

UNREPRESENTED PARTIES - PROCEDURE TO BE FOLLOWED IN COURT

These instructions are proposed to help you with your case in the *Small Claims Section* of the Supreme Court. The instructions are designed to explain your role in representing yourself, or as a witness. In providing you with this memorandum, the Court is not assuming any responsibility to provide you with legal advice nor can it assume an advisory role on your behalf. The judge who will be conducting your civil trial must not only remain impartial, but must also be seen by the other party as remaining impartial. You alone are responsible to familiarize yourself with the civil trial system and the practice and procedure that is normally followed by counsel in presenting a case on behalf of a party. The comments in this memorandum cannot possibly cover all the things you need to know about conducting a civil trial, nor can they begin to replace the advice and assistance that would otherwise be available to you if you had legal counsel.

For further information contact:
Small Claims Section
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GENERAL PROCEDURE

1. Within the limits of the law, the Judge will attempt to assist each party. It must be remembered that the Judge must decide the issue in dispute, and therefore cannot be seen as favouring any party.
2. When addressing the Court, you should stand.
3. The Judge will explain the procedure to be followed, i.e. who speaks first, when you are allowed to ask questions and when you are allowed to call witnesses.
4. A party or witness should not speak out of turn.
5. A witness may only speak from the witness stand.
6. If two persons are suing, or being sued, generally only one person will be allowed to question witnesses on the other side. An exception would be if the interests of the parties differ.
7. Generally, only a lawyer can speak or act for a party.
8. The Judge will ask a party, once he/she has been sworn as a witness, to explain his/her side of the case and may question the party about their case.
9. Once the party has told his/her version of the case, the Judge will ask the other party if he/she wishes to ask any **questions**, (cross-examination) of the witness.
10. The party who is the plaintiff, and that party's witness (if any) will give evidence before the defendant and his/her witnesses.
11. When a party is told they may cross-examine a witness, that is the opportunity for the party to ask relevant **questions**. It is not the time to give evidence, or to give the party's version of the facts, or present argument. The Judge will provide that opportunity at a later time.
12. If an exhibit is to be presented to the Court, i.e. photograph, letter, appraisal, estimate, etc., unless there is agreement, the person who prepared the exhibit must present the exhibit in Court.
13. The Judge is responsible for the manner in which the courtroom is run. If the Judge is a man, you should address him as "my Lord", and if a woman as "my Lady".
14. Before testifying, you either may take an Oath before God that you will tell the truth, or, if you choose, you may ask to be "affirmed" that you will tell the truth, or you may state your wish to promise to tell the truth in compliance with your religious or cultural beliefs.
15. While on the witness stand you will be asked questions, either by the other party or the party's lawyer, or by the Judge. You must answer their questions to the best of your ability. If you do not understand the question, or do not know the answer, just say so.

16. The Judge may rule that some questions are not relevant, and you will not be required to answer them. However, all relevant questions must be answered.
17. In order to win the case the plaintiff must prove his/her case on a balance of probabilities.

ATTIRE

18. No special attire is necessary. However, you should refrain from wearing clothing that is overly casual. No caps or hats are permitted in the courtrooms. Clean and neat is all that is required.

