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HOW TO  
**SUE THE POLICE  
AND PRIVATE SECURITY**  
IN  
**SMALL CLAIMS COURT**

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*David Eby & Emily Rix*

 **PIVOT**  
PIVOT LEGAL SOCIETY



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# HOW TO SUE THE POLICE AND PRIVATE SECURITY IN SMALL CLAIMS COURT 2011 UPDATE

Suing the police is no easy business. Since *How to Sue the Police and Private Security in Small Claims Court* was released in 2007, it has helped dozens of people navigate the complicated British Columbia legal system. Since it was created, however, a few things have changed. Please keep this insert at hand when going through the book, since it contains important information that could affect your case.

Page	Note
8/9	If you are younger than 19 years old, the form your litigation guardian needs to fill out is called "Consent to Act as Litigation Guardian and Certificate of Fitness." It can be found at: <a href="http://www.ag.gov.bc.ca/courts/forms/scl/scl807.pdf">http://www.ag.gov.bc.ca/courts/forms/scl/scl807.pdf</a>
12	In regards to <b>Steps three and four</b> , if you are suing the RCMP, you have two years to complete this step. The forms must only be filed within six months of the incident if you are suing a municipal police officer
12	In regards to <b>Step five</b> : You actually have up to one year to serve the Defendant with your claim after it has been filed.
21	All the forms necessary to complete a Small Claims Court action can be found here: <a href="http://www.ag.gov.bc.ca/courts/small_claims/info/forms.htm">http://www.ag.gov.bc.ca/courts/small_claims/info/forms.htm</a>
30/48	Access Justice merged with Pro Bono BC. For legal help, you can call <b>Access Pro Bono</b> at 604-878-7400 or toll-free at 1-877-762-6664
40	Step five must be completed within <b>one year</b> of filing your forms.
49	The BC Court of Appeal overruled <i>Ward v. Vancouver</i> in 2007. This same decision also overruled <i>Walkley v. Canada</i> . In the BC Court of Appeal decision, the court wrote: " <b>It is not sufficient to establish that their acts constituted the commission of an intentional tort. It must also be established that they committed the tort knowing it to be wrong or with reckless indifference as to whether it was wrong or not.</b> " Practically speaking, this means it will be very hard to sue individual police officers instead of their employer. This means you should be aware of your limitation dates and make sure you're within them
86	The Ontario Superior Court of Justice overruled <i>Collis v. Toronto (City) Police Services Board</i> and found that the officers in that case were not negligent. The \$10,000 award was overturned. See: <i>Collis v. Toronto Police Services Board</i> [2007] 228 O.A.C. 333
95	VANDU has moved to 380 East Hastings Street

## IMPORTANT WARNING

**This book is not legal advice and does not replace legal advice from a qualified lawyer. The law is complicated, and only a lawyer can provide you with advice that is entirely accurate for your situation. This book is a general guide to make you familiar with how the Small Claims Court system works in B.C. for claims against the police. You can get in touch with a lawyer to discuss your situation by calling one of the phone numbers at the end of this book.**

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Electronic copies of this book are available for free on the web at [www.pivotlegal.org](http://www.pivotlegal.org). To order a hard copy of this book, see page 100.

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# 1 INTRODUCTION TO PIVOT LEGAL SOCIETY

LOCATED IN VANCOUVER'S DOWNTOWN EASTSIDE, Pivot is a non-profit legal advocacy organization that focuses its efforts strategically to address the legal and human rights challenges commonly faced by those on the fringes of society, such as sex workers, people addicted to illegal drugs and the homeless.

Currently if you make a complaint against the police in British Columbia, a police officer – usually from the same department as the officer you are complaining about – will investigate your complaint and decide whether or not it is true. Pivot has found through experience that this system does not work.

Pivot has produced this book so that people who have negative experiences with the police have a way to hold police accountable for their actions without having to rely on the current complaint system.

Unfortunately, going to court, even Small Claims Court, is expensive and difficult for people without legal training. It is Pivot's aim, through this book, to make Small Claims Court in B.C. a better fit for ensuring police accountability to the citizens they serve.

Despite the obvious drawbacks of Small Claims Court, Pivot believes that accountability for police misconduct in Small Claims Court is better than no police accountability at all. Pivot continues to call for an independent, civilian-based police complaint investigation process where trained citizens, and not police officers, investigate police complaints.

To learn more about Pivot, visit [www.pivotlegal.org](http://www.pivotlegal.org).

## INTRODUCTION TO THIS BOOK

### What is this book for?

This book teaches you how to start and run a lawsuit in Small Claims Court in British Columbia against a police officer who has mistreated you.

### What is police misconduct?

Most police officers do an excellent job of protecting us. These police officers are friendly and polite. They only use their power to arrest and search people when they have to and when they are legally allowed to. Unfortunately, sometimes police officers do not do their job properly. Some police officers may even do their job in a way that hurts people.

If a police officer does his or her job in a way that hurts people, without a legal reason for acting that way, that behaviour is called “police misconduct.” There are many different types of police misconduct. They include:

- **Wrongful Arrest** – arrest for no legal reason;
- **False Imprisonment** – being stopped by police for no legal reason;
- **Unlawful Searches** – being searched by police for no legal reason; and
- **Seizure of Property** – when police take your legal possessions that were not used in a crime and do not return them.

### What if police misconduct happens to me?

If you have been hurt by a police officer, there are many ways you can tell the police that you have been mistreated. You could tell the police officer while the problem is happening. You could file a complaint with the Office of the Police Complaints Commissioner. You could go to the police station and ask to speak to the supervisor of the police officer who hurt you. Sometimes these are good ways to solve the problem, but sometimes they are not. When these traditional ways of solving the problem will not help you, this book, and Small Claims Court, might be able to help.

## **Is it hard to sue the police?**

Suing a police officer is serious and takes a lot of work if you want to win your case. You will have to tell your story more than once to the judge, and your story will have to be consistent. The police officer's lawyer will ask you questions about what happened and might ask you questions about your history with the police. The police officer who hurt you may even be sitting in the same courtroom as you. Suing the police is a decision you should make carefully and should be your last resort for justice.

The good news is that it is easier to work without a lawyer in Small Claims Court than it is in Supreme Court. The better news is that if the police caused "damages" to you, the court may award you money from the defendant police officer or city to make up for the pain or other problems that the police officer caused you.

## **Should I sue the police?**

Suing the police is very serious, and you should carefully consider your reasons for the lawsuit before you begin. The purpose of Small Claims Court is to compensate an innocent party for harm caused by another. Its purpose is not to inflict punishment or to award any costs beyond the damages that were suffered.

The purpose of this manual is to assist you in getting compensation if you suffered damages as a result of police misconduct and to discourage such wrongful behaviour by the police. This manual is not meant to assist with frivolous lawsuits intended to simply inflict cost or harm. You should not attempt to sue the police if you merely want to annoy, harass or "get back" at an officer who made you angry in some way. Furthermore, you should never fabricate or exaggerate a story so that you can sue the police. Such an action would be an abuse of the legal process – a waste of the court's time that carries serious consequences.

If you are unsure as to whether you have a case appropriate for suing the police, you should contact a lawyer for advice (see pages 75–78 of this book for a list of free legal advice resources in the community).

## I want to sue the police officer who hurt me.

### What do I do now?

If you have decided to go ahead and sue the police, read this ENTIRE book and follow EVERY step that it suggests. Every part of this book has information that will help you win your case. If you make sure you follow every step in the book, and you do it in the right time, you will be more likely to have a fair chance in court. If you do not follow every step, or miss deadlines, you may not be able to argue your case in court at all.

### **WARNING! IF YOU DO NOT READ THIS YOU WILL LOSE YOUR CASE!**

There are many important deadlines you must meet to sue the police. If you miss a deadline, you may lose your trial. To avoid missing a deadline, read this book carefully, and watch for the clock symbol that looks like this:



The information beside the clock gives you a deadline for filing a form or completing some other step. **Do not miss any deadlines!** If you do miss one, contact a lawyer and ask for advice on how to fix the problem.

# 2

## THE BASICS OF SUING THE POLICE

### What is Small Claims Court?

The Small Claims Court in British Columbia is a court designed to help people sue for small amounts of money, to a maximum of \$25,000. Small Claims Court uses forms that are easier to understand than Supreme Court, and you can have your case heard by a judge much faster than in Supreme Court.

### When can I sue the police for misconduct?

You have the right to sue the police if:

- a police officer searched, arrested or detained you (you were “jacked up”) without a legal reason;
- a police officer took your property or damaged or destroyed it without a legal reason; or
- a police officer used more force against you than was needed.

You cannot sue the police if the police have only sworn at you or yelled at you. You cannot sue the police if you see them do something to someone else. The police must have, without any legal reason:

- threatened you with physical harm;
- done something to you physically;
- used their authority to make you do something you did not want to do, like be searched;
- used their authority to stop you from doing something you wanted to do, like stop talking to them and leave; or
- taken or damaged your possessions.

On pages 81–93 of this book, you can read about examples of ordinary people who have sued the police for damages and won. If the facts of your case sound like the facts of those cases, you may have a strong case in court.

### **How do I know if what the police did was illegal?**

A good book to read with this book to find out if the police have treated you properly is *The Arrest Handbook: A Guide to Your Rights*, published by the B.C. Civil Liberties Association in 2003. You can get a copy of this book from their website at [www.bccla.org](http://www.bccla.org) or by phoning them at 604 687 2919 and asking them to mail you a copy.

### **How much money will I get? What are “damages”?**

You should not expect to win a lot of money in Small Claims Court. Many people think that Canada is like the United States and that they will win millions of dollars in court. That is not true. In many cases it is difficult to get any money at all.

In Small Claims Court, you ask for “damages,” which is money the court orders the Defendant (in this case, the police officer or the municipality) to pay you for injuries or damage that the Defendant caused to you or your possessions.

There may be opportunities for you and the Defendant to negotiate or mediate a “settlement” before the case goes to court. A settlement is where the Defendant agrees to pay you a sum of money to end the case without going to court. You should carefully consider any fair offers to settle. Keep in mind that the purpose of your lawsuit is to get compensation for your losses, not to punish the police officer involved. If an appropriate settlement is available, you should seriously consider it and not go to court unnecessarily.

