

Getting Ready for Court

Small Claims Court Self-Help Guide



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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.

Getting Ready for Court

PREPARING TO GO TO TRIAL

How do I prove my case in court?

To prove your case, you must tell your story to the judge and back it up with evidence. The judge will decide your case based on that evidence. This guide contains information for both plaintiffs and defendants. It explains how to prepare for a trial if the claim is not resolved as part of a pre-trial conference.

How should I organize the information I have to prove my case?

If you prepared a worksheet for the pre-trial conference which listed the facts you want to prove and the evidence you have to prove those facts, you can use it as a starting point.

If you do not have a worksheet, you can start by making a list of the facts you need to prove, and of the evidence you plan to present to prove each part. If you are the plaintiff and the defendant admits certain facts in the reply form, you are not required to prove these facts.

Organize your evidence in the same order as the events that took place. It helps to put the written information about your case in a binder with an index. You should also make separate lists of questions you want to ask your witnesses, the other party and any witnesses you think that they might call. Put the lists of questions in separate sections in your binder along with any bills or other documents you want that witness to identify or explain for the court.

To help you put together your information, refer to the "Trial Preparation Checklist" on page 6.

What kind of evidence do I need to prove my case?

There are four types of evidence that may be used in court: oral testimony, written statements, documents and objects. Each type of evidence is explained in this guide.

Oral Testimony

Oral testimony is information given in court by witnesses who swear an oath or affirm to tell the truth. Any person who has first-hand information about the case can be a witness. The plaintiff and the defendant can both call witnesses, including themselves, to tell the court what they did or saw and in some cases, what they said or heard. After you have finished asking your witness all your questions, the other side (called a “party”) is allowed to cross-examine the witness. This is done by asking questions to clarify or explain what the witness said.

If you ask someone else to be a witness, you should talk to them well before the date of the trial to be sure that their information will help prove your case. You should review with them the questions that you plan to ask them during the trial. To ensure that the witness appears in court on the date of the trial, you should ask the clerk for a Summons to Witness (Form #17) for you to fill out. The summons orders the witness to appear in court at a certain time, and to bring documents and other things listed on the form.

You are not required by law to serve a summons on a witness, but if you do, you may ask the court for an adjournment if the witness fails to appear at the trial. A witness whose evidence is important to your case may be arrested for failing to appear at the trial.

The summons must be served personally. Personal service requires the person who serves the document to physically hand the summons to the witness. You can serve the witness yourself, or you can pay the Sheriff to serve the summons. The person who serves the summons must swear an Affidavit of Service (Form #7) before a Notary Public to prove that the summons was served. You can ask the clerk to notarize your Affidavit of Service at no cost. If you have any questions about personal service, contact the clerk before you attempt to serve any documents.

If you have the choice of more than one witness who could testify about the same information, you should consider which witness the court is most likely to believe. You should also consider the cost to you of having a witness attend court. If the witness lives more than 25 km away from the place of the trial, you must pay “attendance money” for attending the trial. The witness is entitled to be paid for reasonable travel expenses such as mileage, meals and accommodation.

If you are the plaintiff and you want the cost of summoning witnesses included in your claim, get the witness to sign a receipt that shows the amount of attendance money they received. Then swear an Affidavit (Form #9) with a copy of the receipt attached to it as an exhibit. You should submit the affidavit to the court when you ask the judge to include this cost in your claim.

If you want to have evidence entered by affidavit, telephone, teleconference or videoconference, you will have to file a Notice of Application (Form #8) and an Affidavit (Form #9) and serve them on every party who has filed documents with the court at least seven days before the hearing date for the application. Be sure to make several copies of these documents [one for your file, one for each person served and one for filing with an Affidavit of Service (Form #7) for each person you serve] before you file them in court.

If you are permitted to enter evidence by videoconference, you will be responsible for paying the costs of the videoconference. Ask the clerk for a copy of the Court Services videoconferencing policy to find out how much it could cost you.

Written Statements and Documents

Evidence must normally be given in person so that the other party can cross-examine the witness. However, the judge may accept the following documents:

1. written statements made by expert witnesses;
2. hospital records or medical reports;
3. financial records, bills, contracts, documentary evidence of loss of income or property, repair estimates or other records made as part of carrying on a business.

