

Presenting your evidence in the small claims court

By Donald Dinnie, Director, Norton Rose Fulbright

The small claims court resolves matters speedily, inexpensively and informally. Whether you are the claimant (the plaintiff) or the party opposing the claim (the defendant), you must conduct your own case in court without legal representation.

Proceedings are inquisitorial so the commissioner plays an active role in supervising the presentation of the evidence and assisting the parties and the witnesses in presenting their evidence. The inquisitorial system is a method of adjudication in which the commissioner endeavours to ascertain the facts by questioning the parties, weighing the evidence and arriving at a decision. The commissioner will actively steer the parties to determine the facts. The commissioner is not a passive recipient of information.

That does not mean, however, that you can sit back and expect the commissioner to make your case or your defence for you. The commissioner will have read any papers filed in court setting out the claim or the defence. As the party to the action you are best placed to ensure that all the relevant facts and evidence are placed before the court. So, you must prepare accordingly and thoroughly. If you have seen the TV series, “Judge Judy” or “Judge Rinder”, which are American and British television series representing the small claims court process in those jurisdictions, they will give you a sense of how the process works (but without the theatrics).

If you are not a regular litigant in the small claims court (hopefully you are not) and you have the opportunity to do so, it is a good idea to go and sit in and listen to proceedings in the small claims court closest to you before your own trial date. It does not matter if that is not the court which will hear your case. That time will be well spent in giving you a sense of the court procedure, what type of questions commissioners ask, and to see what the parties in those cases do well or badly so you do not repeat their mistakes.

Make sure you are at the court on the appointed date well before the time when your case will be called so that you can have ample time to find the specific court, sit down, find your breath and meet up with any witnesses you have arranged to attend.

Do not be misled by your favourite television lawyer series. You do not get to “put hard questions to the witnesses” or deliver an impassioned emotional speech to the jury. Television programmes usually represent the adversarial system where opposing parties gather and present evidence and arguments to the presiding officer. That is not the process adopted in the small claims court.

You do not get to cross-examine a witness. You can suggest questions which the commissioner can put to the other party or their witnesses or ask limited questions with the commissioner's permission and through the commissioner.

You should prepare your case thoroughly. Practise your presentation before a friend or family member or in front of a mirror. Identify the key facts of the case and ensure that your case is set out simply, logically and in chronological order.

When practising the presentation of your case for a friend or family member ask them to play devil's advocate and to ask questions and challenge your case. This is the one time where they can play out their lawyer TV series fantasies and cross-examine you to ensure that you have thought of everything you need to present to the court.

It is useful to practise with a friend or family member not familiar with the claim and use them to comment on whether, on your presentation, they can easily understand your case or defence. You need to communicate your story simply and clearly. If they are confused, it is likely that the commissioner will also be confused. Do not complicate your case with irrelevant facts or evidence. You only have one bite at the cherry. There is no appeal of the judgment if the commissioner gets the decision wrong on the facts. Bear in mind that any evidence having reasonable value to prove your version may be offered, but the commissioner may refuse to accept irrelevant, or repetitious evidence or arguments. Usually proceedings take place in open court. Members of the public, including the media, can attend.

If you have any documents relevant to the claim or defence, make sure you take the original documents to your hearing. If you do not have access to the original documents, you need to bring along, if possible, certified copies and ensure you have copies to give to the court and to your opponent. Often parties arrive at the small claims court and tell the commissioner that they do not have the documents with them. That may result in a postponement of the case or the matter being determined without the benefit of that evidence.

If you are the plaintiff, make sure you bring along a copy of your letter of demand, and proof of registered posting, or an affidavit by you where you personally delivered the letter of demand to your opponent. Also bring a copy of the summons as issued with the court date and proof of proper service of the summons by the sheriff on the defendant by way of a Sheriff's Return of Service of the summons or your affidavit confirming personal service on the defendant. If, as a defendant, you have delivered a statement of defence (your plea), or other papers, bring along a copy with the proof of delivery of the plea to your opponent.

The same applies to any form of written contract that is in dispute. Or if the matter relates, for example, to a lease, bring the written lease. If one of the issues is whether payments were made or

received, bring along certified copies of the relevant bank statements for the applicable period to demonstrate that, for example, no relevant payment was received in your bank account for the appropriate period, or to show, for example, that a payment was made into the opponent's bank account. Bring along invoices, receipts and proof of payment where that is an issue.

If you are suing for damage caused to a vehicle, it is useful to be able to present a few alternative quotations for repairs to the vehicle, or other assets for which you claim damages.

