

A WALK THROUGH YUKON'S SMALL CLAIMS COURT

Booklet#2: How to Start a Small Claim

PRODUCED BY:

YUKON DEPARTMENT OF JUSTICE

How do I start the Small Claims process?

You can go to the Court Registry in Whitehorse, Watson Lake or Dawson City and ask for a Claims form (Form #1) to start the Small Claims process. If you are unable to go to a Court Registry in person, you may phone or write to one of the following registries to ask for the form:

Small Claims Court

Court Services J-3
P.O. Box 2703 Whitehorse, Yukon Y1A 2C6
667-5441 (local) 1-800-661-0408 (toll free)
(ground floor of the Law Courts, 2134 Second Avenue)

Court Registry

General Delivery
Dawson City, Yukon
Y0B 1G0
993-5070
(in Museum building)

Court Registry

P.O. Box 192
Watson Lake, Yukon
Y0A 1C0
536-7551
(204 Robert Campbell Highway
next to Watson Lake Secondary School)

What information do I need to fill out a claim?

As the **plaintiff** (the person who is suing), you must print or type the details of your claim on the form. Your claim must include your name and address, the name and address of the **defendant** (the person you are suing), the amount of your claim, the type of claim, the reasons for your claim and the details of your claim. You should provide the date, place and any other information that relates to your claim as briefly as possible.

Can I claim interest on a debt?

If you are claiming interest on the amount you are owed, be sure to write this on the form, and to give the date when interest was to start. If the defendant agreed to pay you a set rate of interest, you can claim that rate of interest.

How do I name the defendant?

You must properly name the defendant. If a judgement is in your favour, you can only collect money from the party named as the defendant in the case. If the defendant is an **individual**, be sure to include the person's full name, and make sure that the name is spelled correctly. If the defendant is an incorporated company, you must give the full legal name of the company. You can check for the correct company name at the Corporate Affairs office on the third floor of the Andrew Phillipsen Law Centre in Whitehorse (in the same building as the Law Courts), or by contacting:

Corporate Affairs
Department of Justice
Government of Yukon
P.O. Box 2703
Whitehorse, Yukon Y1A 2C6
667-5442
toll free 1-800-661-0408

The corporate records will show a “registered office” (usually the address of a law firm). You should show this address on your claim and use it to serve documents on a corporation.

The defendant could also be unincorporated business such as a sole proprietorship (a person operating under a business name) or a partnership (two or more people operating a business). You can make a claim against a sole proprietorship by naming the business name as the defendant, or by suing both the owner and the business as a partnership. Who you decide to sue will depend on what you think your chances will be to collect from either the business or the individual.

If you sue a partnership and want to enforce a judgement against the partners, you will have to serve each partner with a copy of a Notice to Alleged Partner (Form #3). You can obtain this form from the clerk. The clerk cannot provide advice as to who you should sue. Contact a lawyer or the Law Line if you have any questions about suing.

You can get information about partnerships from Corporate Affairs or from the municipal office where the partnership’s business license was issued. You can also ask for the names and addresses of the partners by writing to the partnership. The members of the partnership are required by law to give you that information.

What should I do after I complete the claim form?

Before you take your claim to be filed in court, you must make copies of your claim and of any supporting documents (such as invoices, receipts, etc.). Bring all the copies with you when you file your claim so that the clerk can stamp them to show when the original was filed in court.

If you sue one defendant, make enough copies to give the clerk four sets of the claim form and supporting documents (the original plus three copies). The clerk will keep the form and a copy of the supporting documents when the claim has been filed. All the other copies will be returned to you. You may have to provide the original documents to the judge as evidence for your court case, so keep them in a safe place.

If you sue more than one defendant, bring two extra copies of the claim form and of the supporting documents for each additional defendant.

If you sue a partnership, give the clerk two copies of the claim form and of the supporting documents for each additional defendant.

If you sue a partnership, give the clerk two copies of the completed Form #1 and Form #3 and of the supporting documents for the business and for each of the partners you want to sue. You will also have to give the clerk the original and your copy.

You must serve one copy of the claim form and supporting documents on each defendant. File the other copy with the court with an Affidavit of Certificate of Service once service is completed.

How much does it cost to file a claim?

Fees for filing a claim vary with the amount of the claim. The cost for filing a claim of \$3000 or less is \$50; the fee for claims between \$3000.01 and \$5000 is \$100. Payment may be made by cheque or money order (payable to the Territorial Treasurer), cash, VISA, MasterCard or debit card.

How do I get the details of my claim to the defendant?

After you file your claim in court, you are responsible for serving the defendant with one copy of the claim and a Reply for (Form #7). You can do this by:

- 1) Delivering the forms personally to the defendant;
- 2) Having a lawyer or other agent serve the defendant personally;
- 3) Having the Sheriff serve the defendant; or,
- 4) By mailing the claim to the defendant by certified or double-registered mail.

If you have a lawyer serve the documents, you will be charged for the service at rates set by the lawyer's office. If you have the Sheriff serve the documents, you will have to pay a fee. Contact the Sheriff's Office at 667-5451 (toll free 1-800-661-0408) for information about Sheriff's fees. Sheriff's fees can be paid at the Sheriff's Office at the time you file your claim.

If the defendant is a corporation, the claim can be served on an officer, director, or agent of the corporation, on the corporation's registered office or place of business, or on the manager of the business.

If the defendant is a sole proprietorship, the claim can be served on the proprietor, or on the manager at the defendant's place of business.

If the defendant is a partnership, the claim can be served on one or more of the partners, or on the manager at the defendant's place of business. You must serve the partnership as well as each partner from whom you hope to collect money.

How do I prove that I served the defendant?

If you or an agent (other than the Sheriff) served the defendant personally, the person who did the serving must complete an Affidavit of Service (Form #4) and file it with the Small Claims Clerk along with a copy of the claim and other documents that were served. If you use certified or double-registered mail, you should also complete an Affidavit of Service, and be sure to include the signed pink Acknowledgement of Receipt card with the Affidavit and other required documents. You must have your affidavit notarized. You can swear it before a notary for a fee, or you can have the clerk notarize it free of charge. If you have the Sheriff's Office complete the service, you must leave an extra copy of the documents to be served with them so that they can complete a Certificate of Service (Form #5) and return it to you so that you can file it in court.

How long do I have to serve the defendant?

Your claim must be served within one year of the date that you file it in court. If you are unable to serve the defendant during this period, contact the clerk for information about to extend the service period.

How long do I have to wait for the defendant to reply?

Defendants who are served in the Yukon must reply within 20 days of being served. Defendants who are served outside the Yukon must reply within 30 days of service.

If you contact the clerk and the defendant has not replied to your claim within the time limit, you may ask for a default judgement. For more information on default judgments, see Booklet #6, Judgements and How to Collect a Small Claim.