### **Whom should I sue?**

You can sue more than one person or organization in the same lawsuit, using the same form.

*If you were mistreated by a police officer from a city or district, you should sue:*

1. the police officer(s) who mistreated you; and
2. the city or district they work for (see pages 18–19 for details).

*If you were mistreated by an RCMP officer, you should sue:*

1. the police officer(s) who mistreated you; and
2. the Solicitor General for British Columbia (see pages 8 and 24 for details).

*If you were mistreated by a security guard, you should sue:*

1. the security guard(s) who mistreated you;
2. the company the security guard works for; and
3. the company that hired the security guard company – for example, the mall or business improvement association where the security guard works (see below for details).

## **Suing a security guard**

This book works for suing security guards as well as suing the police. To use this book to sue a security guard, where this book says “police” or “police officer,” just imagine it says “security guard” instead.

A few steps for suing security guards are different from the steps for suing the police. To sue a security guard, you do not have to follow step two (see page 18) in the next chapter. Instead of suing the city, you should sue the company that the security guard works for, the company that hired the security guard and the security guard himself. For example, if you want to sue an Acme Security guard named John Doe working at the Pacific Shore Mall, you would sue Acme Security, the Pacific Shore Mall and John Doe.

To find out the name of the company that the security guard works for, you or a friend can check for a name on the security guard’s badge or uniform. To find out the legal name of the company, call the company and ask. If they will not tell you, you will need to check with the Corporate Registry. Call Enquiry B.C. at 1 800 663 7867

and ask to be connected to the Corporate Registry. The person who answers at the Corporate Registry will be able to tell you how to find the legal name of the company.

Most of the cases in the “case law” section apply just as well to security guards as they do to police officers.

### **Suing the RCMP**

Many cities use the Royal Canadian Mounted Police (“RCMP”) to do their policing instead of a local city police force. If an RCMP officer was involved in misconduct, it changes the steps you should follow slightly.

To sue an RCMP officer, you do not have to follow step two in the next chapter (see page 18). Instead of suing the city, you should sue the Solicitor General of British Columbia. You need to sue the Solicitor General of British Columbia because of a case called *Roy v. British Columbia*, a 2005 decision of the B.C. Court of Appeal.

If a judge asks you why you have sued the Solicitor General instead of the city, do the following:

1. Tell the judge that paragraphs 4–7 of *Roy v. British Columbia*, a 2005 decision of the B.C. Court of Appeal, discuss sections 3(1) and 14 of the *Police Act*.
2. Tell the judge that the authority for the *Police Act* has changed from the Attorney General to the Solicitor General and that those paragraphs explain why you are suing the Solicitor General as the minister “charged” with the *Police Act*.

If you are suing the RCMP, it might be a good idea to print out a copy of *Roy v. British Columbia* from the Pivot website at [www.pivotlegal.org](http://www.pivotlegal.org) and bring it to court with you for the judge. All of the other differences between suing the RCMP and suing a city police force are listed in each section of this book.

### **If you are younger than 19 years old**

If you are younger than 19 years old, you must find a person older than 19 years old and who lives in British Columbia to be your “litigation guardian.” To become a litigation guardian, this person must

fill out and hand in a form called “Certificate of Fitness and Consent to Act as Guardian Ad Litem” at the Small Claims Court registry (see the Small Claims address on page 75). Your litigation guardian must attend all of your court and mediation hearings. If you cannot find an adult who will help you with your case, call the Child and Youth Services section of the Office of the Public Trustee at 604 660 4444 or 1 800 663 7867, or e-mail them at mail@trustee.bc.ca, and ask them for help.

If you are under 19 years old and you are suing because you were physically injured by the police, then your litigation guardian must use a lawyer. Call Pivot Legal Society at 604 255 9700 if you need a referral to a lawyer. Your litigation guardian does not need to use a lawyer if you were not physically injured.

### Special Legal Words

In court, there are many special words that you may not know. There is a list of words and definitions at the end of this book. Here are some important ones you should know before you keep reading:

The **Claimant** is you, the person who sues someone else in Small Claims Court.

The “**Notice of Claim**” is the form you use to start the lawsuit.

The **Defendant** is the person, company, society, city or province that is being sued.

The “**Reply**” is the form the Defendant uses to answer the “Notice of Claim” form.

**Serving a document** means giving a copy of that document to another person in a special way so that the court knows that person received it.



# SUING THE POLICE: STEP BY STEP

## OVERVIEW OF THE PROCESS

### Step one: Preserve the evidence (see page 14)



**You should do this immediately after the incident.**

- As soon as possible, collect any evidence that will help support your account of what happened (such as witness statements, medical records, photos, etc.) and write down all of the details you can remember about the incident and the police officer(s) involved.
- Remember: Keep a copy of everything that you send to the Defendant, receive from the Defendant, or file with the court. Make sure you put the date on every letter you write.

### Step two: Give City Hall proper notice (see page 18)



**You must do this within 60 days of the incident.**

- If you are suing a city or district in B.C. as an employer of a police officer, the law says that you must send a letter to the city or district first to give them notice before you can sue them. This letter should include the time, the place and a brief description of the incident.
- This step is not necessary if you are suing an RCMP officer or a security guard.

### Steps three & four: File the required Small Claims Court forms (see page 21)



**These forms must be filed within 6 months of the incident.**

- You must file a “Notice of Claim” form to tell the court about your claim and start the lawsuit.
- You must pay a filing fee to start your lawsuit. If you cannot afford this fee, you will have to fill in two forms: a “Statement of Finances” form and an “Application to the Registrar” form.
- If you were physically hurt by the police, you need to fill out a “Certificate of Readiness” form.
- See pages 21–40 for more details on how to get and fill out these forms.

### Step five: Notify the Defendant of your claim (see page 40)



**Documents must be sent within 14 days of filing your Small Claims forms.**

- You must legally notify (“serve”) the people you are suing. You must send each person you are suing three things: (1) a copy of your “Notice of Claim” form, (2) a blank “Reply” form that the Defendant can use to reply to your claim and (3) if you were physically injured, a copy of your “Certificate of Readiness” form with a copy of all of your receipts and medical records.
- After you have served a Defendant, you will need to fill out a “Certificate of Service” form.
- See pages 41–44 for more details on how to serve different Defendants.

### Step six: Wait for the Defendant’s Reply (see page 46)



**Each Defendant has 14 days to file a Reply with the registry.**

- The Defendant will likely fill in the “Reply” form and return it to the Small Claims registry. The Small Claims registry will then send you a copy of the Defendant’s “Reply” form, and the court will set a date for a settlement conference.
- It may be up to 35 days before you receive the Defendant’s Reply from the registry. You should contact the registry to see what is happening if you do not get a copy of the Defendant’s Reply in the mail within 35 days of serving the Defendant(s).

### Step seven: The settlement conference (see page 50)



The settlement conference date is set by the registry. *If you need to change the date of your settlement conference, go to the registry as soon as possible.*

- A settlement conference is required for every Small Claims Court case. It is a private discussion between you, the people you are suing and the judge to try and solve the dispute without having to go to court.
- Make sure you are well prepared for the conference: bring all your evidence with you, and think about what you want from the Defendants (e.g., how much money, a formal apology, etc.).
- If no settlement is reached, remember to ask the judge if you can get copies of the evidence the other side has, such as reports that the police made about your arrest or detention. This will help you prepare for trial.
- Warning: Do not sign any forms from people who work for the city unless you have asked a lawyer or the judge for advice about the form.

### Step eight: Offers to settle (see page 55)



If you wish to offer to settle, send your letter within 30 days of the settlement conference.

- You or the Defendant can make a written offer to settle (a letter offering a sum of money to stop the case) during the 30 days after the settlement conference.
- If a settlement is reached, the trial will be cancelled after you give a copy of the written offer to settle and the letter of acceptance to the registry.
- See page 56 for details on how to write your own offer to settle.

### Step nine: The trial (see page 58)



You will be notified of your trial date either at the settlement conference or by a “Notice of Trial” in the mail. *If you need to change the date of your trial, go to the registry as soon as possible.*

- A trial is a public event where each party tells its own side of the case to a judge who makes a binding decision.

- Make sure you read pages 58–68 of this manual thoroughly so you are familiar with the rules and procedures of court, and are well prepared to present your case.
- Remember to bring everything to court with you.

### Step ten: The judgment (see page 68)



If you lose your case and wish to appeal, the appeal must be filed in the Supreme Court within 40 days after the date on the written Small Claims Court judgment.



If you win your case, you should file your payment order as soon as possible.

- If you lose your case, the decision can be appealed to the Supreme Court. It is a good idea to get advice from a lawyer about whether or not you should appeal.
- If you win your case, in order to collect your money you will need to file a “Payment Order” with the registry and mail it to the Defendant.
- See page 70 for what to do if the Defendant does not pay the money he or she owes you.



## DETAILS OF THE PROCESS

### STEP ONE: PRESERVE THE EVIDENCE



**You must do this step right away!**

The only way you can win in Small Claims Court is if you “prove” your case. To prove your case, you must convince the judge that what you say happened actually happened.

Police officers are professional witnesses. They are used to going to court and have testified in court many times before. Judges respect and like police officers because most police officers are professional and polite. Police officers almost always take notes of everything they do. Their notes will be evidence at the trial.

If you do not have any witnesses or evidence, it will be your word in court against the professional evidence of a police officer. While the

judge might still believe you and you might still win, your case will be much stronger if you have evidence of what happened to you.

There are many different kinds of evidence. You will have many of these kinds of evidence, but you likely will not have them all.

**Evidence disappears quickly!** If you have any of the kinds of evidence listed below, collect it as soon as possible so that you will have that evidence for your court date. Keep in mind that it may be a year or more before your court date.

