



PROVINCIAL COURT OF SASKATCHEWAN - CIVIL DIVISION

PLAINTIFF INFORMATION - STARTING YOUR ACTION?

Note: This material is for informational purposes only. It is not to be construed as legal advice. It is intended to give a general overview of matters involving civil claims in the Provincial Court (Civil Division).

Should you require advice specific to your situation, please consult a lawyer.

1. Write a Demand Letter

You should first send a demand letter to the defendant (the person you wish to sue) briefly stating the nature and amount of the claim, and a deadline to settle (at least 10 days, if not more). You should also advise that if no settlement is achieved, you are going to file a claim in the Provincial Court Civil Division.

Your letter should be dated and show the name and address of the party it was sent to. Keep a copy for court in the event a trial becomes necessary. A sample demand letter is attached at the end of this article.

2. Properly Name the Defendant

You must be very careful when it comes to naming the defendant (the person you wish to sue). *If it's not exactly right, you may win your case but then be unable to collect your money.*

For example: You hired Henry Brown Drywalling Ltd. to drywall your basement. The walls cracked, so you decide to sue Henry Brown Drywalling Ltd. You win the case but the company refuses to pay so you ask the Sheriff to seize and sell the company's goods. Now you find out that the company's real name is "HB Drywalling Ltd." and all their property is registered in that name. You have a judgment against the wrong party.

The rules about names are strict but they are not complicated. Here are some of the rules you need to know:

a) If you are claiming against an individual:

Use the person's legal name, avoiding nicknames and shortened versions: e.g. use 'Robert' instead of 'Bob' unless you know 'Bob' is the legal name. Avoid the use of initials - if you obtain a judgment and register it against property in the defendant's name, Information Services Corporation (Land Titles) will not accept names with initials.

b) If you are claiming against a company:

Usually you can tell if you are dealing with an incorporated company because its name will end in "Limited," "Ltd.," "Corporation," "Corp.," "Incorporated" or "Inc." To get the correct name contact:

CORPORATIONS BRANCH
1871 SMITH STREET, 2ND FLOOR
REGINA, SK. S4P 2N5
TELEPHONE: (306) 787-2962 (REGINA)

They will advise you of the full and correct name and address of the company. What you are looking for is proof of the defendant's (the party you wish to sue) corporate status. This information is contained in a document called the "*Corporate Registry Profile Report*". This will be required to prepare your claim. This document will also give you the address of the registered office of the corporation where you may serve your claim. **If the plaintiff (the person who is suing) is a company, you must also provide proof of the plaintiff's corporate status.** There is a small fee for the search and the Report.

c) If you are suing a business which is not an incorporated company:

You will want to name both the business and the name of the owner. For example: John Smith carrying on business as John Smith's Plumbing.

d) If you are suing more than one defendant:

You may name more than one defendant if the claims against each of them are related; you must name each defendant correctly.

For example: Mary's Landscaping Ltd. purchased supplies on credit from your business. You had the director of the company, Mary Green,

personally guarantee the company's debt. The debt is unpaid. You would sue Mary's Landscaping Ltd. and Mary Green personally.

3. Bring the following Information for the Provincial Court Clerk

- The correct name and address of the defendant(s);
- Full details of events, dates, locations, etc.;
- The original documents, invoices, contracts, cancelled cheques, estimates, or any other documents that you intend to use to prove your claim;
- Proof of corporate status if you are either suing a corporation or if you are starting the action as a corporate plaintiff.

4. Pay the Court Fees

The fees payable for issuing a summons are:

- Claims of \$2,000.00 or less \$ 20.00
- Claims over \$2,000.00 and up to \$20,000.....1% of the claim (rounded up to the nearest dollar) up to a \$100.00 maximum.

Fees go up by \$1 for every \$100 that you are claiming. For example:

- if the amount of your claim is \$2,500, the fee is \$25.
- if the amount of your claim is \$7,500, the fee is \$75.
- if the amount of your claim is \$9,950 or over, the fee is \$100.

5. Service of the Claim material

a) What is service?

It is your responsibility to notify each defendant (person you are suing) of the claim by serving the claim material upon each defendant. This ensures that the defendant has the opportunity to see the actual claim in a timely fashion. Methods of service and time restrictions are described below.

b) When do I serve the claim?

The claim must be served at least **TEN CLEAR DAYS** before the court date shown on the face of the claim. "Clear" days do not include the day on which the claim is given to the defendant or the day of court. If you were not able to serve the defendant in time, you should advise the Provincial Court clerk's office. A new date will be given and a new summons prepared at no additional cost to you to allow more time to try to serve the defendant.

