



Guide de la Cour des petites créances NCJ Small Claims Guide

French Version

Small claims are brought to the Nunavut Court of Justice. The Small Claims Court has jurisdiction over claims not exceeding \$20,000.00

www.NunavutCourts.ca/fr

Guide de la Cour des petites créances

French version

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A Introduction à la Cour des petites créances

A Introduction to Small Claims Court

Qu'est-ce que la Cour des petites créances?

La Cour des petites créances est une cour de justice, mais qui n'est pas accessible qu'aux avocats. C'est une cour devant laquelle les gens ordinaires peuvent plaider leur propre cause. Les réclamations sont déposées devant la Cour de justice du Nunavut, suivant les Règles de procédure en matière de petites créances, que vous pouvez obtenir en ligne à l'adresse www.nunavutcourts.ca.

Dois-je connaître du « vocabulaire juridique »?

Non. Il n'y a pas beaucoup de termes juridiques que vous devrez connaître pour vous y retrouver, mais il y en a tout de même quelques-uns. Voici les plus importants :

- Le **demandeur** est la personne qui dépose une réclamation à la Cour des petites créances.
- L'**avis de demande** est le formulaire que le demandeur remplit pour déposer la demande.
- Le **défendeur** est la personne qui est poursuivie – celle qui est visée par la réclamation.
- La **réponse** est le formulaire que le défendeur remplit pour répondre à l'avis de demande.
- **Signifier un document** veut dire faire parvenir ce document à une autre personne de la façon prescrite par la loi.

Si vous ne comprenez pas la langue utilisée dans ce guide ou dans tout autre document sur les petites créances, vous avez 25 jours à partir de la date où vous avez reçu le document pour contacter la Chambre civile de la Cour de justice du Nunavut au 867-975-6102 ou sans frais au 1-866-286-0546 pour demander une traduction.

NOTA : La signification de l'avis de demande ou de l'Avis de mise en cause ne peut être faite que par le shérif ou son délégué (règle 9.1).

Quelles causes sont entendues à la Cour des petites créances?

Une demande de recouvrement de petite créance peut avoir trait à une blessure subie lors d'un accident d'automobile, une créance, des dommages-intérêts ou la restitution d'objets ou de biens personnels d'une somme maximale de 20 000 \$, excluant les dépens et les frais.

Quelques exemples de demandes de recouvrement de petite créance :

- Une réclamation contre une entreprise qui refuse d'échanger ou de réparer des biens défectueux qui y ont été achetés;
- Une réclamation contre une partie vous ayant remis un chèque sans provisions;
- Une réclamation contre une partie qui vous doit de l'argent (par exemple, un prêt non remboursé);
- Une réclamation pour une somme due pour un service que vous avez fourni;

- Une réclamation pour des dommages-intérêts pour des biens détruits ou une blessure personnelle subie lors d'un accident d'automobile;
- Une réclamation contre une partie pour une somme d'argent ou des biens que vous avez acquis mais que vous n'avez pas reçus;
- Une réclamation contre une partie qui vous a acheté des biens, mais qui n'en a pas acquitté la facture;
- Une réclamation contre une partie qui détient vos biens illégalement.

NOTA : Cette liste n'est pas exhaustive.

Quelles causes ne sont pas entendues à la Cour des petites créances?

Il y a des causes qui ne peuvent être entendues à la Cour des petites créances, même si les sommes réclamées sont minimales. Par exemple, les causes impliquant un propriétaire et un locataire, les causes de diffamation verbale ou écrite, les causes ayant trait aux titres de biens-fonds, au droit de la famille, à l'homologation ou à la faillite ne peuvent pas être entendues à la Cour des petites créances.

Comment puis-je déposer une réclamation?

Pour présenter une réclamation à la Cour des petites créances, vous devez aviser la Cour de votre réclamation; l'avis de demande est le document utilisé à cette fin.

Qu'est-ce qu'un avis de demande?

L'Avis de demande est la pièce maîtresse de la poursuite. Ce document révèle :

- **QUI** vous êtes
- **QUI** vous poursuivez
- **QUELS** sont les événements qui ont mené à la poursuite, et
- **QUELLES** sont vos demandes.

Vous pouvez obtenir le formulaire de l'avis de demande à la Cour de justice du Nunavut ou en ligne au www.nucj.ca. Si vous ne pouvez pas vous rendre en personne au Centre de justice du Nunavut, vous pouvez écrire ou téléphoner afin qu'on vous l'envoie. Pour des explications sur la marche à suivre pour remplir l'Avis de demande, consultez le livret #2, ***Déposer une réclamation.***

Que faire si je ne suis pas majeur?

Si vous avez moins de 19 ans, vous devez faire déposer la réclamation par un adulte qui vit dans le territoire et qui accepte d'être votre tuteur à l'instance. (Cette personne doit soumettre au greffe un formulaire signé, intitulé « Autorisation du représentant ».)

Si vous n'arrivez pas à trouver un adulte qui accepte de vous prêter assistance, vous pouvez contacter le Tuteur et Curateur public. Vous pouvez contacter ce bureau en composant sans frais le 1-866-294-2127 ou le 1-867-975-6338. Vous pouvez aussi joindre ce bureau par télécopieur au 867-975-6343 ou par courriel au publictrustee@gov.nu.ca.

Vous devez savoir qu'en tant que mineur, si votre réclamation a trait à une blessure personnelle, l'adulte vous prêtant assistance devra utiliser les services d'un avocat si votre

cause est portée devant le tribunal.

Que se passe-t-il si le montant de ma réclamation dépasse 20 000 \$?

Vous pourriez vouloir déposer une réclamation de plus de 20 000 \$, mais tout de même vouloir que la cause soit entendue à la Cour des petites créances. C'est possible, dans la mesure où vous acceptez de réduire le montant que vous réclamez à 20 000 \$. Dans la section « Combien? » de l'avis de demande, vous n'avez qu'à dire « Je renonce à la partie du montant de ma réclamation qui dépasse 20 000 \$ ».