Kind of evidence	What it is	What to do
Witness	A person who saw the police officer mistreat you or saw the injury caused to you or your property by the police officer	<ul style="list-style-type: none"> <li>• Get the name, address, phone number and e-mail address of anyone who saw what happened to you.</li> <li>• Ask any witnesses to write down what they saw right away so that they do not forget any details and to date and sign their notes.</li> <li>• Make a copy of the witnesses' notes. Ask the witness to keep one copy, and keep one copy for yourself.</li> </ul>
Photograph/ Video	A picture or recording of something. It could be a picture or recording of what happened to you, or of the injury caused to you or your property by the police officer, or of the place where the problem with the police happened	<ul style="list-style-type: none"> <li>• Have a friend take pictures of all of your injuries. It is best if your friend who takes the pictures can be in court with you.</li> <li>• Ask any nearby stores or businesses if they have security cameras. They may have recorded what happened. Do this quickly, because many businesses erase their tapes within 24 hours. If they do have tapes, write a dated, signed letter to them immediately asking them to save the tapes and explaining why. Keep a copy of the letter for yourself, and give the original to the store.</li> <li>• Take pictures of the area where you had the problem with the police. Take pictures from a couple of different angles so that the judge can see the area.</li> </ul>

Kind of evidence	What it is	What to do
Medical record	Notes your doctor made during a medical examination of your injuries	<ul style="list-style-type: none"> <li>• If you were injured by the police, even just a scrape or bruise, see a doctor and have the doctor examine you.</li> <li>• Tell your doctor what happened to you and why you need a copy of his or her notes.</li> <li>• Ask the doctor to photocopy the notes that she or he writes down during your appointment so that you can use them for your case. Keep the notes in a safe place.</li> <li>• Be sure to tell the doctor about all of the injuries caused by the police officer and to get notes at any follow-up appointments.</li> <li>• Keep any receipts if you have to pay the doctor, because you can get this money back at trial.</li> <li>• If your injuries do not get better, or if they get worse, keep going back to your doctor on a regular basis to document them.</li> </ul>
Identifying notes	Notes you made of details that will help determine which police officer was involved	<ul style="list-style-type: none"> <li>• As soon as possible, write down all of the details you can remember about the police officer involved.</li> <li>• Did you get the police officer's name or badge number?</li> <li>• What did the police officer look like? What was his or her race, weight, height, hairstyle and hair colour?</li> <li>• Was the police officer driving, biking or walking?</li> <li>• Was the police officer in uniform or out of uniform?</li> </ul>

Kind of evidence	What it is	What to do
Notes of the incident	Notes you made of exactly what happened to you, including drawings or maps that help you remember	<ul style="list-style-type: none"> <li>• As soon as you can, write down all of the details you can remember about what happened.</li> <li>• Exactly when and where did the incident happen? Write down exact street names and times and the date. This information may also help you identify the police officer involved.</li> <li>• Your mind may play tricks on you and change key details over time that will cause the judge to not believe your story. Your notes will help you remember exactly what happened and keep your facts straight.</li> <li>• Be as honest as you can with yourself in these notes about exactly what happened, including anything you may have done to cause part of the problem.</li> <li>• If you have difficulty writing, ask a friend to write down notes for you.</li> </ul>
Anything else	Anything physical that you can bring to court to show the judge what happened	<ul style="list-style-type: none"> <li>• Evidence comes in all different shapes and sizes. Be alert and look for things that will help prove what happened to you.</li> <li>• Examples of other kinds of evidence are: the clothes you were wearing if they became ripped or bloody; possessions of yours that were broken by the police officer; and any other physical evidence you have of what happened.</li> </ul>

**Keep a copy of *everything* that you send to the Defendant or file with the court. Make sure you put the date on every letter you write!**

## STEP TWO: GIVE CITY HALL PROPER NOTICE



**You must do this step before 60 days have passed.**

When you are suing a city police officer, it is important to also sue the police officer's employer. The law says that the employer is legally responsible for the actions of its employees. The police officer's employer is usually the city where that police officer works. For example, the employer of Vancouver Police Department police officers is the City of Vancouver.

If you are suing a city or district in B.C. because they are the employer of the police officer who mistreated you, the law says that you must send a letter to the city or district first to give them notice before you can sue them. **You must send this letter within two months or you will not be able to sue the city.** The information you should put in this letter is listed on the next page.

If you do not send this notice, you will need a "reasonable" excuse for not sending it and proof of your excuse (usually a letter from a doctor or psychologist). Your lawsuit against the city may be thrown out of court by the judge if he or she does not think your excuse is good enough. Fortunately, even if you do not have a "reasonable" excuse, you may still be able to sue the police officer, but you may not be able to sue the city.

### *If you are suing a Vancouver Police Department Officer*

If you are suing a Vancouver Police Department officer, you should also sue the City of Vancouver. Before you can sue Vancouver, the law says that you have to send your letter to the City Clerk's office at the following address:

City of Vancouver  
 Attention: City Clerk  
 453 West 12th Avenue  
 Vancouver, B.C.  
 V5Y 1V4

*If you are suing a city police officer from a city or district other than Vancouver*

The rule that you must send a letter to the city is the same for all other city or district police forces. So if you are suing a police officer from a police force other than the VPD, you will need to send the letter to the city in charge of that police force. For example, if you are suing a Saanich Police Department officer, you will need to send notice to the District of Saanich.

To find out where to send your letter, call Enquiry BC at 1 800 663 7867. Ask for the contact information for the City Clerk's Office of the city in which the particular police department is based.

*If you are suing an RCMP police officer who works for a city*

If you are suing the RCMP, skip this step and go to step three.

*If you are suing a security guard*

If you are suing a security guard, skip this step and go to step three.

## **What information to put in your letter**

Your letter should start with your address and phone number at the top left hand corner. Then, underneath, put the address for City Hall (see the previous page for the address for the City of Vancouver). Send your letter to the City Clerk of the appropriate city. The City Clerk is an employee at City Hall.

The letter should include these three pieces of information about your claim against the police officer and the city:

1. **Date and time:** The date and time that the police officer mistreated you. If you cannot remember the exact date, write down "on or about" and then the day, the month and the year that you think it happened.
2. **Location:** The exact place where the police officer mistreated you including street name(s) and the city name. If you can, use a specific street address (for example, "In front of 401 Main Street in the city of Vancouver").

3. **What happened:** A brief description of what happened to you, including descriptions of the police officer(s) involved (see the type of evidence in step one called “identifying notes”).

Do not include exactly what the police said or exactly what you said; it is not necessary. You just need the time, place and a brief description of what happened to you.

**Remember to keep a copy of all letters for your records, and make sure to put a date on every letter!**

Here is a sample letter:

Mr. Your Name  
111 Your Address Street  
Vancouver, BC  
V6E 1Y9  
604 123 1234

City of Vancouver  
Attention: City Clerk  
453 West 12th Avenue  
Vancouver, B.C.  
V5Y 1V4

September 15, 2005

Dear Madam/Sir:

I am writing you this letter to give you notice of the time, place and manner of damages caused to me by Vancouver Police Department officers.

On Tuesday, September 2, 2005 at approximately 5:00 p.m., I was walking down Main Street in the City of Vancouver. In front of 401 Main Street two men wearing Vancouver Police Department uniforms stopped me.

One police officer pulled my hand behind my back and pushed me against the wall. The other police officer searched my bag. The officer who pushed me against the wall injured my head and arm. They held me for about 20 minutes and then released me without charge.

Sincerely,

Your Name

### **STEP THREE: GET THE “NOTICE OF CLAIM,” “CERTIFICATE OF READINESS” AND “STATEMENT OF FINANCES” FORMS**



**You must do this step before four months have passed.**

Get ready to fill in forms! There are lots of forms to fill in to start your lawsuit. You will need to fill out a form to tell the court about your claim and to start the lawsuit, called a “Notice of Claim” form. You will need to fill in two forms if you cannot afford to pay the filing fee – one called a “Statement of Finances” form and the other called the “Application to the Registrar” form. If you were physically hurt by the police, you will need to fill in a “Certificate of Readiness” form. This section will tell you where to get these forms and how to fill them in.

#### *Where to get your forms*

You can get all of the forms you need from the nearest Small Claims Court registry. You can find the Small Claims Court in B.C. nearest you by calling 1 800 663 7867. Ask for the “Small Claims registry” nearest to your house. The closest registry to the Downtown Eastside is located at 800 Hornby Street in downtown Vancouver, near the corner of Hornby and Robson streets. Call 604 660 8989 for directions.

If you cannot get to the Small Claims Court registry, you can telephone or write and ask them to send you the forms. All of these forms can also be found on the Internet at [http://www.ag.gov.bc.ca/courts/forms/forms\\_smcl.htm](http://www.ag.gov.bc.ca/courts/forms/forms_smcl.htm).

### **STEP FOUR: FILL IN THE FORMS**



**You must do this step and file the completed forms before six months have passed!**

This section of the book contains instructions and advice about filling out your “Notice of Claim,” “Statement of Finances” and “Certificate of Readiness” forms. There is a sample completed “Notice of Claim” form on page 23 of this book. When filling out the “Notice

of Claim” or “Certificate of Readiness” form, press hard with your pen! You are making 5 copies.

**If you need more help filling out any Small Claims Court forms, you can contact the non-profit legal organizations Access Justice or Law Line for free legal advice. Their contact information is on page 78 of this book.**

### “Notice of Claim” form

See facing page for a sample of the “Notice of Claim” form.

#### *From:*

This is where you tell the court who you are. Fill in your full legal name, which means your first, middle and last names as they appear on your birth certificate.

Put the address where you get your mail in this section. If you do not have a stable address where you get mail, ask a friend who has been living somewhere for a while if you can use his or her address.

It is important to have an address that you can check regularly, because this is where the Defendant will send his or her “Reply” to you and where the court will send you important information.

If your address or your friend’s address changes, be sure to let the Small Claims Court registry know by calling or writing them a letter to tell them what your new address is.

#### *To:*

This section is where you put the names of the people you are suing. It is very important that you name the people you are suing very carefully and make sure you have the right names. You will likely be filling in more than one name and address, so ignore the labels on the lines and write so that you can fit everyone in the space on the form.



### A. Put the employer's name first

#### *City name and address for Vancouver Police Department officers*

If you are suing a Vancouver Police Department officer, you will be suing the City of Vancouver and the officers who mistreated you. Fill in the city's name and address:

City of Vancouver  
 Attn: Law Department  
 453 West 12th Avenue  
 Vancouver, B.C.  
 V5Y 1V4  
 604 873 7512

#### *City name and address for police officers outside of Vancouver*

Outside of Vancouver, if you are suing a city police officer and not the RCMP, you will need to find out the address of the city where the police officer who mistreated you works. You can find the address of the legal department of the city or district you are looking for by calling Enquiry BC at 1 800 663 7867. Use the city's name in the "Name" section and the address of their legal department in the "Address" section.

