UNDERSTANDING A SMALL CLAIMS COURT TRIAL

LEGAL TERMS

- The person or company who files a *Notice of Claim* in Small Claims Court is called "*the claimant*". The person or company who files a *Reply* responding to the Notice of Claim is called "*the defendant*". Together the claimant and defendant are referred to as "*the parties*" to the lawsuit and the Notice of Claim and Reply are called "*the pleadings*".

PROVING A CLAIM OR A COUNTERCLAIM

- The party making a claim or counterclaim (a claim contained in a Reply) can only be successful if they can prove their claim with evidence on the balance of probabilities. This means they must prove that it is more probable than not that things happened as they believe, and that the law favours their position.

EVIDENCE

- **Relevance** Judges must make their decisions by applying the law to the evidence that has been presented in court during the trial. It is up to you to present the evidence.

The Notice of Claim and Reply are not evidence. They are statements or summaries outlining the substance of the parties' claims or responses. These documents should essentially define the scope of what evidence may be relevant. Relevant evidence will assist in proving one or more of the statements made in the pleadings.

- **Admissibility** Evidence must also be of a type that a judge is permitted to consider by the law of evidence. Not all relevant evidence can be admitted in a trial. It is easiest to explain admissibility with examples of the more common types of evidence.

A. Oral Testimony of Witnesses

This is where a person comes to court, enters the witness stand, swears an oath or affirms to tell the truth, and testifies about what they know about some or all of the issues in the case. Witnesses include parties like claimants and defendants. If you as

a claimant or defendant have direct knowledge of the facts of the case and want to tell the judge what you know you must testify and be a witness. The rules and procedures are the same for all witnesses.

While there can be exceptions, you should assume that the ***only*** way to have your or any other person's knowledge about facts relevant to the case considered by the judge, is to have that person in court to give their testimony. Letters from a person, or affidavits from a person, are not generally admissible. In addition, as a general rule witnesses can only talk about their own personal knowledge, not about what someone else told them; that would be hearsay.

Unless you are certain that an exception applies, you should have your witness in court for the trial. Failure to do that may result in your not being able to have that person's evidence considered as part of your case.

Examples of exceptions can include:

1. where there is a specific agreement between all of the parties;
2. expert reports that have complied with Rule 10 of the ***Small Claims Rules***;
3. estimates that comply with the requirements of Rule 10 of the ***Small Claims Rules***.

(Please note that you can attend at the Court Registry or go on-line to review the ***Small Claims Act*** *and* ***Rules*** *at* http://www.bclaws.ca/.

B. Documents

It is common for a party to a Small Claims case to rely on some form of document such as a photograph, diagram, map, plan, contract, invoice, cheque etc. In order for a document to be entered as evidence (called an "exhibit") at a trial it must be introduced through a witness (including a party). Unless you have made a specific agreement with all of the other parties about what documents are admissible as evidence you cannot simply hand a bundle of documents to the judge at the trial. Without that agreement, each document must be identified by a witness who can explain it to establish its relevance and admissibility.

A letter or affidavit or some other form of statement from a person who has not attended as a witness (unless it is a letter, statement or affidavit of an opposing party) is not admissible, unless it comes within one of the exceptions mentioned above.

Any document should be an original unless there is a good reason why the original is not available or if there is an agreement between the parties that a copy can be used.

Where possible the parties in Small Claims trials are encouraged to discuss documents that they want to have entered as exhibits at the trial **before the trial**. Where there is prior specific agreement between **all** parties such documents may be entered without the necessity of having a witness give evidence about them. For example, the parties may agree that each party will provide the judge with a binder of their documents. However, **do not make assumptions** in this regard. Even with an agreement the judge has the ultimate decision as to admissibility.

C. Real Evidence

There can also be situations where “real evidence” (an object) is introduced as an exhibit. If the item is small enough to be handled in court it can include such things as samples of material or a product that is the subject of the case. If an item cannot be easily or safely handled and stored, consider the use of photographs. All of this type of evidence is subject to the same requirements as documents; a witness must identify and explain the evidence. For a photograph, a witness must be able to say that they took the photo or that it accurately depicts something they saw at a particular time.

Summary

Evidence needs to be both relevant and admissible. For statements of individuals, those people must attend to testify about matters that are relevant to the claim, reply or counterclaim. Where it is possible for the parties to agree on undisputed facts, documents or pieces of real evidence, they are encouraged to do so as it will shorten the trial and reduce the number of witnesses required. If you do not have the specific agreement of the other side, do not assume that there is any substitute for having a witness attend in person and documents or items available to be entered as exhibits.