PLAINTIFF'S CASE

19. The judge will call on you to present your first witness, which may be yourself. The witness will take the witness stand and be sworn. You and the other party should agree to keep your witnesses out of the courtroom until they have given their evidence. You will tender as evidence any documents that the other party has agreed are admissible and they will be given exhibit numbers. Documents that are not agreed to will be tendered through your witnesses in due course, and the judge will rule on their admissibility at the time they are tendered. In other words, if you have a photograph to be tendered and the other side is not agreeing to have it entered, it would be necessary to call the person who took the photograph as a witness.
20. You will ask your witnesses questions in what is known as examination-in-chief, or if you are the witness, you will explain your case. You are not permitted to ask leading questions except on matters that are not in controversy. A leading question is one that by its form suggests the answer to the witness. For example the question: "Did you tell me that the money would be there by Friday?" would be leading because whether or not anything was said to you, and if so, what, may both be in issue. The defendant can object if you ask leading or misleading questions.
21. After you have completed the examination-in-chief of your first witness, or explained your case, the defendant may cross-examine you or the witness. In *cross-examination*, leading questions suggesting the answer are quite proper. Even matters that were not raised in examination-in-chief can be raised provided they are relevant to the issues in the case or to the credibility of the witness. The purpose of cross-examination is to test the observations, recollections and truthfulness of the witness. When the cross-examination of the witness is finished, you may re-examine the witness but the scope of re-examination is very restricted. It does not permit you to re-open the examination-in-chief or to cross-examine your witness or ask leading questions. You can only ask questions on new matters that were raised in cross-examination.
22. As the plaintiff, you are entitled to give evidence yourself. To do so, you must take the witness stand just like any other witness. You are not required by law to testify at all, but generally it would be most unusual if you declined to do so. You can testify on one occasion at any stage of your case. However, you may wish to be the first witness so as to avoid a suggestion by the defendant that you waited until the end of your case to testify in order to tailor your evidence to match the evidence given by the other witnesses you called.

23. It is important that you understand the difference between giving evidence and making submissions. All verbal evidence (called “testimony”) is given under oath or on affirmation from the witness box. A witness will not be heard in court except from the witness box. Except in the case of an expert witness, a witness can only testify about what the witness actually saw or heard. A witness cannot testify about what someone else may have seen or heard even if that other person told the witness about it. Only that other person can testify about it. Nor can a witness make a submission or an argument from the witness box. A witness can only give evidence, not make submissions.
24. At the conclusion of the case, submissions or argument may be made to the Court. Submissions must be made from the counsel table, not from the witness box. Submissions are observations and comments about the party’s position in the case that would tend to persuade the court that such a position has merit. You can refer to the evidence that has been given when you make your submissions, but you cannot give evidence yourself when you are making a submission. You can only give evidence from the witness box in your role as a witness.
25. If you take the witness stand and give evidence, you must be very careful to keep in mind the distinction between “evidence” and “submissions”. When in the witness box you must restrict what you say to what you personally saw, heard, did, received, etc. You cannot make submissions from the witness box. The defendant can object if you stray into making submissions instead of giving evidence. Because there will be no one in front of you asking questions during your “examination-in-chief”, you must plan ahead what you will say. When you have finished your examination-in-chief, the defendant can cross-examine you and when the defendant has finished, you can reply to the issues he raised that require clarification in the restricted fashion.
26. Once your evidence as a witness has been completed and you have left the witness stand, you can no longer give evidence. You will normally not be allowed back on the witness stand a second time. You will be restricted to making submissions and argument from the counsel table. In summary, you will be heard by the court in only two ways: as a witness giving evidence from the witness box, and as an unrepresented plaintiff making submissions from the counsel table. For good and obvious reasons, you cannot combine the two and must at all times maintain this distinction.

DEFENDANT’S CASE

27. When the plaintiff has completed his/her case, counsel for the defendant, or the defendant if unrepresented, then has the right to present evidence and will most likely do so. The defendant will begin by calling its witnesses and by tendering its documents. The witnesses will be examined in chief and will be subject to cross-examination and re-examination in the same manner as the witnesses that the plaintiff called, except that this time the defendant cannot ask leading questions and only the plaintiff is entitled to cross-examine the defendant’s witnesses.

DOCUMENTS AS EVIDENCE

28. Documents that are admissible as evidence are given to the court as exhibits during the trial. In very general terms, a document is admissible if it is relevant to the case and is

properly authenticated or tendered either by agreement reached beforehand by the parties, or having been proven during the trial. *The Prince Edward Island Evidence Act* deals with the admissibility of certain types of documents.