



Public Legal Education  
and Information Service  
of New Brunswick

# Small Claims Court



*Information for  
Claimants,  
Defendants and  
Third Parties*

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization which provides information about the law to New Brunswickers. It receives funding and in-kind support from the Department of Justice Canada, the New Brunswick Law Foundation and the New Brunswick Department of Justice.

The information contained in this booklet is based on the new Small Claims Act that came into force on January 1, 1999. The booklet was developed and produced in collaboration with the New Brunswick Department of Justice.

The booklet provides general information on small claims actions and does not contain a complete statement of the law in the area. Moreover, laws continue to change. Anyone needing specific legal advice on his or her situation should contact a lawyer.

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# Table of Contents

## **Background Information .....1**

- What is a small claim?
- What if my claim is over \$6,000?
- What are some types of small claims?
- Who is involved in a small claim?

## ***Section 1: What Claimants Should Know .....3***

### **Starting a Small Claim .....3**

- Step 1: Completing the Claim Form
  - Tips on Completing a Claim Form
- Step 2: Filing the Claim
- Step 3: Serving the Claim
- Step 4: Waiting for a Response

### **Withdrawing the Claim .....5**

## ***Section 2: What Defendants Should Know .....6***

### **Responding to a Small Claim .....6**

- Step 1: Considering the Options

### **Defending a Claim .....8**

- Step 1: Completing a Response
- Step 2: Filing a Response

### **Making a Third Party Claim .....9**

- Step 1: Making a Third Party Claim
- Step 2: Filing a Third Party Claim
- Step 3: Serving a Third Party Claim

**Section 3: What Third Parties Should Know ...10**

**Responding to a Third Party Claim .....10**

Step 1: Consider the Options

**Defending a Third Party Claim .....10**

Step 1: Completing the Third Party Response

Step 2: Filing the Third Party Response

**Section 4: What all Parties Should Know .....11**

**Serving Documents .....11**

Step 1: Deciding How to Serve

Step 2: Getting Proof of Service

Step 3: Filing the Affidavit of Service

**Settling the Claim, Counterclaim or  
Third Party Claim Before a Hearing .....12**

**The Hearing .....13**

Tips on preparing for the hearing

What will the hearing be like?

Who can represent the parties?

What happens if one of the parties does not show up  
for the hearing?

How do the parties present evidence?

**The Adjudicator's Decision .....16**

What happens at the end of the hearing?

Can the successful party recover costs?

**Setting Aside a Judgment .....17**

1. If the Defendant did not file a Response within 30 days

2. If a party did not go to the hearing

**Enforcement .....18**

What happens if one party receives a monetary judgment?

**Appeals** .....18  
A. To appeal a ruling of the adjudicator  
B. To appeal the decision of the adjudicator  
C. To appeal the decision of the Court of Queen's Bench

**Getting More Information** .....19

**Court Services Offices** .....20

**List of Forms** .....22

*All forms mentioned in this booklet are available from the Clerk of Small Claims Court, in the Court Services Office, upon request.*

# Background Information

## What is a small claim?

It is a claim made through the court for money or personal property you believe someone owes you. A small claim can be for **debt, damage,** or **personal property** valued **up to \$6,000**. You can claim interest as long as the interest *and* the claim is not more than \$6,000.

## What if my claim is over \$6,000?

If you wish to sue for debt or damage over \$6,000 or higher valued personal property, you can start a civil action through the Court of Queen's Bench. You can only use small claims court for a higher amounts if you decide to give up the amount over the \$6,000 limit. You must state on your claim form the amount you are giving up (abandoning). Talk to a lawyer before deciding what to do.

**If you give up the amount over \$6,000 to file your claim, you cannot ask for the rest of it at another time. For example, you can't split the amount into two or more claims.**

## What are some types of small claims?

Here are some common small claims.

- Claims against a business that won't exchange or repair damaged goods you bought;
- Claims against someone who gave you a cheque that "bounced";
- Claims against someone who owes you money;
- Claims for money owing for a service you performed;
- Claims for damages (property or personal injury) caused by a car accident;
- Claims against someone for money for goods you bought but didn't get;
- Claims against someone who has bought goods, but not paid the invoice;
- Claims against someone who has property belonging to you.

**Note:** The Small Claims Court does not have authority to handle some claims such as title to land, probate matters, or libel and slander suits.

