

Pre-Trial Conferences

Small Claims Court Self-Help Guide



4

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.

Pre-Trial Conferences

What should I do if the defendant disagrees with my claim?

You should ask the clerk to set up a pre-trial conference. At the pre-trial conference, a Justice of the Peace (JP) or a Small Claims Court Judge may assist the parties to try and settle the case without a trial. If you are unable to reach an agreement, the JP or judge will set the matter down for trial.

What is a pre-trial conference?

A pre-trial conference provides an informal setting for the parties to set out the issues involved in the claim and the evidence they will provide to the court to support their case. This conference helps to give each side a good understanding of the other's point of view. By setting out the issues and the evidence involved in the trial before the case goes to court, a trial may take less time and be less expensive for the parties.

The JP or judge in charge of the pre-trial conference may attempt to have the parties reach a consent agreement. If the parties come to an agreement, the matter will not be set for trial.

When is a pre-trial conference held?

A pre-trial conference must be held when the parties have been unable to resolve the claim themselves. Generally pre-trial conferences are held in Whitehorse, unless the parties reside in another community and want it held there. You can ask the clerk to set up a pre-trial conference if pre-trial conferences are available in your community. If you live in a community that does not have a court registry, the clerk can set the pre-trial conference for the next court circuit date and a judge can take charge of the conference.

What happens at a pre-trial conference?

The JP or judge will ask both parties to give the full details of the dispute from their point of view. If you have hired a lawyer to deal with the claim, your lawyer can attend the conference for you. The JP or judge will try to find out if the parties agree on any points of the case so that it can either be settled by a consent order at the pre-trial conference or so that there will be fewer issues to sort out at the trial.

How should I prepare for the pre-trial conference if I am the plaintiff?

You should be prepared to prove two parts to your case. First you must prove the defendant's liability; that is, that the defendant did something wrong to you. Secondly, you must prove the amount that you are claiming. If you are claiming that the defendant wrote you an NSF cheque, or failed to repay a loan, you should produce the NSF cheque, and/or proof that to date the defendant has not paid you. If you are claiming that the defendant caused damage to your belongings, you should provide an estimate for repairs or a repair bill, or a bill for the cost of a similar item or items you had to buy to replace the damaged property.

You must be well prepared and bring all your documents relating to the case. The JP or judge will ask questions about your case and the evidence you will use to support your case. Evidence includes such things as bills or receipts, and the oral statements that you and your witnesses will make in court. The JP or judge can help by pointing out what kind of evidence you will need to do a good job of presenting your case in court.

To help you organize your case, you may want to prepare a worksheet which states the facts you want to prove on one side of the page, and the evidence you will present to support those facts. If you want more information about what is considered evidence, refer to Guide #5, Getting Ready for Court.

How should I prepare for the pre-trial conference if I am the defendant?

Look over both the claim form that was served on you and your reply to the claim. If you disagree with the plaintiff's version of what happened, be prepared to explain why, and bring any evidence that you have to support your side of the story. Also be prepared to tell the JP or judge if you agree with any parts of the claim. (You may find it useful to prepare a worksheet similar to the one described above for the plaintiff.)

If you disagree with the amount the claimant says you owe, you must show the JP or judge the amount you think is correct and how you arrived at that amount. If you agree with the amount but you can't pay it all at once, you should bring evidence of your financial situation such as recent pay stubs or last year's income tax return. Tell the JP or judge what kind of payment terms you can manage.

You should also think about a few other points. For example, has the plaintiff named the correct defendant? If the plaintiff had a contract with your corporation, and you own the corporation and did the work, the claim must be filed against the business and not against you personally. Even if the plaintiff has suffered the damage described in the claim, has it been proven that it was your fault? Is the amount claimed by the plaintiff reasonable, or was the damaged property old and worn before it was damaged, and not worth as much as a similar item in brand new condition?

What should I do if I don't live in the same community as the other party?

