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The Small Claims Court

by

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The history of the movement to establish Small Claims Courts dates back to the early 1960's when the Justice of the Peace courts were increasingly being seen as obsolete.

Between the early 1960's and now, Small Claims Courts can be found in Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom and the United States. The general business of Small Claims Courts typically encompasses private disputes in which large sums of money are not at stake. The focus has overwhelmingly been on civil disputes between private litigants and generally involves the routine collection of small debts as well as evictions and other disputes between landlord and tenant unless such jurisdiction is already covered by an alternate tribunal such as a tenancy board.

The idea was to create a Court system which would allow people to represent themselves. The concept was that of simple, informal, lawyer less court where ordinary people could settle their affairs amicably, without expense, delay, technicality or contentiousness, assisted by a unified law and simplified procedure that opened the practice of law to the lay man. The mission envisaged the diversion of small matters out of the courts and into neighbourhood Justice Centers and other informal dispute resolution mechanisms.

This presentation is made against the backdrop of the draft Small Claims Rules relating to civil claims.

In this jurisdiction, in which the court serves six (6) constitutional democracies and three (3) dependent states, Small Claims Courts are established in the different States by local statutory instruments. These courts have no inherent jurisdiction and claims disputes properly brought before them and over which they have statutory jurisdiction are subject to monetary and other limits imposed by the enabling statute.

The draft Small Claims Rules now under review create two categories of ad judicable claims; the first being general purely monetary claims not exceeding the statutory limit and the second relating to Hire Purchase Agreements and

actions with respect to relating to possession of land; and again, subject to statutory limits and impositions.

The schematic chart provided herewith is not intended to replace the Rules but outlines, in broad terms, the flow of a typical matter commenced pursuant to the provisions of the Small Claims Act and consistent with the Rules from commencement to disposition. The proposed process would be “forms driven”, but as at the date of this presentation, draft forms have not yet been crafted.

The general function and purpose of the Small Claims Rules is to provide a procedural road map for dealing with claims over which the Court does have jurisdiction. When acting with such jurisdiction the Small Claims Court has the inherent powers (not synonymous with inherent jurisdiction) of any court; including the capacity to control its own process when specific rules are not in place. The current contemplation is that there will be Civil, Criminal and Family related Rules for the matters to be addressed in the Small Claims Court process. Although subject to a maximum monetary limit as to the amount of the judgment that can be awarded in Small Claims Court, these courts have become attractive, and to some degree can be monopolized by merchants dealing primarily in sales of consumer goods on hire purchase plans. Compared with the cost of litigation in the High Court coupled with the vast number of commercial debts at or around the limit of the Small Claims Court maximum monetary limit as set by statute, these courts offer time savings and economic advantages that persuades many Claimants to reduce their claims to fit the requirements of this venue. The advantages of speed, informality and low cost, and the fact that in some jurisdictions a claimant who loses in a Small Claims Court is entitled to a Trial *de nova* in a court of more general jurisdiction with more formal procedures places high demands on their systems.

The draft Small Claims Rules are designated to be simpler than High Court Civil Procedure and frequently, the rules of evidence related to admissibility of evidence are altered and simplified in order to further the objectives of economical and user friendly processes.

One of the guiding principles often emphasized is that in these Courts, individuals ought to be able to conduct their own cases and represent themselves without recourse to a lawyer. In some jurisdictions, corporations must still appear represented by a legal counsel and in others by a director, officer or an authorized representative of such corporation.

By establishing suitable plain language forms, the pleadings in Small Claims Court matters are likewise simplified, and in many jurisdictions, no answer is required of the defendant and default judgment is not available for failing to file

a written response to the claim. This will specifically not be the case in the jurisdictions which adopt the Small Claims Rules as currently drafted. Although silent on a time for filing a defence, Rule 9.1 states the consequence for failing to file a defence within 14 days and provides that default judgment could be entered if the claim is purely for a monetary amount, and that such judgment would be final, subject only to the rules of setting aside. In the event that the claim is for other than a fixed monetary amount, default would still be noted with the provision that a hearing date be set to determine the form and content of the final judgment.

