

The People's Admiralty Court

A Comparative Review of Small Maritime Claims Procedure and Developments in Quebec, in Ontario and under A.M.A.C. Rules

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Title



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Colour
Key

ON

QC

No Colour =
Common

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Misconceptions

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Misconceptions

?

- Small Claims Court deals with Mickey Mouse stuff
 - You don't get proper justice

Theme: To What Extent is this Correct?



Reality



Contents



Reality

- Small Claims Courts deal with complex issues



A claim against a cruise line, a tour operator, and an airline for loss of cruise time arising out of connecting flight delay - contract of carriage and services; Carriage by Air Act; Warsaw Convention; Consumer Protection Act; exclusion clauses



Demurrage claim; privity of contract; contractual tariff; Canada Transportation Act; implied contract



Passenger claim arising out of on-board theft during cruise; Marine Liability Act and Athens Convention; territorial jurisdiction; corporate veil; motion for summary judgment and role of motions judge under s. 25 of Courts of Justice Act; whether cruise line had place of business in Canada



History

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History

- Earlier small claims mechanisms existed, although primarily as tools for merchant debt recovery
- '50's - '60's sees societal changes, inc. rapid middle-class growth, and developing consumerism
- Notions of government as servant of public and access to justice see creation of public health insurance, UI, legal aid, consumer protection legislation ... and small claims court (1971)
- Similar but somewhat slower development into “citizen-oriented” tribunal by late '70's

Theme: To What Extent are Small Claims Court systems Responsive to Historical Objectives?

Theme: To What Extent are Small Claims Court systems Responsive to Client Base?



Judges \ Courts



Contents



Judges \ Courts

- No small claims court as such; small claims are instead treated distinctly, and per their definition, as an integral part of the jurisdiction of the Cour du Québec
 - Small claims proceedings are heard by judges of the Cour du Québec
-
- The Small Claims Court - A branch of the Superior Court of Justice
 - All Superior Court judges are also judges of the Small Claims Court
 - Small claims proceedings are heard by judges of the Superior Court, by provincial judges or by deputy judges
-
- ➔ Jurisdiction note re admiralty cases - Attorney General for Ontario v Pembina Exploration Canada Limited [1989] 1 S.C.R. 206



Geographic Limits

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Geographic Limits

- Court's enforcement is limited to the Province
- Proceedings must be taken in the territorial division:

In which the cause of action arose

In which the defendant (or any one of several defendants) resides or carries on business

Or at the Court's place of sitting nearest the place of residence or of business of the defendant or any one of them, if more than one defendant

- Proceedings must be taken in the Court district:

Of the domicile or last known residence of the defendant

The domicile of the insured who sues his insurer

Where the cause of action arose

Where the contract was formed

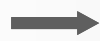
If defendant not domiciled in Quebec, his residence or establishment

But if plaintiff more than 80km from defendant's domicile, then plaintiff's own domicile, or if not domiciled in QC, then plaintiff's place of residence or establishment



Monetary Limits

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Monetary Limits



Ontario
Amendments
January 2010

Historical Note

Comparative Table

A matter of jurisdiction

\$7000 in principal

Where value of contract, and any amount claimed,
not greater than \$7000

May not divide claim exceeding \$7000

But may voluntarily reduce to not greater than
\$7000

Periodic payments ok

Successive performance such as lease, labour con-
tract

Joinder of claims where same basis in law or raise
same issues of law and fact. If each joined claim is
a small claim, then small claims procedure applies.



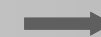
\$25,000 in principal

Any action for the payment of money where amount
claimed not greater than \$25,000

Any action for the recovery of possession of personal
property where value of property not greater than
\$25,000

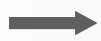
May not divide cause of action in order to bring within
Court's jurisdiction

Abandonment to come within monetary limit



Subject Matter

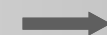




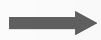
What is a "small claim"?

- basically any contractual or non-contractual claim not exceeding the monetary limit
Includes dissolution, resiliation or cancellation of a contract,
NOT leases of dwellings, claims for support payments or class actions
NOT claims for defamation, or claims assigned against payment
OPTIONALLY a challenge to the validity or constitutionality of legislation; the Court may order its transfer to the Court of competent jurisdiction
- Any action for the payment of money where amount not exceeding monetary limit or any action for recovery of possession of personal property where value of property not exceeding monetary limit

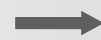
Thus again basically any contractual or non-contractual claim



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Standing and Representation



Standing

- Who can claim?

A person, partnership or association, in its own name and for own account, or a tutor, curator or a mandatary (agent) in an incapacity setting, or the administrator of another's property

A legal person, partnership or association only if at all times during the 12 months preceding it had no more than 5 employees

No limitation; not federal Crown

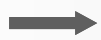
- Who can be sued?

