount has been made. So if you have made or received the offer, be sure not to make any mention of it during the trial, but do bring it with you to court.

### **6. The Trial**

[What is the difference between a settlement conference and a trial?](#)

There are a number of differences. A settlement conference is a private discussion between the parties, with the assistance of the judge. A trial is a public process where each party tells its own side of the case to a judge who makes a binding decision.

Evidence is heard from witnesses at a trial. A settlement conference the parties simply tell the judge what the witnesses would say if they were present.

A trial can be a much more formal procedure than a settlement conference, but not always. A lot depends on the personal style of the judge and also on the judge's assessment of what procedure will allow the parties to present their cases easily and fairly.

[How do I prepare for trial?](#)

If you followed the advice of this guide about preparing for the settlement conference, much of your work is already done. Start by going back and reviewing the notice of claim, the reply, your worksheet and any documents or other evidence you have.

You should bring the original and at least two copies of each document. The original may be kept by the

court as an exhibit. The copies are for the judge, the other party and yourself.

You will likely be the main witness for your case and you may be asked to simply tell your story. So prepare what you will say.

Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who doesn't know you or the other people involved. Make a list of all the points you want to cover. Then go back over your list and cross out any items that don't really have anything to do with the issues that are in dispute.

If you are the claimant, be prepared to start by telling the judge briefly what the case is about. Don't forget to mention anything that was agreed at the settlement conference or after it.

### **Example 6**

*Using our earlier example, the claimant in this case might start by saying:*

*I am Peter Homeowner and I am the claimant in this case. I hired the defendant to install a new roof. They did a poor job and the roof leaked. It damaged my carpet and furniture and now I'm going to have to pay another roofer to make the roof good. I say the defendant should have to pay that.*

*At the settlement conference, we agreed that I will withdraw my claim for the carpet damage and reduce my claim for the chair to \$150. After the settlement conference we met and agreed that the repair job could be done for \$900. I have a new estimate from someone the defendant suggested. So, in all, I'm asking for an order for \$1,050."*

Don't forget that the courts are open to the public so you can go in any day and just sit down and watch. If you do that, try to watch several cases because each one is different and you may get some wrong impressions by watching only one case.

### **What witnesses should I have?**

When you are thinking about what witnesses, if any, to call, remember that, except for expert witnesses, they must have personal knowledge of the facts you want them to tell the court about. Hearsay evidence is something that the witness only knows about from hearing someone else say it. Because of that it is usually too unreliable to be allowed as evidence in court. An example of when it would be allowed is if the other party admitted something to a witness. For instance, if one of the drivers in a car accident said to a witness, "I guess I was in too much of a hurry to get to work," the witness would be allowed to tell that to the court.

### **How do I prepare my witnesses?**

Think carefully about what questions you will have to ask your witness in order to get the evidence you need and write those questions down. Don't ask questions that suggest the "right" answer. These are called "leading questions". For instance, don't say, "Was the light red?" Instead say, "What colour was the light?" Do review the questions with your witnesses beforehand. It is alright for you to discuss the case with them, but you must not tell them what to say. Be sure to tell them this so they won't be embarrassed if they are asked in court whether they've discussed the case with you.

### **What do I do when the other side says something I don't agree with?**

If you've watched television trials, or even lawyers in actual courtrooms, you will have seen cross-examination used both to help prove a case, and to show the weaknesses in the other side's case.

In small claims court, the judge may allow you to cross-examine the witness for the other side, if it seems that it would be helpful. But cross-examination is difficult to do well and it may be easier for you to get your point across to the judge if you simply ask to be allowed to respond to what the witness has said. You then tell your side of it - under oath - and the judge may ask you both some more questions, to get things straight.

If you do cross-examine a witness, an easy way to ask your questions is to say what it is you want the witness to say and then ask, "Is that correct?" These leading questions are quite alright in cross-examination, even though they are not allowed when questioning your own witnesses.

#### What about expert witnesses?

Experts are the only witnesses who are allowed to give evidence about their opinions. Sometimes an opinion is the only way to prove an important part of your case, such as why the roof leaks.