#### *Whom to sue if you are suing the RCMP*

If you are suing an RCMP officer, you will be suing the Solicitor General of B.C. as the employer. See page 8 of this book where it explains why you sue the Solicitor General of B.C. instead of the city the officer works for. In the "To:" section, write:

Solicitor General  
 Legal Services Branch  
 P.O. BOX 9280, STN Prov Gov't  
 Victoria, British Columbia  
 V8W 9J7  
 250 356 8421

## **B. Then write the names of the police officers**

### *If you know the names of the officers*

If you know the names of the officers who mistreated you, fill in their names underneath the name and address of the employer. Use each officer's full name. List the officers, and use the address of the city or district as the officers' address. Usually, the lawyers for the city or district will act for all of the Defendants. If you can, try not to use initials or titles like "Inspector," "Ms." or "Constable."

### *How to find out a police officer's full name from his or her last name or badge number*

If you only know the officer's last name or badge number, you can call the police department's non-emergency switchboard or general inquiry line (in Vancouver at 604 717 3535) and ask what the officer's first name or full name is.

### *How to find out a police officer's detachment*

If the lawyer for the City will not act for the individual officers and tells you that they will not accept service, you will need to find the officer's detachment. An officer's detachment is the office where the police officer works. You can call the police department's non-emergency switchboard or general inquiry line (at 604 717 3535 in Vancouver) and ask what detachment your police officer works out of, as well as the address of that detachment. Just say, "I'd like to send a letter to Constable \_\_\_\_\_. Can you tell me the address of his detachment?"

### *If you do not know the names or badge numbers of the officers and cannot find out*

If you do not know the names of the officers who mistreated you, do not write their names right away. You will be able to find out their names after you begin your lawsuit, at the settlement conference. See page 51 for details. If you want to add them to your lawsuit once you find out their names, you will need to go to the registry and ask how to add another person to your lawsuit. The registry will provide you with the necessary forms and will tell you which of the forms you

need to serve to the new person you are adding. It is not absolutely necessary to add individual officers to a claim; however, it can affect your damages if the officers are not named personally.

A list of all the city police departments in the Greater Vancouver area and their contact information can be found on page 76 of this book.

### *What Happened?*

Write down what happened. Here are some hints to help you make your “What happened?” section more effective:

1. **Write your story in the order things happened.** Start from the very beginning and finish at the end. You might try to answer these questions in the “What Happened” section in this order:
  - a. When did this happen? [On January 1, 2007 . . . ]
  - b. Where were you going/what were you doing? [I was going to . . . ]
  - c. Where were you stopped by police officers? [I was stopped by a police officer at . . . ]
  - d. What did the police officer say and do? [The police officers \_\_\_\_ and \_\_\_\_ .]
  - e. What did you say and do? [I said \_\_\_\_ and did \_\_\_\_.]
  - f. What were your injuries and/or what happened to your property?
2. **Write like a newspaper reporter.** The judge only wants to read and hear the “four W’s”: Who? What? Where? and When? You do not need to include all of the details, but you do need to answer the four W questions.
3. **Do not bring up politics or your opinion.** If the judge were talking to you, she would say, “Just give me the facts!”
4. **Keep it simple.** Both the Defendants and the judge will read this section. If you keep it simple, it will be easier for everyone to quickly understand what happened. Keep it to one page, but include all of the important things that happened. It may take you a couple of tries to get a description that is perfect.

5. **Be honest.** If you say something that is not true in this statement or do not mention something that the police officer will tell the judge, the judge will be less likely to believe the rest of your story. Be honest even with information that you think might hurt your case, because the judge will then know that you are giving the whole truth and nothing but the truth.

**If you need legal help filling out this section, contact Access Justice or Law Line for free advice. Their phone numbers are found on page 78 of this book.**

*Where?*

Write down the city and province where the incident happened. You do not need to write down the street address.

*When?*

Fill in this section with the date of the incident. This information is used to make sure your claim is being made in time. In cases where the police have mistreated you, you must file the notice of action form within 6 months of the police misconduct.

*If you cannot remember the exact date*

If you cannot remember the exact date, write the words “On or about” and then the day, the month and the year that you think it happened. For example: “On or about February 10, 2007.”

*How Much?*

Under how much, there are three different headings that you might use, depending on the damages you are suing for:

- a. Special Damages
- b. General Damages
- c. Punitive Damages

**Special Damages:** This is money that you had to pay:

- a. to a doctor or for transportation or any other reason related to what the police officer did;
- b. to fix your property that was damaged by the police officer; or
- c. for replacing destroyed property or property that the police officer took.

Special damages also include money that you lost because you were unable to go to work because of what happened to you. Figure out how much you are paid each day and then multiply that amount by the number of days that you were unable to work. For example, if you earn \$100 per day and you missed three days of work, you would claim \$300 in lost wages.

You might have one or more of these kinds of special damages, or you may have none of them. If you have none of them, skip this section. If you have more than one, do not add them all together, but put them in a list with the word “Special Damages” at the top so that the court knows how much money you had to spend or will need to spend. For example:

*Special Damages*

Doctor’s appointment . . . . .	\$40.00
New lighter . . . . .	\$2.00
New bus pass . . . . .	\$100.00
Missed 3 days of work. . . . .	\$300.00

**General Damages:** This is money the court makes the police officer or the city give you to repay you for pain and suffering the police officer caused you.

Your pain and suffering could be mental or physical. Physical injuries are easy to prove by giving the court the notes taken by your doctor when he or she examined you, and during any follow-up appointments. The judge will look at other cases where a person had similar injuries to you to figure out how much money to give you if you win.

The amounts in the table below are based on general damages courts have given people for pain and suffering caused by the police. You can ask for more or less than these amounts; this table is just a guideline. You can read about the cases on which these amounts were based on pages 81–93 of this book to see if your case is more or less serious.

Wrongful arrest or false imprisonment	You were held by police for no reason for 15 to 30 minutes.	\$2,000–\$3,000
	You were arrested and held for 30 minutes to 1 hour.	\$3,000–\$4,000
	You were arrested and held for no reason for six hours or more, up to overnight.	\$5,000–\$12,000
Illegal search	You were strip searched and police did an internal cavity search for no reason.	\$50,000 and you should probably ask a lawyer to go to Supreme Court
Assault	You were kicked or punched by a police officer, and it caused a minor injury to you like a cut or bruise.	\$2,000–\$3,000
	You were kicked or punched by a police officer, and it caused a more serious injury to you like a torn muscle, scrape that left a scar on your face or a painful deep bruise.	\$3,000–\$4,500
	You were hit in the head by a police baton, causing headaches, disabling you for two to three months and damaging your teeth (does not include brain injury).	\$10,000
	You have bite wounds from police dogs that left scars.	\$15,000
	You were bitten by police dogs and suffered a broken bone like an arm, leg or rib.	\$20,000
	You were hit in the head, causing a concussion and memory loss, and you have a CT scan from your doctor that proves it.	Up to \$25,000

You can claim for more than one of the things listed in the table on the previous page, but like special damages, make a list. For example:

*General Damages*

Broken arm . . . . .	\$10,000
Wrongful arrest for one hour . . . . .	\$4,000

**Aggravated Damages:** This is money that the court orders the Defendant to pay if the Defendant embarrassed or humiliated you and in so doing caused you damages. These damages are rarely given, but are worth asking for if a police officer acted in a way that caused you embarrassment or humiliation. An appropriate amount to ask for in such cases is usually between \$1,000 and \$5,000.

**Punitive Damages:** This is money that the court orders the Defendant to pay as a punishment for behaving very badly. The court must find that the Defendant was “high-handed,” “malicious” or “arbitrary” in a way that is clearly not “decent behaviour.” An example would be a police officer that was very hateful and mean to you.

These damages are rarely given but are worth asking for if a police officer acted very badly towards you. As an example, in one case where police officers made racist comments to an Aboriginal Claimant, the court awarded \$5,000 in punitive damages to the Claimant.

An appropriate amount to ask for in punitive damages is between \$5,000 and \$10,000. If it is just one officer making racist, sexist or other hateful comments, stay to the lower end. If it is more than one officer, you may want to ask for a higher amount of punitive damages.

As with the other kinds of damages, be specific about why you want punitive damages. Here is an example:

*Punitive Damages*

For making racist comments and being very hateful . . .	\$5,000
---	---------

**Interest:** Always ask for interest on your “Notice of Claim” form. Do not fill in an amount.

**If you need legal help to fill out this section, call Access Justice at 604 482 3195.**

## **Filing Fees and Service Fees**

Do not write anything in this section yourself. When you have finished filling out all of the other sections of the form, take the form back to the Small Claims Court registry where you got it. The registry staff will fill in the fee section for you.

There are two kinds of fees the court will want to charge you. One is called a “service fee,” which is a charge for sending your form to the person you are suing. If you deliver the document yourself, you do not have to pay service fees. See pages 40–44 of this book for more information on getting your “Notice of Claim” to the Defendant.

The other kind of fee is called a “filing fee,” which is a charge for filing your form. It is not as easy to avoid this charge.

### *If you can afford to pay the filing fee*

If you can afford it, and you pay the filing fee, the court will make the Defendant pay the fee back to you if you win your case. The filing fee is \$100 for claims where you are asking for less than \$3,000, and it is \$156 for claims where you asking for more than \$3,000. The fee can be paid by cash, certified cheque or money order. Put the name “Minister of Finance of British Columbia” on the cheque or money order.

### *If you cannot afford to pay the filing fee*

If you cannot afford the fees, you will need to get two forms from the Small Claims Court registry, the same place from which you got your “Notice of Claim” form. You will need the “Application to the Registrar” and the “Statement of Finances” forms. Along with these two completed forms, you will need to bring in as many of the documents listed at the bottom of page 2 of the “Statement of Finances” form as you have.