Cette limite de 20 000 \$ s'applique au total de tout ce que vous réclamez, y compris la valeur de tous les biens que vous pourriez demander. Toutefois, cette somme n'inclut ni les intérêts, ni les dépens. Ainsi, si votre réclamation visait une créance de 20 500 \$, vous pourriez renoncer aux 500 \$ et réclamer 20 000 \$ plus intérêts et dépens. (Les dépens que vous pouvez réclamer à la Cour des petites créances sont très restreints – de façon générale, vous ne pouvez réclamer de montant supérieur aux frais de dépôt de l'avis de réclamation.)

Si vous renoncez à une partie du montant de votre réclamation, de façon à respecter la limite de 20 000 \$, vous ne pourrez ni tenter de poursuite dans une autre Cour, ni déposer de nouvelle demande de recouvrement de petite créance. Une fois que vous y avez renoncé, cette portion de votre réclamation disparaît et vous ne pouvez tenter de nouvelle action pour la réclamer.

(Il y a deux exceptions possibles :

SI le défendeur dépose une demande reconventionnelle contre vous devant la Cour de justice du Nunavut ou

SI le juge de la Cour des petites créances renvoie votre réclamation à la Cour de justice du Nunavut, vous aurez alors la possibilité d'y déposer votre réclamation pour une somme supérieure.)

Combien ma cause me coûtera-t-elle?

Tout dépend de la façon dont vous gérerez votre cause, de la réponse du demandeur à votre réclamation et de la démarche que vous choisirez si vous gagnez votre cause.

Les frais de dépôt et de signification de documents sont de 75 \$. Le défendeur n'a aucuns frais à déboursier pour répondre à une réclamation.

Dans la plupart des cas, les frais et les dépens peuvent être ajoutés au montant total à payer par la partie perdante. Ceci signifie que les dépens encourus par le défendeur pourraient être imputés au demandeur si le défendeur obtient gain de cause dans une demande reconventionnelle.

Si vous deviez avoir recours aux services d'un avocat, les honoraires que vous auriez à déboursier **ne** pourraient **pas** être ajoutés à votre jugement.

Quiconque n'a pas les moyens d'acquitter les frais de dépôt au greffe peut demander au registraire d'être exempté d'avoir à les acquitter.

Comment puis-je obtenir plus de renseignements?

Ce livret est le premier d'une série disponible en ligne ou au greffe de la Cour des petites créances. Les livrets de cette série s'intitulent:

A (pages 1- 4) QU'EST-CE QUE LA COUR DES PETITES CRÉANCES?

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C (pages 1-4) SIGNIFIER DES DOCUMENTS

D (pages 1 – 5) RÉPONDRE À UNE RÉCLAMATION

E (pages 1 – 4) SE PRÉPARER À L'AUDIENCE EN COUR – PARTIE 1 – LA MÉDIATION

F (pages 1 – 3) SE PRÉPARER À L'AUDIENCE EN COUR – PARTIE 2 – LE PROCÈS

G (pages 1 – 3) LE DÉFAUT

H (pages 1 – 3) LES TÉMOINS

RÈGLEMENTS CIVILS – Pour de plus amples renseignements, vous pouvez consulter directement les Règles de procédure de la Cour des petites créances. Ces règles ont été écrites pour les personnes n'ayant pas de formation juridique.

Les commis du greffe de la Cour des petites créances peuvent aussi vous aider. Ils ne peuvent pas vous donner d'avis juridique et ne peuvent pas non plus remplir les formulaires pour vous, mais ils peuvent répondre à toutes vos questions à propos des procédures de la Cour des petites créances.

Les renseignements contenus dans ce livret ne donnent qu'un aperçu des dispositions les plus importantes des Règles de procédure en matière de petites créances. Ces renseignements ne sont pas des avis juridiques. Si vous avez des questions d'ordre juridique, vous devriez consulter un avocat.

Bureaux d'aide juridique du Nunavut :

Maliiganik Tukisiinaikvik (Iqaluit) – (867) 979-5377

Keewatin Legal Services (Rankin Inlet) – (867) 645-2536

Kitikmeot Law Centre (Cambridge Bay) – (867) 983-2906

High Arctic Law Office (Pond Inlet) – (867) 899-8707

Greffe civil de la Cour de justice du Nunavut :

Ligne principale – (867) 975-6102

Sans frais – 1-866-286-0546

B Déposer une réclamation

B Making a Claim

Comment dois-je remplir l'avis de demande?

Dans l'avis de demande, vous devez inscrire qui vous êtes et qui vous poursuivez; ce qui s'est produit; où et quand les événements se sont produits; et finalement, la somme que vous réclamez. Les étapes pour remplir l'avis de demande sont décrites ci-dessous.

- **De (demandeur)**

Si vous êtes le demandeur, vous devez inscrire ici votre nom, votre adresse postale et vos numéros de téléphone et de télécopieur. Cela peut sembler plutôt simple, et ce l'est la plupart de temps, mais il faut tout de même vous assurer d'inscrire le bon demandeur. Par exemple, si vous êtes propriétaire d'une entreprise, devriez-vous inscrire votre nom, celui de l'entreprise, ou les deux? Les cas décrits ci-après pourront vous aider à décider.

Votre adresse postale et votre numéro de télécopieur sont importants, car c'est ainsi que la cour vous fera parvenir la réponse à votre réclamation, ainsi que tout autre document relatif à votre cause.

Si vous changez d'adresse, assurez-vous d'en aviser la cour et toutes les autres parties impliquées dans la poursuite. Si vous ne le faites pas, les documents seront acheminés à votre ancienne adresse et vous ne serez pas informé des développements de votre cause.

- **À (défendeur)**

C'est dans cette section que vous répondez à la question « Qui poursuivez-vous? ».

Vous devez prendre soin de bien identifier le défendeur. S'il n'est pas identifié correctement, vous pourriez avoir gain de cause mais ne quand même pas pouvoir obtenir votre argent.

A. Si vous poursuivez un individu :

Utilisez le nom complet de la personne. Les initiales du (des) prénom(s) ne suffisent pas.

Dites : ROBERT JOHNSON,

Ne dites pas : R.W. JOHNSON.

N'utilisez pas de titres, tels que M., Mme, ou Dr.