### Who is involved in a small claim?

Those involved in a small claim are called the *parties*. They include some or all of the following:

- **Claimant** (the person making the claim). Usually, any adult or business can make a claim.
- **Litigation Guardian** (an adult who has the court's permission to make or defend a claim on behalf of a person under 19 years).
- **Defendant(s)** (the person or business against whom a claim is made).
- **Third Parties** (people or businesses the Defendant claims are responsible for all or part of the Claim).

The person who wishes to be the **Litigation Guardian** for a Claimant or Defendant, must complete a consent form (Form 21) and file it with the court. A litigation guardian could also represent someone who is disabled and cannot represent themselves, for example someone who is mentally incompetent.

# Section 1: What Claimants Should Know

## Starting a Small Claim

### STEP 1: COMPLETING THE CLAIM FORM

The first step in starting a small claim is completing a *Claim* (Form 1). You can get the form from the Court Services Office. They have offices in each of the eight Judicial Districts. The back of this booklet lists the addresses and telephone numbers of these offices.

### Tips on Completing a Claim Form

- follow the directions on the Claim form;
- type or clearly print the information;
- put your full legal name, telephone number and complete mailing address;
- include the name of the Defendant(s). Be sure to spell each Defendant's full name correctly and include a middle name or initial if possible;
- if you are suing an incorporated company, check the full legal name with Corporate Affairs Branch, New Brunswick Department of Justice, P.O. Box 6000, Fredericton, N.B. E3B 5H1, (506) 453-2703;
- if you are suing more than one Defendant, include information on all of them;
- if you are not sure who to name as the Defendant(s) in your claim, you should seek a lawyer's advice;
- fill in the address where the Defendant(s) lives;
- give the Defendant(s)'s mailing address (if different from the one above)
- state how much money or the value of the property you are claiming against the Defendant(s). State the amount over \$6,000 you are giving up (if any). Include in your claim any expenses you may be responsible for, but think you could get back. For example, you may be able to recover expenses if you win your claim to repay Medicare, to cover the income you lost because of injuries or to rent a car while your car was being fixed.
- prepare a short explanation (particulars) of your small claim;
- ***let Court Services know if your address changes after you file your claim.***



## STEP 2: FILING THE CLAIM

To file your small claim, take or send the completed original Claim form and copies to the **Court Services Office** in the Judicial District where the Defendant(s) lives or where the incident happened. If you are not sure of the Judicial District of the Defendant, check with Court Services. Include enough copies for each Claimant and Defendant. When making copies for other parties, you must copy each page in its English and French side-by-side format. This will produce an 8 1/2 x 14" copy of each page. If the Claim is for \$3,000 or less, you must include a filing fee of \$50.00. If the Claim is over \$3,000, the fee is \$100.00. You can pay the fee by certified cheque or money order (payable to the Minister of Finance). You can pay in cash if you file in person at Court Services.

When the Clerk receives the Claim, he or she will mark down a small claim number and date the form. **You have filed your claim.** The Clerk will keep the original and return your stamped copy, along with enough stamped copies and **Response** forms (Form 2) for each Defendant. If you send your Claim and sufficient copies by mail, include a self-addressed envelope so the Clerk of the Small Claims Court can return these documents to you.

**NOTE:** The Clerk of the Small Claims Court will **mark a number on your Claim form.** Refer to this number when you call or write Court Services for information about your claim.

## STEP 3: SERVING THE CLAIM

The Claimant in a small claims action must serve each Defendant named in the Claim with a stamped **copy of the Claim** and a **Response** form (Form 2). These are documents that the Clerk returned and provided to the Claimant when the Claim was filed. Service means giving the Defendants copies of these documents. The Claimant must **serve** the Claim **within one year of filing it.** See page 11 for information on service or ask Court Services for the Fact Sheet on Serving Documents.

## STEP 4: WAITING FOR A RESPONSE

After service, the Claimant must wait for a response. The Defendant(s) has **30 days to respond** to the Claim. During that time, the following could happen:

- **The parties agree to a settlement:** See page 12.
- **The Defendant(s) admits the Claim:** If the Defendant admits the Claim and pays the Claimant, the Claimant should file a Withdrawal (Form 5) with the court. If the Defendant does not pay, the Claimant can fill out a **Request for Judgment** (Form 6) and ask for and get a **Default Judgment** (Form 7).
- **The Defendant(s) admits the Claim and requests a payment hearing.** If the Claimant agrees to a payment hearing, the Clerk will let all parties know the time, date and location of the hearing.
- **The Defendant(s) files a Response denying the Claim:** If the Defendant files a Response denying all or part of the claim, the Clerk's Office will send a copy to the Claimant, schedule a hearing and notify all parties. **Note: The parties can come to a settlement any time before the hearing.**

If the Defendant(s) does not file a Response in 30 days, the Claimant can then ask for a judgment on the Claim by filling out Form 6 **Request for Judgment**. The Clerk will require that you provide proof of service of the Claim before entering a **Default Judgment** (Form 7).