On the “Application to the Registrar” form, fill in your name where it says “Claimant(s)” and the Defendants’ names where it says “Defendant(s).” Fill in all names exactly the same way as you filled them in on your “Notice of Claim” form, but do not fill in the addresses on this part of the form.

Where it says “From,” fill in your name, address and telephone number.

Underneath where it says “The applicant asks for an order,” put a check mark in the box that says “exempting the applicant from paying fees.”

Underneath where it says “The facts on which this application is based are as follows,” write down why you cannot afford to pay the fees. Be brief. An example would be: “I am on welfare and cannot afford the fee” or “I have been unemployed for the last 4 months and have two children. I cannot afford the fees.” After you write down the reason you cannot afford the fee, write, “Please see my statement of finances form for details.”

After you have filled out all of the information on the “Application to the Registrar” form, sign your name beside the words that say: “I certify these facts are true.”

### **“Statement of Finances” form**

See next page for a sample of the “Statement of Finances” form.

In the “Statement of Finances” form, beside the word “I,” there are two underlines. On the first underline, write your name. On the second underline, write down what kind of work you do, or would do if you were not unemployed; for example, “labourer,” “mother,” “on disability,” “construction worker,” “framer,” “computer programmer” or “mechanic.”

On the underline beside number 1 on the form, write down whether you are married, single, or living with someone in a common-law relationship.

Sample of the “Statement of Finances” form  
 Available at <http://www.ag.gov.bc.ca/courts/forms/scl/scl024.pdf>



**STATEMENT OF FINANCES**  
 IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER
REGISTRY LOCATION

I, \_\_\_\_\_,  
 state: \_\_\_\_\_

**(STRIKE OUT ANYTHING THAT DOES NOT APPLY TO YOU AND INITIAL.)**

1. I am married / single / other (specify): \_\_\_\_\_

2. I support and maintain (specify number):  
 \_\_\_\_\_ Children under 18  
 \_\_\_\_\_ other dependants

3. Listed below is an accurate “Statement of Finances” of my household.

MONTHLY INCOME		MONTHLY EXPENSES	
Net Salary	\$ _____	Rent	\$ _____
Commissions	\$ _____	Mortgage	\$ _____
Tips and Gratuities	\$ _____	Property Taxes	\$ _____
Unemployment Insurance	\$ _____	Utilities (heat & light)	\$ _____
Pension	\$ _____	Phone	\$ _____
Investments	\$ _____	Cablevision	\$ _____
Rentals	\$ _____	House/Tenant Insurance	\$ _____
Business Income	\$ _____	Life Insurance	\$ _____
Child Tax Benefit	\$ _____	Food	\$ _____
Maintenance (if any)	\$ _____	Restaurant Meals	\$ _____
Workers' Compensation	\$ _____	Sundries & Personal Grooming	\$ _____
Monthly Income of Spouse/Common-Law Spouse living with me	\$ _____	Clothing	\$ _____
Income of Children (if any)	\$ _____	Laundry & Dry Cleaning	\$ _____
Other	\$ _____	Motor Vehicle (lease or loan) (license, insurance, fuel & service)	\$ _____
<b>SUB-TOTAL</b>	\$ _____	Transportation (public)	\$ _____
Income Assistance	\$ _____	Newspapers & Subscriptions	\$ _____
<b>A. INCOME TOTAL</b>	\$ _____	Entertainment	\$ _____
		Alcohol & Tobacco	\$ _____
		Gifts	\$ _____
		Church & Charities	\$ _____
		Maintenance Payments	\$ _____
		Child Care & Babysitting	\$ _____
		School Expenses/Children's Activities, Lessons	\$ _____
		Other	\$ _____
		<b>B. EXPENSES TOTAL</b>	\$ _____

**MONTHLY DEBTS**

Credit Card(s): (please specify)

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

Bank or Finance Company: (please specify)

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

Department Store(s): (please specify)

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

Other:

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

**C DEBT PAYMENT TOTAL** \$ \_\_\_\_\_

**VALUE OF ASSETS**

Real Estate Equity

Market Value \$ \_\_\_\_\_  
 Mortgage Balance \$ \_\_\_\_\_

Automobile Equity

Make and Year \_\_\_\_\_  
 Market Value \$ \_\_\_\_\_  
 Loan Balance \$ \_\_\_\_\_

Bank or Other Account (include RRSP's) \$ \_\_\_\_\_

Stocks & Bonds \$ \_\_\_\_\_

Life Insurance \$ \_\_\_\_\_

Money owing to you \$ \_\_\_\_\_

Name of Debtor \_\_\_\_\_

Personal Property \$ \_\_\_\_\_

Cash \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

**If you need more space for any item on this Statement, attach an extra sheet and sign it.**

**A. INCOME TOTAL** \$ \_\_\_\_\_

**B. EXPENSES TOTAL** - \$ \_\_\_\_\_

**SUB-TOTAL** = \$ \_\_\_\_\_

**C. DEBT PAYMENT TOTAL** - \$ \_\_\_\_\_

**BALANCE** = \$ \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Copies of this form:**

If you have been summonsed to court, bring the original of this *Financial Statement* and two copies to court to be filed. One copy is for you and the other is for the other party.

**Reminder:**

Be sure to bring any documents specifically required by a summons you may have received.

If there are no documents mentioned on the summons, you should bring the following items to support your Statement of Finances:

- Copies of your last 2 years' Income Tax Returns and T-4 slips
- If you are not employed, recent proof of the source and amount of your income (such as your 3 most recent Employment Insurance benefit statements)
- copies of your last 2 months utility bills for hydro, telephone and cable
- copies of your last 6 monthly bank statements for all bank accounts
- copies of any mortgage or rent agreements and receipts for the last 6 months
- any other documents you feel are important to establish your financial situation

Number 2 asks you about the number of people you support with your money from work, welfare or disability. If you are responsible for paying for an adult's or child's clothes, food or other expenses because they cannot work, that person is called a "dependent" because they depend on you to pay for them. Fill in the number of children under 18 who depend on your money to pay for their expenses on the first underline. Fill in the number of adults who depend on your money to pay for their expenses on the second underline.

### *Monthly Income*

Under number 3 on the form, underneath the words "Monthly Income," fill in information about where your money comes from each month. Fill in the amount of money you get from each of the items on the list, and add them up under the section marked "Income Total."

For example, if you are on welfare or disability, fill in the line beside the words "Income Assistance" with the amount you get each month, including the money you get for your rent.

If you get money from a source that is not listed on the form – for example, if you get money from relatives – list that amount beside the word "Other."

### *Monthly Expenses*

Under "Monthly Expenses," fill in information about how you spend your money each month. Fill in the amount of money you spend on each of the items on the list, and add them up under the section marked "Expenses Total."

Once you have finished the "Monthly Income" and "Monthly Expenses" parts, go back through the section and draw a line through anything that you left blank. Then initial each line. Do this for every section that you left blank.

When you are done this page, flip the page down from the top to show the second half of the form.

### *Monthly Debts*

Under this section, fill out all of the people to whom you owe money and the amount of your monthly payments. Do not fill in the entire amount that you owe – just how much you have to pay each month.

List each credit card or loan on a different line. For a loan that is not from a bank, credit card, or department store, for example “pay-day loans” from places like Money Mart, fill it in under the “Other” section.

Add up all of your monthly payments and fill in the amount beside the words “Debt Payment Total.”

### *Value of Assets*

Under this section, the form asks you to fill in everything that you own that you could sell for money.

**Real Estate Equity:** If you own land or a house, fill in the value of the mortgage and the property under “Real Estate Equity.”

**Automobile Equity:** If you own a car, under the section marked “Automobile Equity,” fill in the type of car and the year under “Make and Year.” Guess the amount of money you could sell it for, and fill that in under “Market Value.” Put the amount of the car loan you still have to pay off under “Loan balance.” If you are leasing a car, do not fill this section out, but put your monthly car payments in the “Monthly Expenses” section of the first page of the form.

**Bank or Other Account:** If you have money in bank accounts, stocks or life insurance, or if somebody owes you money, fill in the amounts in the “Bank or Other Account” section. Put the name of the person who owes you money beside “Name of Debtor.”

**Personal Property:** If you have valuable personal property like musical instruments, CDs, computer equipment, jewellery or anything else you could sell for money, add it up and put the total value of what you could sell it for beside the words “Personal Property.”

**Cash:** If you have more than \$100 in cash, fill in the amount beside the word “cash.”

**Other:** If you have anything that might be valuable that is not included in the list, write down its value beside the word “Other.”

### *Totals*

This section of the form underneath the “Value of Assets” section asks you to do some math. If you are not comfortable doing math, just take the form back to the Small Claims registry where you got it, and ask them to help you fill in the totals.

If you are comfortable with math, flip back to page one and take the number in the section marked “Income Total” and fill it in on page two where it says “Income Total.” Flip back to page one again and take the number in the section marked “Expenses Total” and fill it in on page two where it says “Expenses Total.” Subtract your expenses from your income, and fill in that amount where it says “Sub-Total.” Fill in the amount from page two where it says “Debt Payment Total” underneath the “Sub-Total,” and subtract that amount from the sub-total. Put the amount that you get in the section marked “Balance.”

### *Signature*

Date and sign the form, and print your name underneath your signature.

### **“Certificate of Readiness” form**

A sample of the “Certificate of Readiness” form is on the facing page.

You only need to fill out this form if you have been physically injured by the police. This form tells the court you are ready to meet with a judge.

To fill out the form, where it says “In the case between,” fill in the names the same way as you did on the “Notice of Claim” form, but leave the addresses out. Where it says “From,” fill in your name and address. Sign and date the bottom of the form.

You will need to attach proof of your injuries and any expenses that came from your injuries. If you missed work because of your injuries, get a letter from your employer saying how much time you missed at work and what your pay rate is. If you had to pay for physiotherapy or painkillers, or had other expenses, attach copies of the receipts for those costs. For each person you are suing, make a copy of your medical records, receipts and letters, and attach these documents to a copy of the “Certificate of Readiness” form. Make an additional copy for the Small Claims registry. Every person you sue must get copies of all of the evidence of your injuries and expenses.