Note: ten days is the *minimum* required time, not the maximum. The earlier you can serve the defendant, the better. This is especially important if you are using a process server to serve the defendant for you - they may need extra time to get the material to the defendant.

c) How do you serve a claim?

The claim may be served in any of the following ways:

Personal service

Personal service may be made by any person 18 years old or older. Service is made by giving the defendant the claim material. The defendant does not have to sign anything. You just have to hand the copy of the claim material to the defendant and say “This is a claim made against you.” If the defendant refuses to accept the claim, you should just drop the claim as close to the defendant as possible. Proof of service may be done either by you testifying orally in court or by filing an Affidavit of Service through the Provincial Court Clerk’s office. *The person who actually did the service must be the one who swears the Affidavit of Service.* If you need help completing the Affidavit of Service, bring the documents to the Provincial Court office and the clerk will help you.

Process server

You may wish to employ a process server or the Sheriff’s office to serve the claim material, for a fee. Process servers are listed in the yellow pages and the Sheriff’s office is located at the Court of Queen’s Bench. In either case, it is your responsibility to ensure that the Affidavit of Service is filed with the court to prove the documents were properly served.

Registered signature mail

You can serve the claim by registered signature mail. More information can be obtained by contacting Canada Post Customer Service at 1.888.550.6333 or by going online to: <http://www.canadapost.ca/tools/pg/manual/PGregister-e.asp#1373264>

You will have to provide the court with **signed proof** that the defendant has received the claim. This usually comes from the post office in the form of a *Delivery Confirmation Certificate* which can be obtained online with your tracking number or by contacting Canada Post Customer Service (1-800-267-1177) within 60 days and asking them to provide you with a copy by fax or mail.

d. What if I am unable to serve the defendant?

If you are unable to serve in any of the ways described above because the whereabouts of the defendant is unknown or he or she is proving impossible to serve, you may require an order for **substitutional service**. This means service can be done in some other manner as directed by the Court, providing all reasonable efforts have been made to serve the defendant without success. If you feel this is necessary, you can contact the Provincial Court Clerk to discuss.

6. For Further Information, Contact:

Contact information for the Provincial Court (Civil Division) offices is located on the Provincial Court website under “Court Locations and Sitings” at:

http://www.sasklawcourts.ca/default.asp?pg=pc_maps_main_court_offices

7. Preparing for your Case Management Conference

The Case Management Conference is a settlement discussion held between the parties presided over by a judge. It is not a trial and therefore no witnesses are required to attend, however, if you have a lawyer he or she may attend with you.

A determination of who should be successful will not be made here. The main purpose is to explore the possibilities of a settlement such that no trial would be necessary. **IT IS MANDATORY FOR THE PARTIES TO ATTEND THIS CONFERENCE, FAILING WHICH YOUR CLAIM MAY BE DISMISSED OR JUDGMENT ENTERED AGAINST YOU, AS THE CASE MAY BE.**

The settlement conference lasts for approximately 45 minutes. It is necessary to organize and bring all relevant documents and materials to be able to fully discuss and present your position. Because time is limited, it would greatly assist the process to have sent copies of any documents or material that you intend to rely on to the opposing party ahead of time. Copies of documents can be made by the Court clerk at the Small Claims Office at the cost of .50 per page if photocopying equipment is not available to you.

If settlement cannot be achieved then the case management judge will briefly explain the trial process and select a mutually agreed upon date for trial. To assist the parties, the judge will also provide court material entitled “Preparing for Trial”.

Sample Demand Letter

Jane Doe
123 Any Street
Estevan, SK
S7J 2R5

February 9, 2006

TGIF Plumbing and Heating
27 Pine Tree Ave.
Estevan, SK
S7K 3M2

Attention: Bob Smith, Manager

Dear Mr. Smith:

I am writing to notify you of my intention to take your company, TGIF Plumbing and Heating, to Small Claims Court.

As you know from my previous phone calls, I have been unhappy with the furnace that your company installed in my home on October 17, 2005. At that time I paid your invoice of \$6,745.00 in full. However, it was soon apparent that the furnace was not installed properly. It ran very noisily but did not put out any heat. Also, your employees damaged walls in the entrance to the house and the stairwell to the basement when bringing the furnace in.

I paid \$1,500.00 for another heating company to come to my house and put the furnace into working order. The cost of drywall repair and repainting the damaged walls was \$500.00. My total additional cost was \$2,000.00.

In order to avoid a Small Claims action against your company, I demand payment of the above outlined \$2,000.00 within 14 days of the date of this letter. It is my hope that we can resolve this matter without the need for legal action. However, failure to respond to this letter will leave me no option but to pursue this matter in Court.

Sincerely,

Jane Doe