If you have an audio or video recording of any evidence, bring that recording to court and ensure that you have a device to play the recording. Make sure that any recordings are audible and if possible bring along a transcript of the material aspects of that evidence. If you have physical evidence, for example, damaged clothes if you are claiming against a laundry, bring those to court rather than photographs of the damage. Obviously, in the case of damage to a car or a house, evidence by way of appropriate photographs and video recordings is appropriate. The person who took those photographs or video recordings should give evidence in court or by way of affidavit as to when they took the photographs or video recording, unless you were present and can give that evidence.

Bear in mind that as the plaintiff claimant you bear the burden of proof to establish your case on a balance of probabilities. The ordinary rule is that the party who makes an allegation must prove it. You must establish by your evidence that the defendant has done something which makes them liable to pay you damages.

Think about what elements of the dispute are not in contention. You will not be given a lot of time to present your case.

Think about what is in dispute and how you will deal with that in evidence. What objective evidence is there, such as bank accounts, invoices, receipts and written contracts, to present to the court to substantiate your version or to gainsay a version that may be presented by your opponent? What evidence will your opponent present to challenge your case?

If you have witnesses who will assist your case, ask them to agree to attend court on the designated day. There is no way to compel them to attend so you will need to ask a favour of the witness. If you are the plaintiff ask the clerk of the court to issue the summons for a court date when you and your witnesses are available.

If you are the defendant, immediately you receive the summons with the court date, notify your witnesses and ask them to confirm their availability. If you think a witness is key to your case and not available on the court date, contact your opponent immediately and see if you can agree a postponement with them to a date convenient to both parties and all their witnesses. If your opponent refuses to agree to that arrangement and you can establish to the court that the witness is material to

your case, take to the court on the trial day, copies of your correspondence, in that regard, in whatever format, to show the commissioner that despite your best efforts, your opponent would not agree another date. This will assist you in securing a postponement.

Do not just fail to arrive at court. You must be in court at the appointed date and time for the trial otherwise you risk dismissal of your claim or default judgment against you.

If you cannot get a witness to attend court, obtain an affidavit (that is a statement sworn to under oath to God or a secular affirmation) which you can present to the court. It would be useful if the witness's affidavit tells the court why the witness is unable to attend at court and then deals with the particular issues on which they are able to give evidence.

The witness giving testimony (by way of affidavit or in person in court) should give evidence only in respect of facts of which they have personal and direct knowledge. The formal rules of evidence do not apply. Commissioners can accept hearsay evidence – which is evidence reliant on the truth of someone who is not present at court to give evidence. The Commissioner will take into account that such evidence is not always particularly persuasive or necessarily reliable. So, it does not usually assist to have a witness who says person A told them that they saw X, Y and Z happened.

You may need expert witnesses to give evidence about the nature and amount of damages. For example, a panel beater for a motor car or an electrician or a builder. They may not be willing to attend court without being paid for their attendance. You cannot recover those costs from the other parties. An alternative would be to obtain an affidavit from that witness.

Proceedings in the small claims court are usually conducted in English and Afrikaans but you and your witnesses are entitled to give evidence in a language in which you are comfortable and certainly in any one of the official languages of the country. As soon as you know the court date and if you are giving evidence in a language other than English, contact the clerk of the court to ensure that on the day of the trial there will be an interpreter available for the language of your choice. You do not pay for the services of the interpreter as the State provides the interpreter. If your language is not an official language or an official language not commonly spoken in the town where the court sits, for example, French, it is unlikely that there will be an appropriate interpreter at the Court without prior arrangement. To avoid a postponement, contact the clerk of the court and make an arrangement for the attendance of the relevant interpreter as far in advance of your court date as possible. The interpreter should not have any relationship with any of the parties or witnesses.

The Commissioner (who acts like a judge) should be addressed as “commissioner”. They are not “Your Ladyship”, “Your Worship”, “Your Honour” or “Your Holiness”. “Commissioner” is the title whether the commissioner is male or female. But do not worry too much about how you address the

Commissioner. Commissioners are used to being called all sort of names but, of course, not rude ones! At all times be respectful to the Commissioner, your opponent and to your and their witnesses.

There is no particular dress code for the court but do dress respectfully to show to the Commissioner that you take both the court and your case seriously. You need not, for example, as a male wear a jacket and tie. However, arriving to defend yourself in a t-shirt, shorts and slops may suggest that you do not take the process seriously. At the same time dress comfortably. You do not want to sit in court distracted by new and scratchy clothes or shoes that are giving you blisters. In winter months be warmly dressed as it can be quite chilly in the court room.

Your dress and conduct should at all times maintain the dignity of the court. Do not swear or use any inappropriate or offensive language or gestures.

You may be a little nervous when you first stand up to address the court. Being properly prepared with the comfort of having practised your presentation together with having the relevant documents and witnesses present in court will assist in making your butterflies a mild flutter, rather than a frantic pounding, of wings.

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For more information go to: <http://www.justice.gov.za/scc/scc.htm>