It makes it much easier for everyone involved in the trial if you submit any written or documentary evidence with an index. Each section should have a tab for easy reference. Please contact the clerk if you have any questions about the format of your written or documentary evidence.

If you want to use written statements or documents, you must file them with the clerk and then serve all the other parties with the statements or documents at least 14 days before the date of the trial, or the judge may not accept it as evidence. You can serve a copy on the other party or parties by personal service or by mailing it to them. Be sure to mail the documents early enough so that the respondent receives them at least 14 days before the date of the trial.

If the name and address of the author of the statement does not appear on the statement, you must provide that information separately to the other party. This *must* be done in the interests of fairness. The other party has the right to know that information, and the right to summon the writer to court to answer questions about the statement.

Documents Introduced by Witness

If the document needs to be explained by a witness, it should not be entered as written evidence. Instead, you should bring it to court and ask the witness who is most familiar with it to explain its meaning to the judge. You should bring the *original* document to court, but if there is no dispute that it is authentic, the judge may accept a copy. If you do not have the document yourself, you should ask the person who has it to provide it voluntarily. If they will not give it to you, you can use a summons to order them to bring it to court.

Objects

If your claim concerns an object which is small enough to bring to court, you may bring it to the trial. If the object is too big to bring into the court, you should take a photograph of it and enter the photo as evidence. If you didn't take the photo, you should be sure to have the person who took it show up in court in case the judge and the other party have questions about it.

How do I prove my case when I am suing for an unpaid debt?

If you are suing for a debt such as an unpaid loan or an NSF cheque, you need to prove:

1. that a debt exists;
2. the amount of the debt; and
3. that the debt is unpaid or only paid in part.

Your evidence should include written documents, such as the defendant's IOU, NSF cheque, unpaid bills or letters to help prove your case. Any people who were present when the debt was incurred, or who heard the defendant say that the money was owed to you, should be introduced as witnesses to support your case.

If you are suing to get an NSF cheque paid, you must be able to prove that the defendant signed the cheque, and that it was returned by the bank because the defendant's account did not have the funds to cover the amount of the cheque. Often the defendant will not deny that this is the case, and providing the cheque with the "not sufficient funds" bank stamp will be enough to satisfy the judge that you are still owed the money. If the defendant denies writing the cheque, you will have to prove they did.

How do I prove a case of a broken contract?

If you are suing because the defendant broke a contract with you (for example, the defendant performed work for you but did not do the job properly), you must prove:

1. that there was a contract;
2. the details of the contract;
3. how the contract was broken by the defendant; and
4. the amount of money you are suing for, and how you arrived at that amount.

If you have a written contract, it will be easier to prove your case. The contract will form the most important part of your evidence. If there was no agreement in writing, you can still prove that you had an oral contract through the testimony given by you and any other witnesses who were present when you made the contract.

To prove that the contract was broken, you must show that certain conditions of the contract were not carried out, or were not carried out satisfactorily. If the defendant did not finish the work, or if the work was done poorly, you should get at least two written estimates to show what work needs to be done, and what it will cost to complete or repair the job. The estimates are added proof that your claim is fair and reasonable.

If you have already had the work finished or repaired by someone else, you should provide copies of the repair estimates and the invoices to the court when you file your claim. You may also need to have the people who prepared the estimates or who did the repairs appear in court on your behalf.

How do I prove my case when I am suing for damages over a vehicle accident?

If you are suing because of a vehicle accident, you must prove:

1. that the accident happened;
2. how the accident happened and who caused it;
3. the identity of the driver and/or owner of the vehicle; and
4. the reason for the amount you are claiming.

You can usually prove how the accident happened through your oral testimony and the testimony of any other people who saw the accident. You need to state the location, date, time and weather conditions when the accident occurred. You should also give details about the condition of both vehicles before and after the accident, the steps you took to avoid a collision, and any other useful information. Photographs of the vehicles can be useful.

If the owner and driver are not the same person, you can obtain a certificate from Motor Vehicles which states the owner's name. If the driver was using the vehicle with the owner's consent, the owner is also liable for any damages caused by the driver's negligence.