Sample of "Certificate of Readiness" form  
Available at <http://www.ag.gov.bc.ca/courts/forms/scl/scl007.pdf>



**Certificate of Readiness**  
In the Provincial Court of British Columbia (Small Claims Court)

REGISTRY FILE NUMBER
REGISTRY LOCATION

**In the case between:**

Fill in the registry file number shown on the Notice of Claim.

Fill in the names of the parties, copying them from the Notice of Claim.

Name \_\_\_\_\_ **CLAIMANT(S)**

**and**

Name \_\_\_\_\_ **DEFENDANT(S)**

Certificate of Readiness

**FROM:**

Fill in the name, address and telephone number of the claimant who is filing the certificate.

Name \_\_\_\_\_ **CLAIMANT**

Address \_\_\_\_\_

City, Town, Municipality \_\_\_\_\_ Prov. **British Columbia**

Postal Code \_\_\_\_\_ Tel. # \_\_\_\_\_

**I am claiming damages for personal injuries and am ready to discuss settlement of my entire claim.**

**I attach all medical reports and all records of expenses or losses incurred or expected.**

Fill in the date and sign here.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of claimant

Do not fill out the “Certificate of Service” form that comes with your “Certificate of Readiness” form yet. Keep it, and wait until step five (see below) to fill it out.

### Filing your forms

Before this step you should have finished filling out the following forms:

1. the “Notice of Claim” form;
2. the “Application to Registrar” and “Statement of Finances” forms to avoid paying the filing fee (if you cannot afford to pay the filing fee); and
3. the “Certificate of Readiness” form, including attached copies of all of your medical records and receipts (if you were physically injured by the police).

At this stage, before filing your forms, it is a good idea to consult with a lawyer who can review them. Contact a lawyer through Access Justice Canada at 604 482 3195 and make an appointment for the lawyer to review your forms and make suggestions. This way you can be sure you have got everything in order.

Once you are finished filling out all the forms, you need to take everything back to the Small Claims Court registry to start your claim. Usually, you will just take the forms back to the same Small Claims Court registry where you got the “Notice of Claim” form, but if you are far away from where the problem happened, the registry may ask you to take your form to another place. The registry will take all of your forms and stamp them, keeping a copy for themselves. They will keep your “Application to Registrar” and “Statement of Finances” forms, so it is a good idea to make a copy for yourself before handing those in. Once they are stamped and accepted, they have been “filed,” and you can move on to the next step.

### STEP FIVE: LET THE DEFENDANT KNOW ABOUT YOUR CLAIM



You must do this step before 14 days have passed after filing your forms!

Once you have filed all of the forms at the Small Claims registry, you need to tell the people you are suing that you are suing them. The legal way you tell someone you are suing them is to “serve” them. To serve someone whose name you have put on your “Notice of Claim” form as a Defendant, you must give them three things: (1) a copy of your “Notice of Claim” form, (2) a blank “Reply” form that the Defendant can use to reply to your claim, and (3) if you were physically injured, a copy of your “Certificate of Readiness” form with a copy of all of your receipts and medical records.

After you file your “Notice of Claim” form, you technically have one year to “serve” the Defendants. You technically have six months to serve the city. However, you only have 14 days to serve the “Certificate of Readiness” to every Defendant after you file it. It is easiest to make sure you serve everything to the Defendants within 14 days after you file everything at the registry. If you miss the 14-day deadline, you may have to fill out your “Certificate of Readiness” again and refile it. If you miss the one-year or six-month deadlines, you will have to file everything again, and you may lose your right to sue the city. Check with a lawyer about what to do if this happens.

This next section (to page 44) tells you how to serve different Defendants. If you do not serve a Defendant, you will not be able to continue your case against that person:

*If the Defendant is the City of Vancouver*

1. Go to City Hall, which is located at 453 West 12th Avenue in Vancouver.
2. Go to the third floor and look for the signs directing you to the “City Clerk’s Office.”
3. Leave a copy of the “Notice of Claim,” “Certificate of Readiness” and blank “Reply” forms with the clerk, deputy clerk or a similar official at the City Clerk’s Office.
4. Write down the name of the person who takes the forms, or ask for a business card from that person.

*If the Defendant is a city outside of Vancouver*

1. Go to city hall for the appropriate city.
2. Find the City Clerk’s Office.

3. Leave a copy of the “Notice of Claim,” “Certificate of Readiness” and blank “Reply” forms with a deputy clerk or a similar official at the City Clerk’s Office.
4. Write down the name of the person who takes the forms, or ask for a business card from that person.

*If the Defendant is a city police officer*

There are three ways to serve a police officer:

1. You can send the form to the law department for the city or district and hope that a lawyer will accept service for the police officer.
2. You can send the forms by registered mail (which costs about \$6.25 plus the cost of the stamp) to the police officer at his or her detachment (see page 25 for information on how to find a police officer’s detachment). Regular mail is not good enough. Keep the receipt from the registered letter with your court papers. You will need to get a printout from the Internet proving that the letter was delivered. If you cannot get on the Internet, you can pay extra for Canada Post to send you a copy of the signature they get from the person who received the letter.
3. You or a friend can give the forms to the police officer in person by calling the police officer’s detachment and asking when he or she will be working so that you can deliver court papers to him or her (see page 25 for information on how to find a police officer’s detachment and that detachment’s contact information).

If you are trying to serve a VPD officer, go to the police station at 312 Main Street in Vancouver when the police officer is working, and ask for the officer to be paged. The officer should come to 312 Main Street to meet you. If you are trying to serve a police officer from another area, ask the person you have contacted at the detachment about the best way to deliver legal papers to that officer in person.

When you meet the police officer, hand the forms to the police officer and say “You are being served with a Small Claims Court ‘Notice of Claim’ form, a ‘Certificate of Readiness’ form and a blank ‘Reply’ form.” If the police officer refuses to take the papers, place the papers on a counter or table near the police officer and leave.

***If the Defendant is an RCMP officer***

Use the same process as if the Defendant were a city police officer.

***If the Defendant is a security guard***

There are two ways to serve a security guard:

1. You can send the forms by registered mail (which costs about \$6.25 plus the cost of the stamp) to the security guard at his or her store or employer's offices. You can look up the address for the store or office in the phone book. Regular mail is not good enough. Keep the receipt from the registered letter with your court papers. You will need to get a printout from the Internet proving that the letter was delivered. If you cannot get on the Internet, you can pay extra for Canada Post to send you a copy of the signature they get from the person who received the letter.
2. Usually, if you have an encounter with a security guard, you will be banned from the store or location where the problem happened. You can still serve the security guard in person by asking a friend to go to the place where the security guard works and asking when he or she will be working so that you can deliver court papers to him or her. When your friend sees the security guard, he or she should hand the forms to the security guard and say, "You are being served with a Small Claims Court 'Notice of Claim' form, a 'Certificate of Readiness' form, and a blank 'Reply' form." If the security guard refuses to take the papers, place the papers on a counter or table near the security guard and leave, or leave them at the feet of the security guard.

***If the Defendant is a security guard company or store***

The best way to serve a company or store is to look up their address in the phone book (if you do not already know where their office or the store or mall is), go there in person and leave a copy of the documents with a receptionist or a person who appears to manage or control the company's business there.

*If the Defendant is the Solicitor General of B.C.*

There are two ways to serve the Solicitor General of B.C.:

1. You can send the forms by registered mail (which costs about \$6.25 plus the cost of the stamp) to the Solicitor General at the following address:

Solicitor General – Legal Services Branch  
 P.O. BOX 9280, STN Prov Gov't  
 Victoria, British Columbia  
 V8W 9J7

Regular mail is not good enough. Keep the receipt from the registered letter with your court papers. You will need to get a printout from the Internet proving that the letter was delivered. If you cannot get on the Internet, you can pay extra for Canada Post to send you a copy of the signature they get from the person who received the letter.

2. You or a friend can deliver the forms to a lawyer who works for the Solicitor General in Victoria, British Columbia. You can find these lawyers at the Ministry of Solicitor General, Legal Services Branch, 1001 Douglas Street in Victoria B.C. When you leave the forms with the lawyer, make sure you get his or her contact information. It might be a good idea to get a business card if the lawyer has one.

**Remember to keep copies of everything you serve to the Defendants!**

**After you have served the Defendants**

After you have served a Defendant, you will need to fill out the “Certificate of Service” form (Form 4). A sample is on the facing page.

1. Beside the word “**I**,” write your name.
2. Beside “**served**,” write the person or city’s name that you served.
3. Beside the word “**on**,” write the date that you served the Defendant.

Sample of the “Certificate of Service” form  
 Available at <http://www.ag.gov.bc.ca/courts/forms/scl/scl007.pdf>