The other side needs to be prepared to cross-examine your expert or to get another expert opinion. So, if you intend to call an expert witness to give opinion evidence, you must serve the other side with a summary of the opinion at least 30 days in advance. If you don't, you can ask the judge for permission to call the witness anyway, but you might not get permission or the other side may succeed in getting a postponement of the trial. If that happens, you could have to pay the other side's expenses for showing up for trial.

#### Can I use a letter from my expert instead of bringing the witness to court?

Normally, a witness must appear in person, so that the other side has a chance to ask questions, but an exception is made for expert opinions.

If you want to use a letter or a written report, have the person prepare a letter stating his or her qualifications, what the opinion is and the facts that the opinion is based on. Then serve a copy of the report or letter on the other party at least 30 days before the court date. If you don't, the same rule applies as for failing to give a summary of an expert's testimony in advance.

If you receive an expert's report from the other side and you think it is important that you be allowed to cross-examine the expert, you can notify the other party, in writing, at least 14 days before the trial, that you require the expert to attend. Be careful about this because if the judge decides it was unnecessary, you could end up paying the cost of bringing the expert to court.

#### What about repair estimates?

Another exception to the "in person" rule is made for estimates. You can bring a written estimate for the repair of damage or an estimate of the value of property and present it as evidence at trial without bringing the person who gave you the estimate.

If you are going to use a written estimate, you must serve all other parties with a copy of the estimate at least 14 days before the trial. If you don't, you can ask the judge for permission to present the estimate anyway, but you might not get permission, or the other side might succeed in getting a postponement of the trial to obtain their own estimate. If that happens, you could have to pay the other side's expenses for showing up for trial.

It's a good idea, especially if the amount is large, to get more than one estimate yourself.

#### How do I make sure my witnesses will come to court?

If you have any witnesses, chances are they will agree to come to court voluntarily. If not, you can get a summons to witness form at the small claims court registry. If it is served on the witness, along with an offer to provide reasonable travelling expenses, at least seven days before the court date, the person will be required by law to attend.

#### What if I can't be ready - or can't attend - on the date set for the trial?

If you have a very good reason for being unable to attend on the date set, you can appear in court to ask the judge to postpone or adjourn your trial. Your application must be in writing and you have to serve the other party with it at least seven days before you ask the judge.

If you apply to postpone or adjourn your trial less than 30 days before the trial date, you must pay a fee if the adjournment is granted.

The fee must be paid within 14 days after the adjournment or within a longer period of time set by the registrar. If you fail to pay the fee, the judge may decide that you cannot proceed any further.

## Are there special rules about how to behave in court?

The judge in small claims court is called "Your Honour". Everyone stands when the judge enters or leaves the courtroom. You must stand whenever you are speaking to the judge or the judge is speaking to you. You will also stand while questioning your witnesses. Many judges will invite you to sit while giving your evidence, but you should stand at any other time when you want to say anything.

At settlement conferences, everyone remains seated.

## 7. A Trial Preparation Checklist

- review the notice of claim, the reply, and any other documents that have been filed
- review the results of your settlement conference
- list the points you need to prove to win your case
- consider how you will prove each one
- gather the documents you need and organize them in logical order
- contact any witnesses you decide are necessary
- obtain statements from expert witnesses, if any, and send out copies as required
- prepare questions for witnesses and review them together
- prepare a list of questions for cross-examination
- on your trial date, give yourself plenty of time to arrive well ahead of the time you have been given

If you have prepared your case well, you will be much more relaxed on the day of your trial and you will be able to present your case to its best advantage.

## 8. 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](http://www.ag.gov.bc.ca/courts/small_claims/index.htm). The other titles in the series are:

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|-------------------------------|---|
| 1. What is Small Claims Court | 5. Getting Ready for Court                            |
| 2. Making a Claim             | 6. Getting Results                                    |
| 3. Replying to a Claim        | 7. Court Mediation for Small Claims Up to \$10,000    |
| 4. Serving Documents          | 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](http://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](http://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](http://www.clicklaw.bc.ca) for additional legal information.