To prove your case for the amount you are claiming, you must prove the type and extent of the damages you suffered due to the accident. Damages can include pain and suffering, lost wages, the cost of vehicle repairs, and other items.

How do I prove my case when I am suing for damages to other property?

You will need to provide written documentation to back up your claim for damages. You should provide any estimates you have of the cost to repair the damage to your property, as well as invoices and receipts to show that the repairs were done and that you paid for them. Photographs of the damaged property before and after the repairs would also be very helpful.

Can I watch trials in Small Claims Court to find out what goes on in court?

Visiting the court beforehand to see how it operates is a very good idea. It will give you a chance to learn what to expect in court, and to become more comfortable with the proceedings. Hearings of Small Claims Court are open to the public. Talk to the clerk to find out when the court will be sitting before your case goes to trial.

TRIAL PREPARATION CHECKLIST

- Review the claim form, the reply and any other documents filed in court
- Review the results of your pre-trial conference
- List the points you need to prove in order to win your case
- Plan how you will prove each of these points
- Gather the documents you will need and organize them in logical order
- Contact any witnesses you decide are necessary
- Get written statements from expert witnesses, documents such as medical records, financial records, bills or repair estimates
- Arrange all the written statements or documents you want to present as evidence with an index and tabs for easy reference and file them with the court
- Serve copies of written statements or documents by personal service or regular mail to all the other parties
- Prepare questions for your witnesses and review them together
- Prepare a list of questions for cross-examination

YOUR DAY IN COURT

What should I do when I first arrive for my trial?

Be sure to arrive before the time set for small claims cases. If your case is set to be heard in Whitehorse, check the bulletin boards on the ground floor of the Law Courts to find out the number of the courtroom where your trial will take place.

If your case is being heard as part of a court circuit in your community, be sure to be present when the court opens. The judge will decide the order in which cases are called. Often the court will deal with criminal matters and shorter small claims matters first.

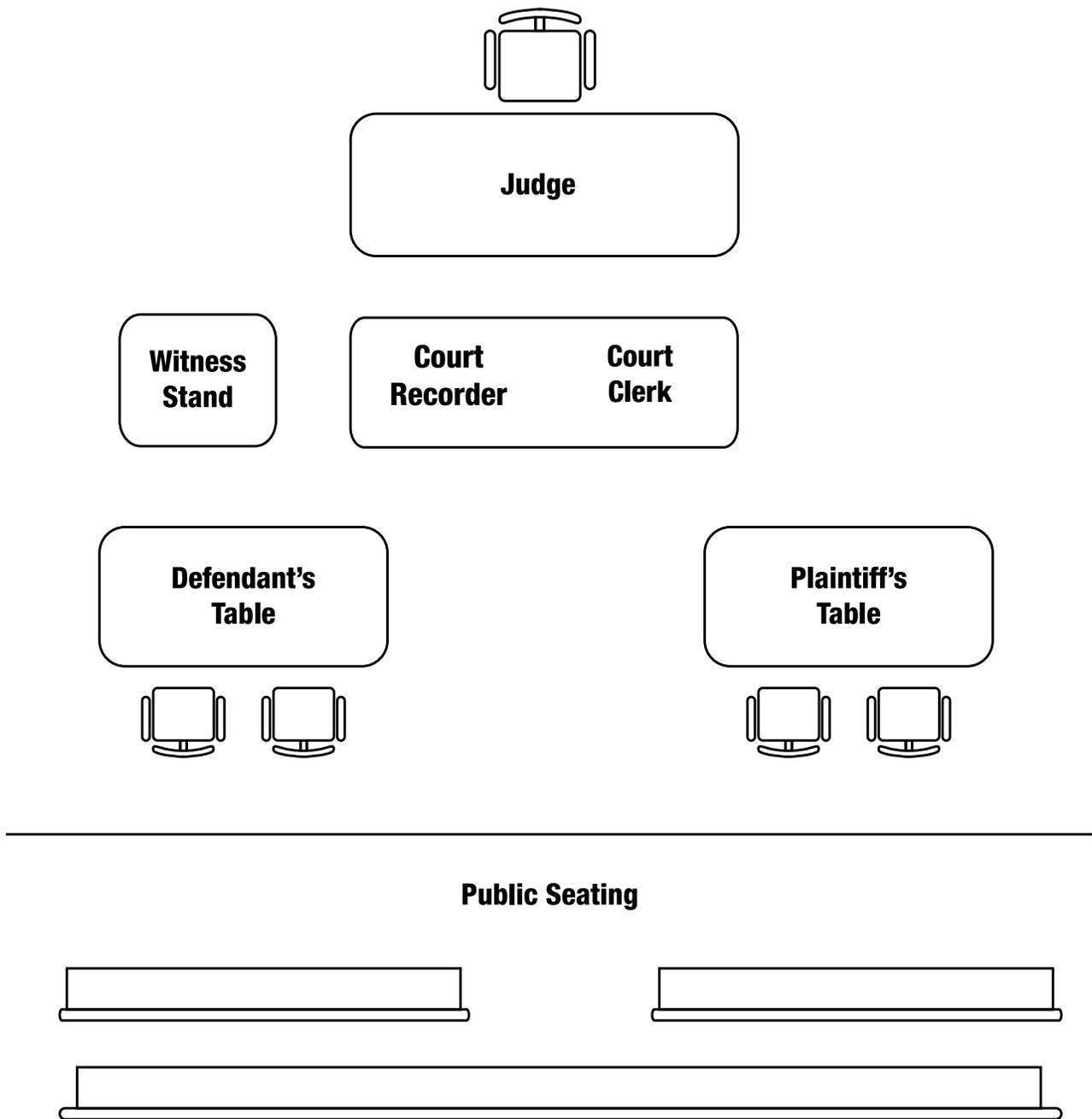
Several cases may be heard each day, especially in Whitehorse. You may have to wait in the public seating