## Withdrawing the Claim

The Claimant can withdraw a Claim by filling out a **Withdrawal** (Form 5). For example, the Claimant may decide to withdraw the Claim if the parties settle the dispute. The Claimant may withdraw the Claim at any time if there is no Response. However, if the Defendant has responded, the Claimant can only withdraw the Claim with the written agreement of all the parties.

## Section 2: What Defendants Should Know

### Responding to a Small Claim

#### STEP 1: CONSIDER THE OPTIONS

When a Defendant is served with a Claim, he or she should read it carefully to decide how to respond. Denying the Claim and filing a Response is just one of several options. Here is an overview of possible options. Only some of them involve completing and filing a Response.

##### ***Admit the Claim***

The Defendant can admit and pay the Claim directly to the Claimant. A defendant who pays a Claim should ask the Claimant to **file a Withdrawal** (Form 5) with the court. Be sure to get a signed receipt from the Claimant stating you paid the debt. The receipt should state how much you paid, when you paid it, and for what debt.

##### ***Admit all of the Claim and request a payment hearing***

A Defendant who admits the Claim, but can't pay it, can complete a Response form and request a payment hearing. You must file the Response with Court Services; but there is no fee. If the Claimant agrees to a payment hearing, the Clerk will let all the parties know the time, date and location of the payment hearing (Form 9). The purpose of the hearing is to set a payment schedule acceptable to both parties. The Clerk will contact the Claimant with the Defendant's request. The Defendant should bring any documents to the hearing that relate to his or her ability to pay, including the previous year's income tax return and a statement of present earnings.

If the parties reach an agreement during this hearing, they can file a **Payment Agreement** (Form 10)

***Check Your Insurance!***  
Check with your insurance company to see if you have insurance to cover the Claim. A Defendant's insurer may want to have a copy of the Claim. Sometimes an insurer will take over the case on the Defendant's behalf. The insurer, or their lawyer, will decide whether to pay the small claim or to dispute it.

with the Clerk. A defendant who pays the Claim according to the agreement, can avoid a **Judgment** against him or her. However, if the defendant does not make payments according to the agreement, the Clerk may still enter a **Default Judgment** (Form 7) for the amount of the claim not paid.

### **Admit some of the Claim**

A defendant can dispute some of the Claim, by completing the Response form and stating where he or she agrees and disagrees with the Claim and why. The defendant must file the Response with Court Services along with the **\$25.00 filing fee** within 30 days of receiving it. The fee may be paid by money order or certified cheque (payable to the Minister of Finance). Cash is only accepted if the Response is filed at Court Services in person.

The Claimant may settle for the amount the Defendant admits. If the parties make an agreement, they may sign a **Settlement Agreement** (Form 13) and file it with the Clerk. The Clerk records the settlement.

### **Deny the Claim**

A Defendant can deny the Claim. To deny the Claim the Defendant sets out reasons on the Response form and files it with the court along with a \$25.00 fee. See below - **Defending a Claim** for greater detail on how to defend a Claim.

### **Deny the Claim and make a Counterclaim**

If a Defendant not only denies the Claim but feels the Claimant owes him or her money, the Defendant can file a claim. This is called a Counterclaim. A **Counterclaim** may be for an amount of money or property valued at **up to \$6,000**. If the amount you wish to claim is greater, you would have to give up the amount over \$6,000 to have the Counterclaim heard in small claims court.

#### **Amounts over \$6,000**

The Defendant can apply for a transfer to the Court of Queen's Bench (Form 22) if claiming more than \$6,000. Discuss this option with a lawyer.

To **file a Counterclaim**, the Defendant must write down the details of his or her Counterclaim in **Section B** of the **Response** form. Remember, the Defendant must file the Response **within 30 days** of

receiving the Claim. If the amount of the Counterclaim is **\$3,000 or less**, the filing **fee is \$50.00**. If the amount is **more than \$3,000**, the filing **fee is \$100**. This is the maximum charge for filing a Response and Counterclaim. Make the cheque or money order payable to the Minister of Finance. You may pay cash if you file in person. The Defendant does not have to serve the Counterclaim. Once the Response is filed, Court Services will send the Claimant a copy of the Response which includes the Counterclaim.

## Defending the Claim

If a Defendant denies responsibility for the Claim, he or she can defend the Claim by following these steps.

