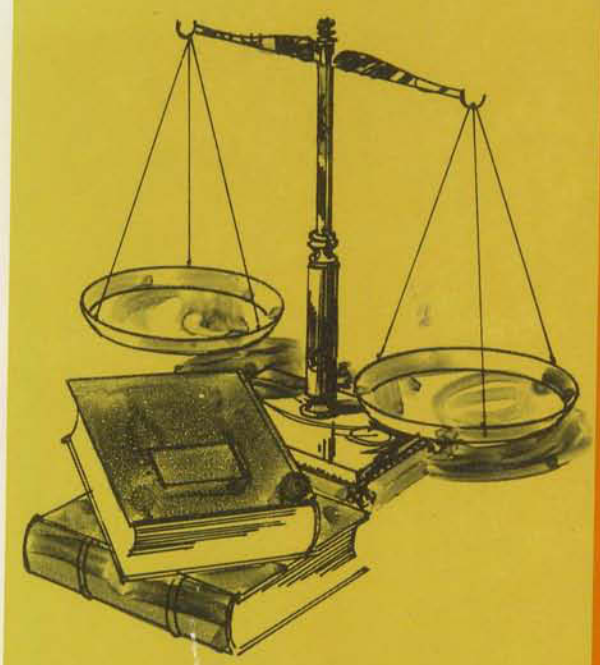
SMALL CLAIMS PROCEDURES ACROSS CANADA



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PREFACE

Within recent years, there has been increasing awareness of the rights of consumers. Some of these rights have been firmly imbedded in Canadian law for many years and others are the result of new legislative initiatives at both the federal and provincial levels. There has also been a growing recognition of the need to make the machinery of justice more adaptable to the resolution of disputes of a minor nature.

The overhaul and streamlining of procedures for dealing with small claims is one area where a great deal has been accomplished by the provincial legislatures. Although the administration of small claims courts is clearly a provincial responsibility, the federal Department of Consumer and Corporate Affairs is naturally interested in view of the potential importance of small claims courts in resolving consumer disputes.

Accordingly, the Department of Consumer and Corporate Affairs asked Associate Professor George W. Adams of the Osgoode Hall Law School, York University, to prepare a brief non-technical survey of small claims procedures in Canada. This booklet is the result of Professor Adams' efforts.

Although the report is being issued by the Department of Consumer and Corporate Affairs, the views expressed in it are those of the author.

CLARE BOLGER,
Assistant Deputy Minister
(Consumer Affairs)
Department of Consumer and
Corporate Affairs

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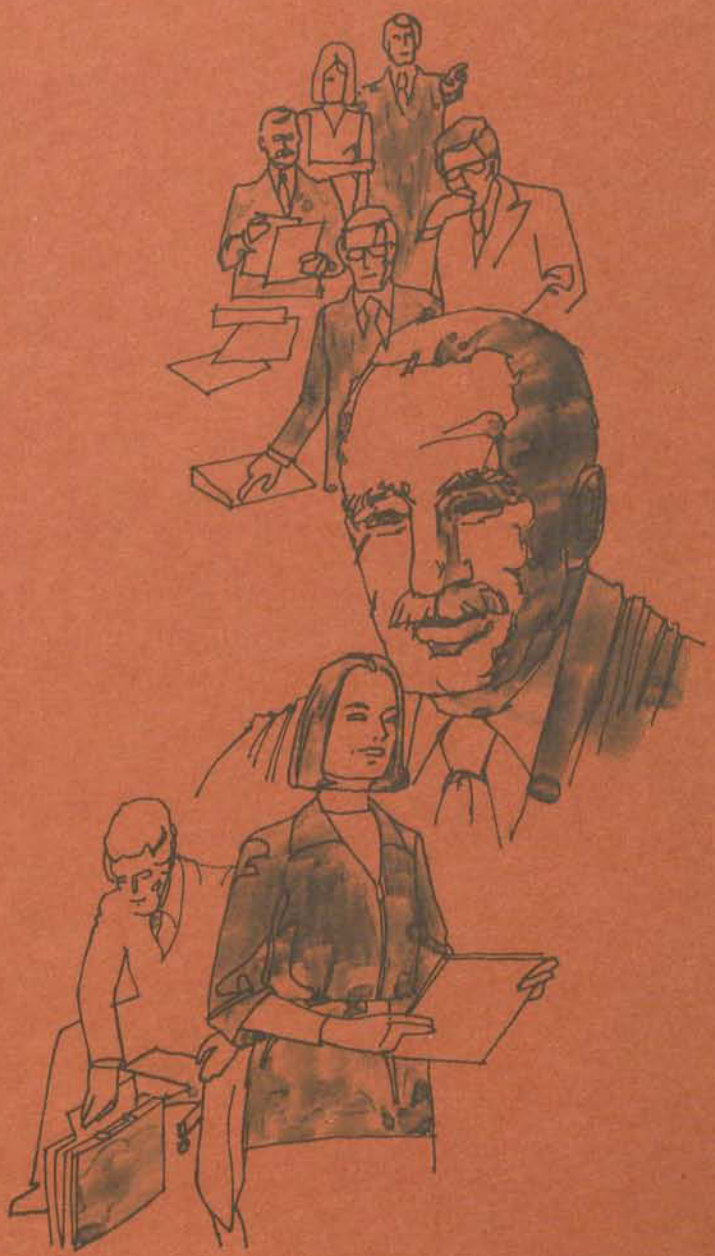


For ordinary causes, our contentious system has great merit as a means of getting at truth. But it is a denial of justice in small causes to drive litigants to employ lawyers, and it is a shame to drive them to legal aid societies to get as a charity what the state should give as a right.

ROSCOE POUND,
The Administration of Justice in the Modern City (1913)

What good are legal rights without corresponding legal remedies? While a legal philosopher might find great meaning in the availability of such rights, the average Canadian citizen would not. The viability of one's rights depends upon effective and readily available enforcement. What does this mean for people with legal claims or defences in relation to disputes over small amounts of money? If the individual has to hire a lawyer, take several days off work to process a claim, and possibly pay for the costs incurred by the opposing party, legal rights involving small sums of money will become academic. Who could afford the luxury of such claims or defences? Possibly the corporate or institutional litigants – insurance companies, debt collection agencies, public utilities – but not the average man or woman.

In response to these problems most provinces and territories in Canada have created court procedures for small disputes that are relatively easy for the citizen to use without the assistance and expense of a lawyer or agent. In most of these jurisdictions the procedures are designated as a small claims court but a minority refer to them as magistrate courts or justice of the peace courts. These courts are, at least in relation to other superior courts, tailored to the abilities and conveniences of lay people. The procedures for filing, defending and enforcing a claim in these courts are quite inexpensive, informal and comprehensible. These are all features intended both to insure that the procedures are readily available to the average Canadian citizen, and, more generally, to preserve the integrity of legal rules governing matters involving small amounts of money.

But possibly because these courts remain associated with the mystique of all judicial processes, or because of inadequate publicity, the public does not appear to be sufficiently aware of both the nature and the value of these courts. In part, this is reflected by the large number of default judgments that occur in the lower courts, suggesting that many people may fail to appear and defend against claims more out of a fear associated with formal judicial procedures than because of the unavailability of a valid defense. Another indication that these courts are insufficiently publicized is the public clamour over consumer remedies. While no one would suggest that the consumer is sufficiently protected by substantive legal rules, the small claims courts of Canada are ideal forums in which existing rights and newly enacted consumer legislation could be enforced. And yet there is a continual bombardment by recommendations to set up a court or tribunal for the exclusive use of consumers. Surely the existing small claims courts, admittedly with a number of modifications, would be more than adequate to serve consumers. The same kind of observation can be made with reference to landlord and tenant relationships. Moreover, to use an existing legal institution would save the Canadian citizen from the expense and confusion arising out of a multiplicity of courts, commissions and tribunals. In fact, the utilization of a reformed small claims court in this way would be quite consistent with the past and present service it has provided the ordinary Canadian citizen. Accordingly, this booklet describes the small claims courts of Canada from three perspectives – the past, the present, the future.

The past helps one to appreciate the significance of the present and the potential of the future and a description of the small claims courts is no exception. The analysis of the present situation attempts to describe how a claim is processed from both a claimant's and defendant's point of view. It is hoped that it will encourage people to make greater use of these procedures and in addition provide an insight into the variety of changes needed. And finally, the section on the future will survey different approaches to the continued evolution of the small claims courts. It should be noted that the appendices contain a summary of the small claims procedures found in all of the provinces and territories of Canada as well as those in the United Kingdom and the United States.

THE PAST

How did the small claims courts come to be?

People governed by legal rules have always desired an economical and quick process to resolve their differences involving small amounts of money. For instance, after the Norman conquest of England most of the small debt claims were resolved, quite informally, by the feudal lord. However, as a means of solidifying control over this newly acquired domain, the King divided the country into counties and instituted a central court for each of these areas. But these new courts were to administer justice for only substantial claims and with the decay of the feudal structure and the consequent disappearance of the feudal or communal courts, the ordinary people were left without a forum to air their differences – differences that, quite naturally, involved very small sums of money. It is reported that this breakdown of the feudal courts gave rise to an atmosphere of lawlessness that encouraged both an increase in unlawful conduct and a disrespect for individual civil rights. As a result, the Crown felt it necessary to step into this legal vacuum and in 1518 a statute during the reign of Henry VIII created a small debts court for the City of London. This court had jurisdiction in all claims under 40 shillings and was presided over by two aldermen and "four ancient discrete commoners." From that time to the present, while buffetted by criticism directed at their informality and untrained bench, similar forums have existed in England in a variety of shapes and under a variety of names. But whether they were administered by justices of the peace, itinerant justices, magistrates or registrars, their purpose was to insure that justice was available to everyone. Analogous courts based upon this English experience were created in Canada after the French régime.

For instance, in Canada in 1764 the grand jury of the Court of Quarter Sessions held at Quebec recommended that any three of His Majesty's justices of the peace be authorized to decide finally the fate of any sum not exceeding £10 without jury or appeal. It would appear that during the very early days of British rule in Canada as well as after the establishment of each of the provinces that now constitute Canada, the roving justice of the peace or magistrate was the basic model for resolving disputes over small amounts of money. But the most formalized and specialized approach to small claims was in Upper Canada, now the Province of Ontario. In fact in contrast to England and most of the other provinces and territories of Canada, a specialized court structure was created at a very early time and has managed to maintain its distinct identity to the present. Therefore, a brief outline of this court will give some flavour to the history behind all of the small claims courts in Canada.

In 1791, the *Constitutional Act* provided for the division of the old province of Quebec into Upper and Lower Canada and soon after the new legislature of Upper Canada made provision for "an easy and speedy method of recovering small debts." This act provided for the establishment of a provincial court system that was to have jurisdiction in matters of debt where the claim was for 40 shillings or less. The judges, who also served as justices of the peace in their areas, appointed a place in each district where the new court was to be held on the first and third Saturday of each month. These courts which boasted of a very informal procedure and were operated on a shoestring budget by their part-time judges became known as the Courts of Request after an English counterpart.

But over time the procedural structure became more specific and complex, particularly as the monetary limit on jurisdiction was extended. For instance, in 1816 the monetary jurisdiction was raised to £5 but it was provided both that judgment could not be granted on the unsupported oath of the plaintiff – creating a necessity for either documents or witnesses – and that judgment could only be given by a court whose jurisdictional boundaries included the residence of the debtor. Accordingly, from a procedure which involved visiting the local justice of the peace in town on a Saturday and telling your story one month after the issuance of a claim, the system evolved into a fairly complex and formalized provincial court system.