area of the courtroom until your case is called. Do not leave and return later, or you may miss hearing your case being called.

The judge may first hear default hearings or cases in which only one party shows up, as these are usually dealt with more quickly than a trial where both parties present evidence.

When your case is called, go up to the front and sit at the table set aside for your party.

How is the courtroom set up?



In what order are the plaintiff's and defendant's cases presented?

Usually the plaintiff is the first to be sworn in to give evidence. After the plaintiff has given evidence, the defendant can then ask questions about the plaintiff's testimony as part of the cross-examination. Then the plaintiff can call witnesses to the stand. The defendant can cross-examine the witnesses after they give their testimony.

When the defendant has finished cross-examining the plaintiff's witnesses, the defendant can present their case. The plaintiff can cross-examine the defendant and the defendant's witnesses after they finish giving their testimony. After both parties have given their evidence, they may summarize their cases to help the judge come to a decision. These summaries are not considered as evidence by the judge.

What are the rules in court?

You must call the judge "Your Honour". You must stand when the judge enters or leaves the courtroom, and you must stand when you are speaking to the judge from your table. You must also stand when you question your witnesses. You may either stand or sit in the witness box when you are testifying.

You should speak clearly and slowly. The judge will take notes as you are speaking. Do not interrupt when the judge or the other party is speaking. If you disagree with some of the other party's evidence, make a note of your objection. You will have a chance to summarize your case before the end of the trial; this is the time when you can comment on any statements or evidence that the other party presents.

How do I present my case?

If you are the plaintiff, you have to prove your case on "the balance of probabilities". This means that you must prove to the judge that it is most likely that the events took place in the way you claim they did. If you are the defendant, you must show that your version of events is more believable than the plaintiff's version.

Both parties should set out the facts of their case in the order that the events occurred. Stick to the facts that you know, speaking slowly and clearly. If you have information that came to you from another person, you should call that person as a witness. If you have documents to enter as evidence, they should be identified by a witness who wrote them or who has direct knowledge of them.

How should I question my witnesses?

Your witnesses will probably be asked to wait outside the courtroom until they are called to testify so that their testimony is not influenced by other witnesses. Once the clerk has asked the witness to swear an oath or to affirm to tell the truth, you may ask your questions.

NOTES

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

Small Claims Court

Court Registry

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