Dites : JOHN WILLIAMS et BETH WILLIAMS,

Ne dites pas : M. et Mme WILLIAMS

B. Si vous poursuivez une compagnie constituée au Nunavut :

De façon générale, vous saurez que vous avez affaire à une société constituée en raison de la particule « Ltée. », « Corp. » ou « Inc. » qui apparaît à la fin du nom de l'entreprise. Pour obtenir le nom complet et l'adresse du siège social de la compagnie, vous devez demander une recherche de compagnie au

Bureau d'enregistrement

Adresse: Ministère de la Justice, 1^{er} étage, Édifice Brown
Tél. : 867-975-6590 Téléc. : 867-975-6594
Courriel : legal.registries@gov.nu.ca

Adresse postale: C.P. 1000, Succursale 570
Iqaluit (Nunavut)

Il se peut que l'adresse du siège social ne soit pas l'endroit où la compagnie fait affaires, mais c'est quand même l'adresse que vous devez inscrire dans l'avis de demande. Vous devrez inclure une copie de la recherche de compagnie lorsque vous déposerez votre avis de demande.

Habituellement, vous ne désignerez comme défendeur que la compagnie.

Par contre, il y a des causes dans lesquelles à la fois la compagnie et le mandant de la compagnie doivent être désignés comme défendeurs. Il s'agit des causes dans lesquelles le mandant a joué un rôle, en plus d'être le mandant de la compagnie.

C. Si vous poursuivez une compagnie constituée hors du Nunavut :

Si la compagnie n'a pas d'actifs au Nunavut, vous devriez déposer votre réclamation dans la juridiction où la compagnie a été constituée.

Vous pouvez déposer une réclamation au Nunavut contre une compagnie constituée hors du Nunavut si cette compagnie possède des actifs au Nunavut et que ce n'est pas une compagnie extraterritoriale. Il est fortement recommandé de faire une recherche de compagnie avant de déposer l'avis de demande. Cette recherche de compagnie vous permettra d'obtenir le nom légal de la compagnie. La connaissance du nom légal exact de la compagnie augmenterait vos chances de faire exécuter le jugement si la Cour se prononçait en votre faveur.

D. Si vous poursuivez une entreprise non constituée :

Communiquez avec l'hôtel de ville ou les bureaux de votre communauté et demandez

- a) le nom complet de l'entreprise et
- b) le nom du propriétaire.

Vous devriez nommer à la fois l'entreprise et le propriétaire, de façon à pouvoir réclamer le paiement de l'un ou de l'autre si vous obtenez gain de cause. Par exemple : « Joe Smith, exerçant son activité sous le nom Smith Automotive ».

E. Si vous poursuivez une société en nom collectif :

Il s'agit d'une action très similaire à la poursuite d'une entreprise. Vous devez désigner les associés et la société en nom collectif. Par exemple : « Joe Smith et Marge Smith exerçant leur activité sous le nom de Smith et Smith Automotive ».

F. Si vous poursuivez une société :

Il s'agit aussi d'une action très similaire à la poursuite d'une entreprise. Vous devez obtenir copie d'une recherche de compagnie indiquant le nom complet et l'adresse la plus récente de la **société**. Vous obtiendrez ces renseignements au Bureau d'enregistrement, dont le numéro de téléphone et l'adresse se trouvent dans la section portant sur la poursuite d'une compagnie constituée au Nunavut.

G. Si votre réclamation a trait à un accident d'automobile :

Vous devriez désigner comme défendeurs à la fois le conducteur et le propriétaire du véhicule. Vous pouvez obtenir le nom et l'adresse du propriétaire en demandant un rapport d'accident au bureau de l'

Administrateur,
Division des véhicules motorisés
Gouvernement du Nunavut
C.P. 10
Gjoa Haven (Nunavut)
X0B 1J0
TÉL.: (867) 360-4614
TÉLÉC. : (867) 360-4619

Il y a des frais à acquitter pour obtenir ces renseignements. La Division des véhicules motorisés accepte les chèques personnels.

H. Si vous poursuivez le Gouvernement du Nunavut :

Vous devez désigner le défendeur comme suit :

SA MAJESTÉ LA REINE DU CHEF DU NUNAVUT.

C'est le nom légal du Gouvernement du Nunavut.

- **Et à (autre défendeur)**

Si vous poursuivez plus d'un défendeur :

Vous pouvez désigner plus d'un défendeur si les réclamations faites à l'un et à l'autre sont liées. C'est dans cette section que vous inscrivez le nom de tout autre défendeur contre qui vous déposez une réclamation.

- **Quels événements ont mené à cette poursuite?**

C'est dans cette section que vous décrivez en quoi consiste votre cause. Vous devriez réfléchir à ce que vous allez écrire et tenter de relater les faits qui sont primordiaux à votre cause.

Vous n'avez pas à utiliser de « vocabulaire juridique ». Vous n'avez qu'à décrire ce qui s'est produit. Vous ne pouvez toutefois pas omettre de détails essentiels. Le défendeur doit savoir exactement en quoi la réclamation consiste. De plus, ce document informera le juge au sujet de votre cause.

- **Quand?**

Par exemple : * quand l'accident s'est-il produit; * quand le contrat a-t-il été signé; * quand le véhicule a-t-il cessé de fonctionner, etc.

Vous pourriez avoir déjà dévoilé cette information, mais cette section informe aussi le personnel du greffe de la cour qui peut ainsi s'assurer que votre réclamation est déposée dans les délais prescrits.

Pour la plupart des actions juridiques, il y a des délais qui sont parfois très compliqués. Tout dépend du type de réclamation que vous déposez. Vous devriez consulter un avocat pour vous renseigner sur les délais qui pourraient s'appliquer à votre réclamation.

Si vous avez tenté de régler votre différend et que les démarches ont échoué, ne tardez pas à déposer votre réclamation.

- **Où?**

Vous pourriez avoir déjà répondu à cette question dans la section « Que s'est-il produit? ». Vous devez répéter ces renseignements ici pour permettre au personnel du greffe de la cour de s'assurer que votre réclamation est déposée au bon endroit (des explications à ce sujet suivront.).

Vous n'avez pas besoin d'une adresse complète pour cette section – le nom de la ville, du village ou du hameau suffira.

Si la cause découle d'une rupture de contrat, indiquez le lieu où le contrat a été conclu ou l'endroit où les paiements devaient être versés.

- **Lieu du procès :**

Vous inscrivez dans cette section le nom de la communauté où vous souhaitez que le procès se déroule. Généralement, le procès a lieu dans la communauté où les événements menant à la poursuite se sont produits.

