

You Are Being Sued - What to Do

Small Claims Court Self-Help Guide



3

Information Resources – Whitehorse, Yukon

Yukon Government

Consumer Services

867-667-5111; toll free (in Yukon) 1-800-661-0408, ext. 5111
Email: consumer@gov.yk.ca
Web site: www.community.gov.yk.ca/consumer/index.html
Location: 307 Black Street

Corporate Affairs

867-667-5314; toll free (in Yukon) 1-800-661-0408, ext. 5314
Email: corporateaffairs@gov.yk.ca
Web site: www.community.gov.yk.ca/corp/index.html
Location: 307 Black Street

Employment Standards

867-667-5944; toll free (in Yukon) 1-800-661-0408, ext. 5944
Email: employmentstandards@gov.yk.ca
Web site: www.community.gov.yk.ca/es/index.html
Location: 307 Black Street

Small Claims Court Registry

867-667-5619; toll free (in Yukon) 1-800-661-0408, ext. 5619
Email: courtservices@gov.yk.ca
Web site: www.yukoncourts.ca/courts/smallclaims.html
Location: Ground Floor Law Courts, 2134 – 2nd Avenue

Non - Government

Law Line - Yukon Public Legal Education Association (YPLEA)

867-668-5297; toll free (in Yukon) 1-866-667-4305
Email: ypleayt@gmail.com
Web site: www.yplea.com
Location: Ground Floor Andrew A. Philipsen Law Centre, 2134–2nd Avenue

Law Society of Yukon (Lawyer Referral Service)

867-668-4231
Email: info@lawsocietyyukon.com
Web site: www.lawsocietyyukon.com
Location: Suite 202–302 Steele Street (T.C. Richards Building)
Lawyer Referral Service—half—hour consultation with a lawyer—\$30 incl. GST

Lawyers

To contact a lawyer's office, look in the phone directory under "Lawyers" in the Yellow Pages or under names of local law firms

IMPORTANT!

This guide has been produced by the Court Services Branch of the Yukon Department of Justice. It is intended to be used as a guide only and is not considered a comprehensive legal resource.

The information provided does not replace a lawyer's advice and cannot teach you everything you need to know. Even if you decide to proceed without a lawyer, you should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as of its date of publication.

You Are Being Sued - What to Do

REPLYING TO A CLAIM IF YOU ARE SUED

What should I do if I do not agree with the plaintiff's claim?

1. You should complete the Reply (Form #2) which was served on you with the claim. This form is also used to reply to a counterclaim or a third party claim. How you complete the form will depend on the kind of reply you want to make.
2. *If you think you do not owe any money at all:* check the box which states that you disagree with the claim. Give details of the reason for your reply in the space provided. If you need more space, attach a separate page with details of the reasons why you disagree with the claim. Your reply must include all your contact information on the form, such as your current physical and mailing addresses and phone number. (You may also include your email and fax addresses.) Attach a copy of any documents you have that will support your reply.
3. *If you agree that you owe some money, but not the entire amount claimed by the plaintiff:* check the box on Form #2 that states that you admit responsibility for a set dollar amount, and fill in the blank with the amount that you agree that you owe. Explain why you disagree with the remaining amount of the plaintiff's claim. As in #2 (above), provide your contact information, and also attach a copy of supporting documents.

If you are able to pay the amount that you agree you owe, make your payment to the plaintiff or to the Small Claims Court. Get a receipt from the plaintiff if you make a direct payment. If you pay the money to the court, the clerk will automatically issue a receipt. If you cannot pay right away, see the instructions below.

What should I do if I agree that I owe all the money?

Check the box on Form #2 which states that you do not dispute the plaintiff's claim. You can pay the amount owed to the plaintiff or to the Small Claims Court. (See the second part of this guide, Making Payment on a Claim.)

What should I do if I can't make a full or partial payment right away?

If you cannot pay right away, contact the clerk to arrange a pre-trial conference with the plaintiff to work out a payment schedule. See the second part of this guide for details on making payments on a claim.

If you are unable to come to an agreement with the plaintiff, contact the clerk to arrange a pre-trial conference to set a date for trial. (See Guide #4, Pre-trial Conferences.)

What should I do if I have insurance?

Send or bring a copy of the claim and the blank Form #2 to your insurer as soon as possible. If you are covered by your insurance policy, your insurer will take over the case for you. You must cooperate with your insurer; this can include going to court as a witness when you are asked to do so.

If your insurer says that you are not covered and you disagree, you should file a Third Party Claim (Form #4) in Small Claims Court, and arrange to serve it on the insurer. You will have to file the original Form #4 as well as two copies of it for the insurer and one copy for the plaintiff and for each other defendant (if any). (See Guide #2, How to Start a Small Claim.)

How should I reply if I think that somebody else owes the plaintiff money?

You can file a third party claim with your reply. Refer to the information on how to file a claim against an insurer. If you are claiming against more than one third party, you must file the third party claim, as well as make two additional copies of the third party claim for each third party, plus one copy for the plaintiff and each of the other defendants (if any).

Once the clerk has filed and "issued" the third party claim, your copies will be returned to you. You can then serve the plaintiff and other defendants with a copy of the third party claim and any supporting documents. You will also need one extra copy of each claim served on each party to use with an Affidavit of Service (Form #7) to prove service. (See Guide #2 for details on how to serve a claim and on how to prove service.)

What should I do if I think that the plaintiff owes me money?