After a time, the justices of the peace were replaced by commissioners who were to adjudicate district complaints on a fee basis – 2 shillings per judgment – and the commissioner was empowered to appoint clerks and bailiffs to help process disputes and they were also to work on a fee basis. The commissioner could summons witnesses from any part of the province, imprison any person who acted in contempt of court and fine witnesses up to 40 shillings when they failed to appear under subpoena. By 1838, there were 173 courts of request in Upper Canada conducted by 1,068 commissioners. Unfortunately, because there were so many people who had been "rewarded" by appointment to the office of commissioner and because they worked on a fee basis, there was much vying for jurisdiction over a limited market. As a result, the commissioners became infamous for both misusing their power and evolving a body of law that enticed creditors into their courts. In fact, this

is a phenomenon that has plagued inferior civil tribunals across Canada and the United States. In an effort to decentralize the administration of justice, a fee system evolved with its concommitant potential for corruption.

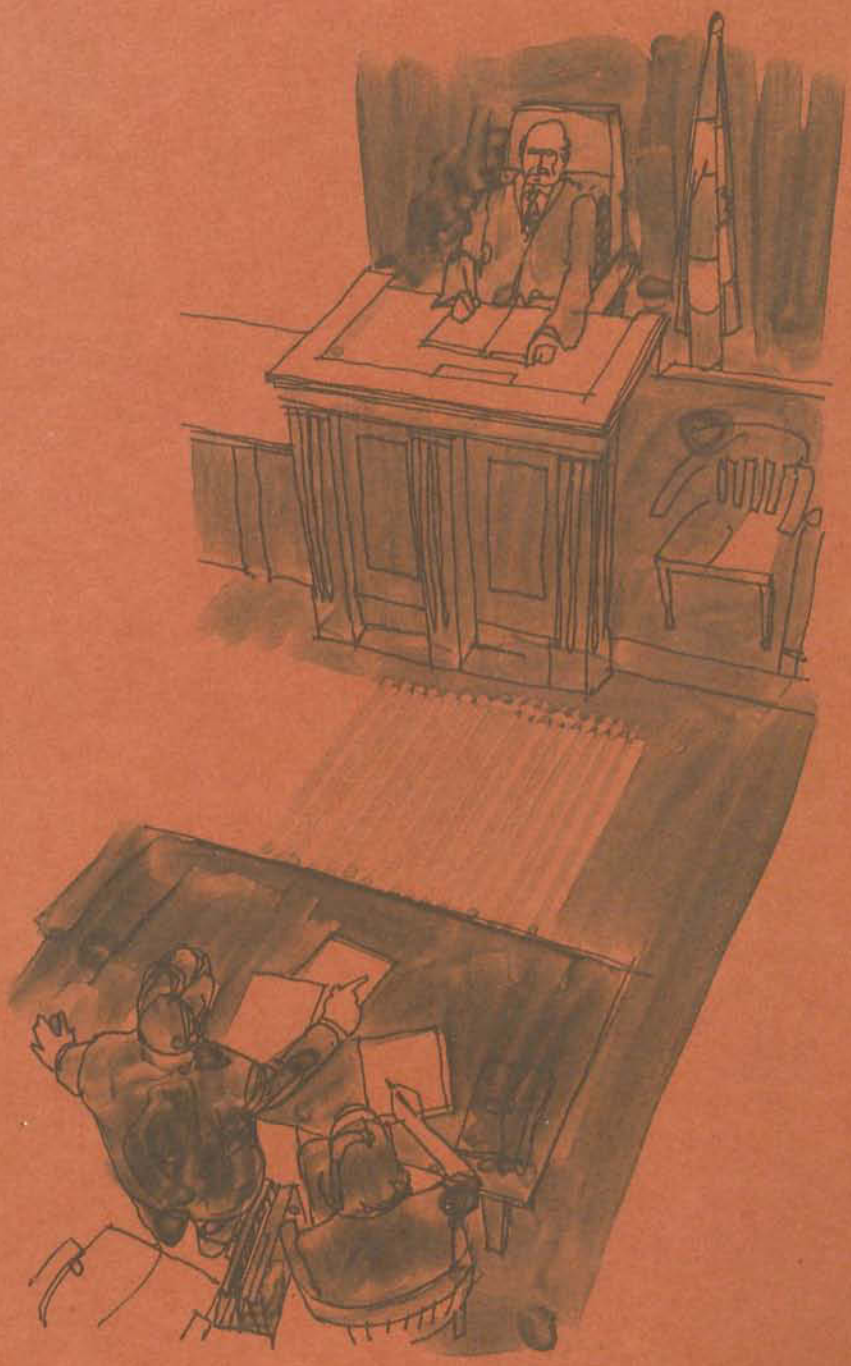
A committee set up to investigate the claims of corruption recommended, not surprisingly, that the courts of request be completely abolished and a new court be created in their stead – a court presided over by district judges who would control a group of sub-judges. Also, the fee basis of compensating the judges was severely criticized and was eliminated shortly thereafter. The result of these recommendations was the creation of the Division Court of Upper Canada in 1841.

The procedure in this court was quite simple. A writ could be filed with an account showing the debt or contract. If the claim was under 40 shillings the writ could be served on almost anyone who associated with the defendant, but if it was over this amount, more stringent rules were applied to induce personal service. On applying for a writ the plaintiff had to pay the greater of one shilling or one-twentieth of the claim, and if the plaintiff were to fail in the action or fail to show up for the trial, the judge could award either the whole or part of this deposit to the defendant. If the defendant was unsuccessful, the judge had the discretion to allow up to fifty days after service of the summons to pay, but if the defendant failed to pay within this period, the court could issue an execution order against any of the goods and chattels that were located "in the district in which the court was holden." This latter procedure was also very simple. After the execution order was granted the clerk passed it to the bailiff who had the power to seize and sell the goods and chattels. The bailiff was allowed to enlist the help of the district police and no action of trespass could be brought against either the bailiff or his aides. After effecting seizure, the bailiff was required to post a sign in an accessible public place at least eight days before the sale of the goods. It was then necessary to regulate the extensive powers of the bailiff. The legislation therefore provided for the fees that could be charged. It also provided that a bailiff who misused his office was subject to dismissal and three months in jail. Moreover, if the bailiff did not charge according to the fee schedule, the person wronged was entitled to treble damages and, if the bailiff failed to pay that, he became liable to a jail term for as long a period as the judge had the jurisdiction to give. Accordingly, this court was sufficiently structured by 1850 to be the recognizable forerunner of the small claims courts that presently exist in Ontario. In 1877 it was reported that 270 division courts in Ontario had decided approximately 75,000 claims involving over two and one-quarter million dollars.

Few fundamental changes are seen from this period to the present but the procedural framework has of course become more complex in response to the equally complex changes in Canadian Society: the monetary jurisdiction has been increased to $400 in southern Ontario and $800 in northern Ontario; a limited right of appeal has been created; garnishment proceedings have come into extensive use; debt consolidation provisions have been enacted for the relief and rehabilitation of debtors; the committal of debtors has been abolished; finally, these courts have come to be formally designated as small claims courts. But the basic structure and format are clearly discernible.

In contrast to this rather ancient lineage of a specialized small claims court in Ontario, the trial of small claims in the other provinces and territories of Canada, as well as in the United States, was usually vested in justices of the peace. While they performed well in a rural agrarian community, they tended to malfunction in a mobile, urban society. Their chief faults were lack of competent personnel, excessive costs and abuse of the fee system that provided salaries. Since the start of the twentieth century, however, with the growing concentration of people in cities, there has been an increasing trend to more specialized and regulated small claims procedures in all North American jurisdictions.

THE PRESENT



In this section, which describes the present operation of small claims procedures in Canada, the court procedures will be outlined as they would confront a typical claimant or defendant. It is hoped that this kind of presentation will encourage a more extensive use of the procedures available throughout Canada.

While all of the provinces and territories in Canada have created machinery to resolve small monetary disputes, some of the forums are more specifically designed for this purpose than for others. Therefore it will be less confusing to use a province like the Province of Ontario – a jurisdiction possessing a specialized small claims court structure – as the model for discussion purposes and to mention the courts of other provinces only when there are fundamental variations. An outline of the Ontario procedures will be helpful for anyone confronted with a small claim in any of the other jurisdictions. But a summary of small claims procedures for each province is appended to this booklet for consultation by those wanting to determine the existence of more detailed variations between jurisdictions. A glance at it will reveal that seven provinces (Alberta, British Columbia, Manitoba, Nova Scotia, Quebec, Ontario and Saskatchewan) have designed a specific court to deal with a variety of small monetary matters. New Brunswick, Newfoundland and Prince Edward Island do not have small claims courts as such. In these three provinces small claims are processed through an existing county court structure, but there is a minor and residual jurisdiction in local magistrates to resolve disputes up to some upper limit. In the Province of New Brunswick, for example, the limit is $80. Finally, the Northwest Territories and the Yukon have small debt officials with jurisdiction in debts up to $200 and magistrate courts possessing a substantive jurisdiction not unlike Ontario's small claims courts but with an upper limit of $1,000.

As noted in the introduction, the small claims procedures are intended to be quick, informal and relatively inexpensive methods of resolving disputes involving small amounts of money. The format of these courts has evolved to permit the average person to use them without either the assistance of a lawyer or feeling ill at ease or out of place. But the procedures are not so simple and informal that no preparation is needed. Prior knowledge of the court's format is required. Information on both case preparation and court procedures is essential to the efficient and effective use of small claims procedures either for a claimant or a defendant. The more people know about both their claims and the court's operation, the more comfortable they will feel in this setting. This psychological comfort means a great deal to the complete and precise presentation of a person's position. For this reason the processing of a claim or dispute is described in some detail.

a) Why go to court and when?

Courts have an important role to play in society but they should be a forum of *last* resort. Having a dispute resolved by a judge is more costly, more formal, more antagonistic and more time-consuming than if the parties to it resolved the matter themselves. The people embroiled in a dispute know their needs and feelings best and for this reason they are best suited to tailoring a settlement of their differences to suit these needs. Furthermore, there is not always a legal rule or result that accommodates every dispute. Having to wait two hours for a bus or being unable to go to an important party because the cleaners have failed to clean your clothing in a reasonable period of time are situations for which no legal rule provides redress although some limited headway is being made in the nature of recompensing people for the frustration suffered because of such an incident. But the parties, in settling their differences, are not so limited and settlements are often outside the requirements of legal rules. In this regard many businessmen have found a strict reliance upon their "legal rights" to be unwise.

Accordingly, it is best to start out by getting in touch with the other party to your dispute – the person you believe has caused you harm – requesting that (s)he compensate you for the loss suffered. These are difficult meetings for even the most confident of people but they are, nevertheless, necessary. You should, therefore, document your relationship with that party as fully as possible, assembling bills, contracts, accident reports and recollections as well as evidence of your losses as shown in estimates, repair bills, medical reports, and accounts, before approaching the other person. In other words, you want to be completely prepared to make the most persuasive and complete presentation of your claim. This kind of preparation takes the claim out of a possibly emotional context so that it can be settled in a rational and controlled manner. Finally, when this information is assembled, it is suggested that you meet the opposing party *in person*. It is not advisable to conduct these negotiations over telephone or by letter. Letters often do not find their way to the right person and, more often, letters are filed away or disposed of. Furthermore, waiting is frustrating. Telephone conversations lack the psychological impact associated with face-to-face contacts and you are

more easily dealt with by way of such simple retorts as "I'm busy", "could you call me tomorrow", "he's not in", or "I'll do what I can", or by the other party simply hanging up the receiver. Therefore, go to see your opposition. Be firm but courteous. Know exactly what you want. Do not hesitate to suggest that this is only the beginning if an unreasonable stance is taken. When dealing with a business, be it a corporation or sole proprietorship, be sure to talk to a person who can solve your problem right then and there at the time of your meeting. You want to meet with the owner, a manager or a claims adjuster and no one else should suffice.