- **Le montant de votre réclamation dépasse-t-il 20 000 \$?**

Si votre réclamation est de moins de 20 000 \$, exclusion faite des dépens et des frais, cochez « Non ».

- **Renoncez-vous à la partie du montant qui dépasse 20 000 \$?**

Si le montant de votre réclamation dépasse 20 000 \$ mais que vous acceptez de réduire le montant à 20 000 \$, cochez « Oui ». Rappelez-vous cependant qu'une fois que vous avez renoncé à une partie de votre réclamation, vous ne pouvez plus tenter de nouvelle action pour la réclamer.

- **Le défendeur comprend la langue de la présente demande :**

Vous pouvez intenter une poursuite dans l'une des quatre langues officielles du Nunavut, soit en inuktitut, en inuinnaqtun, en anglais ou en français. Si vous savez que le défendeur

comprend la langue que vous avez choisie pour déposer votre réclamation, indiquez-le en cochant la case appropriée. Ainsi, le défendeur sera avisé dans une langue qu'il comprendra.

Que dois-je faire de mon avis de demande après l'avoir rempli?

Après avoir rempli votre avis de demande, vous devez informer la cour de votre réclamation en déposant votre avis de demande au greffe de la Cour des petites créances. Si vous avez rempli l'avis de demande en ligne, assurez-vous de l'imprimer, de le signer et de le déposer au greffe. Rappelez-vous d'y annexer une copie de la recherche d'entreprise si vous poursuivez une compagnie ou une **société**.

Lorsque votre avis aura été accepté, vous devrez en payer les frais de dépôt . Le paiement peut être fait en argent comptant, par chèque personnel ou d'entreprise, chèque certifié, mandat-poste ou traite bancaire, à l'ordre de la Cour de justice du Nunavut.

Vous pouvez transmettre votre avis de demande au greffe par courrier (n'oubliez pas d'inclure les frais de dépôt), mais dans la mesure du possible, déposez votre avis en personne. Le personnel du greffe vérifiera votre document, vous permettant de corriger sur-le-champ les erreurs contenues dans l'avis, s'il y a lieu. Vous éviterez ainsi les délais causés par les envois et renvois.

Si la Cour est de passage dans votre communauté, vous pouvez remettre votre avis de demande au greffier pour qu'il le dépose.

Quel est le délai dont je dispose pour faire parvenir l'avis de demande au défendeur?

Vous avez un an pour le faire avant que votre avis n'expire. Si vous voulez poursuivre vos démarches au-delà de ce délai, vous pouvez demander une reconduction.

Signification

Une copie de l'avis de demande doit être remise au défendeur, afin de l'informer de la réclamation. Le shérif de la Cour de justice du Nunavut se chargera de la signification.

Que se passe-t-il ensuite?

Après avoir reçu votre avis de demande, le défendeur pourrait vous contacter pour payer la réclamation ou pour trouver un moyen de régler la cause à l'amiable. Vous êtes libre de conclure une entente avec le défendeur en tout temps. Le fait d'avoir déposé votre avis de demande à la cour ne vous oblige en rien à poursuivre vos démarches de réclamation.

Si vous êtes satisfait de ce que le défendeur vous offre, vous devriez retirer votre réclamation lorsque vous aurez reçu paiement. Si le défendeur vous offre de payer en versements, vous devriez tous deux signer une entente de règlement (formulaire 7) et le déposer au greffe. Cette entente peut être exécutée si les paiements ne sont pas effectués.

Si le défendeur dépose une réponse et accepte d'acquitter une partie ou la totalité de la réclamation, mais que vous n'êtes pas satisfait des modalités de paiement, vous pouvez déposer un ordre de paiement et demander une audience sur le paiement pour que la Cour détermine un échéancier de paiements.

Si le défendeur dépose une réponse qui conteste votre réclamation, le greffe vous en fera parvenir une copie et fixera une date pour une session de médiation.

Le défendeur dispose de 30 jours après la date de signification de l'avis de demande pour déposer une réponse.

Si le défendeur ne fait rien, vous pouvez demander à la Cour de rendre un jugement par défaut, qui est exécutoire au même titre qu'un jugement prononcé par un juge à la suite d'un procès.

Comment puis-je obtenir plus de renseignements?

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- B (pages 1-7) DÉPOSER UNE RÉCLAMATION
- C (pages 1-4) SIGNIFIER DES DOCUMENTS
- D (pages 1 – 5) RÉPONDRE À UNE RÉCLAMATION
- E (pages 1 – 4) SE PRÉPARER À L'AUDIENCE EN COUR – PARTIE 1 – LA MÉDIATION
- F (pages 1 – 3) SE PRÉPARER À L'AUDIENCE EN COUR – PARTIE 2 – LE PROCÈS
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- H (pages 1 – 3) LES TÉMOINS

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High Arctic Law Office (Pond Inlet) – (867) 899-8707

Greffe civil de la Cour de justice du Nunavut :

Ligne principale – (867) 975-6102

Sans frais – 1-866-286-0546

C Serving documents

A lot of paperwork is involved in almost any lawsuit, and it's important that copies of documents get to everyone who needs them.

Getting the paperwork from one person to another is called "service of documents".

*In Nunavut, the Notice of Claim or Notice to Third Party is to be served by the Sheriff or his delegate only (Rule 9.1).

If the party is an individual:

If you are suing an adult, the two methods of service available are:

- personal service, and
- service by registered mail.

To serve a document personally, you or someone acting on your behalf will simply hand the document to the party. If the person refuses to take it, you may drop it on the floor at his or her feet.

To serve a document by registered mail, you will need to provide proof of service (see [section 8](#) on how to prove the document has been served).

If the party is under the age of 19, different service procedures apply. You may need to seek legal advice as the Nunavut Rules of Court guide this process.

If the party is a company:

You may send the document by registered mail to the address shown on the Notice of Claim. You will need to provide a proof of service. You may take it there personally and leave it at the registered office.

Another way to serve a company is to take it to the company's place of business and leave it with the person who appears to be in charge there. You should get that person's name and title/position.

You may also leave it with the director or officer of the company. And, finally, if the company has a trustee-in-bankruptcy, or a liquidator, or a receiver-manager, you may leave it with that person.