The processes and procedures applicable to Small Claims Court will be as set out in the Small Claims Court Acts and the rules for the different jurisdiction and the forms created to give effect to the process. Expensive court procedures such as interrogatories and depositions are not generally allowed in Small Claims matters, and practically all matters filed in Small Claims Court are set down for trial. The draft Rules contemplate that should the Defendant not show up at a trial and not have requested a postponement, default judgment may be entered in favour of the claimant.

In that civil jury trials are not currently allowed even in High Court civil proceedings, there are no provisions in the draft Rules to accommodate civil jury trials. The Statutes establishing Small Claims Courts usually exclude jury trials and prohibit claims for equitable relief such as injunctions and protective orders. The later will very likely only be granted at Small Claims Court hearings dealing specifically with family matters.

As with other litigation, winning in Small Claims Court does not automatically ensure payment in recompense of any award. As with other litigation, realizing on an award of judgment may be relatively easy in the case of a dispute against an insured party a law abiding party with capacity to pay but could be difficult in case of an un-cooperative, transient or indigent party.

Consistent with the developing practice in general civil litigation, most Small Claims Courts encourage the parties with disputes to seek alternate means of resolving their disputes, even before filing suit. This practice is monitored by a statement on the Claim Form in which the Claimant is required to advise whether or not Alternate Dispute Resolution mechanisms have been attempted. It should be noted that pursuant to the draft rules, the Court retains the option to refer any matter to mediation. Further, the parties can agree on a third party to arbitrate the dispute outside the Court process, and in this regard, some jurisdictions offer classes in Small Claims Courts procedures and alternate dispute resolution opportunities.

Small Claims Courts have evolved in some jurisdictions, so as to operate independently of the Superior Courts and in others; they operate as a branch or division of the Superior Court. In both of these models, matters are heard by Divisional or Lower Court Judges, Deputy Judges and "Hearing Officers". Some jurisdictions contract with lawyers as Small Claims Court Adjudicators, and to so as to not interfere with the usual lawyer/client work day and obligations, these matters are heard at night. This is not only convenient to the lawyers and the parties, but it helps make good use of court room space which would otherwise remain un-occupied while the backlog of matters continues to build.

In British Small Claims practice, an Allocation Questionnaire is employed as a form of discovery. After a claim has been initiated and a defence filed each party is required to complete and return an Allocation Questionnaire within a specified period of time. The information provided assists the Court Administrator in properly allocating the claim to one of the tracks and assists in fixing an early hearing date. The information usually requested in an Allocation Questionnaire is:

- whether the parties wish to have some time month to attempt to settle the dispute;
- the most convenient location or venue for the hearing and reasons for choosing it;
- whether or not pre-action protocol is needed (such as disclosure requirements);
- whether or not expert witnesses will be called;
- whether or not there is reason to fast tract the particular litigation and;
- The time estimate for each party to present its case.

For further information on the allocation questionnaire and the British Tracking System, reference should be made to the Woolf Report of 1999 to the Law Chancellor.

Working through the schematic provided herewith, claims are commenced by, and in general, pleadings are to be consistent with the forms referred to in Rule 5. The filing process and the duties of the Court Registry to ensure that the claim will be heard in a venue convenient to the Defendant is setout in Rule 5 and Rule 7 deals specifically with the Service of Documents. The time for the filing of a defence is set, but section 9 advises of the consequences of not filing a defence

within 14 days of service. These sections also deal with default judgments when fixed sums of money are claimed and the process for further hearing as to the contents of a judgment when the claim is for something other than a fixed sum of money.

Built into the Small Claims Court Rules is the flexibility to transfer matters from Small Claims to High Court if the pre-requisites are set out in section 10 of the draft rules are met. Also, the process remains resolution driven and is assisted by the capacity of the Court to issue procedural orders in order to facilitate such settlements.

The matter finally dealt with pursuant to the rules is the question of costs. As with other Civil litigation, costs follow the event and as provided by the Rules a successful party would normally be entitled to up to 25% of the claim plus a series of expense and inconvenience related costs such as travel and lost earnings for the purpose of attending court and can even be further enhanced at the discretion of the Judge if he finds the conduct of one of the parties to be outrageous.

It is expected that there will be further consultation processes before legislation creating the Small Claims Court is enacted and the Rules will probably be further refined with an emphasis on resolution and specifically opposed to creating a further layer of bureaucracy.