### STEP 1: COMPLETING A RESPONSE

To defend a Claim, a Defendant must fill out the **Response** (Form 2) which was served with the Claim. This form provides a space for the Defendant to explain what happened and why he or she is not responsible for the Claim.

### STEP 2: FILING A RESPONSE

To file a Response, a Defendant must take or send the completed **Response Form** to the Court Services Office in the Judicial District the Claimant filed the Claim. This is noted at the top of the Claim. The Defendant should file the response form **within 30 days of receiving it**. When filing the Response, the Defendant must attach **copies of the Response for each Claimant** and include a **\$25.00 fee**. When making copies for other parties, you must copy each page in its English and French side-by-side format. This will produce an 8 1/2 x 14" copy of each page. You may pay the fee by certified cheque or money order (payable to the Minister of Finance). You can use cash if you file the Response at Court Services in person.

**NOTE:** The Defendant does **not** have to serve the Response on the Claimant. The Clerk will send the Claimant a stamped copy. Unless the Defendant settles with the Claimant before the hearing, the Clerk will set a date, time, and place for the hearing. The Clerk will notify all of the parties. If a Defendant does not file a Response within **30 days of receiving it**, the Claimant can ask the Clerk to enter a judgment against the Defendant.

## Making a Third Party Claim

If a Defendant thinks someone else is responsible for all or part of the Claim, he or she can name that third party in the Claim by taking the following steps.

### STEP 1: COMPLETING A THIRD PARTY CLAIM

The Defendant must get a *Third Party Claim* (Form 3) from the Clerk at the Court Services Office. Fill in this form and set out your reasons for making a Claim against the Third Party.

★ **Example of a Third Party Claim.** Someone is suing you because you hit their car and caused damage. The accident happened because someone else hit you. You think that the person who hit you should have to pay for the damages to the Claimant's car. You can make a Third Party Claim against that person.

### STEP 2: FILING A THIRD PARTY CLAIM

The Defendant must file a Third Party Claim with the Clerk at Court Services within **30 days** of receiving the original Claim, along with a **\$50.00 fee**. Include enough copies for each Third Party. When making the copies, you must copy each page in its English and French side-by-side format. This will produce an 8 1/2 x 14" copy of each page. The fee may be paid by money order or certified cheque (payable to the Minister of Finance). Cash is only accepted if the Response is filed at Court Services in person. The Clerk will return enough stamped copies for you to serve on each of the Third Parties along with blank Third Party Response forms.

### STEP 3: SERVING A THIRD PARTY CLAIM

Once the Defendant files the Third Party Claim, he or she has only **15 days to serve** the Third Party with

- a copy of the original Claim,
- a copy of the Response,
- a copy of the Third Party Claim and
- blank copies of the *Third Party Response* (Form 4).

**Note:** The Defendant does **not** serve the original Claimant with the Third Party Claim. The Clerk will send a copy to the Claimant. Remember, a Defendant can settle the Third Party Claim any time before the hearing. However, if a settlement is not reached, an adjudicator will decide the Counterclaim (if there is one) and the Third Party Claim at the hearing. The adjudicator will also decide the original Claim at the same hearing.

## *Section 3: What Third Parties Should Know*

### Responding to a Third Party Claim

#### STEP 1: CONSIDER YOUR OPTIONS

You may decide to

- settle before the hearing,
- dispute the original Claim against the Defendant,
- defend the Third Party Claim.

### Defending a Third Party Claim

#### STEP 1: COMPLETING THE THIRD PARTY RESPONSE

A Third Party who wishes to defend the Claim against him or her, or dispute the Claimant's original Claim against the Defendant, must complete the **Third Party Response** (Form 4) stating what happened and why they are not responsible for the amount being claimed.

#### STEP 2: FILING THE THIRD PARTY RESPONSE

The Third Party must **file** the completed Third Party Response form with the court, along with a filing fee of **\$25.00**. The fee may be paid by money order or certified cheque (payable to the Minister of Finance). Cash is only accepted if the Third Party Response is filed at Court Services in person. The Third Party must file the Response within **30 days** of receiving it.

**Note:** The Third Party does not have to serve this document on the other parties. However, he or she must include enough copies for each party. When making these copies, you must copy each page in its English and French side-by-side format. This will produce an 8 1/2 x 14" copy of each page. The Clerk will send the Defendant(s) and the Claimant(s) a stamped copy of the Third Party Response. Remember, a Third Party may settle a Third Party Claim at any time before the hearing. If a settlement is not reached, an adjudicator will decide the Third Party Claim at the hearing. The adjudicator will also decide the original Claim at the same hearing.