But there are two sides to every story and every dispute and all is not lost if no satisfactory settlement has been concluded after this meeting. At this meeting, ascertain clearly the other person's position and the facts upon which (s)he is relying. At the same time, by subtle probing, assess just how strongly (s)he is committed to that position. Is there any room for compromise? This is another function of the meeting. After returning home, reassess your position in the light of this information. Are you clearly in the right from a common sense point of view, and does any middle position exist that would satisfy you? For instance, the dry cleaner may have irreparably damaged your three year old coat, worth $400 when purchased; but you have worn it for three years; the ticket you received disclaimed liability "for any loss however caused" even though you did not read it; and it is unclear that you did not have to warn the store clerk that the colours might fade or the coat might shrink unless special steps were taken. Of course the cleaner is in the business of cleaning and should know these things and nobody reads the hundreds of tickets received for similar transactions. But *there are two sides to the story* and if you go to court, a judge will hear both of them. Is it inevitable that he will prefer your position to that of your opponent? No matter how inexpensive, quick and informal small claims courts are, litigation costs some money and needs the investment of time – a day off work to go to the trial, for instance. Would not $100 or $150 for that coat be a sufficient start on a new coat to be purchased as a replacement? Remember you had the use of the old coat for three years and it is by no means certain that you will win at the court hearing! If you detected some room for compromise at your meeting – and even if you did not – why not propose a settlement of $200 or $250 and accept any counter-proposal close to $150? If the opposing party is in business, this kind of settlement can only generate good will, not to mention the avoidance of adverse publicity. If the opposition is an individual, a settlement of this kind maintains an amicable relationship between people if a continuing acquaintanceship is involved. At the very least, it avoids the confrontation involved in face-to-face contact in court.

But people will be people – unwise, unreasonable, intransigent or committed – and a compromise will not always be possible. But before facing the decision whether you will proceed to court or give up the battle, you should be sure to try any alternative way of applying pressure on your opponent. For instance, if your opponent is a business possessing a provincial licence to operate, telephone or write your provincial department responsible for Consumer Affairs to determine whether a complaint can be laid as one step on the road to having its business practices investigated and possibly its licence revoked. Another recourse, possibly less effective, is the Better Business Bureau.

But suppose that all else has failed (this occurs in a minority of cases) and it is time to face that decision – should you proceed to the small claims court? Remember, the court is easy to use, and even if the defendant has a lawyer (should the legislation permit his presence) the judge will often be of assistance to you. In Quebec, lawyers cannot appear in the small claims courts and the judge has an obligation to assist the parties. Therefore, do not let the fear of technical and procedural detail deter you. But do you believe in your position and can it be substantiated if the defendant does not agree to everything you allege? Do not worry about "the law" because if you genuinely feel aggrieved and have suffered a real loss there is likely to be some legal rule to assist you and the judge will find it. But the judge must be given sufficient evidence upon which to act.

b) Can you use this court to resolve this dispute?

There are two limitations that generally apply to the use of a small claims procedure. They have to do with (1) the monetary size of your claim and (2) its substantive nature. Because these courts lack much of the procedural form of more superior courts because they are designed to enable lay people to use them, governments have worried about their abuse as well as their use. Detailed pleadings, time-consuming discovery of an opponent's case and sometimes even the rules of evidence have no application in a small claims court, yet all of these devices insure the accuracy, reliability and legitimacy of a claim. Although these devices are invaluable in larger claims, they have been done away with in a small claims court on

the grounds that their costs outweigh their benefits in relation to small sums of money. For this reason the small claims court has both a monetary limit and a substantive limit on its jurisdiction.

If you are claiming a debt or damages above a certain arbitrary figure you will have to pursue it in the appropriate county, district or supreme court of your province and you will need a lawyer to assist you in the formulation of your claim and in its enforcement. This monetary limit of the small claims court varies from province to province and the amount is presently under review in a number of jurisdictions. For instance, the monetary limit in southern Ontario is $400 and in northern Ontario, $800 but the Ontario Law Reform Commission has recommended that the jurisdiction be a uniform $600 throughout that province. In Alberta the monetary limits are $500 in claims of debt and $200 in damage actions. The British Columbia, Manitoba, Nova Scotia and Saskatchewan small claims forums can be used in debt and damage actions involving sums up to $500, whereas Quebec has placed a $300 limit upon the jurisdiction of its small claims court. As noted above the monetary limits of the small claims courts of the Northwest Territories and the Yukon are $200, although the jurisdiction of the magistrates' courts extends to $1,000.

The substantive nature of the claim is also important because many provincial small claims courts lack jurisdiction to resolve *all* disputes involving small monetary claims. The Ontario court is representative and its jurisdictional capacities are described in the following terms:

> 53. The small claims court does not have jurisdiction in,
>
> a) an action for the recovery of land, or an action in which the right or title to a corporeal or incorporeal hereditament, or any toll, custom, or franchise, comes in question;
>
> b) an action in which the validity of a devise, bequest or limitation under a will or settlement is disputed;
>
> c) an action for malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage;
>
> d) an action against a justice of the peace for anything done by him in the execution of his office, if he objects thereto;
>
> e) an action upon a judgment or order of the Supreme Court or a county court where execution may issue upon or in respect thereof.
>
> 54. Except as otherwise provided in the Act, a small claims court has jurisdiction in,
>
> a) any action where the amount claimed does not exceed $400 exclusive of interest;
>
> b) any action of replevin where the value of property distrained, taken or detained does not exceed $400; and
>
> c) any action or matter authorized by or under any Act to be heard in the small claims court.
>
> 57. 1) A small claims court in action otherwise within its jurisdiction has power to grant relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the Supreme Court.
>
> 2) Nothing in this section confers jurisdiction to grant an injunction.*
>
> *(*The Small Claims Court Act*, R.S.O., 1970, c.439)

Most other provinces have similar restrictions but for the usual debt, automobile accident, or consumer purchase these limitations are inconsequential. Finally, it should be noted that other specialized statutes, for instance statutes dealing with relationships between landlords and tenants, may take jurisdiction away from the small claims court for particular kinds of disputes. This is illustrated in Ontario where straight damage actions involving landlords and tenants and sums of money under $400 can be brought in the small claims courts but disputes over the termination of a residential lease and questions involving statutory obligations must be taken to the county court. Normally, if you were to attend the clerk's office of the small claims court and attempt to file claims of the latter two types you would be told that this was not possible; you would also be told where you would have to go to have the matter resolved.

c) Where is the Court?

We have noted that a primary purpose of these courts is to make justice accessible to the ordinary citizen, and in attempting to implement this purpose the governments of each province have tried to decentralize the courts in order that individuals will not have to travel very far to have their claims resolved. For example, Ontario has been divided into a number of divisions – 191 divisions in 1970 – with administrative offices and a court allocated to each division. These divisions are defined in the regulations to *The Small Claims Court Act* by reference to their geographical boundaries. But to insure that claims will not be brought in just any division, forcing defendants and witnesses to travel great distances across the province to the location of the hearing, it is provided that a claim must be brought in the court division where the defendant resides or in the division where the cause of action

arose. Accordingly if you are suing on a contract you have the choice of suing the defendant in the division where the contract was formed or suing in the division where the defendant carries on business or resides. This is a universal requirement throughout Canada.

To determine the proper division, you can telephone any of the small claims court offices in your region and tell them these locations and you will be advised where to take your claim. In Ontario, claims are filed with the clerk of the division of the small claims court. The clerk will have an office in some convenient location. You should be able to file your claim at lunch time or after work, depending on the office hours. In some of the other provinces claims are filed directly with the magistrate who will hear your case. Again, a telephone call to the appropriate offices will inform you of the procedures for your province. Other provinces do not have as many separate geographical divisions peculiar to the small claims procedures and more often than not, the small claims courts in those jurisdictions follow the geographical pattern of the county and district courts.

d) How much will it cost?

The filing of a claim in this court requires the payment of a minimum filing fee prescribed by statute or regulation. In some provinces and territories a uniform fee is levied in all disputes and in other jurisdictions the fee is graduated in relation to the monetary size of the claim.

Again, Ontario provides a useful example. The processing fees in that province are structured on a sliding scale basis relating to the monetary size of the claim. The fees range from a minimum of $4 per action where the claim is for $10 or less to a maximum of $14.50 where the action is for more than $400. These are broken down as follows for a claim under $10: On filing the claim there is a fee of $2 payable to the clerk, and a fee of $1 payable to cover handling and postage as well as a fee of $1 payable to the bailiff who will deliver your claim to the defendant. Where the claim is for $200 and does not exceed $400 there is a filing fee payable to the clerk of $8, an additional $1 payable for handling and postage, and an additional fee of $3.50 payable to the bailiff.

But these are not the only charges if, after obtaining a judgment against the defendant, you have to collect it by using the enforcement provisions under the small claims court legislation or the other remedies contained in the enforcement legislation – although these additional charges are not too severe. Consider the following charges that might be incurred in the entire processing of a hypothetical claim involving $300. This will also convey a preliminary view of the flow of activity in pursuing or defending a claim.

On commencement of the action, you pay the clerk $8 together with an additional $1 for handling and postage. Another 75 cents are paid for a summons for two witnesses and $4 to the bailiff to serve the summonses. If you are successful at trial but unable to collect the judgment it may be necessary to pay $1.50 to issue a writ of execution against the defendant's goods or chattels and similarly it may be necessary to spend $2.50 to issue a direction to garnish wages plus another $2 to serve the direction to the garnishee. If you want to examine the judgment debtor about his assets to assess his ability to pay, you can bring him before the court by way of a judgment summons which costs $4 to issue and $3 to deliver to the defendant. Moreover you may finally want the bailiff, for $3, to attempt to levy against the goods and chattels of the judgment debtor pursuant to the writ of execution. All of this will, therefore, cost you $33.25.

Of course it is not always necessary to go through all of these procedures. More importantly, in other provinces, for instance Quebec, there is no need to incur a separate charge for each request you make of the court. In that province it costs $5 to file a claim of $100 or less and $10 if the claim is above that amount. If you need the court's assistance in collecting your judgment the cost is again $5 for a judgment below $100 and $10 for one above that amount. Furthermore, in probably a majority of the provinces and territories the documents of the courts are all delivered to the defendant by registered mail or by the plaintiff, thereby eliminating the pay of any cost associated with a bailiff performing this function. It has been recommended that Ontario adopt the use of registered mail in this way.

e) Whom to sue

Once having both decided to sue in the small claims court and located the clerk's office or the official to whom you are to submit your claim, it is necessary to go to that office and enter your claim. Most of these offices have a special claim form – called a summons – that you must fill out properly. In a number of jurisdictions, like Quebec, the clerk prepares the claim for you as well as any affidavit that is required to attest to the truth of the facts contained in the claim.