Court Directions For Preparation For Trial

In all likelihood when you leave a Settlement Conference the judge will give you a list of things to do and information to exchange with the other party. Some of these may relate to expert reports, estimates, or documents mentioned above. You will also likely have been told to prepare "will say" statements of any witnesses and to provide witness lists.

Expert reports have to be served according to Rule 10 of the Small Claims Rules, however the judge may have given you different time lines, in which case what the judge told you governs.

"Will say" statements of witnesses are intended to give each side an opportunity to understand fully what the evidence that the other side is going to introduce is. A "will say" statement should include the name, address and telephone number of a witness. Each side has the right to try to speak to the other side's witnesses. Witnesses in civil cases are not obliged to speak to the opposing party but they may do so if they wish.

The "will say" statement should also set out in chronological order the specific information that that witness is going to give at trial. It should not be limited to identifying the topics that the witness is going to testify about but rather the specifics of what their evidence about each of those topics is going to be.

Trials in Small Claims Court are not intended to be trials by ambush where either side learns for the first time when the witness is on the witness stand what they are going to say.

You will also likely be told that you are required to exchange documents with the other side and provide the Court with copies of those documents. Any documents that are relevant to the issues should be provided. If you do not disclose documents in accordance with the Order of the judge at the Settlement Conference, the trial judge may not allow you to introduce those documents at the trial.

The judge will likely tell you to prepare a chronology of events regarding the issues. This is intended to allow the trial judge to better understand when things happened and how the issues in the case arose. The more detail you provide the better.

You should assume that if you do not comply with the Settlement Conference judge's directions within the time stipulated there will be consequences that will have a negative impact on your case. This can include preventing you from using some of your evidence, delay of the trial, an order that you be responsible for the other party's expenses or even dismissal of your claim or defence.

Small Claims trials are intended to be fair. Parties should not try to keep evidence a secret and "spring" it on other parties at trial. The judge will take the steps they consider necessary to ensure fairness.

Summary

This is by no means a comprehensive review of what can be complicated and technical areas of the law. Each trial judge will do his or her best to ensure that the evidence is introduced effectively and efficiently. The reason why trials operate under these rules is to ensure that they are fair for all concerned and that fair and proper results can be obtained.

You cannot assume that there will be any shortcuts. If you are not prepared to proceed according to these general concepts you may be prevented from presenting all of the evidence that you hoped to introduce at the trial.

If you are concerned about how to proceed it is possible to bring applications for directions in court before the trial date. You must attend at the court registry to complete the appropriate application and serve the other parties with notice of it. It can also be very helpful to get advice from a lawyer about how to present your case. Use the Lawyer Referral Service to get brief legal advice for a small fee. The Court Registry may be able to give you information on other free or low-cost ways to get legal advice in your community.

Conduct of the trial

Small Claims trial judges will have you use the procedure they think best suits your case. The following is a common procedure for trials.

At the start of the trial the judge may ask both parties to make brief opening comments to explain their case. If there are any agreements on what happened (called “admissions of fact”) or exhibits that can be admitted as evidence by agreement, those should be mentioned at the start.

The claimant will then call its witnesses including the claimant him or herself. The claimant should ask its witnesses questions to bring out their relevant and admissible testimony, including showing them documents or real evidence that they can identify. The other party or parties may question (“cross-examine”) each witness.

Cross-examination is the opportunity to challenge the accuracy or completeness of what the opposing party’s witness has said by asking questions. It is not a time for you to make statements, give your evidence, or argue with the witness.

When all of the claimant's witnesses have testified and all documents and exhibits that the claimant wishes to enter as evidence have been dealt with, the defendant decides if it wishes to introduce any evidence. Because the claimant has the burden of proving its case, the defendant is not obliged to present evidence if it does not believe the claimant has met its burden.

If the defendant decides there is evidence that should be rebutted it will call witnesses (which may include the defendant) and the same process that applied to the claimant's witnesses will apply to the defendant's.

Because some parties find the traditional trial process very difficult, some judges will follow more relaxed procedures than these in Small Claims Court. You must follow the directions of your trial judge.

After all of the evidence has been introduced the parties will have an opportunity to make closing remarks to the judge. This is your opportunity to summarize your case, pointing out all of the evidence which you say supports your claim. After listening to the closing submissions and considering the evidence and the law, the judge will give you their decision ("judgment"). This can be done orally or in writing, either at the end of the trial, or after reserving for further consideration.