## Section 4: What all the Parties Should Know

### Serving Documents

#### STEP 1: DECIDING HOW TO SERVE

Sometimes a person involved in a small claims case must serve documents on another party. To do this, the person can hire someone to serve the documents. Look under "process servers" in the yellow pages.

Alternatively, the person can ask a friend to do it. If the person wishes, he or she may serve the documents him/herself. Serving the person means giving them the documents. This must be done personally or by registered or certified mail or courier. You will need *proof of service* to show the Clerk you served the other party. The other party could be, for example, the Defendant(s), Third Parties or Witnesses.

#### STEP 2: GETTING PROOF OF SERVICE

To prove service, the server must swear and sign an **Affidavit of Service** (Form 20) in front of a *Commissioner of Oaths*. The Commissioner of Oaths is someone who has the power to witness a sworn statement. The affidavit states that the server gave the documents to the Defendant. After the server has signed it, the Commissioner of Oaths will then sign and date the form. All lawyers are Commissioners of Oaths. A number of other people may also be Commissioners of Oaths.

You may find a  
**Commissioner of Oaths** at:

- your workplace
- Court Services
- lawyer's office
- Service NB Centres or Revenue Offices

To get a list for your area, call **Consumer Affairs** at 506-453-2682.

If the server used registered/certified mail or courier, the party being served **MUST** sign the receipt card. Be sure to attach the **signed receipt or acknowledgement card** to the affidavit. Remember, if you cannot prove service on a party, then you will not be able to get a judgment. If you cannot prove service of a Summons on a witness and the witness does not show up, the adjudicator may continue the hearing without your witness.



When you use the Registered Mail service at Canada Post, they provide confirmation that Canada Post received the item for mailing and that the item arrived at its destination. You can find the name of the person who signed for the package and the date of delivery by calling 1-888-550-6333, though some restrictions may apply. Canada Post can fax the signature to you or you can view the signature online at:


<https://obc.canadapost.ca/emo/basicPin.do?language=en>. It is also possible to get a hard copy of the signature from Canada Post, if it becomes necessary, for a fee.

### STEP 3: FILING THE AFFIDAVIT OF SERVICE

A party who has served documents on other parties must return copies of the Affidavit of Service to the Clerk of the Small Claims Court. The Clerk will put this form in the file for the case to prove that the other parties involved in the case have been informed.

## Settling a Claim, Counterclaim or Third Party Claim Before a Hearing

Many small claims, counterclaims and third party claims are settled before a hearing. Parties to a dispute *can and should try to settle* before the hearing. This can happen any time before a hearing begins.

 **Remember:** Write down any agreement made. Be sure to date the agreement and have each party sign it.

### Some Advantages to Settling

- both parties can avoid the time and money spent on a hearing.
- the **agreement to settle** is binding on both parties.
- the parties can file the agreement with the Clerk.
- if the Defendant admits to part of the Claim, the parties may agree on this amount as payment for the whole Claim.
- the parties can negotiate a payment schedule that is agreeable to all.
- a judgment will not be entered against the Defendant.

Mediation may also be a way to settle the Claim. Look in the yellow pages for a list of private mediators. A mediator is a person whose job it is to help people settle disputes.

## The Hearing

Where the parties have been unable to reach a settlement and the Defendant has filed a Response denying the Claim, the Clerk will set a date, time, and place for the hearing. The case will be decided by an *adjudicator*. The Clerk will notify all the parties (Form 11). Unless a party to the Claim has a very good reason, it is important to attend the hearing.

### What will the hearing be like?

The small claims hearing is informal, but similar to a court proceeding. The judge is called an adjudicator. The adjudicator's powers include swearing in evidence, asking witnesses questions, hearing and receiving evidence, awarding costs, and deciding disputes.

The adjudicator will first ask the parties if they tried to settle the claim. The adjudicator may give the parties more time to reach an agreement. If the parties reach a settlement at this point the adjudicator can help them prepare a written agreement. The parties must file the agreement with the Clerk. If an agreement is reached, the case ends without a hearing and there is no judgment filed even though the agreement is binding.

### Who can represent the parties?

At the hearing the parties can present their own case. If they want they can have a lawyer or an articled student at law represent them. With the adjudicator's permission, an unpaid agent (such as a friend or relative) can represent a party. An officer, partner or employee may represent a corporation or a partnership.

## Tips on Preparing for the Hearing

It is important to prepare for the hearing whether you are the Claimant, Defendant or a Third Party.