But whatever the assistance you might be given in executing this claim form, it is essential that you sue the proper person or persons. There are few restrictions in naming persons to a law suit; therefore, be sure to include everyone you think has been responsible for your losses. However, if you are suing a business, you need sue it alone and not the employees who sold you the goods, if the matter involves a consumer purchase. The following are useful rules of thumb. If the defendant is an individual, set out the full name of this person. Should the defendant operate a business but not as a corporation, set out the name of the individual who owns the business and then the name of the business. If the business is incorporated you need name the company only, but set its name out fully. If you are in an automobile accident, sue both the driver and the owner. Their names can be found in accident reports filed with the police. If the defendant is a business and needs a municipal licence to operate, the name can be obtained in the municipal offices. Full corporate names can be obtained from a registrar of companies probably located in the provincial department dealing with financial and corporate affairs or the Corporations Branch of the federal Department of Consumer and Corporate Affairs in Ottawa.

f) Preparation of the claim and its delivery to the defendant

To start the judicial wheels in motion the defendant must be sufficiently informed of the claim to permit a meaningful reply and he must be ordered by the court to attend at a certain time and place to have the dispute resolved. This involves the issuance of both a summons or claim and a notice of trial. Specimens of the former can be found in the appendix. The summons names the persons suing and being sued; describes the amount of the claim; warns the defendant that he has, for instance, ten days after having received the summons to file a dispute or counterclaim; informs the defendant that more information can be obtained from the clerk; finally, it has appended to it a description of the particulars of the claim. The particulars must be sufficiently specific and full to inform the defendant of the nature and timing of your claim and the salient facts upon which you rely. Again, a few sample claims can be found in the appendix. The main purpose of the particulars is to insure that the defendant knows the allegations against him so that he can properly respond to and prepare for them. If you are suing for a debt upon which judgment can be signed without a hearing, should the defendant fail to respond to your summons, you must attach a promissory note, cheque or other document which proves the indebtedness. As noted above, in many small claims courts the clerk will prepare the summons and claim for you but you must, of course, provide that office with sufficient and accurate information. However, as you have already assembled these data before you attempted to settle the matter, all your work is already done. It should be noted that some provinces require you to establish a *prima facie* case before a claim can be filed: hence the clerk or magistrate taking your claim must be satisfied that there is some legitimate dispute against the defendant. Therefore, bring all your information with you at this time.

In many provinces (in a majority of them now) the summons and claims can be delivered to the defendant personally by the plaintiff, delivered to an adult person at the defendant's usual place of abode, or sent to the defendant by registered mail. Proof of this delivery or service is established by either oral evidence at the hearing, an affidavit swearing that it was done, or the receipt given by the postmaster establishing that the letter was received. While Ontario still relies on a bailiff to perform this function, recent recommendations admonish the province to adopt the flexible approach of these other jurisdictions. In Ontario, if your claim goes to trial, it will do so within approximately four to six weeks, depending on the volume of the particular court's business at that time of year. However, if the defendant fails to respond to the summons within the time allowed, you may be able to have "judgment signed" right there and then. In some provinces, for instance, Ontario, a default judgment, as this procedure is known, is only possible in a claim for debt. An action for damages requires a hearing to prove the existence and amount of such damage whether the defendant is going to contest your claim or not. In other words, it is a mechanism to safeguard the interests of a defendant in a limited way. But this is not the case for all provinces and territories.

g) On receiving a summons

If the procedure recommending attempted settlement has been followed, the defendant will know that someone claims something from him or her before receiving a summons, but the first official notice of the claim is the summons. As already noted, the summons will notify you of the plaintiff's identity, the size of claim made against you, the particulars supporting the claim, and the amount of time you have to file a dispute or to pay the amount of the claim "together with lawful costs" at the office of the clerk. If you fail to reply to

the summons, judgment may be entered against you without further notice. For instance, as outlined above, in Ontario a claim of indebtedness will immediately result in default judgment being entered against you if you fail to reply to the summons, whereas judgment in a claim for damages must await the hearing. In the latter event, if you have not filed a dispute within the allowed time or have not, prior to the hearing, petitioned a judge to permit you to do so after missing this deadline, the judge will not listen to any of your representations at the time of the hearing and judgment will be signed against you if the plaintiff proves his damages. Therefore, on receiving the summons a number of alternative courses of action are available. These are: (1) attempt to negotiate a settlement; (2) pay either the full or a partial amount of the claim into court; (3) file a dispute; (4) enter a counterclaim or claim a set-off; and (5) join a third party whom you believe to be involved.

The issuance of a summons can mean that the plaintiff is committed to his claim in its entirety but more often than not there will be room for compromise and negotiation. The success of a claim cannot be guaranteed and you, yourself, may feel the claim is completely, or at least partly unjustified. Without letting the time limit for filing a dispute go by, you should immediately communicate with the plaintiff and outline both your position and any settlement proposal you wish to make. Even if the claim is justified you may be financially unable to pay it at this time. In such circumstances, a schedule for payments could be negotiated and thereby save the plaintiff the time and costs associated with the enforcement of the judgment. In any event, get in touch with the plaintiff, but do not miss the deadline for filing your dispute.

The second option is paying all or a part of the claim into court by sending it into the clerk within the period allowed. To pay in the full amount with allowable costs results in a satisfaction of the claim but paying in a partial amount is often a good move tactically. This gives the plaintiff an opportunity to have second thoughts about both the wisdom and the costs of trying to "win" more than this amount, and, more importantly, he runs the risk of failing to recover his *entire* claim, thereby renouncing his court costs. In other words, this rule is intended to penalize plaintiffs who have wasted valuable court time to satisfy their claim. But if you pay only a partial amount of the claim to the court clerk, be sure to file a dispute at the same time outlining the basis to your position, just in case the plaintiff does not take your offer up. Furthermore, remember that a dispute must be filed in all jurisdictions within a certain specific period of time. In Ontario this period is ten days from the receipt of the summons or claim. It is reiterated that if you fail to do this, judgment can be given against you – a default judgment – although in Ontario, if the claim is for damages as opposed to debt, the plaintiff must at least attend the hearing to prove the damages. If you have missed the deadline you can ask a judge for "leave" to file a dispute at any time before judgment has been entered against you; even when judgment has been entered against you, if good reasons are available, it can be set aside, again by applying to judge for this relief.

The dispute should set out your reasons for contesting the claim and again, forms are available in the clerk's office. A typical dispute can be found in the appendix. In most jurisdictions the court has power to give judgment which allows time to pay. If this is what you really need, inform the clerk or magistrate why this is the case and request that the judgment incorporate the terms upon which you can reasonably make payment of the claim. Generally there is no difficulty in having such a request honoured by the court.

Very often you may yourself have a claim against the plaintiff arising either out of the same set of events (a counterclaim) or out of a more independent relationship with the plaintiff. Set-off is the term that describes this claim in the context of raising it as a defence to another cause of action. In other words, the plaintiff may owe you money because of a pre-existing loan that has gone unpaid and you would want to *set* this amount *off* against any money that the court might find you owe him. Or his car may have caused damage to your car, arising out of the same accident, and you may feel that he was responsible, in full or in part, for the accident. You would then counterclaim for the damage that you sustained in the accident thereby becoming a "plaintiff by counterclaim." In either case, the full particulars of your claim must be given to the clerk or judge. Just as they assisted the plaintiff in the formulation of his claim, they will assist you in the preparation of yours.

Finally, you may believe that a third party has contributed to the plaintiff's damage and should be sued or that a third party should idemnify you for any loss you may sustain as a result of the claim. If this third party was directly involved in the incident (s)he may be joined as a co-defendant whereas if this third party was not so directly involved but in some way contributed to your involvement or

has agreed to idemnify you in such cases, this person is called a "third party" and is added as such. In other words the plaintiff has a claim against you and as a result of this claim you now have a claim against the third party. Because payment in the latter case is contingent on liability being established against you by the plaintiff, the cases are conveniently disposed of in one hearing.

h) Preparation before trial and the hearing

You will be notified of the time, place and date of the hearing by the clerk of the court. The hearings in most of the small claims courts of Canada are very informal. At least one statute provides that the judge does not have to follow the rules of evidence but this latter extension of informality is the exception. The hearings are conducted on a mixed adversarial-investigational basis in that most courts expect the parties to the dispute to present their own evidence and make representations as to the outcome of the dispute with the judge asking supplementary questions as the need arises. Only in Quebec does the legislation specifically direct the judge to play a major role in the court hearing by asking questions and cross-examining witnesses. Some statutes direct that the hearing occur at a time and place convenient to the parties but you can expect to take a day or half-day off work to attend the hearing in most provinces.

Now, because you will have to provide sufficient facts upon which the judge can act, evidence becomes very important. Without going through all the complicated rules of evidence the best guideline to follow is to provide the judge with the "best evidence" available. Therefore, in a dispute over a breach of contract you must prove: (1) a contract was entered into with the defendant; (2) the terms of that contract; (3) the contract was breached by the defendant; and (4) the damage you sustained. Accordingly, you should bring to the hearing the original copy of the contract (if it is in writing) or you must describe orally the nature of the contract. You should provide evidence of the important terms of the contract. For example, if the amount or the time for performance are very important, an independent witness who was present at the time the contract was entered into would be helpful. If someone like a garage mechanic can substantiate the breach of the contract, you might have him come to court as a witness. Estimates or repair bills relating to the damage you sustained should be submitted or experts in assessing the damage should be called. Remember that your opposing party has the right to cross-examine your evidence to assess its reliability. Therefore, anything other than direct testimony, such as hearsay evidence of the variety "she told me that Ralph said", denies your opposition the opportunity of questioning both Ralph and your informant to ascertain exactly what was said. For this reason, most courts want Ralph in court.

While section 55 of the Ontario legislation provides that:

> "the judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment as appears to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as hereinotherwise provided."

Judicial decisions have held that:

> "this statutory provision . . . does not . . . entitle the judge to disregard the general principles of law, but may very well be interpreted to clothe the court with jurisdiction to disregard technical defects which would defeat the justice of the claim."*

Unfortunately, the rules of evidence are not regarded as a technical defect.

*_Smith_ v. _Galin_, 1956 O.W.N. 432, p. 434 (C.A.)

The best way to assure the availability of witnesses is to subpoena them. A subpoena is an order from the court, to a person, directing his or her attendance at a hearing to give evidence. It may also order the individual to produce certain documents or records. Failure to obey this order can result in both a fine and imprisonment. The Ontario legislation allows witnesses $1 per day for attendance in court unless they are barristers, solicitors, physicians, surgeons, engineers or similar persons who are entitled to $4 per day, assuming their evidence is being given as that of expert witnesses. Where a witness resides more than three miles from the court, a travelling expense, not exceeding twenty cents per mile one way, is allowed. In other words, witness fees are very low but one must balance the equity to a witness against the interests of the plaintiff and defendant. The legislation has tried to keep all costs at a minimum.

If you want to withdraw your claim at this stage you should let the defendant know and get this person's consent to a discontinuance of the action *without costs*. If this is obtained, advise the clerk. Should the defendant not agree to renounce his costs, make the request once again, but this time by registered letter. Furthermore, advise him that you will make this same request to the judge at the date of trial. Similarly, if you need an adjournment, request the defendant to consent to a postponement of the case and on agreement advise the

court. A new date for the hearing will then be arranged. But if the defendant refuses, as with the discontinuance, make this request again in a formal manner by registered mail, and advise that, at the date of the hearing, you will be making the same request to the judge. At least one adjournment is usually possible and, having advised the defendant beforehand, you are unlikely to be made responsible for any additional costs.

