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# Community Legal Information Association of Prince Edward Island, Inc.

## Going to Court: Civil Trial Procedure

Civil law is different from criminal law. Civil disputes always involve the private interests of individuals, groups or organizations, including the government. When people cannot reach an agreement, one of them can ask the courts to decide. Cases that appear in civil court include family matters, wills and estates, lawsuits claiming damages for negligence such as personal injury claims and other disputes. This pamphlet explains what happens in cases involving negligence or damages.

The process used in Small Claims Court, for claims of less than \$8,000, is a little different than the process in the general section of the Supreme Court. You can get more information about Small Claims Court by going to the Courts' website: <http://www.courts.pe.ca> or by phoning the Clerk of Small Claims Court at 902-368-6000.

Participants in a civil suit are called "parties". The party starting a court action, or lawsuit, is known as the "plaintiff" or "petitioner". The party accused of causing the damage or injury is known as the "defendant" or "respondent".

The courts become involved in civil matters when an individual, group or organization has asked them to. The role of the courts in civil disputes is to provide a way to resolve conflicts when the parties cannot or will not settle in any other way. Although civil trials can take place before a judge and jury, a judge alone hears most of the trials. Jury trials are very rare in civil court.

### Starting the Action

Usually the steps in a civil action are as follows:

1. Statement of Claim;
2. Statement of Defence;
3. Discovery and affidavits of documents;
4. Pretrial conference (the purpose is to try and have parties settle the matter. A judge will examine the issues and provide a non binding opinion to encourage the parties to settle before trial);
5. Trial.

#### 1. Statement of Claim

The first step is when the plaintiff files a Statement of Claim with the Supreme Court clerk. The Statement of Claim is signed, dated and stamped, then issued by the Registrar in Supreme Court. It is served, or delivered to, the defendant and filed in court with proof of service.

## **2. Statement of Defence**

The second step occurs when the defendant files a Statement of Defence in Supreme Court. When the defendant fails to respond to the Statement of Claim and doesn't file a Statement of Defence, the judge will look at the documents presented by the plaintiff and grant an order or give judgment without a trial. This is called a Default Judgement.

The Statement of Defence must be filed within 20 days if the defendant is served in PEI, within 40 days if the defendant is served elsewhere in Canada, and within 60 days if the defendant is served anywhere else. The parties involved in the case then exchange informal letters to try and come to an agreement and settle things.

If the matter is not settled, various documents are filed with the court clerks and pass through the court registry from one party to another. This is done in preparation for two other steps that parties usually go through before the trial.

The Statement of Claim and Statement of Defence are called Pleadings.

## **3. Examination for Discovery and Affidavit of Documents**

The next step is an Examination for Discovery in which both parties are questioned under oath and each of them discloses the documents that they plan to use at trial. This is called the Affidavit of Documents and the contents do not get filed with the court until they become exhibits at trial.

## **4. Pre Trial Conference**

Finally, before going to trial a Pre Trial Conference or meeting is held between a judge and the parties' lawyers to clarify the issues and to try to shorten the trial.

This exchange of documents and information in the early stages of a civil case allows both sides to know what's going on and to weigh the strength of each other's case. A good example of how this works: A plaintiff claims \$60,000.00 from an insurance company for coverage of a fire that destroyed part of her grocery shop. The defendant insurance company is refusing to pay. After documents have been exchanged it turns out that the insurers are willing to pay part of the claim, but argue that the damage caused was only worth \$30,000.00. The plaintiff may decide to settle for the \$30,000.00 rather than go to the expense of a trial.

A compromise settlement is often reached and there is no trial. This is very different from a criminal action where the victim of a crime may appear as a witness for the Crown, but has no personal control over the proceedings, and cannot stop them.

## **Proving the claim**

In a civil case the judge makes a decision on a balance of probabilities. This means that when the parties are disagreeing about what was said or what happened, the court must decide which side's evidence is more probably the truth, and apply the law to that. It's as if the evidence is put on a scale. The judge or jury will find in favour of the side which presents the best evidence. For example, if the evidence shows that it is more probable than

not that Arsenault caused the motor vehicle accident in which MacDonald suffered injuries, the judge will order the defendant Arsenault to pay compensation for pain and suffering to the plaintiff MacDonald.

### **The civil trial procedure**

If you are the plaintiff, your lawyer makes an opening statement and calls witnesses to support your position. After each witness gives evidence for you, the defendant's lawyer has a chance to cross-examine them. Following this, your lawyer may re-examine the witness on any new matters which may have been raised by the defendant's lawyer during cross-examination. This is called a rebuttal.

If you are the defendant, your lawyer can call witnesses to support your position at the end of the plaintiff's case. They are, in turn, cross-examined by the plaintiff's lawyer.

Again, your lawyer has the opportunity to re-examine the witnesses on new matters which may have been raised by the plaintiff's lawyer during cross-examination. The judge gives his or her verdict after closing statements in which each side has the opportunity to provide their summing up of evidence.

A civil suit may be stopped at any time if the parties reach an out-of-court settlement. This is very different from a criminal trial where the trial usually continues until a decision of not guilty or guilty is made.

In a civil trial, the role of the judge is to look at areas of disagreement between the parties, and to state the issues clearly. Having had the facts decided for them by the judge, the parties may be able to resolve the dispute themselves. However, if they are still unable to agree, the judge will decide the matter for them and give a decision.

In some cases, civil actions do not go to trial. In certain emergencies, or when the opposing side consents or fails to put up a defence, the judge will look at the documents presented by the plaintiff and grant an order or give judgment without a trial. This is called a Default Judgement. A Default Judgement allows the claim put forward by the plaintiff and the plaintiff can enforce the judgment against the defendant.

After both the Statement of Claim and the Statement of Defence are filed, either party may apply to the judge for Summary Judgement. This means that the judge will act on the affidavit evidence and review the documents filed earlier in order to decide whether to dismiss the claim or the defence, depending on who made the application.

Going to court in a civil case is a stressful, complicated, expensive and lengthy process. It is a last resort, used only after all other attempts to settle matters have failed.

This information has been prepared by the Community Legal Information Association of Prince Edward Island, Inc. It contains general information about civil trials. If you have a legal problem, you need legal advice that this pamphlet does not provide. To get legal advice, contact a lawyer. If you don't know a lawyer, call the Lawyer Referral Service at

902-892-0853 in the Charlottetown area or 1-800-240-9798 toll-free. The Lawyer Referral Service provides you with a brief consultation with a lawyer for a modest fee.

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