<p>FORM 4 SCL 004F 08/2006</p> <p>Fill in:                  your name;                  the name of the party or other person served;                  the date service took place;                  the street address or location, city and province where service took place;                  Name the documents that you served.                  Tell how service took place by checking appropriate box(es) for:                  ordinary mail and fill in the date mailed;                  an individual;                  a company as defined in the Business Corporations Act;                  an extraprovincial company as defined in the Business Corporations Act;                  a partnership;                  a municipal corporation, regional district or other local government body;                  a young person;                  a society as defined in the Society Act;                  an extraprovincial society as defined in the Society Act (if no attorney has been appointed, check one of the 2 preceding boxes for a society);                  an unincorporated association or trade union;                  a corporation incorporated outside British Columbia if it is not an extraprovincial company;                  alternate service method ordered by the Court.</p>	<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p><b>I certify that</b></p> <p><b>I</b> _____  <b>served</b> _____  <b>on</b> _____                  Date _____  <b>at</b> _____  <b>with</b> _____                  _____                  _____                  _____</p> <p><b>by</b> <input type="checkbox"/> mailing a copy by ordinary mail to that person's address on _____                  Date _____</p> <p><input type="checkbox"/> leaving a copy of it with him or her.  <input type="checkbox"/> mailing a copy of it by registered mail to him or her.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to the registered office of the company.  <input type="checkbox"/> leaving a copy of it <input type="checkbox"/> at the registered office of the company.  <input type="checkbox"/> at the place of business of the company, with a receptionist or a person who appears to manage or control the company's business there.  <input type="checkbox"/> with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the company.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to the attorney shown in the corporate registry.  <input type="checkbox"/> leaving a copy of it with the attorney shown in the corporate registry.  <input type="checkbox"/> leaving a copy of it at the head office shown in the corporate registry if that head office is in British Columbia.  <input type="checkbox"/> mailing a copy of it by registered mail to the head office shown in the corporate registry if that head office is in British Columbia.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to a partner.  <input type="checkbox"/> leaving a copy of it <input type="checkbox"/> with a partner.  <input type="checkbox"/> at the place of business of the partnership, with a person who appears to manage or control the partnership business there.  <input type="checkbox"/> with a receptionist who works at a place of business of the partnership.</p> <p><input type="checkbox"/> giving a copy to the clerk, deputy clerk or a similar official.</p> <p><input type="checkbox"/> leaving a copy of the notice with the defendant's mother, father or guardian.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to the address for service on file with the Registrar of Companies.  <input type="checkbox"/> leaving a copy of it <input type="checkbox"/> at the address for service on file with the Registrar of Companies.  <input type="checkbox"/> with a director, officer, receiver manager or liquidator of the society.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to the attorney of the society appointed under section 77 of the Society Act.  <input type="checkbox"/> leaving a copy of it with an attorney appointed under section 77 of the Society Act.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to the registered office of the association.  <input type="checkbox"/> leaving a copy of it with an officer of the association or, in the case of a trade union, with a business agent.</p> <p><input type="checkbox"/> mailing a copy of it by registered mail to a place of business or registered office of the corporation outside British Columbia.  <input type="checkbox"/> leaving a copy of it <input type="checkbox"/> at a place of business or registered office of the corporation outside British Columbia with a receptionist or a person who appears to manage or control the corporation's business, or  <input type="checkbox"/> with a director, officer, liquidator, trustee in bankruptcy or receiver manager of the corporation.</p> <p><input type="checkbox"/> (fill in any instructions given by a judge or registrar for service)</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>CERTIFICATE OF SERVICE</b></p>
<p><b>NOTE: You must give proof of service by REGISTERED MAIL by attaching one of the following:</b></p> <ol style="list-style-type: none"> <li>1. a copy, produced by fax or otherwise, of the signature obtained by Canada Post at the time the document was delivered.</li> <li>2. a print-out of the delivery confirmation made available on the Internet by Canada Post (<a href="http://www.canadapost.ca">http://www.canadapost.ca</a>).</li> </ol>		
<div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div> <p>Date</p>	<div style="border: 1px solid black; width: 100px; height: 20px; margin: 0 auto;"></div> <p>Signature of person who served the document</p>	

4. Beside the word “at,” write the place where you served the Defendant or where the registered letter was sent.
5. Beside the word “with,” write: “A Notice of Claim Form, and a blank Reply form.” Or, if you served the Defendants with a “Certificate of Readiness” as well because you were physically injured, write: “A Notice of Claim Form, a Certificate of Readiness, and a blank Reply form.”
6. Beside the word “by,” check off how you served the Defendant.
7. If you served the Defendant police officer by registered mail, attach the printout from the Internet proving that the letter was delivered, or the copy of the signature of the person who signed for the letter.

### STEP SIX: WAIT FOR THE REPLY



The Defendant has 14 days after you give the Defendant a copy of your forms to give a “Reply” form to the registry. You do not have to do anything here but wait.

After you serve your “Notice of Claim,” the blank “Reply” form and the “Certificate of Readiness” (if you were physically injured) to each Defendant, each Defendant has 14 days to fill out the “Reply” form and send it to the registry. The registry then has 21 days to send the reply to you. So it may be up to 35 days before you get the Defendant’s “Reply” from the date you serve the Defendant. You will get a “Reply” form from each Defendant. If you really have to know right away if the Defendant filed a “Reply” form by the 14th day, go to the registry after that day and ask if a “Reply” has been filed. You should definitely go to the registry to see what is happening if you do not get a copy of the Defendant’s “Reply” in the mail by the 35th day after giving the Defendant a copy of your forms.

#### *If the Defendant offers to settle*

It is possible, but unlikely, that during this time, the Defendant may contact you and offer to “settle” the case. Settling the case means that the Defendant wants to pay you money to stop your court case without going to court.

If you refuse the Defendant's offer and the Defendant wins at court, or you only win as much as the Defendant offered you, you may have to pay some of the Defendant's costs. So be careful when refusing a fair offer!

If you accept the Defendant's offer, you will need to withdraw your claim. If you are suing more than one person or group in your lawsuit, you can settle with one, some or all of the Defendants. If you do not settle with all of the Defendants, you only need to withdraw your claim against the Defendants you settle with, and you can continue against the other Defendants.

To withdraw your claim, go to the Small Claims Court registry and file a "Notice of Withdrawal" form. The registry will help you fill this form out. You must serve the "Notice of Withdrawal" form to all of the Defendants to whom you have served the "Notice of Claim" form. Because you have already served them in person, you can now serve them by ordinary mail. Complete the "Certificate of Service" form noting how you served the "Notice of Withdrawal" form.

### *If the Defendant fills out the "Reply" form*

The Defendant will likely fill in the "Reply" form and return it to the Small Claims registry. The form will probably say that your claim is false, that the force used was not excessive or that the arrest, search or detention was legal. When this happens, the Small Claims registry will send you a copy of the Defendant's "Reply" form, and the court will set a date for a settlement conference. The reply may also have "technical" arguments about your case to try to make you lose without the Defendants having to talk about what actually happened to you. There are two common technical arguments that the Defendants are most likely to make about your claim. You should be prepared to deal with both of these arguments if they are mentioned in the Defendants' "Reply" form.

### **"Technical" arguments by the Defendants: Discloses no cause of action**

The Defendants might say that your claim "discloses no cause of action." What the Defendant is arguing is that even if the judge believed

everything that you wrote was true, there is not enough information to show that the Defendant did anything wrong, and the judge should dismiss your case.

This is not necessarily true. Your “Notice of Claim” form needs to make an allegation against each Defendant you have named personally, except for cities, provinces or companies. If you have named a person, your “Notice of Claim” form must make it clear that the person you have named did something wrong to you.

If the Defendant makes this argument in the “Reply” form, review your “Notice of Claim” form, and make sure you have all of the important facts about what happened to you (assault, false imprisonment, illegal arrest, etc.).

**If you accidentally left something out of your “Notice of Claim” form** that would make it clear the Defendant did something wrong, do the following:

1. Go to the registry and ask how to “amend” or change your “Notice of Claim” form, and include all of the missing parts.
2. Serve a copy of your corrected form to the Defendants.

**If you do not think you are missing anything**, contact a lawyer through Access Justice Canada at 604 482 3195. Make an appointment, and bring a copy of your “Notice of Claim” form and the reply you received. Ask the lawyer if you are missing anything that you should include in your “Notice of Claim” form. If you are missing something, follow the steps above to “amend” your “Notice of Claim” form. It might be a good idea to follow this step even if you think you have already spotted an error in your “Notice of Claim” form.

### **“Technical” arguments by the Defendants: Section 21 of the *Police Act* – Police Immunity**

The Defendant police officers, if you name them personally, will likely try to argue that they are “immune” from your lawsuit because a law called the *Police Act* says in section 21(2) that you cannot sue a police officer for doing something wrong. However, in section 21(3) of the *Police Act*, it says you can sue a police officer if the police officer’s behaviour was dishonest, grossly negligent, malicious, or wilful.

If the Defendant says in his or her “Reply” form that he or she is immune from your lawsuit because of section 21(2) of the *Police Act*, prepare yourself to say this to the judge at your trial:

Section 21(3) of the *Police Act* says you can sue a police officer for “wilful” actions, and my claims for [assault, battery, wrongful imprisonment, wrongful seizure of property or other claims] are “intentional torts.” In *Ward v. Vancouver*, a 2003 decision of the B.C. Supreme Court, at paragraph 12, the judge said that “intentional torts are by definition ‘wilful acts’ for the purposes of section 21(3).”

**If your claim says that the police falsely arrested and wrongly imprisoned you, add this part:**

Also, in *Walkey v. Canada (Attorney General)*, a 1997 decision of the B.C. Supreme Court, at paragraph 72, the judge said that the torts of false arrest and false imprisonment by their very nature involve misconduct that is wilful.

What you are telling the judge is that the police officers acted the way they did on purpose or “wilfully” and that because they acted wilfully, they should not be protected by the *Police Act* from your lawsuit.

Copies of the cases *Ward v. Vancouver* and *Walkey v. Canada* are available on the Pivot Legal Society website ([www.pivotlegal.org](http://www.pivotlegal.org)), so that you can print copies if you need them. If you know that the Defendant will be saying section 21(2) of the *Police Act* applies because the Defendant wrote it down in her “Reply” form, bring a copy of *Ward v. Vancouver* with you to your case, and give it to the judge.

### ***If the Defendant does not fill out the reply form***

Whether or not a settlement offer has been made, if the Defendant does not file a “Reply” form within 14 days of receiving your “Notice of Claim” form, you can ask a judge to give you a “default judgment.” If you get a default judgment, it means that you win your case without having to present the facts because the other person did not respond to your “Notice of Claim” form.

If the Defendant files a “Reply” form on the 15th day, it is not worth applying for a default judgment because the judge will not give

it to you. If the Defendant does not file a reply at all, it is probably worth applying for a default judgment. It is fair to wait for a week before filing for a default judgment. Remember, even if the Defendant meets the filing deadline, the registry has 21 days to send it to you, so it may be worth checking with the registry before filling out the default judgment form. To get a default judgment, go to the Small Claims Court registry and ask for an “Application for a Default Judgment” form. Here is a chart that will help you fill out this form:

Beside the words...	Fill in...
Claimant(s)	Your name exactly as you filled it in on the “Notice of Claim” form.
Defendant(s)	The city’s name and the police officers’ names exactly as you filled them in on the “Notice of Claim” form.
A hearing will be held on...	Leave this section blank. The Small Claims Court registry staff will fill this part out for you.
Default Order As...	The names of the city or police officers who did not send in their reply forms exactly as you put them in on the “Notice of Claim” form.
Has not filed a reply	Put a checkmark in the box.