Saskatchewan and British Columbia legislation provides that no costs other than the fees paid to the clerk can be recovered in an action and in certain circumstances Manitoba limits the recovery of such costs to ten per cent of the amount recovered. The Ontario legislation, while allowing for the recovery of costs paid to the clerk and bailiff, places a specific limit upon the amount of money that can be awarded to a successful party who has employed a counsel or solicitor. The same is true in Alberta. However, there really is no need to be represented by a lawyer in the small claims court and even should you end up opposing a lawyer most judges will look out for your interests and be as helpful as possible. Quebec legislation questions this assumption, specifically excludes the use of agents or lawyers and directs the judge to assist actively in resolving the dispute. Corporations cannot commence an action in Quebec's small claims court and if an action in another court is transferred to the small claims court, as is the right of an individual person, the corporation has to have a person in its sole employ present the case. This provision, following the pattern of a number of small claims courts in the United States, represents the most far-reaching attempt in Canada to insure against unequal presentations.

While hearings are fairly informal, some structure in the presentation of evidence is needed to provide clarity and minimize confusion. Hence, outside of Quebec, the universal approach in disposing of a dispute is in the following manner. First, a few preliminary objections may be in order. For instance, as a defendant you may believe this claim is improperly brought in the small claims court because it is in relation to the title to land, or there is a mistake in the plaintiff's claim. The former objection, if correct, means that the case will the dismissed but the latter objection usually results in a summary amendment of the claim and the hearing proceeds. Assuming the case is not dismissed, the plaintiff is usually asked to give a brief summary of his claim and the relief requested and the defendant is given a similar opportunity to defend himself. This puts the evidence in context and assists the judge in determining what is relevant. Then the plaintiff, bearing the onus of establishing his claim, must present his evidence. The defendant has the right to cross-examine each witness including the plaintiff. Following the defendant's cross-examination, a plaintiff has the right to re-examine his or her witness in relation to matters or confusion arising out of the cross-examination. At the end of the plaintiff's case the defendant has the right to move for a dismissal of the claim contending that the plaintiff has failed to prove a case. But if the defendant loses on this motion no other opportunity is afforded to present evidence and therefore the plaintiff would be granted judgment. Accordingly, as a defendant, it is often wiser to forego such a motion and present your evidence with the plaintiff having the right to cross-examine each witness. Following the defendant's presentation of evidence, the plaintiff has the right to bring forward any "reply evidence" in relation to matters or confusion arising out of the defendant's presentation. Finally, at the conclusion of this dual presentation of facts, each party has a right to summarize his or her position in relation to the salient facts and the appropriate outcome. This is done in a similarly designed order. The plaintiff leads off, followed by the defendant who states his position as well as replying to the plaintiff's remarks. Then the plaintiff is permitted to reply to or rebut the defendant's position. That ends the case.

i) The judgment

In the interests of speed and economy, the judge more often than not pronounces a judgment immediately following the above process. If the issue is particularly complex however, the judge may want time to reflect upon it and he will therefore reserve his decision for a short period of time. But whatever approach is chosen, the reasons are usually set down in writing and given to the parties. It should be remembered that because the judge can direct payment by instalment or give the defendant time to pay, such requests should be made at this time. Also keep in mind that if costs can be awarded, they follow the event. That is, the party who wins get his processing costs.

j) Appeal

In the Province of Quebec a judgment of the small claims court is final and binding. There is no right to appeal to a higher court for a different result. This gives finality to a dispute and eliminates the time and expense associated with such matters. Unfortunately, all of the other provinces permit appeals although Ontario limits the right to appeal to disputes involving sums in excess of $200 while

the Yukon and Northwest Territories have a $100 limit within magistrates' courts. As well, a few jurisdictions permit an application for either a new trial under certain circumstances or a reconsideration of the decision by the judge who made it. Because appeals and such other applications have to be made within a specific period of time, you must make an immediate decision on these matters following the judgment. But remember, once you start on the course of appeal, your dispute will go before a superior court and a lawyer will be required to present it with all the attendant costs. Finally, it should be noted that a "default judgment" is not appealed but rather a request is made to a judge of the small claims court to have it set aside.

k) On enforcing a judgment

On many occasions obtaining a judgment against the defendant is only the beginning of one's experience in the small claims court. The next stage is that you must now collect it. Some defendants simply cannot afford to pay anything or simply do not want to. Hence the problem of enforcement arises and this may involve the garnishment of wages or other available monies, the seizing and selling of goods and chattels or the seizing and selling of land, assuming, of course, that the defendant owns the chattels and land. A number of jurisdictions give the small claims court judgment the status of a judgment of the county or district court, enforceable in that court according to its procedures. This means that your enforcement directions will be filed with the clerk of the county or district court that has jurisdiction over the defendant and executed by the sheriff of that court. Other provinces provide a full or partial repertoire of enforcement remedies within the small claims court framework itself and Ontario is, again, a primary example of this approach. Furthermore, the Ontario procedure is very similar, with a few exceptions, to the procedures of superior courts and will provide a sufficient flavour of the enforcement process across Canada. Thus the Ontario procedure will be described in some detail.

In Ontario, as in most jurisdictions, the onus falls upon judgment creditors to enforce their judgments and a number of procedures are available – a judgment summons procedure, garnishment, and execution. But, as we will see, the judgment debtor can seek relief from creditor harrassment arising out of a number of such judgment debts by applying to the court to provide time for payment by way of an orderly schedule of payments. This is called a consolidation order.

A judgment creditor may secure an examination of the judgment debtor to ascertain the latter's financial ability and resources – in other words, to find out what monies or assets are available to satisfy the judgment. This is called a judgment summons examination. There is a similar procedure available to conduct judgment debtor examinations under the rules of practice and procedure of the various supreme, county and district courts. While in these latter courts such examinations are conducted in the office of a special examiner, an official with no independent judicial powers, in the small claims courts the examination is conducted before a judge of the court who has authority to make an order requiring the judgment debtor to pay the judgment on terms, that is, by instalments. The judgment summons is issued out of the small claims court in the jurisdiction where the judgment debtor resides or carries on business. Before such a summons is issued the judgment creditor or his agent must file an affidavit with the clerk stating that the judgment remains unsatisfied in whole or in part. Then the judgment summons must be served personally upon the judgment debtor at least eight days before the examination. The examination is usually held in a closed session because of the personal nature of the questions and, as noted, the judge may make such order as to payment of the judgment as he deems proper. If the individual fails to abide by this court direction the procedure can be undertaken again. It is called a show cause summons but this time the examination includes reasons for the judgment debtor's failure to comply with the more recent court order. A debtor in Ontario can no longer be sent to jail for failing to pay a judgment creditor but failure to attend any of these examinations may constitute contempt of court and contempt can result in the committal of the debtor. It should be noted that, as with all of these post-judgment procedures, the costs involved are costs in the action and added to the judgment debt.

In Toronto, a mediation-fact-gathering device to assist in the resolution of post-judgment difficulties has been established and is well worth describing. It is to be hoped other courts in Canada will adopt similar procedures in the future.

Some years ago the Senior Judge of the Judicial District of York created the office of the Small Claims Court Referee as a result of the large volume of applications pertaining to orders for the payment of debts under the judgment summons procedure. It had become difficult for the judges to keep abreast of the changing circumstances of each judg-

ment debtor and the frequency of their court appearances. The referee's role is one of gathering information from individual wage-earner applicants who are seeking judicial assistance and relief but the referee also contacts the various judgment creditors involved in an effort to work out some kind of settlement without judicial assistance. The referee refers many of the debtors to credit counselling services and to any other agencies which may be of some assistance in dealing with the underlying causes of any particular problem.

However, if the judgment debt remains unsatisfied and the judgment debtor falls in breach of a court direction that has provided for instalment payments as a result of the above procedures, other more coercive remedies may be resorted to. The most prevalent remedy is called a garnishment proceeding. This is a procedure used to seize monies owing to the judgment debtor, most often wages or bank accounts. The judgment creditor merely calls at the office of the clerk of the court that has jurisdiction and provides the information describing the judgment, the identity of the judgment debtor, and the identity of the garnishee, the latter being the person who owes money to the judgment debtor. The judgment creditor then delivers, personally or by registered mail, the direction to garnish to both the judgment debtor and the garnishee. The garnishee then must pay any monies so owing to the extent of the judgment into court or if no monies are owing this must be indicated. If monies are owing and the garnishee fails to comply with the direction, judgment will be entered against the garnishee as well. It is noted that Ontario also provides for garnishment before judgment – a garnishment summons – in regard to any debt or money demand, although the court retains the money until liability is actually established in the normal way. But one cannot garnish wages by this method.

Employers, prior to the introduction of section 5 of the *Ontario Employment Standards Act*,* often discharged employees who were being pursued by their creditors in this manner, but now section 5 reads:

*R.S.O., 1970 c.147

> No employer shall dismiss or suspend an employee upon the grounds that garnishment proceedings are or may be taken against the employee.

It is important to note that in Ontario, and in most other provinces, specific legislation exempts seventy per cent of the wages due to a judgment debtor and the exemption can be increased or lowered on application to the court.

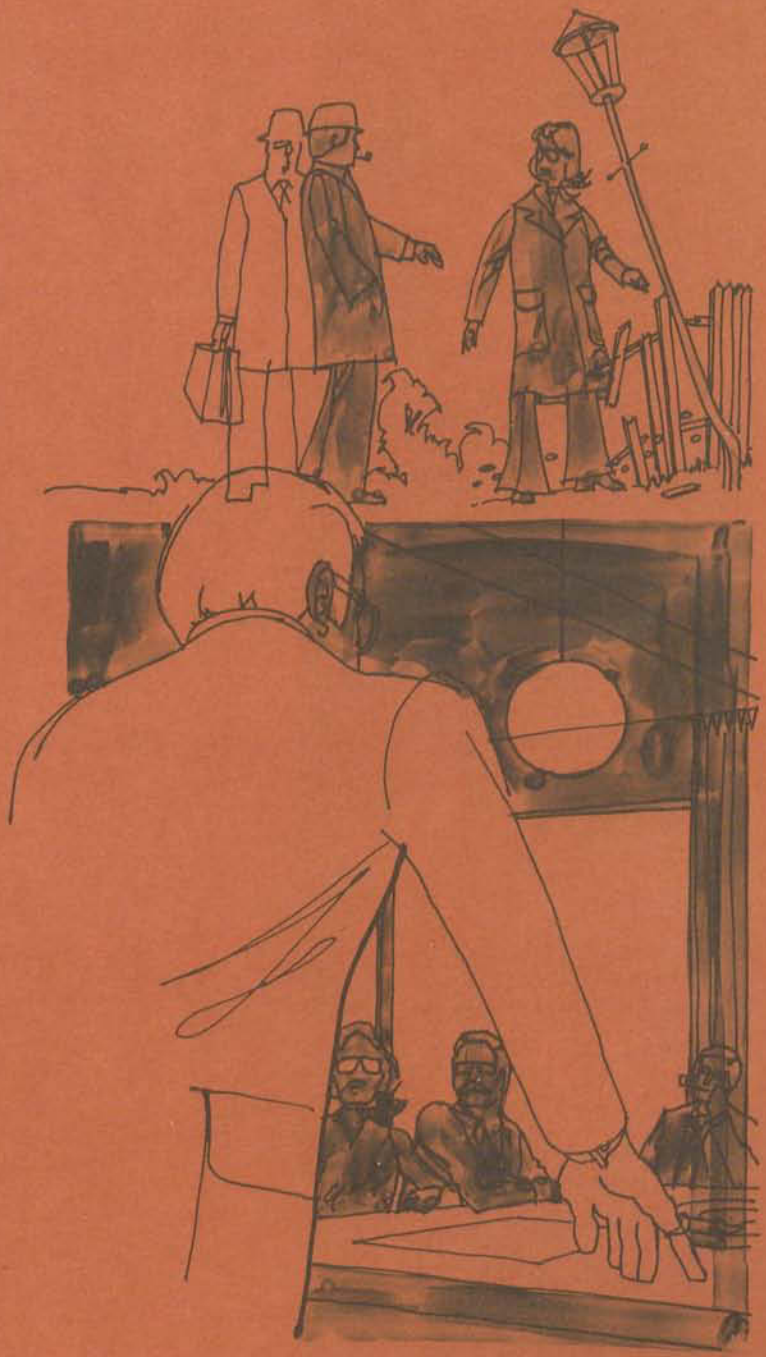
The last remedies to be discussed relate to the seizing of personal assets or land to satisfy a judgment. These two distinct types of execution are available through the clerk's office. A right of execution against lands is available where the amount of the judgment owing exceeds $40. Upon application of the plaintiff and upon payment to the clerk of the fee prescribed by the regulations, the clerk will issue an execution directed to the sheriff of the county in which the judgment debtor owns the land. The act provides that such an execution has the same force and effect as one issued from a county court. Registering the execution with the sheriff results in a charge against all of the judgment debtor's lands in that jurisdiction. As a result, the judgment debtor cannot deal with the land in any way without first paying the amount of the judgment. On the expiration of twelve months the sheriff can be directed to sell the lands, with the proceeds going first to satisfy the judgment. But because of the rights of other judgment creditors, not to mention the requirement of an initial deposit to cover the sheriff's costs, a lawyer should be consulted before exercising this option.