You can request to appear at the pre-trial conference by phone. If you want to do this, you will have to prepare and file the following documents with the court:

- A Notice of Application (Form #8) to request that the matter be heard by phone. As you will be required to serve the other party, you should check the box marked "With notice (by serving the other party)";
- An Affidavit (Form #9) setting out the evidence to support your application; and
- A draft Order (Form #11) directing that your appearance at the pre-trial conference be by phone.

Be sure to make several copies of these documents before you file them with the court. The number will vary depending on how many people are parties to the court action, but you will need one copy for your file, one for each person served and one for filing with an Affidavit of Service (Form #7) for each person you serve.

What else do I have to do to let the other party/parties know about my request to appear by phone?

You must serve every party who has filed documents (called "pleadings") with a copy of the Notice of Application, Affidavit and draft Order as well as a Response (Form #26). Ask the clerk for a date to hear the application before you complete the Notice of Application and include this date in the document. It will be before any date set for the pre-trial conference. You must serve all these documents at least seven days before the date set for the pre-trial conference. Then you must file one copy of the documents you served attached to an Affidavit of Service (Form #7) for each person you served to prove to the court that you served them.

What happens if a party agrees to the application or fails to respond to my request?

Each party has five days to file a response to the application. If they agree to the application, or if they do not respond to the request, the court will probably sign the order letting you appear at the pre-trial conference by phone, without making you phone or come to court on the application hearing date. If a judge does not sign the order, you can phone in to the hearing to explain why you think you should be able to phone in to the pre-trial conference itself.

What happens if we reach an agreement at the pre-trial conference?

If the pre-trial conference results in an agreement, the JP or judge will fill out a Pre-Trial Consent Order (Form #12) for both parties to sign. 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. This order has the same legal effect as if a judge made the order as a result of a trial. (The plaintiff can then use any means allowed by the court to collect on the debt if the defendant does not pay.)

What happens if we settle the matter outside of the pre-trial conference?

The parties can apply to the court for a consent order by filing these documents with the court:

- Requisition for Order (Form #10);
- Draft Consent Order (Form #11);
- Evidence that they consent to the draft order (all parties should sign this order); and
- If necessary, an affidavit in support of the consent order.

There is no charge to file these documents with the court. Whether you settle the matter at the pre-trial conference or outside of any court proceedings, the judge may order a full or partial refund of the filing fees if the issues are resolved without a trial.

What happens if we can't agree?

If the pre-trial conference ends without resolving the problem, the matter will be set down for trial. The trial date may be determined at the pre-trial conference or the judge may direct the clerk to contact the parties about a suitable date. Within 14 days of setting the date, either party may go to the court registry to complete a Notice of Trial (Form #15) and pay a \$50 fee to set a trial for that date. **Failure to pay the trial fee at that time may result in the trial date being removed from the list and the case may not be heard.**

The clerk will stamp the completed Notice of Trial and return copies of it to the plaintiff or defendant to serve on the other parties involved in the claim at least 28 days before the date set for the trial. Service can be in person, by regular mail, or by fax.

What happens if one of the parties doesn't show up at the pre-trial conference?

If the defendant doesn't show up, the plaintiff can complete a Default Judgment form and have the clerk sign it. If the claim is for a "liquidated" amount (such as the amount of an NSF cheque or unpaid bill), the judgment will be on Form #13. If the amount has been estimated (as in cases of personal injury or property damage), the judgment will be on Form #14, which will require a judge to sort out a fair and reasonable amount for the claim. The clerk will fill in the section of this form which sets out the date of a court hearing for the judge to decide on the amount of the claim. The defendant does not have to be told of the date of this hearing. (For further information on default judgments, see Guide #6, Judgments and How to Collect a Small Claim.)

If the plaintiff doesn't come to the pre-trial conference, there is a chance that the claim could be struck. The plaintiff should contact the clerk as soon as possible after the date of the pre-trial conference if they wish to proceed with their claim.

NOTES

© 2012 Government of Yukon

ISBN 978-1-55362-599-5

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

Également disponible en français