- ✓ ***Gather all documents*** concerning your case. These could include receipts, contracts, estimates of damages, photographs, cancelled cheques, and I.O.U.s.
- ✓ ***Organize your thoughts*** by jotting down what happened and when it happened. This will help you present your side of the story clearly at the hearing.
- ✓ ***Consider using witnesses.*** Witnesses may help prove a party's case. A witness is anyone with first hand knowledge or information about the case. Any party can have witnesses.
- ✓ ***Contact any witnesses*** you want to give evidence to support your case. It is your responsibility to let your witness know the time and place of the hearing in advance. Tell them if you want them to bring anything to the hearing with them.
- ✓ ***Summon witnesses who may not show up.*** If you are worried a witness will not show up for the hearing, you can summon them. A ***Summons to Witness*** (Form 12) requires a witness come to the hearing. The Summons will tell the witness when and where to appear and what, if anything, they need to bring with them. Fill out this form and serve it on the witness. (See **Serving Documents** on page 8 for a reminder on how to serve someone).
- ✓ ***Pay attendance fees.*** The person calling the witness must pay attendance money to each witness they summon at the time the Summons is served. The amount is \$35.00 for each day or \$18.00 for a half day. You also have to pay for any travel costs, 20¢ per kilometre to and from the hearing, and \$30.00 for overnight accommodations (if necessary).

## What happens if one of the parties does not show up for the hearing?

If any party does not show up for the hearing:

- the adjudicator may hear and decide the case without hearing that party's side of the story.
- a Claimant may have his or her case dismissed, lose the case, or have a judgment against him or her on a Counterclaim.
- a Defendant may have a judgment made against him or her, lose the Counterclaim or Third Party Claim, or have the Counterclaim or Third Party Claim dismissed.
- a Third Party may have a judgment made against him or her.
- the adjudicator could adjourn the hearing and set another date to hear the case.

If the adjudicator sets another date for the hearing, any party that does not show up will have his or her claim(s) dismissed. The adjudicator would then hear the claims of the parties in attendance.

## How do the parties present evidence?

At the hearing, the adjudicator will hear evidence from the Claimant(s), Defendant(s), and Third Parties. The evidence is usually given in person, under oath. Evidence might include witnesses or any documentation, photographs, receipts, contracts, estimates of damages, cancelled cheques, and I.O.U.s, that are relevant to the case.

If a witness cannot come to the hearing the adjudicator may allow the evidence in a sworn written statement.

**Note:** The adjudicator may allow any party to change their Claims at the hearing. This could include a change to the Claim, Response, Counterclaim, Third Party Claim or Third Party Response.

### **Claimant(s) presents case first...**

Each party has a turn presenting their evidence and witnesses. First the Claimant presents his or her evidence. Afterwards, the Defendant(s) can ask questions of each witness if they want. Next a Third Party who is disputing the original Claim can ask questions.

### **Defendant(s) presents case next...**

Once the Claimant finishes presenting evidence, the Defendant can present his or her case. Afterwards, the other parties have a chance to ask questions. Finally, the Third Party (if there is one) can present evidence and the Defendant and Claimant can ask questions.

### **Counterclaim heard after Claim...**

After hearing the evidence in the Claim, the adjudicator will hear the Counterclaim (if there is one). In this case, the Defendant in the original Claim presents evidence first and then the Claimant can ask questions. The Claimant then presents and the Defendant can ask questions.

## **The Adjudicator's Decision**

### **What happens at the end of the hearing?**

When all parties finish presenting their evidence, the adjudicator will decide the case. The adjudicator must give a decision as soon as possible after the hearing. The decision and reasons must be in writing. The adjudicator may inform the parties of the decision at the end of the hearing. The adjudicator will file the written decision with the Clerk. The Clerk will send copies of the decision to all parties. The decision is effective on the date the adjudicator files the written decision with the Clerk.

### **Can the successful party recover costs?**

The successful party may recover costs from the other party. These costs include filing fees, service fees, attendance fees paid to witnesses, fees resulting from the adjudicator setting aside a default judgment, and a fee for a transcript (if there is an appeal). The adjudicator can award costs (up to \$500.00) against a party who unreasonably brings or defends a claim. The adjudicator will automatically award **after judgment interest** that begins the day after he or she files the judgment. The rate of interest is set as 7% per year.

## Setting Aside a Judgment

There are some cases where a party can apply to the court to set aside a judgment. In such cases, there must be a good reason to do so. The following are cases where a party may ask to have a judgment set aside.