An execution against goods and chattels is separate and distinct from an execution against lands quite unlike a writ issued by county, district and supreme courts which is a single document directing the sheriff to levy against both goods and lands of the judgment debtor in the county. The execution against goods and chattels in the small claims court is directed to the bailiff of the division where the goods and chattels are situated. The bailiff will go to the locations where the judgment debtor may have goods and seize them. He will then hold them for eight days, place advertisements notifying the public of an auction and then sell the goods or chattels at the auction. The proceeds are then paid into court. Certain goods such as clothing of the judgment debtor and his family up to a value of $1,000; household goods to a value of $2,000 and workman's tools to a value of $2,000 are exempt from execution. Furthermore, the judgment debtor must own the goods in question; hence goods subject to chattel mortgages and conditional sales contracts are frequently unavailable for execution.

Finally, the *Ontario Small Claims Court Act* provides a scheme whereby a judgment debtor who has a number of judgments outstanding may apply to the court to consolidate all of the judgment debts. Notice must be given to all of the judgment creditors. The judge may then make an order that all of the debts be consolidated and require the judg-

ment debtor to pay into the court a percentage of his or her weekly income, pursuant to the order. The clerk will notify all the judgment creditors and prepare the consolidation order. This order remains in effect as long as the debtor complies with the prescribed payments and as long as no debts are subsequently incurred. If he fails in either regard, the order terminates and the judgment creditors can continue "the chase". Unfortunately, the court lacks the capacity to reduce the amount owing to judgment creditors, by way of the consolidation order technique.

THE FUTURE



The small claims courts, like all such procedural structures, are not and cannot be a panacea for the societal conflict found within them. Judicial procedure grapples with the issues arising out of larger social forces but has very little direct control over these forces. To resolve effectively many of the problems that find their way before this court, these forces must be directly tempered by substantive reform, thereby altering the roots of social problems.

But the enforcement of legal rights has never been unimportant and fundamental societal trends suggest that agencies similar to small claims courts will play a major role in resolving conflict in tomorrow's urban society. Legal rules are increasing in both number and scope while the influence of other institutions such as the family and the church that have formerly played important regulatory roles appear to be declining. It is becoming more and more necessary for ordinary citizens to assert their legal rights formally. But all of these legal rules and reforms will mean very little if they cannot be enforced in an economical and speedy manner and with the necessary assistance readily available. While the small claims court has delivered justice to the Canadian people in the past, it must keep pace with fundamental social change. As society changes so must court structure. Many commentators have attacked these courts because of inconvenient office and hearing hours, insufficient personnel of high quality, insufficient assistance in the preparation, negotiation and presentation of claims and disputes and assembly-line justice, and because of an allegedly excessive use by debt collection agencies and lawyers. Many of these charges are not without foundation. A number of changes are needed and will occur. Fortunately or unfortunately, depending on where you live, some provinces are moving more quickly than others in experimenting in procedural forms.

Office and hearing hours should be scheduled at convenient hours and court personnel must be upgraded and increased in number. No small claims procedure should require its judges to apply the rules of evidence for any purpose other than to affect the weight of relevant evidence. So many important tribunals follow this approach today. But what fundamental reforms are in store?

It is not foolhardy to predict that in the future a more extensive and qualified clerk's office staffed by para-legal professionals will not only prepare claims and disputes but also assist in the negotiation and settlement of these differences, thereby avoiding the time, expense and confrontation associated with a court hearing. Similarly, this office will assist the parties in presenting their case if negotiations fail. In other words, a much more substantial service will be available in these conflict situations which will substantially reduce the frustration and the embarrassment that is often experienced at present. Moreover, these offices, by way of negotiation and mediation, may even come to play a major role in reducing more generalized community conflicts that often lack legal solutions.

A second approach in the future may see the small claims courts converted into community centers aimed principally at resolving differences through negotiation, compromise and introspection, with the assistance of sociologists, psychologists and financial planners. Both plaintiffs and defendants will be counselled to understand their mutual differences in light of basic common purposes. The court would come to represent the community center for guidance and assistance within an "extended family." Instead of relying upon legal rules, the court would admonish the parties in the light of their social responsibilities in a modern post-industrial society.

Another possibility for the future, one with the most contemporary traces, is a court that prohibits the presence of all agents and lawyers while directing the judge to play a major investigational role in resolving the differences between parties without regard to the rules of evidence. Numerous highly-qualified decision-makers will be immediately available to attend the site of the differences between individuals. Disagreements will be resolved on the spot. These procedures will eliminate the disruptions in community relationships associated with the present system.

Of course, all of these projections are very speculative and quite probably an exaggeration of future shapes. But whatever changes do materialize, small claims procedures will continue to play a vital role in resolving the multitude of inevitable differences that arise in community settings.

APPENDIX 1

The treatment of small claims in the Canadian provinces

a) Alberta

This province has a small claims court system which is provided for by *The Small Claims Act* (R.S.A., 1970, c.343). Every provincial court judge throughout the province has jurisdiction to adjudicate in small claims matters which means that small claims courts are held in all major rural centres. In addition, in the cities of Edmonton and Calgary provincial court judges specialize in this particular field. The monetary jurisdiction of the court is $500 for debt and $200 for damages (including damages for breach of contract). An action or matter must be commenced, carried on and heard in the judicial district in which the defendant or one of the defendants is then dwelling or carrying on business or in the judicial district in which the cause of action arose. Service of all documents may be made upon the person to be served, either personally or by leaving copy for him at his most usual place of abode with a resident who is sixteen years of age or older or by mailing the copy to the person to be served by double registered mail to his or her last known post office address, in which case service is deemed to be effected at the time the double registered letter is delivered by a postal official to the person to be served or to any person receiving it on his behalf.

Once a judgment has been obtained in the small claims court, the successful party can obtain a certificate from the magistrate. After the period stated in the act, this certificate can be filed in the district court. From that time on, the same procedures are available to enforce this judgment as are available to enforce a judgment obtained in the district court. The legislation provides for a maximum solicitor's fee of $5. This is to discourage the appearance of solicitors in small claims court. The legislation provides for a right of appeal.

b) British Columbia

In this province small claims matters, basically claims for amounts not exceeding $500 in either debt or damages, may be dealt with in the Small Claims Division of the Provincial Court of British Columbia (*The Small Claims Act*, R.S.B.C., 1960, c.359, amended by S.B.C., 1969, c.28, s.20). Although the provincial court does not have exclusive jurisdiction, costs are not allowed in any case taken to the county court that is within the jurisdiction of the Small Claims Division of the Provincial Court, unless the parties agree in advance that costs may be awarded.

All judges of the provincial court have province-wide territorial jurisdiction in all divisions of the court, including the Small Claims Division. The only qualification of this is the provision that when an action goes to trial the hearing must occur in the jurisdiction where the defendant resides or where the cause of action arose. Service of the summons may be made by any adult literate person other than the plaintiff upon the person to be served, either personally or by leaving a copy for him at his last or most usual place of abode with some inmate apparently of the age of sixteen years or older or by mailing the copy to the person to be served, by registered mail, to his last known post office address, in which case the service shall be deemed to be effected at the time the copy is delivered by a postal official to the person to be served, or to any person receiving the same on his behalf.

In practice, it usually happens that in a community where there is more than one judge, most of the small claims work is handled by one of them and in the cities of Vancouver and New Westminster, there are judges who handle only small claims cases. Basically the procedures in the Small Claims Division are kept as simple and informal as possible without pleadings and without counsel unless the parties wish to engage them. With the monetary limitation on jurisdiction increased to $500, it is reported that more and more lawyers are appearing in the Small Claims Division, particularly in motor vehicle cases where the outcome may affect subsequent insurance rates. However, no counsel fees can be awarded. Judgment summons proceedings and warrants of execution are available for the enforcement of judgments. The right of appeal exists in all cases.

c) Manitoba

The Small Debts Recovery Act (R.S.M. 1970, c.s.140), which conferred upon a magistrate jurisdiction to try and adjudicate any claim for a debt where the amount of the claim did not exceed $500, and for damages where the amount of the claim did not exceed $200, was repealed recently (S.M. 1973, c.20). But this court did not have exclusive jurisdiction in small claims. The parties were allowed and continue to be allowed to bring small claims into the county court. *The County Courts Act* (R.S.M. 1970, c.260 as amended S.M., 1971, c.77 Pt. II; S.M., 1972, c.38), was amended in 1971 to provide an expeditious and informal procedure for small monetary claims. With

the repeal of the *Small Debts Recovery Act*, this modified county court structure becomes the exclusive forum for small claims.

This procedure is intended to dispose of most small claims not exceeding $500 in a summary fashion. A person having such a claim files a statement with the clerk or deputy clerk of the appropriate county court and then this statement can be served personally by the plaintiff or by registered mail, upon the defendant. If the defendant will not consent to this summary treatment of the claim before a county court clerk, a deputy clerk or county court judge – a procedure in which the rules of evidence do not apply – a notice of objection must be filed with the court within seven days and in that event the more regular provision of the *County Court Act* apply before a county court judge. But if no notice of objection is filed, a notice of trial is sent to the parties and the legislation provides that this hearing must occur no earlier than twenty-one days and no later than sixty days from the filing of the statement. As noted, the rules of evidence do not apply and the dispute may be heard by a clerk or deputy clerk of the court or by a county court judge. Finally, a judgment is a judgment of the county court but an appeal of the judgment to the county court by way of trial *de novo* is allowed.

