

The Complete Guide to Small Claims Court: Tools & Strategies for New and Seasoned 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 and SCC Deputy Judge. 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 complex issues, including frequent substantive and procedural law matters, adducing expert evidence, 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: Anatomy of the Lawsuit and Trial Preparation

1. Introduction

- Overview of the course
- Advantages of Small Claims Court (SCC)
- Limitations of SCC and jurisdiction

2. The initial client interview

- Conflict check
- Review of pleadings and other important documentation
- Exploring deadlines and limitations period
- Exploring all potential parties
- Initial liability assessment
- Discussion about recoverable damages
- Likelihood of recovery against defendant(s)
- Anticipated legal costs and disbursements
- Alternatives to litigation – e.g. demand letter
- Steps to follow if not retained

3. The Plaintiff's Claim

- Identifying all parties
 - Corporate vs. individual defendants and the corporate veil
- Chronology of events
- Liability
 - Common sources of liability – CML and legislative tools
- Damages
 - Non-pecuniary
 - Repair and replacement of damaged property
 - Financial loss, medical and out of pocket expenses
 - Punitive
- Limitation period and common exceptions
- Consequence of unpled issues *Jaldhara v. Hussain*, 2018 ONSC 6715
- Jurisdiction
- Interest
- Court filing fees

4. The Defence

- Deadline to serve and file
- Admissions
- Chronology of events
- Common defences to liability claims
- Common defences to damages claims
- Limitation period defence
- Challenging jurisdiction
- Defendant's Claim
 - Adding additional parties
 - Cross-claim against plaintiff

5. The settlement conference

- Purpose and strategy
- Client preparation
- Production
- List of client witnesses
- Orders sought
- Dealing with self-represented litigants

6. Pre-trial orders - Motions

- Notice of motion
- Procedures
- Evidence in support of motion
- Common examples and relevant jurisprudence

DAY 2: The Trial, Post-Trial Proceedings and Advanced Issues

7. Trial

- Pre-trial matters
 - Deadlines for production
 - Exchange of witness lists
 - Expert reports
 - Witness statements
- Opening statement
- Closing statement and legal submissions
- Examination of witnesses
 - Examination-in-chief
 - Cross-examination
 - Questions by Deputy Judge
 - Re-examination
- Common evidentiary rules and issues
- Dispensing with formalities
 - Rule 2
 - Rule 3.02
- Costs submissions and awards
 - Section 29 of the *Courts of Justice Act*
 - Rule 14.07 offers to settle
 - Rule 19.06
 - Relevant jurisprudence
- Dealing with self-represented litigants

8. After the trial

- Appeals
 - Monetary jurisdiction and standard of review
 - Procedures and deadlines
- Enforcement proceedings

9. Expert evidence

- The legal test for expert evidence
 - Relevance
 - Necessity
 - Exclusionary rules
 - Expert properly qualified
- Rule 18
 - Admitting expert reports alone
- Admissibility vs. weight
- Relevant jurisprudence

10. Ethical and professional responsibility issues

- Conflicts of interest – avoidance and management
 - Potential sources of conflicts of interests
 - Potential vs. actual conflicts
 - Former clients, joint retainers, personal conflicts
 - Conflict checks
 - Handling conflicts and withdrawal of representation
- Client service
 - Managing difficult clients and unreasonable expectations
 - Timely and effective client communication
 - Non-engagement and phantom clients
- Privilege and confidentiality
 - Solicitor-client and litigation privilege
 - Settlement privilege and discussions at settlement conferences
 - The implied undertaking rule
- The lawyer and the administration of justice
 - Practising with civility
 - Abuse of court process
 - Communications with represented parties
 - The lawyer as witness
 - Communicating with witnesses giving evidence
 - Encouraging respect for legal institutions
 - Responding appropriately to client dishonesty or fraud
 - Dealing with self-represented litigants
 - Answering questions of opposing litigants
 - Duty to act in good faith and avoid sharp practice