### 1. If a Defendant did not file a Response within 30 days

If the Defendant had good reasons for not filing a Response, he or she can apply to have the judgment set aside. To do this, the Defendant must fill out two forms. First, he or she must complete the *Application for Order by Small Claims Court* (Form 23) which tells the Court what kind of order is being requested.

As well, the Defendant must complete an *Affidavit to Set Aside Default or Interim Judgment* (Form 8). On this form, the Defendant is required to state the date that he or she received the Claim (if they got it) and the date he or she found out about the judgment. The Defendant must also explain the reasons why he or she did not defend the Claim within the 30 day time limit. The form also asks the Defendant to set out the basis for defending the Claim. This form must be witnessed by a Commissioner of Oaths.

Both these forms must be filed with the Clerk. The Defendant must serve copies of Form 23 on the other parties and provide the court with proof of service. (See section on Service) If the adjudicator accepts the reasons and believes the Defendant may have a defense, the adjudicator can set aside the judgment.

### 2. If a party did not go to the hearing

A party may have good reasons for not going to the hearing. To apply to have a judgment set aside in this case, a party must fill out the *Application for Order by Small Claims Court* (Form 23) and the *Affidavit to Set Aside a Judgment After a Hearing* (Form 15).

As explained above, Form 23 tells the Court the kind of order the person is applying for. Form 15 is an affidavit in which the party must explain why he or she did not go to the hearing. Both these forms must be filed with the court. An adjudicator will schedule a hearing to decide if the reasons are good enough to have the judgment set aside. The person applying to have the judgment set aside must **serve notice** of the application (Form 23) to all parties **at least 10 days before the hearing**.

At the hearing, the adjudicator can set aside the judgment if satisfied with the reasons of the applicant. The adjudicator can then order a new hearing and restore any dismissed claims. If a new hearing is ordered, the adjudicator would file the order with the Clerk who would schedule a new hearing. The Clerk would tell the parties of the date, time and place of this hearing.

## Enforcement

### What happens if one party receives a monetary judgment?

If a party gets a monetary judgment, he or she is now called the **judgment creditor**. The court will send the judgment creditor a copy of the formal judgment (Form 14). The judgment creditor is responsible for collecting the amount of the judgment. Often the unsuccessful party (now called the **judgment debtor**) will voluntarily pay the amount owing.

For more information on collecting a judgment, please see the pamphlet called **Judgment Enforcement**, available from Court Services and Public Legal Education and Information Service of New Brunswick.

In other cases, the judgment creditor must use further legal methods to collect the judgment. For example, he or she might register the judgment with the Personal Property Registry System or request an **Order for Seizure and Sale**. There are fees for these services.

## Appeals

### A. To appeal a ruling of the adjudicator

An adjudicator may rule on an application made by one of the parties, such as an extension of time or setting aside a default judgment. If a party wants to appeal a ruling of the adjudicator, he or she can appeal by application to the Court of Queen's Bench. To do this complete Form 17 (**Notice of Appeal by Application**). On this form you must state what ruling you are appealing and the reasons. There is a **\$75.00 filing fee** for this appeal.

## B. To appeal the decision of the adjudicator

To appeal the decision of the adjudicator, you must apply to the Court of Queen's Bench. Fill out Form 16 (*Request for Appeal by trial de novo*) and file it with the Clerk within 30 days of the adjudicator's decision. There is a **\$75.00 fee for this appeal**. Make the cheque or money order payable to the Minister of Finance. You may pay cash if you file in person. The Clerk of the Court of Queen's Bench will get any documents needed, set a date for the appeal and tell the parties the date, time and place of the hearing. At the hearing a judge of the Court of Queen's Bench will listen to all the evidence and make a decision. If appropriate, the Clerk will enter a judgment.

An appeal of the adjudicator's decision is by **trial de novo**. This means a new trial. The parties will present all documents and witnesses to a judge of the Court of Queen's Bench.

## C. To appeal the decision of the Court of Queen's Bench

A party may appeal a decision of the Court of Queen's Bench to the Court of Appeal. *A party must base this appeal on an error of law and have the court's permission to appeal.* An appeal to the Court of Appeal is complicated and expensive. Talk to a lawyer to make sure there is reason to appeal. Ask Court Services for the Fact Sheet: Appealing a Decision of the Court of Queen's Bench, if you need more information on this subject.

## Getting More Information

If you require more information about small claims, contact the Court Services Office nearest you. You can find the full details of small claim procedures in the *Small Claims Act* which is available free online at [www.gnb-ca/0062/acts/acts-e.asp](http://www.gnb-ca/0062/acts/acts-e.asp). Or you can get a copy of this for \$4.00 (plus 7% GST) from the Queen's Printer, Department of Justice (Room 117 Centennial Building, P.O. Box 6000, Fredericton, N.B. E3B 5H1). Make cheques payable to the Minister of Finance. Prices are subject to change without prior notice.



