

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

1. Introduction

- New monetary jurisdiction
- Advantages of Small Claims Court (SCC)
- Limitations of SCC and jurisdiction

2. The initial client interview and practice management tips

- Cold calls
- Conflict check
- The initial meeting
 - 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
 - The retainer agreement
- Alternatives to litigation – e.g. demand letter
- Steps to follow if not retained

3. The Plaintiff's Claim

- Interest rate
- Identifying the parties
 - Corporate vs. individual defendants and the corporate veil
- Setting out liability
 - Common sources of liability – CML and legislative tools
- Common damages
- Consequence of unpled issues
 - *Jaldhara v. Hussain* 2018 ONSC 6715
 - *Kalknis v. Allstate Ins.* [1998] 41 OR (3rd) 528
 - *936464 Ontario Ltd. V. Mungo Bear Ltd.* 74 OR (3rd) 45

4. The Defence

- Deadline to serve and file
- Elements of the Defence
- Challenging jurisdiction
- Failure to defend
- Judgment before trial
 - *Van de Vrande v. Butkowsky* [2010] OJ 1239

5. Retaining experts

- Considering expert evidence
- Preliminary opinions at investigative stage

DAY 2: Preparing for Trial and Post-Trial Proceedings

6. The settlement conference

- Client preparation
- Purpose and strategy
- Production and disclosure rules in SCC
- Orders sought
- Cost consequences
- Drafting an offer to settle
- Dealing with self-represented litigants

7. Trial preparation

- List of proposed witnesses
- Document production at trial
- Identifying case winning witnesses
- Handling documents during the trial
- Calling expert witnesses at trial

8. Trial

- Preparation of your own witness
 - The pyramid and developing chain of questions
- Cross examination
- Opening statement and theming
- Closing statement and legal submissions
- Costs submissions and awards

9. Enforcement proceedings

- Affidavit of enforcement requirements
- Examination of the judgment debtor
- Default under an instalment order

10. Appeals

- Appeal procedures
- Standard of review

11. 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
 - Transfers
 - Conflict checks
 - Handling conflicts and withdrawal of representation
- 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
 - Referral fees
 - Dealing with self-represented litigants
 - Answering questions of opposing litigants
 - Duty to act in good faith and avoid sharp practice