No restriction

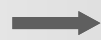


Representation

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Standing and Representation



Representation

- Who can appear in Court to represent plaintiff/defendant?

Representation permitted by any person authorized per Law Society Act

Thus lawyers, paralegals can appear

Anyone else; Court can exclude anyone else if it finds person is not competent properly to represent the party

Natural (i.e. physical) persons must represent themselves, but where unable to do so can give a mandate (gratuitous) to a spouse, relative or friend.

The state, legal persons, partnerships and associations can only be represented by an officer (dirigeant) or another person employed exclusively by them.

Lawyers cannot appear as mandataries (agents), nor can recovery agents. Exceptionally, where a case involves complex law, the Court may allow representation by lawyer.



Pleadings, etc.



Contents



Pleadings, etc.

Action started by claim form (usually); essential facts and conclusions sought, together with supporting exhibits

Court can if asked assist (and if asked is required to assist); the greffe has advisors and one can take an appointment

The Court notifies the defendant, sending copy of the claim and the list of exhibits

Written contestation by defendant

Defendant may make counterclaim (must qualify as a small claim) and/or claim over against another person; likewise, the Court notifies the plaintiff

A claim form (essentially a statement of claim) setting out nature of claim “with reasonable certainty and detail), with copies of documents attached

Plaintiff serves claim in time (6 months) and manner prescribed (detailed rules not substantively different from usual service rules)

Defendant likewise files a defence form setting out basis for disputing claim along with documents, but this is served by the Court

Defendant can counterclaim or make a claim against a third party

Motions



Mediation

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Mediation

Mediation (called settlement conference) is mandatory and must be held within 90 days after first defence is filed; party and party's lawyer or agent must attend

Settlement conference administered by the Court and is presided by a judge (who does not preside at the trial) or a referee

Prior settlement conference, parties exchange copies of documents, lists of witnesses

Court can award costs against person who is inadequately prepared for settlement conference

Mediation is purely voluntary

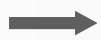
Court is required to inform parties at earliest opportunity of availability of no-cost mediation; if both agree the case is referred to mediation

Mediation is at Court's expense by a lawyer or notary listed on the Court's mediator list

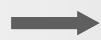


Mediation cont'd

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Mediation



Mediation cont'd

Mediator sends in a report:

If settled, includes settlement agreement or notice that case settled

If settlement agreement is sent to Court, it is confirmed and becomes equivalent to a judgment

If not settled, report serves as a pre-trial checklist

Judge presiding settlement conference can recommend ways of clarifying/simplifying and making admissions

A settlement conference memorandum serves as a pre-trial checklist

Costs on settlement conference limited to \$100

- Case is then wait-listed for trial; there is no discovery



Trial \ Evidence

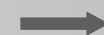


- Section 25, Courts of Justice Act: “The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience.”
- OSCC Rule 1.03: “These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 25 of the Courts of Justice Act.”

- C.C.P. art. 2: “The rules of procedure in this Code are intended to render effective the substantive law and to ensure that it is carried out ...”

C.C.P. art. 977: Judge gives “equitable and impartial assistance” to parties and witnesses “so as to render effective the substantive law and ensure that it is carried out”

C.C.P. art. 978: Judge attempts to reconcile parties whenever possible



Contents



Trial \ Evidence cont'd

Trial Notice

documents, statements or reports must be filed at least 15 days before trial

Written statements may be produced as testimony provided filed at least 15 days prior trial and opposite party notified by Court. Opposite party can request that deponent attend at trial to testify, but is subject to costs if judge takes view that the written statement was sufficient and the deponent's attendance unnecessary

Documents Prior Trial

30 days prior trial, documents which are served will be received in evidence; includes hospital records, medical reports, financial records, invoices, receipts, evidence of loss of income or property damage and repair estimates

Inc. Witness Statements

30 days prior trial, written statements which are served will be received in evidence; signed written statements of witnesses and expert reports insofar as witness would be able to testify to matters contained; the witness may be summoned by the other party for cross-examination, with payment of conduct money, subject abuse sanctions



Trial \ Evidence cont'd

Contents



Trial \ Evidence cont'd

- Trial is formal, but with informal “overtones” depending on judge and nature of case/parties

That parties must bring any witnesses and identify any witnesses they wish to summon; the Court summons the witnesses; parties can be obliged to pay witness costs if summoned unnecessarily

Judge explains procedure
Witnesses are called and examined by judge
Judge gives “equitable and impartial assistance” to parties and witnesses “so as to render effective the substantive law and ensure that it is carried out”
Judge attempts to reconcile parties whenever possible