If you wish to claim that the plaintiff owes you money, you must complete a Counterclaim (Form #3) and file it with your reply. You should show on the form that you wish to make a counterclaim against the plaintiff. If you believe that you owe the plaintiff a smaller amount after you deduct the amount that you believe the plaintiff owes you, show that amount on the reply and provide the reasons for your claim

against the plaintiff. Attach a copy of any supporting documents to your reply. A counterclaim can usually be dealt with in court at the same time as the trial of the plaintiff's claim.

How do I file my reply in court and how much does it cost?

You must bring your reply or send it by mail to the clerk within 20 days of the date you are served with the claim if you are served in Yukon, or within 30 days if you are served outside Yukon.

If you disagree with or are paying only part of the plaintiff's claim, it costs \$25 to file a reply. **Be sure to enclose a reply fee of \$25.** There is no charge if you agree to pay the entire amount of the claim and the plaintiff's costs.

You must also provide one copy of the reply and of any supporting documents for each of the other parties involved. The clerk will file the original reply and will stamp and return the copies to you. You should also keep a copy of the reply and the original of any supporting documents. You may need to produce the documents as exhibits in court if the case goes to trial.

What do I do once the clerk returns my copies?

You must mail a copy of the filed reply to the plaintiff and to any other party. Other parties could include partners or a third party who has been served with your third party claim.

What happens after I send my reply to the other party or parties?

If you are disputing the claim, either you or the plaintiff may contact the clerk to make arrangements for a pre-trial conference. (See Guide #4 for details.) If you agree to pay the claim, read the section of this guide called Making Payment on a Claim.

What happens if I don't file a reply?

If you do not reply to the claim, the plaintiff can request that the clerk issue a "default judgment", which automatically finds that you owe money to the plaintiff. Where damages are involved, the plaintiff has to appear in front of a judge who determines the amount you owe the plaintiff.

A default judgment is a court order requiring you to pay the amount claimed. It can be enforced in the same way as any other judgment of the court. (See Guide #6 – Judgments and How to Collect a Small Claim – for details on how claims may be enforced.)

What should I do if I am late filing my reply?

If you do not file your reply on time, the clerk will accept it if the plaintiff has not yet filed a default judgment. If a default judgment has already been entered against you, you can apply to the court to have the judgment set aside if you can show that you have a good reason. You should speak to the clerk

about the procedure for setting aside judgments. You may also want to get legal advice from a lawyer on this matter.

MAKING PAYMENT ON A CLAIM

How do I make a payment on a claim?

You can make a payment on a claim by paying the plaintiff directly, or by paying the money into court. If the judge orders payment to some other party, you should pay the person indicated in the judgment.

What should I do if I pay the plaintiff directly?

You should be sure to get the plaintiff to sign a written release and a Notice of Withdrawal (Form 25). A release sets out the amount of money paid, the reason for the payment, and a statement that the plaintiff has no further claim against you in the matter which is the subject of the claim. It should be signed and dated by the plaintiff and a witness. If you have any questions as to whether the release would stand up under the law, you should seek legal advice. Once the plaintiff has signed the release, you should file a copy of it with the court. If the plaintiff also signs the notice of withdrawal, the file can be closed after you file it with the court.

Do I have to pay the plaintiff's costs and fees if I make a direct payment to the plaintiff?

Whether you pay the plaintiff or the court, you must pay the cost of any filing fees and service fees, and any court costs that the plaintiff has already paid or was awarded by the court. If the plaintiff already has a judgment against you, you will also have to pay any interest awarded to the plaintiff. The court file will not be closed until these payments have been made, unless the plaintiff files a notice of withdrawal. The plaintiff can start collection action against you if you fail to pay these amounts.

What should I do if the plaintiff agrees to settle for less than the amount of the claim?

If the plaintiff agrees to accept a payment that is less than the amount set out in the claim, obtain a written release from the plaintiff and have the plaintiff contact the clerk to sign a notice of withdrawal.

What happens if I make a payment to the Small Claims Court?

The clerk will issue you a receipt and the file can be concluded if the payment is for the full amount of the claim. The plaintiff's payment will be paid out of the courts' trust account. As with direct payments, you do not pay the full amount of the claim, the file will remain open and the plaintiff can take collection action to recover the unpaid amount.

How will making a partial payment to either the plaintiff or the court affect the claim against me?

A partial payment to either the plaintiff or the court will reduce the total amount that you must pay, but the plaintiff will still have a claim against you and can continue to take any action necessary to recover the remaining debt.

If I am unable to pay all the debt at once, may I arrange a payment schedule?

You may arrange to pay the debt in installments if the plaintiff agrees to the payment schedule. Contact the clerk about setting up a pre-trial conference. The first step of this conference will be a mediation session with the plaintiff and a Small Claims Court Judge or a Justice of the Peace (JP) to arrange terms of payment. If the mediation results in a payment agreement, both parties will be asked to sign a Pre-trial Consent Order (Form #12). Once it is signed, the JP or judge will ask the clerk to file the order in court and to provide each party with a copy of the filed order.

As long as you make payments by the dates set out in the agreement, the plaintiff cannot take further action against you. If you miss a payment, the plaintiff is entitled to proceed against you. This action can take the form of collection action or, if the plaintiff cannot find any of your income or assets to collect against, by requesting a hearing before a judge to ask questions about your financial situation. (See Guide #6 for further details.)

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For more information, or to obtain copies of these publications, please contact:

Small Claims Court

Court Registry

Ground floor, Law Courts

2134 Second Avenue (between Wood Street and Jarvis Street)

Box 2703, Whitehorse, Yukon Y1A 2C6

www.yukoncourts.ca

Tel: 867-667-5619

Toll free in Yukon: 1-800-661-0408, extension 5619

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