When a defendant objects to the summary procedure and a county court judge hears the dispute, a successful plaintiff is entitled to costs in an amount not exceeding ten per cent of the amount of judgment but an unsuccessful plaintiff is required to pay the defendant's costs in accord with the more general county court procedure.

d) New Brunswick

In New Brunswick small claims are handled by a summary procedure within the county court in that the statement of claim is mailed by the clerk, a dispute note is enclosed with it, and the clerk then receives the defendant's reply and the evidence of service. If the matter is disputed, the case is set down for trial and the matter proceeds in the same manner as any other action. If the matter goes to trial, it is reported that counsel is usually present to represent one or the other of the parties. However, in a small percentage of the cases the plaintiff and the defendant conduct their own case. Apparently this practice is not encouraged by the judiciary because of the length of time required to resolve the issues. If judgment is obtained it may be enforced in the same way as any other judgment of the county court. There are six county court judges in New Brunswick, each appointed for certain specified counties. A recent amendment to the *County Courts Act* provides for the appointment of a chief county court judge and permits him to assign sittings to other judges of the court. This would in effect introduce the circuit principle into the county court bench. Finally, it should be noted that local magistrates can entertain small claims that do not exceed $80.

e) Newfoundland and Labrador

Magistrate courts presided over by judges appointed by the provincial government have civil jurisdiction up to $200. Also, stipendiary magistrates have unlimited civil jurisdiction in civil actions concerning wages of labourers engaged in lumbering, or mining, or manual occupations connected therewith, the wages of servants in the fisheries and wages or shares of seal of any person engaged in the seal fisheries. The procedures are quite informal.

f) Nova Scotia

The small claims courts, so called, are established under the *Municipal Courts Act* (R.S.N.S. 1967, c.197) in every incorporated town within the province and are presided over by a stipendiary magistrate or a provincial magistrate. The jurisdiction of the court is limited to $500 in actions in tort and contract. A right of appeal is provided for. The *Justices' Courts Act* (R.S.N.S. 1967, c.158) provides for justices' courts in the county districts. The courts are presided over by one justice of the peace or two justices of the peace or a stipendiary magistrate. The jurisdiction of the court is limited to actions in debt with an upper limit of $20 when one justice is presiding; when two justices or a stipendiary magistrate are present, the upper and lower limits are $80 and $20.

The court has jurisdiction in all actions in contract and in tort where the debt demand or damages are over $20 and under $10,000 and in actions of replevin up to $400. It is reported that the bar plays an active role as counsel for parties before all the courts.

g) Ontario

The Ontario procedure is described in detail earlier in the booklet and accordingly has been omitted from this appendix.

h) Prince Edward Island

There is no small claims court in this province. Rather, Prince Edward Island has three county courts, one in each of the counties, pursuant to the *County Courts Act* (R.S.P.E.I. 1951, s.35). Each county court is vested with the jurisdiction to adjudicate in all personal actions of debt, covenant, assumpsit and tort where the debt of damages claimed do not exceed $1,000. In this regard, subsection 1 of section

24 of the *County Courts Act* reads:

> Where in any action the debt or demand claim consists of a balance not exceeding $1,000 after an admitted set-off of any debt or demand or recoverable by the defendant from the plaintiff, the court shall have jurisdiction to try such action.

Section 27 of the act reads as follows:

> The venue of actions in the civil circuits of the courts shall be regulated as follows:
> a) The plaintiff shall sue in the circuit nearest the residence of the plaintiff;
> b) Where there are two or more plaintiffs or two or more defendants, such suit shall be brought in any of the circuits nearest the residence of one of the parties;
> c) Notwithstanding the preceding rules of this section, no action shall be brought in any county court other than that of the county where the defendant or some of them reside, unless the cause of action or some part thereof arose within the county in a county court of which the action was brought.

i) Quebec

Prior to recent legislation the junior civil court was the provincial court which had jurisdiction in cases up to $3,000. However, *The Code of Civil Procedure* (S.Q. 1971 c.86) now provides that the municipal court is to deal with the small monetary claims of individuals that do not exceed $300. A most significant feature of the legislation is that corporations cannot bring an action against an individual in this court and no agents or lawyers may appear. Therefore when a corporation sues an individual for a sum less than $300 the individual can have the action transferred to a municipal court. Although the corporation can continue to pursue the claim it must do so through an employee in its sole service and not by a collection agent or lawyer.

The creditor in a small claim applies to the clerk of the municipal court of the debtor's domicile and states his allegations to him. The clerk then has to decide if the claim is proper, and if so, draws up a motion which he has the creditor sign. The clerk will enter a demand of payment on the motion, and serve it upon the debtor by registered mail. Upon receiving the demand of payment, the debtor may discharge his debt to the creditor by paying both the debt and the costs of the claim which cannot exceed $10. He or she may also agree with the creditor upon the delays or the terms and conditions of payment. The clerk is to be notified in either case. If the debtor intends to contest the demand for payment, the clerk must be notified of this fact. The clerk will then call the parties before the court at a convenient time. At the hearing the judge examines the parties and witnesses himself, following the procedure which seems best to him "to ensure respect for the law and equity," although the rules of evidence apply. The judge may visit the place of any dispute and order the services of experts, the cost of which will be borne, at the judge's discretion, by either the losing party or the Minister of Justice. In the judgment the judge may grant delays or terms and conditions of payment to the debtor. It is important to note that the costs are never to exceed the sum of $10 in addition to the costs of the witnesses designated by the judge and (if he orders it) the cost of experts.

The clerk will proceed with the compulsory execution of the judgment for the person in whose favour the judgment has been rendered although the debtor's immovables can neither be seized or sold under this procedure. Again, costs against the debtor are limited to $10 as cost of the execution, the excess of the costs of execution being borne by the Minister of Justice. If the person in whose favour judgment has been rendered prefers to execute the judgment himself, he may do so, even against the debtor's immovables, but in such case the procedure to be followed is the ordinary procedure for compulsory execution provided by *The Code of Civil Procedure*. Judgments rendered in matters of small claims are final and without appeal.

j) Saskatchewan

Apart from the small debts procédure in the district court, adjudication of small claims in this province is largely dealt with by the courts established under *The Small Claims Enforcement Act* (R.S.S. 1965, c.102). In the larger centres (Regina and Saskatoon) one or more of the magistrates of the magistrates court is specifically designated to deal with claims under the act. In the remaining parts of the province jurisdiction under the act attaches to the various magistrates appointed at some eleven different centres. These magistrates operate in designated circuits. The procedures of the court are simplified and differ from the more traditional judicial procedures in that the action is initiated on a statement of claim prepared by the magistrate if he is satisfied that the plaintiff has a *prima facie* claim. Only in the two larger centres is there staff available to perform this function. The court has jurisdiction over all claims by individuals in debt or for damages up to $500 and over all such claims of other persons up to $200. No costs are awarded or charged other than the filing fees, which consist of $3 for disputes under $100 and $5 for claims over this amount.

The act provides for a filing of a certificate on a judgment of a small claims court. This certificate, when filed, has the same effect as a judgment of the district court. Finally, the judgment can be appealed

to the district court by way of trial *de novo*. It is reported that the bar plays a role in only a small proportion of the cases in this court.

k) The Northwest Territories and the Yukon

Both the *Northwest Territories Act* (R.S.C., c.N-22) and the *Yukon Act* (R.S.C., c.y-2) provide for police magistrates' courts that have a substantive jurisdiction almost identical to the jurisdiction of the small claims courts in Ontario but with a monetary limit of $1,000. (See *Magistrate's Court Ordinance*, U.R.O., 1971, c.M-1.) In disputes for amounts over $100, one can appeal from a judgment of the courts in either jurisdiction to the Territorial Court. The respective legislation provides for the enforcement remedies of garnishment, execution and attachment.

In addition to the jurisdiction of these courts, however, the *Judicature Ordinance* (R.O., 1956, c.54 as amended by O. 1970, c.5, s.44) of the Northwest Territories and *Judicature Ordinance* (R.O. 1958, c.60, s.51) of the Yukon provide for the appointment of a small debt official who is to have jurisdiction "in any claim for debt, whether payable in money or otherwise, where the amount or balance claimed does not exceed $200." The sections for the filing of claims and disputes, set out the prescribed forms and provide for enforcement remedies and the right of appeal to the Territorial Court.

APPENDIX 2

The treatment of small claims in the United Kingdom

In Tudor times there had been an attempt to deal with small cases and poor litigants by the creation of courts of request. However, these courts were too close to the King's Council to survive the political storms of the 17th century. In many of the ancient towns there were local courts which survived, and some of these were improved by statutes of the 18th and early 19th centuries. The creation of the county courts by statute in 1846 finally provided a comprehensive court system for small cases.

Today there are over 400 county courts for England and Wales, the districts served by these courts being so arranged that in every part of the country there is a county court within a reasonable distance. There are over eighty county court judges, each judge having a "circuit" consisting of a court or group of courts, depending upon the amount of work to be done. In the nine metropolitan districts the work is so heavy that the courts are in more or less continuous session. The circuit amounts to one court and if the court's volume is extremely heavy two judges may be required for a single court. Where the population is less dense the judge may have to hold court in a dozen or more different towns and the court must be held at least once every month. The judges are appointed by the Crown on advice of the Lord Chancellor from barristers of at least seven year's standing.

Each court has a registrar appointed, subject to removal by the Lord Chancellor, and this person may be the registrar of more than one county court. The registrar is a solicitor, and the Lord Chancellor decides in each case whether the appointment should be full-time or part-time. The registrar is the head of the office staff of the court but he also acts as a lesser judge in small claim matters.

The hearing of the cases is divided between the judge and the registrar. In other words, the registrar is, in effect, an assistant judge taking on the lesser cases. These include cases where the defendant does not appear or admits the claim. At present the monetary jurisdiction of the county court in contract and in tort is £750 and the monetary jurisdiction of the registrar is £75. The *Beeching Commission* (1969) and the *Winn Report* (1968) recommended that the registrar's jurisdiction be extended to £100 and that the registrar be relieved of his administrative responsibilities in the running of the offices, leaving him free for work which requires a legal qualification.

While the procedure in these courts is less formal and less complex than that in the High Court, the 1969 edition of the *County Court Practice Book*, contains 319 pages of annotated county court rules and 204 pages of forms, not to mention over 2,000 more pages of legislation, tables of costs and fees, and rules relating to special jurisdiction. A study conducted by the British Consumer Council in 1970 states:

> The solicitors we interviewed in our survey were unanimous in saying that it was a rare person who could successfully fight a case of any complexity unrepresented.*

**Justice out of Reach: A Case for Small Claims Courts*, A Consumer Council Study, July 1970, (London: H.M.S.O.; 1970) p. 19

It appears that the county court is more formal than the Canadian small claim procedures. The Institute of Advanced Legal Studies has reported that the Law Society in the United Kingdom estimates that the cost of bringing an action in county court to recover £100 in damages, assuming a one-day hearing and an expert witness on each side, are £144 for the plaintiff and £136 for the defendant. Thus, assuming that costs are awarded to the winner and the plaintiff lost, the plaintiff would be £280 out-of-pocket. If the plaintiff won, it would still be necessary to meet a bill from the solicitor which would probably be for at least £15 (15 per cent of his claim), in addition to other expenses. The Institute concludes that the penalties for losing are too high and the rewards for winning too low to make litigation worthwhile. Legal aid in Britain is available only to low income people and, in any case, it is usually not granted for claims considered uneconomical to pursue.