Parties summon witnesses

De facto similar



Trial \ Evidence cont'd

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Trial \ Evidence cont'd

- Evidence rules are somewhat relaxed

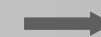
Judge has discretion on how evidence is tendered,
must be satisfied that parties are not prejudiced

Judge may visit premises or order an expert appraisal or certified report by a competent person

Admission of evidence (whether testimony or documentary) depends on relevance; Court is merely directed by statute that it may exclude anything unduly repetitious, although nothing is admissible which is privileged or which is specified as inadmissible under any Act

Copies are admissible if the judge is satisfied as to authenticity

The relevance rule applies whether or not the evidence would have to be proved by oath or affirmation or admissible as evidence in any other Court; e.g. requirements of Evidence Act re production of business records need not be complied with



Judgment, etc.

Contents



Judgment, etc.

Judgment must be rendered within 4 months of hearing

Judgment includes determination of costs, including as regards witnesses (but only those specified), per the Court tariff

Judgment can be executed on the expiry of 30 days from judgment, unless ordered otherwise

Judgment is final and without appeal

Judgments are only subject to review if there is want or excess of jurisdiction

Costs include reasonable disbursements and reasonable representation fee (where claimed amount over \$500)

An award of costs, other than disbursements, cannot exceed 15% of the amount claimed or of the value of the property sought to be recovered, unless the Court considers it necessary in the interests of justice to penalize a party for unreasonable behavior

Possibility of penalty award if a party has unduly complicated or prolonged an action or has otherwise acted unreasonably

Appeal lies to Divisional Court from judgment for payment of money or recovery of property exceeding \$500, excluding costs



Federal Court

Contents



Federal Court

Simplified Action - R. 292 et seq.

- Availability:
Claim exclusively for monetary relief not exceeding \$50,000
Parties agree to conduct as simplified action
or
Court orders treatment as simplified action
- Variations on general rules:
Lists of documents instead of affidavits of documents
Written discovery examination and limited to 50 questions
Motions basically can only be brought at pre-trial conference
Evidence-in-chief by affidavit; unless agreed witnesses to be made available for cross-examination at trial
Reply evidence provided orally



A.M.A.C.



Contents



A.M.A.C.

Rules of the Association of Maritime Arbitrators of Canada

- Small claims procedure where dispute does not exceed \$50,000
- Case is put before a sole arbitrator to be appointed by parties within 30 days, failing which AMAC appoints
- Unless the sole arbitrator orders otherwise, the arbitration is on documents only
Written submissions
Affidavit evidence
Written comments by each side











Comparative Table

Contents



Comparative Table

PE	NB		MB		AB	NS
						
\$5,000	\$6,000	\$7,000	\$10,000	\$20,000	\$25,000	
						
NL		QC		SK	ON	BC

Monetary Limits



Resources

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Resources

[Ontario Small Claims Court](#)

[Ontario Small Claims Court Rules](#)

[Quebec Small Claims Court](#)

[B.C. Small Claims](#)

[Nova Scotia Small Claims Court](#)

[A.M.A.C. Rules](#)

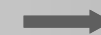
[Federal Court Rules](#)

[New Brunswick Small Claims Court](#)

[Newfoundland and Labrador Small Claims Court](#)

[Prince Edward Island Small Claims Rules](#)

Zuker, Marvin A., Ontario Small Claims Court Practice, 2010



Parting Thoughts



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Final Thoughts

Theme: To What Extent are Small Claims Court systems Responsive to Historical Objectives?

Theme: To What Extent are Small Claims Court systems Responsive to Client Base?

- Will Quebec increase its \$\$\$ limit?
- B.C. pilot project re claims sub-\$5000
Micro Claims Court?

PDF available on www.brissetbishop.com Publications Pages

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Seaman's Wages Claim

Old Canada Shipping Act

Seaman's wages claim

205. (1) A seaman or apprentice or a person duly authorized on his behalf may, as soon as any wages due to him not exceeding two hundred and fifty dollars become payable, sue for them, in a summary manner before any judge of the Court of Quebec or Superior Court of the Province of Quebec, any judge of the Superior Court of Justice in and for the Province of Ontario, any judge of the Supreme Court of Nova Scotia or British Columbia, any judge of the Trial Division of the Supreme Court of Prince Edward Island or Newfoundland, any judge of the Court of Queen's Bench of New Brunswick, Manitoba, Saskatchewan or Alberta, any provincial court judge, or any two justices of the peace acting in or near the place at which his service has terminated, or at which he has been discharged, or at which any master or owner or other person on whom the claim is made is or resides, and the order made by the court in the matter is final.

Subject Matter