## Court Services Offices

### **Court of Queen's Bench of New Brunswick (QBNB)**

Judicial District of Saint John  
(Counties of Saint John, Kings & Charlotte)  
Court Services Office (QBNB)  
P. O . Box 5001  
110 Charlotte Street  
Provincial Building  
Saint John, N.B. • E2L 2J4  
(658-2560)

Judicial District of Woodstock  
(Counties of Carleton & Victoria)  
Court Services Office (QBNB)  
P. O. Box 5001  
689 Main Street  
Woodstock, N.B. • E7M 5C6  
(325-4414)

Judicial District of Moncton  
(Counties of Westmorland, Kent & Albert)  
Court Services Office (QBNB)  
P. O. Box 5001,  
770 Main Street, 2nd Floor, Room 207  
Assumption Place  
Moncton, N.B. • E1C 8R3  
(856-3058)

Judicial District of Bathurst  
(County of Gloucester)  
Court Services Office (QBNB)  
P. O. Box 5001  
254 St. Patrick Street  
Old Court House  
Bathurst, N.B. • E2A 3Z9  
(547-2150)

Judicial District of Campbellton  
(County of Restigouche)  
Court Services Office (QBNB)  
P. O. Box 5001  
157 Water Street  
City Centre Building, Suite 202  
Campbellton, N.B. • E3N 3H5  
(789-2364)

Judicial District of Miramichi  
(County of Northumberland)  
Court Services Office (QBNB)  
673 King George Highway  
Miramichi Law Courts  
Miramichi, N.B. • E1V 1N6  
(627-4023)

Judicial District of Edmundston  
(County of Madawaska)  
Court Services Office (QBNB)  
121 Church Street  
Carrefour Assumption  
Edmundston, N.B. • E3V 1J9  
(735-2029)

Judicial District of Fredericton  
(Counties of York, Sunbury & Queens)  
Court Services Office (QBNB)  
P. O. Box 6000  
423 Queen Street  
Room 203, Justice Building  
Fredericton, N.B. • E3B 5H1  
(453-2015)

## List of Forms

- Form 1**     *Claim* (to make your claim)
- Form 2**     *Response* (to defend or admit the claim)
- Form 3**     *Third Party Claim* (to include a party the Defendant feels is responsible for the claim)
- Form 4**     *Third Party Response* (to defend or admit the third party claim)
- Form 5**     *Withdrawal* (to end your claim at any time, including after a settlement)
- Form 6**     *Request for Judgment* (to proceed with claim if no Response or if claim admitted)
- Form 7**     *Default Judgment* (to record a judgment when no response or claim is admitted)
- Form 8**     *Affidavit to Set Aside a Default or Interim Judgment* (to get a judgment set aside when you don't file a Response)
- Form 9**     *Notice of Payment Hearing* (to tell you when the payment hearing is)
- Form 10**    *Payment Agreement* (to write down the agreement made at a payment hearing)
- Form 11**    *Notice of Hearing* (to tell you when and where the hearing is)
- Form 12**    *Summons to Witness* (to require a person to attend a hearing as a witness)
- Form 13**    *Settlement Agreement* (to write down any agreement the parties make)
- Form 14**    *Judgment* (to record the adjudicator's decision when the Claimant wins)
- Form 15**    *Affidavit to Set Aside a Judgment After a Hearing* (to get a judgment set aside when you don't attend a hearing)
- Form 16**    *Request for Appeal by Trial de novo* (to appeal a decision of the adjudicator)

- Form 17** *Notice of Appeal by Application* (to appeal anything other than a decision)
- Form 18** *Request for Leave to Appeal* (to ask for permission to appeal to Court of Appeal)
- Form 19** *Notice of Appeal* (to tell the parties there is an appeal to the Court of Appeal)
- Form 20** *Affidavit of Service* (to prove you served documents to parties or witnesses)
- Form 21** *Consent to Act as a Litigation Guardian* (to apply to make or defend a claim on behalf of someone under 19 or disabled)
- Form 22** *Application to Transfer Small Claim to the Court of Queen's Bench* (to move your case to the Court of Queen's Bench so you can claim a higher amount or for other stated reasons)
- Form 23** *Application for Order by Small Claims Court* (to apply for an order of the court)
- Form 24** *Warrant to Apprehend* (to request the police to bring a witness to the hearing)