The expense and formality presently associated with county court hearings of small claims led to a recommendation in the study of the British Consumer Council for a radical restructuring of the use of the registrar in the county court set-up. In brief, it was proposed that the registrar of each county court should be charged with running an informal court of small claims as a branch of the county court, designed for individuals to have their claims adjudicated without legal representation. Practising solicitors or professional people with experience in arbitration might help to man the court. The court's judgments would be enforceable by county court machinery. The Consumer Council suggested the jurisdiction of this court might be for claims up to £100 in contract and tort, which is consistent with the recommendations made by the *Winn Committee*

and the *Beeching Commission*. It would be a genuine people's court and, as is the rule in a number of small claims courts in the United States, companies, partnerships, associations and assignees of debt would not be allowed to sue in this court. The purpose of this restriction would be to prevent the courts from becoming widely used by firms for debt collecting and becoming more geared to businesses than to individuals. Individuals sued by firms in the county courts should, if they entered a defence or counterclaim, have the opportunity to transfer the case to the small claims court, provided the claim and counterclaim were within the court's jurisdiction. This would give them access to the special small claims machinery for individual litigants. If there is to be any provision for appeal, the Council, recommended that it should be very limited. The Council also recommended that representation by practising lawyers should not be permitted in the small claims court. Instead, the court was to be organized so that the individual, however ill-educated, could use it himself without a lawyer. The Council felt that when lawyers appear regularly, courts tend to become more formal, more forbidding, slower and not geared to the needs of the individual. In addition, procedural rules tend to evolve and impede the court. Consequently the Council recommended that the court be endowed with investigatory functions so that it would be usable by the entire spectrum of the population. That is, the Council recommended that the court be able to call for certain evidence or make certain inquiries itself if the judge considered that he or she did not know enough about the facts of a case to make a just decision.

A brief outline of the proposed procedure is worth considering. First, the plaintiff would come to the court office and file his claim. The court officer would interpret his story, write out a claim for him and send a summons to the other party for a hearing on a date as soon as possible. The officer would tell the plaintiff what kind of evidence he might bring along and a notice to bring the relevant documents to the hearing would be sent to the defendant. A senior court officer would be available to help in sorting out the main issues in complex cases. The registrar would hold the hearing in his own office, not in a courtroom, and, if court sittings were not held regularly in the evening, the parties should be given at least the option of having a hearing outside working hours. The registrar would conduct the hearing in the way that a reasonable person would do, letting the parties tell their story and asking questions where more information was needed. The hearing would not be governed by any rules of procedure or evidence and the registrar's job would be to try to find out as many relevant facts as possible and apply his own judgment to assessing the parties' stories. His first aim would be to achieve an amicable settlement. If no settlement was reached, then in most cases it was thought that the registrar would be able to reach a fair decision on what had been said to him. Where the registrar is not satisfied that he knows enough to make a fair judgment, he could postpone making a decision until sufficient information was available. How this information would be collected should be a matter for the registrar's discretion: he might ask one of the parties to obtain further information; he might inspect the subject matter of the dispute or send a court officer to do so; he might talk to a witness who had not been at the hearing; and finally, he might consult an on-hand expert about some point over which there was confusion. The process was analogized to that of arbitration. The cost to the parties would be limited to a filing fee of perhaps 10 shillings to £2, which would be recoverable by the winning party.

Quite possibly in response to this proposal, the following practice direction was issued by the Lord Chancellor on September 21, 1973:

1) S.92 of the *County Courts Act* 1959, as amended by s.7 of the *Administration of Justice Act* 1973, enables a county court, in such cases as may be prescribed, to order any proceedings to be referred to arbitration to such person or persons (including the judge or registrar) and in such manner and on such terms as the court thinks just and reasonable. Under Order 19, Rule 1(2), inserted by the County Court (Amendment No. 3) Rules 1973 as from October 1, 1973, the registrar may make an order under this section if the sum claimed or amount involved does not exceed £75 or the parties consent to the reference.

2) In order to secure uniformity of practice and to give the parties and their advisers an indication of the course likely to be taken under these provisions, the registrar should, in settling the terms on which an order of reference is to be made, consider the desirability of including such of the terms mentioned in the Schedule below as he may think appropriate. The list is not intended to be exhaustive and the registrar may consider other terms to be desirable in the circumstances of the particular case; but the parties should be given sufficient notice of a contemplated departure from the terms set out in the Schedule to enable them to make any representations they may think fit, and a party who himself wishes to propose a different term should inform the registrar and the other side before the order is made.

Schedule

1) The strict rules of evidence shall not apply in relation to the arbitration.
2) With the consent of the parties the arbitrator may decide the case on the basis of the statements and documents submitted by the parties. Otherwise he should fix a date for the hearing.
3) Any hearing shall be informal and may be held in private.
4) At the hearing the arbitrator may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity to each party to present his case.
5) If any party does not appear at the arbitration, the arbitrator may make an award on hearing any other party to the proceedings who may be present.
6) With the consent of the parties and at any time before giving his decision and either before or after the hearing, the arbitrator may consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessor.
7) The costs of the action up to and including the entry of judgment shall be in the discretion of the arbitrator to be exercised in the same manner as the discretion of the court under the provisions of the County Court Rules or as the case may be. 1973 1 W.L.R. 1178; 1973 A11 E.R. 448.

This procedure is currently in effect and would appear to meet most of the points raised by the Consumer Council.

APPENDIX 3

Small claims procedures in the United States

Concern in the United States with the processing of small claims has been noticeable since the early 20th century when attention was drawn to the related difficulties experienced by poor litigants and the individual or institution with a valid but minor monetary claim. As noted at the beginning of the booklet, no adequate forum existed to meet their special needs and the legal aid societies could be only part of the solution. In response to these problems, many commentators recommended and campaigned for an entirely different approach to resolving small monetary claims. The result of such reformist agitation led to the development of small claims courts – primarily in the period 1913-1940 – to provide forums where minor disputes could be adjudicated at minimal cost by a judge using an informal and summary procedure. It is said that their development was intended to embody three basic policy objectives: (1) analyzing the importance of the claim from a litigant's viewpoint, rather than with regard to such absolute determinants as dollar value or interest at the bar; (2) avoiding alienation of large segments of the population from the court system; and (3) securing the integrity of judicial institutions.

There has been little uniformity in establishing these courts across the United States. For instance, in many states, state or local legislative action has been required, while in other jurisdictions small claims procedures have been set up by court rule. Many are independent tribunals but more often they are divisions of existing courts. Their monetary limitation ranges from $20 - $500 and the nature of the litigation is generally confined to actions for the recovery of money. The following is a brief summary of some of the features which distinguish them from other courts.

a) Simplified and uniform statements of claim

The language to be used in the statement of claim is usually set out in the statute and is designed to avoid technical or legal terminology. It is to be short and concise, yet descriptive of the event and informative to the defendant.

b) Assistance by the clerk in the preparation and filing of papers

To avoid the need for lawyers and to eliminate unnecessary delay, plaintiffs are given the opportunity of using the services of a clerk to file claims and effect service. The claims may be stated orally to the clerk, but the plaintiff must execute the standard affidavit, or sign or verify the statement prepared by the clerk. If empowered to do so, a competent clerk can settle many cases at this juncture through judicious questioning and the rejection of cases which are not *prima facie* valid. Once the claim is prepared the plaintiff is permitted to elect in what manner he wishes the process to be served.

c) Small filing fee and waiver of Costs

A fee of $1 - $3.50 generally covers the filing, trial and judgment in the case.

d) Registered mail service

Registered mail service, a low cost procedure supplementing the alternative marshall or bailiff system, has been very successful. A requirement of return-receipt to the clerk before the court will exercise jurisdiction ensures that the process has reached the defendant. Service by registered mail protects the defendant from the practice known as "sewer service" which developed in the civil court system.

e) Short notice period

The usual lengthy notice period has been shortened to about five to twenty days from the date of filing.

f) Voluntary arbitration and conciliation procedure

As an added feature, a few jurisdictions include either arbitration or conciliation proceedings to expedite dispute settlement. In some jurisdictions arbitration has been used as an alternative to small claims courts. The arbitration panels are staffed by experienced lawyers who have volunteered their services, and who perform on a regular but infrequent basis. Examples of this procedure are the Pennsylvania and Philadelphia compulsory arbitration systems which are constituted by a panel of civil arbitrators with jurisdiction up to $2,000.

g) Trial procedure

Few dilatory motions and legal manoeuvres are permitted in small claims court proceedings. It is attempted to keep the small claims court procedure speedy, simple and informal and in many states it is specified that the plaintiff has waived his right to a jury trial and limited appeal rights are conducted by trial *de novo*. Some states have provided for night sessions to minimize the cost to litigants and to prevent the equivalent of at least one day's wages from becoming the minimum floor below which, with added costs and counsel fees and the intangible nuisance factor, a dispute cannot be settled within

the judicial framework. Some jurisdictions bar lawyers absolutely and all actively discourage their presence.

h) Judgments

Statutory provisions exist allowing instalment payments and some jurisdictions bar garnishment and attachment procedures; however, the latter is not the norm. There is no requirement or limitation concerning the identity of the defendant, but some jurisdictional statutes decline to accord plaintiff status to corporations, partnerships, associations, insurers, or signees. Unless barred, business interests, it is felt, will predominate in the utilization of small claims courts.

But, as in Canada, contemporary criticism of these courts continues to centre around the dominance of business interests, the fear that these courts have become little more than collection agencies, and that their existence and process is unpublicized and therefore unknown to the majority of potential litigants who are poor. Furthermore, in jurisdictions where council are allowed to appear, they have been criticized for adherence to rigid formalities.

APPENDIX 4

Sample forms used in small claims courts

The selected forms included in this appendix are used in the small claims courts in Ontario and are only intended to provide some flavour of the official correspondence between a plaintiff and defendant prior to a hearing. (See Regulation 801 under the Small Claims Court Act R.R.O., 1970)

Models of particulars for a variety of claims

(i) For damages arising out of an automobile accident

The plaintiff claims three hundred dollars against the defendant for damages incurred as the result of an automobile accident. The accident occurred on or about June 1, 1974 at or near the intersection of Avenue Road and Lawrence Ave. in the City of Toronto. A motor vehicle owned and negligently operated by the defendant struck the plaintiff's vehicle and caused the three hundred dollars of damage. The plaintiff therefore claims:

(a) damages in the amount of $300.
(b) the costs in the action
(c) such further and other relief as to this court may appear just.

(ii) For damages arising out of a breach of contract

The plaintiff's claim against the defendant is for three hundred dollars for damages incurred because of the defendant's negligent cleaning of the plaintiff's coat in breach of a contract between the plaintiff and defendant entered into on June 1, 1974 in the City of Toronto at the premises where the defendant carries on business. The plaintiff claims that the defendant negligently damaged the coat in attempting to clean the coat and did so to such an extent that the plaintiff was forced to replace the coat and thereby sustained the above mentioned damages. The plaintiff therefore claims:

(a) judgment in the amount of $300
(b) costs of the action
(c) such further relief as to this honourable court may appear just.

(iii) For debt arising out of goods sold and delivered

The plaintiff's claim is for a debt owed by the defendant in the amount of three hundred dollars, being the costs of two hundred feet of pine privacy fence sold by the plaintiff and delivered to the residence of the defendant at 194 Melrose Avenue in the City of Toronto on June 1, 1974 at the defendant's request.

(iv) For debt arising out of work done without payment

The plaintiff's claim is for debt in the amount of three hundred dollars being the value of electrical work and services performed by the plaintiff at the defendant's residence at 194 Melrose Avenue in the City of Toronto on June 1, 1974 at the defendant's request. The time involved and materials used are itemized as follows: (hours and materials to be itemized).

(v) For damages arising out of a consumer purchase

The plaintiff's claim is for one hundred dollars paid to the defendant on June 1, 1974 for a new bicycle (make and serial number). The bicycle does not operate and cannot be effectively repaired.

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