If the party is registered in Nunavut as an extra-territorial corporation (its main place of business is outside the territory), you may leave a copy of the document with the person who is appointed to be its attorney, under Section 389 of the *Business Corporations Act*. Alternatively, you may send these documents to the attorney by registered mail. You would get this information from the Legal Registries in Iqaluit.

If the party is a partnership:

A partnership doesn't have a registered office. To serve a partnership you may take the document to its place of business and leave it with a receptionist or with the person who seems to be in charge. Or, you may mail it by registered mail to, or leave it with, a partner. You will need to provide a proof of service by completing and filing a Certification of Service.

If the party is an unincorporated business:

If the business is not an incorporated company and not a partnership, the owner of the business will be named as the party. This is the person you must serve, and the rules for serving an individual apply.

If the party is a municipality:

If you are serving a municipality, you must leave a copy of the document with the clerk or deputy clerk or some official. The *Municipal Act* has special notice periods and limitation periods that are very short. The registry will not be able to provide this information and you may need legal advice.

If the party is a young person, a society, an unincorporated association or a union:

If you are serving any of these, there are special rules about service, and registry staff may help you with these.

If the party is the Government of Nunavut:

If you are suing the Territory of Nunavut, you may serve the document personally by leaving it during business hours or by registered mail:

Legal and Constitutional Law
Box 1000, Station 540
Sivummut Building
Iqaluit, NU X0A 0H0

Do I have to serve it myself?

No, you don't. Often it will be a simple thing - either sending it by registered mail, or dropping it off at an office, or having someone serve it for you.

What if I can't serve the party?

You might find that when you go to serve your document the party has moved and cannot be found. Or maybe the party knows you are trying to serve the notice and is avoiding you. In any case, there is something you may do.

You may make an application to the Registrar of the Small Claims Court to let you serve

the document in some other way. In Nunavut, the Notice of Claim or Notice to Third Party is to be served by the Sheriff or his delegate only (Rule 9.1).

For example, if you know where the party lives but he or she refuses to come to the door, or arranges not to be there whenever you knock, you might get permission from the Court to serve the document by taping it to the party's front door.

In some situations, the Registrar might allow you to serve the document by:

- leaving it with a relative of the party
- mailing it by regular mail, or
- leaving it at the party's last known address.

(Alternative methods of service are sometimes called "substitutional service": that is, they are substituted for the normal method.)

Before asking for some other method of service, you should already have tried several times to serve it in the normal way. Be prepared to give details of how you tried to serve the document and what happened, and why the method of service you are asking for will succeed.

How do I prove that a document has been served?

That depends on who served the document and how.

If you or someone else served the document personally, you may prove it by filing a Certificate of Service. The certificate simply says who served the document and how and when it was served.

If the document was served by registered mail, you must file a Certificate of Service, a copy of the document that was mailed attached to the certificate and a proof of service to show the document has been served.

A proof of service by registered mail may be obtained either by phoning toll free 1-888-550-6333 and asking for a signature copy or accessing the Canada Post internet site: <http://www.canadapost.ca/> and printing the delivery confirmation form.

If there is more than one party served, a separate Certificate of Service must be prepared for each party. You may ask the registry for additional copies of the Certificate of Service to attach to the service copy of the document you served.

How do I change my address for service?

It is up to you to be sure that the Court and the other parties in the lawsuit always have your proper address so that they may serve documents on you. Write to the Small Claims registry to let them know if your address changes. A postcard will do - just be sure to print clearly your name, your new address and the file number of your case. You will have to send the same thing to every other party in the case; that is, claimants, defendants and third parties, if there are any.

If you don't advise the registry and the other parties involved of your change of address, they are entitled to keep sending things to your old address and it will not be possible to

keep you informed about what is happening in your case.

How may I get more information?

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F (pages 1 – 3) GETTING READY FOR COURT – PART 2 - THE TRIAL

G (pages 1 – 3) DEFAULT

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Toll free – 1-866-286-0546

D Replying to a claim

If someone is suing you in Small Claims Court, you will receive a Notice of Claim. For most people, this raises a lot of questions.

If you decide to oppose the claim, it will tell you how. If you simply want a reasonable payment schedule, it will tell you how to arrange that. Read the booklet first and then decide what action you want to take.

If you are a claimant and the person you are suing makes a counterclaim against you, this booklet may provide some help with some of the decision you'll have to make.

What if I just do nothing?

The one thing you should NOT do is ignore the claim. If you do nothing, the claimant may get a judgment against you, just as if there had been a trial. Then they can proceed to garnishee your salary, bank account or seize your property.

What if I want to pay the claim?

You may agree that you owe what is claimed. If that's the case, you may pay it directly to the claimant. Or you may contact the claimant to make some arrangements that you can both live with, and the claimant may withdraw the claim. Either way, that will end the lawsuit.

Alternatively, if you have reached an agreement, to pay all or some of the claim, you may both sign a Settlement Agreement (Form 7) and file it with the Registry or the claimant may file a payment order with the Registry. Nothing further would happen with the lawsuit, unless the terms of the agreement were not followed (Rule 13).

What if I don't agree with the claim?

If you and the claimant cannot agree, either on the claim itself, or on the terms of payment, there are several things that you may do:

- If you do owe what is claimed, but can't pay it right away, and can't agree with the claimant on a payment schedule, you may ask the court to set a schedule of payments that you can handle.
- If you don't agree with the claim, you may deny all or part of what the claimant says.
- If you say the claimant owes you money, that will set off his claim.
- You may make a counterclaim against the claimant (use Reply form (form 2) and Counterclaim form (form 3)).

Whatever you decide, you will use the Reply form (form2).

What is a Reply?

The Reply is your answer to the Notice of Claim. It is a special form you will use to tell:

- what you disagree with in the Notice of Claim, and why
- what, if anything, you agree with
- what, if anything, you are claiming against the claimant, and
- whether you want the Court to set a payment schedule.

How much time do I have to file my Reply?

Whether you were in Nunavut or outside of Nunavut when you received the Notice of Claim, you have 30 days to reply.

Even after the time limit has passed, the Court Registry may still file your Reply, as long as the claimant has not obtained a default judgment against you or had a hearing date set to determine what you owe in default.

Even if one of those things had happened, you may still ask the Court for permission to file a Reply after the time limit. You will have to have a good reason for your delay.

Where do I get a Reply form?

When the claimant gave or sent you the Notice of Claim, a blank Reply form should have been included with it. If it was not, or if you need another form, you may get one from the Nunavut Court Registry or go to the Nunavut Court of Justice website at www.nunavutcourts.ca. You may also call the Courthouse in Iqaluit and request a form.

How do I fill out the Reply?

The Small Claims Court forms are specially designed to be used by people who are not lawyers. You may find all the help you need on this sheet. If not, don't hesitate to ask the Court Registry staff for assistance.

Let's look at an actual Reply form and go through it step by step.

From (Defendant):

This is where you put your own name, address and telephone number. Again, copy your name as it appears on the Notice of Claim.

The address given on the Notice of Claim may not be the right one. You must be sure that the address you give is correct because this is where the Registry will send any further notices or information to you.

If your e-mail or mailing address changes at any time, be sure to notify the Small Claims Court Registry and all other parties to the lawsuit. Otherwise, they will continue to send mail to your old address and you won't know what is happening in your case.

To (Claimant):

This is where you put the name of the claimant. Simply copy the claimant's name, address and telephone number from the Notice of Claim.

PART A: I agree with the claim:

If you want to pay the claim but you need some time - and you can't come to an agreement with the claimant - fill in this space. In the spaces to follow, you may tell what sort of payment arrangements you want to make.

Most of us want to pay what we owe. Often the reason we don't is that we simply can't. Or we can't pay it right away. Sometimes installment payments may be the answer. Or a delayed payment date might satisfy both sides.

PART B: I do not agree with any part of the claim:

This is where you tell what you disagree with in the Notice of Claim. You should take some care with this part. Look at the "How much" section of the Notice of Claim. If the claim has more than one part - a, b, c, and so on - then you should reply to each part separately, using the same letters.

You may have already answered this in the AND TO (ADDITIONAL DEFENDANT) section but if you believe that the claimant should be going after someone else for the whole amount or for some of it, be sure to put it in here.

If there is anything in the Notice of Claim that you agree with, be sure to include that here. Otherwise, the claimant might have to spend money to prove it in court. The judge could order you to pay the claimant back for money that was wasted proving something that was never really an issue.

Try to be brief. You may have many other quarrels with the claimant, but don't include them here. Stick to only those items that appear in the Notice of Claim under "How much".

Don't worry about using "legal language". Just make your point in your own words.

Counterclaim Or Third Party Claim:

If you have a claim to make against the claimant, (fill in the appropriate box). A counterclaim is just another claim, like the one in the Notice of Claim, except that it is made by the defendant, against the claimant. It is important to correctly identify who you are suing. You have to fill in a Counterclaim form (form 3) and attach it to the Reply (form 2).

If you have a claim to make against someone else then you fill in the appropriate box. It is important to correctly identify who you are suing. You have to fill in a Third Party Claim form (Form 4) and attach it to the Reply.

What do I do with my Reply, after I've filled it out?

The next step is to file the Reply with the Court. You do that by taking or mailing it to the Small Claims Registry. The address will be on the Notice of Claim you received. If you have completed the Reply form online, make sure you print, sign and file it at the Registry.

When your Reply is filed, you will be asked to pay the filing fee unless you have agreed to pay the full claim.

You may pay by cash, personal or company cheque, certified cheque, money order or bank draft, payable to the Nunavut Court of Justice.

If you can, you should take it to the Registry yourself. The staff there will check the form for you and point out any errors or things you might have missed. They can't give legal advice but they are experienced in dealing with Small Claims forms and they may be very helpful.

If they have to mail a form back to you for corrections, you may run out of time.

What happens next?

Once the Registry has accepted your form(s), they will send a copy to each of the other parties in the case.

Mediation is the next step. You will receive a notice in the mail, telling you where and when it will be held and you must attend.

The mediator will discuss with both of you the possibility of settling the claim. If you have asked in your Reply for a payment schedule, that will be discussed during the mediation. If you reach an agreement, you will each sign a Settlement Agreement (Form 7) setting out the terms for payment.

Remember that at any stage, you are always free to try to work out some agreement with the claimant, which will put an end to the lawsuit.

What if I think there is someone else who should pay?

It may be that there is someone else who should be responsible for paying the claim. This is called a "Third Party Claim". If you have a Third Party Claim, ask your Small Claims Court Registry for a Third Party Notice (form 4). You will fill out the form, sign and file it in the Registry, just as you did with your Reply.

The third party will receive notice about the claim when they are served the following by the Sheriff (Rule 9):

- a copy of the Third Party Notice
- a copy of the Notice of Claim
- a copy of your Reply
- a copy of any Notice of Settlement Conference or Notice of Trial that has been issued, and
- a blank Reply form.

How may I get more information?

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E Getting Ready for Court Part One – Mediation:

If your Small Claims Court case is going to court you will receive either a notice of a mediation session or a Notice of Trial in the mail from the Court Registry. Most cases will have a mediation session.

First, we will talk about the mediation session, what its purpose is and what you may do to prepare for it.

If all goes well, your case will end there, with a settlement. If not, there will be a trial. For more information on how to prepare for trial please refer to Part two – The trial.

What is the mediation for?

There are two main purposes for the mediation:

- to encourage settlement of cases, and
- if settlement is not possible, to help the parties prepare their cases for trial.

Try not to think so much in terms of "How can I win my case?" Think instead, "What do I want from this case? What does the other side want? Is there any possible solution that we both can live with?"

Even if the whole case cannot be resolved, the mediation session is a good chance to work out an agreement on at least some of the issues, so that the trial will be easier, quicker and less expensive.

How should I prepare for a mediation session?

The better prepared you are for your mediation session, the more you will gain from it. In fact, it is a good idea to do most of your preparation at this time. Then, if you do have a trial, most of your work is done.

What's more, if you are not prepared and the session cannot be properly conducted (because you don't have the necessary documents with you, for example) it may cost you money. The mediator may order you to pay the other party's expenses for coming to the session, and you may all have to come back a second time.

If you are the Claimant:

(Go to the "If you are the Defendant", unless you have a counterclaim. If so, read this because the same applies to counterclaims.)

If you are the claimant, there are two basic parts to your case:

First: You have to prove liability. That means you must prove that the defendant did something wrong to you.

Second: You have to prove the amount. It's not enough to prove that the dry cleaner ruined your suit. You have to prove what the suit was worth or what it cost to repair the damage.

The evidence is whatever you will use at trial to prove your case. But you have to think about it now because the mediator at the mediation session will want to know how you intend to prove your case. There are several different kinds of evidence. The most often used are:

- a) oral testimony (at trial only): a witness comes to court and answers questions at the trial;
- b) documentary evidence: documents, such as business records, are presented in court either by a witness or a party;
- c) photographs: photographs are sometimes used as evidence if the person who took them may properly identify them.

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. The best way to do this is to get out your Notice of Claim for reference and then make yourself a worksheet.

You must bring to the mediation session all of the documents that you will use at trial - if there is one - to prove your case. This would include the contract, invoice, bill of sale and written estimate, if you have them. **DO NOT BRING THE WITNESSES.** You should be prepared to summarize what your witnesses would say if they had to come to court.

If you are the Defendant:

Begin by looking again at the Notice of Claim and at your Reply.

Do you disagree with the claimant's version of "What Happened?" Make a note of exactly what it is you disagree with and be prepared to tell the mediator what, if anything, you agree with.

Do you disagree with the amount that the claimant says you owe? Be prepared to show what the correct amount is and how you arrived at that figure.

Do you agree to pay what the claimant claims, but simply can't pay it all at once? If that's the case, bring with you some evidence of your financial situation - recent pay stubs, for example, and last year's income tax return. Then tell the mediator what sort of payment terms you would need. If you can pay something right away, that is even better.

What will happen at the session?

You will go into an office or meeting room and sit at a table with the mediator. In any case, this will be a private meeting. Members of the public are not allowed.

The mediator will say a few words and will likely ask each of you to give a brief summary of your case. You don't need to write this out in full but you should have a list of the points you wish to make. If you've made a worksheet, you may wish to use that.

The mediator may then lead you both into a discussion of what, if anything, you could agree on. Ideally, you would agree on the final result and then you would complete, sign and file a Settlement Agreement (form 7), and that would be the end of it. Or, you might agree on some of the issues and leave others for the trial.

Who attends the mediation session?

The mediator will be there and possibly a clerk (to take notes). The parties must attend. If anyone has a lawyer, the lawyer may attend as well but the client must always be there.

If one of the parties is a company, then the company's representative must be one who has authority to settle the claim.

If you would like to have someone attend with you for support, ask the mediator's permission at the start of the session.

What if I don't come to the mediation session?

If you don't attend the session, an order may be made against you. If you are the defendant, this could be an order that you pay the full amount of the claim. If you are the claimant, it could be an order dismissing your claim. The mediator may also order that the case go to trial, and set a trial date in the absence of one of the parties.

What if I can't be ready - or can't attend - on the date set for the session?

If you can't have all your documents ready in time for the mediation session, or if you have a good reason for being unable to attend on the date set, ask the Registrar to postpone your session to another date. Be sure that the Registrar has notice - in writing - at least seven days before the date set. If the Registrar doesn't think that you tried your best to be ready, you may still be required to keep the appointment.

If you cannot attend in person, you may make a written application to the Registrar to attend by telephone.

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F Getting Ready for Court Part two - The trial

What is the difference between a mediation session and a trial?

There are a number of differences. A mediation session is a private discussion between the parties, with the assistance of the mediator. A trial is a public process where each party tells its own side of the case to a judge or adjudicator who makes a binding decision.

Evidence is heard from witnesses at a trial; at a mediation session the parties simply tell the mediator what the witnesses would say if they were present.

How do I make sure my witnesses will come to court?

If you have any witnesses, chances are they will agree to come to court voluntarily. If not, you may get a Notice to Appear as a Witness (form 10) at the Small Claims Court Registry. If it is served on the witness, along with reasonable traveling expenses (i.e. taxifare), at least five days before the court date, the person will be required by law to attend.

What if I can't be ready - or can't attend - on the date set for the trial?

If you have a very good reason for being unable to attend on the date set, you may appear in court to ask the judge to postpone or adjourn your trial. Your application must be in writing and you have to serve the other party with it at least seven days before you ask the judge.

If you apply to postpone or adjourn your trial, the judge may order you to pay some costs.

A trial preparation checklist

- review the Notice of Claim, and Reply, and any other documents that have been filed
- review the results of your mediation session
- list the points you need to prove to win your case
- consider how you will prove each one
- gather the documents you need and organize them in logical order
- contact any witnesses you decide are necessary
- obtain statements from expert witnesses, if any, and send out copies as required (see Rule 15.5)
- prepare questions for witnesses and review them together
- prepare a list of questions for cross-examination

- o on your trial date, give yourself plenty of time to arrive well ahead of the time you have been given

If you have prepared your case well, you will be much more relaxed on the day of your trial and you will be able to present your case to its best advantage.

Getting Results

Some people think that when the trial is over and the mediator's decision is made, the winner will be paid and that's the end of the case. Unfortunately, for some it's just the beginning.

Getting a court order or a settlement agreement is one thing, but getting your money is another matter.

If I win my case, will the Court collect my money for me?

No. Collecting money is not the Court's responsibility. The Court has a number of procedures you may use - tools that are available to you - but it is up to you to use them.

What do I do once I have my order?

Whether your payment order was made by a judge after a trial or mediation session, or whether you got it by default, the order first has to be put in writing. The Small Claims Court Registry staff may help you with this. Then you give it to the Registry, where it will be signed and entered in the court records. This is called "filing" the order and it must be done before you may take any steps to collect on it.

After that, the first thing you should do is send a copy to the debtor with a letter asking for prompt payment. Be sure to include the address where payment may be made. Set a reasonable deadline, taking into account whether payment will likely come by mail, and other circumstances you may know about.

If that doesn't work, you will have to take other steps to enforce your order. You have 10 years before the order expires, but usually, the faster you act, the better your results will be.

What can the creditor do if the debtor doesn't pay?

If the debtor does not pay, the creditor has a number of options. The most commonly used are:

- a) a payment hearing
- b) garnishing wages or bank accounts
- c) seizure and sale of goods by the court bailiff
- d) a default hearing (if there was already a payment schedule in effect)
- e) registration against land.

Summary

There are many different tools available to help you collect your money once the Court has given you a payment order.

In most cases, you should start with a simple written request for payment along with a copy of the order. If that doesn't work, take a look at all the information you have about the debtor and try to decide what would be the most effective method. Usually a payment hearing is a good start because you may use that to gather the information you may need later. A payment schedule is often the answer - if timing and amount of the payments are manageable for the debtor, you have a better chance of collecting what's owing to you.

But if the debtor has money available and is just determined not to pay, take a look at the other options that are available to you and decide what will give you the best chance of success.

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G Default

The Court may award a final judgment to the claimant when the defendant fails to file a Reply. This is called a default judgment. A Reply is the written statement of the claimant, in answer to the defendant's claim.

If a Defendant Does Not Reply to a Claim

If a defendant does not file a Reply within 30 days, the claimant may ask the Clerk for a default judgment.

This means that if a claimant has filed a claim against you, you have to complete a Reply (Form 2) and file it at the Court within 30 days of receiving it; otherwise, the claimant may get judgment against you in the amount that they have claimed, seize your goods and property; or schedule an assessment hearing without you being there.

Judge's permission needed in certain cases

No default judgment will be made on a counterclaim or Third Party Notice, without the Court's permission.

How to ask for a default judgment

To ask for a default judgment under Rule 12.1, a claimant must submit a written direction to the Registry.

If a claim is for an identified amount (or recovery of goods)

If a claim is for a clearly and easily identified amount and the claimant completes the steps mentioned above and, if the Clerk is satisfied that all preconditions have been met, the clerk will enter judgment requiring the defendant to pay the amount claimed and prepare a Certificate of Judgment (Form 11B).

If a claim is not for an identified amount

If a claim is for damages where the amount depends on the circumstances, and the claimant completes the steps above, the Clerk will set a date for an assessment hearing.

No notice of hearing

A defendant who has not filed a Reply and has been noted in default is not entitled to receive notice of any further steps taken in the proceedings.

Purpose of assessment hearing

The purpose of an assessment hearing under this rule is to allow a judge to determine

- (a) the amount the claimant is entitled to, if the claim is for money, and
- (b) the terms of any other order it considers appropriate.

If a claimant does not attend

If a claimant does not attend at the time set for an assessment hearing, the Court may adjourn the hearing or dismiss the claim.

How do I set aside the Noting in Default?

As a defendant, if you have been noted in default you may apply to set aside the Noting of Default or the subsequent judgment. To do this you fill out the Notice of Motion (Form 9) at the Registry. However, for the Court to set aside the Noting in Default you have to show that you have a good defence to the claim or show that you have a good reason for why you are in default.

What do I do once I have obtained a Certificate of Judgment?

Please go to the booklet number 6 *Getting Ready for Court – Part 2 – The Trial* where it talks about how you may collect payment.

How may I get more information?

This is one in a series of booklets available online or from the Small Claims Court Registry. The titles in the series are:

A (pages 1- 4) WHAT IS SMALL CLAIMS COURT?

B (pages 1-7) MAKING A CLAIM

C (pages 1- 4) SERVING DOCUMENTS

D (pages 1 – 5) REPLYING TO A CLAIM

E (pages 1 – 4) GETTING READY FOR COURT - PART 1 - MEDIATION

F (pages 1 – 3) GETTING READY FOR COURT – PART 2 - THE TRIAL

G (pages 1 – 3) DEFAULT

H (pages 1 – 3) WITNESSES

CIVIL RULES - For more detailed information you may want to look at the small claims court rules themselves. The rules have been written for non-lawyers.

The people behind the counter at the Small Claims Registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer your questions about Small Claims Court procedures.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Rules. The information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

Nunavut Legal Aid Offices:

Maliiganik Tukisiinaikvik (Iqaluit) – (867) 979-5377

Keewatin Legal Services (Rankin Inlet) – (867) 645-2536

Kitikmeot Law Centre (Cambridge Bay) – (867) 983-2906

High Arctic Law Office (Pond Inlet) – (867) 899-8707

Civil Registry of the Nunavut Court of Justice:

Main line – (867) 975-6102

Toll free – 1-866-286-0546

H Witnesses

This booklet will tell you about the steps required for you to summon a witness. It also explains what you have to do if you are summoned to attend court. A **summons** is when the court requires a person to attend court as a witness at a trial, hearing or examination, to produce documents or other things or to testify before the court.

How a witness is told to attend court

To summon a witness to court, a party must:

- (a) complete a Notice to Appear as a Witness (Form 10), following the instructions on the form, and
- (b) serve a copy of the summons on the witness at least 5 days before the date the witness is required to attend, and
- (c) pay the witness' costs for transportation and accommodation OR arrange for telephone/video testimony.

A Notice to Appear as a Witness may be served on the witness by mail, registered mail, fax or e-mail.

A Notice to Appear as a Witness is not effective unless the witness' costs for transportation and accommodation OR arrangements for telephone/video testimony are made.

What if I do nothing?

If you are required to appear as a witness and you don't show up, or if you don't bring the required documents, the party who required you to appear may seek an adjournment and institute civil contempt proceedings against you.

Travelling expenses

What if I am a resident of Iqaluit and I am asked to be a witness in Cape Dorset?

The party who has required you to attend the trial must

- a) arrange for you to attend by telephone or videoconference
OR

- b) pay your costs of transportation to and accommodation in the community where the trial will be conducted.

If travel costs are not offered, or telephone/video testimony is not arranged, the witness will likely have a defense to any civil contempt proceedings.

Summons not always necessary

If a witness will attend court voluntarily, a summons is not necessary.

What a witness served with a Notice to Appear as Witness must do

A person who is served with a Notice to Appear as a Witness must:

- (a) attend court at the time and place stated on the notice, and
- (b) bring to court any records and other things required by the notice.

If a witness does not obey a Notice to Appear as Witness

As stated earlier, if you decide not to appear as witness, or bring the documents requested, the other party may institute civil contempt proceedings against you.

What if I cannot attend court or if I don't have anything to contribute?

If you are summoned as a witness but you are unable to attend or if you think that you don't have anything to contribute you should contact the Court Registry and let them know. They will be able to help you.

Expert Witnesses

An expert report or testimony from an expert witness is not admissible at trial, unless the Court orders otherwise.

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