Leave the rest of the form blank, and the court will help you fill it in with the proper information when you appear for the default judgment hearing. Once you are done, bring the form back to the Small Claims Court registry and they will give you a hearing date.

Show up on the hearing date and explain to the judge that you served the Defendant and that the Defendant did not file a reply. Ask the judge for a default judgment. The judge or the clerk will help you fill out the rest of the default judgment form.

## STEP SEVEN: THE SETTLEMENT CONFERENCE



If you need to change the date of your settlement conference, go to the registry as soon as possible!

Every single case that goes through Small Claims Court must have a “settlement conference.” You will get a letter from the Small Claims Court registry telling you when the date of your settlement conference is.

A settlement conference is a private discussion between you, the people you are suing and the judge. The judge’s job at the settlement conference is to try to help you and the people you are suing solve your problems without having to go to court. You will have a different judge at your trial than at the settlement conference.

Settling usually means that you accept a smaller amount of money from the Defendants than you are asking for in your “Notice of Claim” form. In exchange for the money, you would agree not to go to court.

Before the settlement conference, you should think about what you want from your lawsuit. When you settle, you guarantee that you will get something for your lawsuit. When you do not settle, and you go to court instead, there are no guarantees of anything. You might win, but you also might lose.

*Ask the judge for the evidence that the other side has*

THIS PART IS VERY IMPORTANT! If you cannot agree with the other side on a settlement, the conference will help you get ready for the trial. Ask the judge if you can get copies of the police reports made about your arrest or detention. If the incident happened in a place with video cameras, like a jail or a store, ask the judge for the videotape. The judge will tell you if he or she will order the other side to give you what you are asking for.

If the judge orders the other side to give you the reports, read them when you get them. If you did not have the police officer’s names before, you have them now! If you wish, take the names of the police officers from the report to the Small Claims Court registry and ask how you can add those names to your “Notice of Claim.” You will have to repeat step four for all of the names that you add so that the people you add know you are suing them.

**WARNING!** Sometimes, a person who works for the city, either a lawyer or a person who works for the city's insurance company, may ask you to sign a form. These people do not work at the Small Claims registry, but will call you or visit your home to try to talk to you. Unless you have asked a lawyer or the judge (during the settlement conference) for advice about the form, you should not sign any forms. Ask for a copy of the form, and bring it to a lawyer (see page 78 in this book) for advice.

### Preparing for a settlement conference

Be well prepared for the settlement conference. If you are not prepared, and the conference cannot be conducted properly, the judge might order you to pay the expenses of the other party or Defendant coming to the conference. If that happens, you will have to come back for a second settlement conference.

The judge may ask you to “disclose” or give the evidence that you have to the other side and may give you a date by which you have to do this. Do not miss this date! If you do not give a copy of something you want to use at the trial to the other side, you will not be able to use it at trial without giving the Defendant an “adjournment” or delay. You do not need to give the Defendant copies of your notes that you have made to prepare for trial. You will lose your trial if you hold back important evidence and the judge or Defendant finds out.

#### *Here is how to prepare for a settlement conference:*

1. Bring all of your evidence with you, because you may need to disclose it if the Defendant or judge asks for it, including:
  - a. Notes that you or other people have made of what happened;
  - b. Video, photographs, charts, maps, or any other visual representations of what happened;
  - c. Medical records, like doctor's notes;
  - d. If you have witnesses who will be coming to the trial, you should know what the witnesses are going to say and be able to tell the judge what the witnesses will say; and

- e. See pages 15–17 for examples of other kinds of evidence you should bring with you.
2. Think about what damages you will be asking for. How much money did you ask for on your “Notice of Claim”? How much are you willing to settle for? Do you want a formal apology from the police officers to be a part of your settlement?
3. Dress in your best clothes and act as politely and calmly as possible. The lawyer for the police officers and the city will probably say things that upset you – even things that you think are untrue – but you will be more likely to win your case if you stay calm and wait for your turn to speak. If you are very angry, raise your voice or are very rude and impolite, the judge might think, “Now I understand why the police officer had to use extra force on this person!”

If you do not go to the settlement conference, the judge may throw out your case, and you will lose. If you do not go to the settlement conference, the judge might also say that the case should go to trial and set a date for a trial without you. You might be working or busy, but the judge will say it is your fault for not coming to the settlement conference and not trying to reschedule. If the Defendant does not attend, you should ask for a default judgment. See pages 49–50 for details.

### *What will happen at the settlement conference?*

Here is what happens at a settlement conference:

1. **Where?** Settlement conferences usually happen in a small room near the Small Claims Court registry. Show up about half an hour before your conference so that you can find your room, review your notes and relax. If you need help finding your room, ask at the Small Claims Court registry.
2. **Who can you bring with you?** You can bring a lawyer with you. You can also bring a friend for support, but you will need to ask the judge’s permission for your friend to stay. Ask right at the beginning of the settlement conference.
3. **Who else will be there?** You will be invited into the meeting room by the judge. You will meet the judge and the lawyer for the city. The police officers you are suing may be there, or they may send

their lawyers instead. One lawyer may be representing all of the Defendants.

4. **What will the judge ask me?** You should introduce yourself to the judge and tell the judge that you are the Claimant. The judge will tell you about the purpose of the settlement conference and will introduce him- or herself. The judge will then ask you to give a brief summary of your case so that he or she can understand your claim.
5. **What should I say?** Tell the judge what happened to you. Be brief and tell the judge just the facts. Answer the 4 W questions for the judge: Who, What, When and Where. Go over the evidence (see pages 15–17 in this book) that supports your story.
6. **What else will happen?** After you tell your story, the judge will ask you and the Defendants if there is anything you can agree on. The Defendants will likely agree that you were in contact with the police on a certain day, but they probably will not agree with anything other than that. The judge can say to you or the Defendant that it would be a good idea to settle based on the evidence. Nothing the judge says at the settlement conference is final – it is just advice. You will have a different judge for your trial.
7. **Can I ask questions?** The judge may ask you at some point if you have any questions. Ask the judge if he can order the Defendants to give you all of the reports and notes made by the police officer of your arrest or detention. Ask any questions you have about what is happening or what will happen at your trial.
8. **What are “issues”?** The judge will then figure out what the “issues” in the trial are. An “issue” is a question that the judge is going to try to answer at the trial. Your issues will probably sound something like: Did this police officer use excessive force when arresting the Claimant? Or the issue might be: Did this police officer have a legal right to detain or arrest this Claimant? There might be many different issues in your case.
9. **Do I need to agree with the Defendants?** If the judge asks if you agree with the Defendants, it is okay to say no. Do not agree with anything that is not true. If you and the Defendant disagree on the answers to the questions the judge is asking in the issues, then

the judge will answer these questions after hearing the evidence at trial.

10. **How do I know when it is over?** After the discussion about the issues and whether or not you and the Defendants can settle your issues, the judge will tell you that the settlement conference is over. Do not forget to thank the judge. The judge may tell you the date for the trial or may tell you that you will receive a notice of trial in the mail.

## STEP EIGHT: OFFERS TO SETTLE



**If you are going to offer to settle, send your letter before 30 days have passed since the settlement conference.**

You can settle your case with any of the Defendants you have named at any time. However, there is an important time period during the 30 days after the settlement conference when an offer to settle is more important and refusing the offer might cause the judge to take away some of your damages if you win.

During these 30 days, you or the Defendant can make a written offer to settle. A written offer means that you send a letter to the Defendant or the Defendant sends a letter to you offering an amount of money to stop the case.

### *Accepting an offer after the settlement conference*

If you accept the written offer, send a letter saying that you accept the offer to the Defendant. You must send this letter no more than 30 days after the settlement conference.

The trial will be cancelled after you give the registry a copy of the written offer to settle and the letter that says you accept the offer.

### *Refusing an offer after the settlement conference*

If you do not accept a written offer to settle, and the amount the judge gives you at trial is similar to the offer that was made to you, the judge might reduce the damages you were supposed to get by up to 20 percent of the amount the Defendant offered. The judge does this to encourage people to settle and to accept fair offers. You can refuse

an offer by sending a letter back to the Defendant asking for more than the person has offered.

At trial, the judge cannot be told about any offers until a final decision on the amount has been made. Hence, if you have received an offer, bring it with you to court, but do not mention the offer, or the amount of the offer during the trial.

### *Writing your own offer to settle*

See facing page for a sample of the “Offer to Settle” form.

It is often a good idea to propose your own settlement if there is an amount of money you would settle for. Make it a fair amount. If you are going to do this, do it immediately after the settlement conference.

To make an offer to settle, go to the registry and ask for a copy of Form 18, the “Offer to Settle” form. Fill out the form and underneath the part that says “offer to settle this claim(s) in the following terms” write the amount of money that you are requesting and add “as a global settlement of all claims made by the Claimant.” The Defendants have 28 days after receiving your offer to accept it or reject it, so fill in the date 28 days after you serve the Defendant as the “Expiry Date of Offer” for acceptance. Serve a copy to the Defendants the same way that you would serve a “Notice of Claim” form (see page 23). Complete a copy of the “Certificate of Service” for each Defendant (see page 45).

If the Defendants accept your offer, they will send you a form that says they accept your offer. Take that form, along with your form, and file them both at the registry. Then skip ahead to page 70 of this book to find out how to collect your settlement amount.

If the Defendants reject your offer, they will not reply at all, or they will send a letter to you that says they reject your offer. Keep a copy of the “Offer to Settle” form and any letter you get from the Defendants rejecting your offer. If you win at trial, give a copy of the form and the letters to the judge to show that you tried to settle the case.

Sample of the “Offer to Settle” form  
 Available at [www.ag.gov.bc.ca/courts/forms/scl/scl803.pdf](http://www.ag.gov.bc.ca/courts/forms/scl/scl803.pdf)

	<h2 style="margin: 0;">OFFER TO SETTLE</h2> <p style="margin: 0;">In the Provincial Court of British Columbia (Small Claims Court)</p>	REGISTRY FILE NUMBER  REGISTRY LOCATION
<b>In the case between:</b>		
NAME	<b>CLAIMANT(S)</b>	
ADDRESS		
CITY, TOWN, MUNICIPALITY	British Columbia <small>PROV.</small>	POSTAL CODE      TEL. #
<b>and</b>		
NAME	<b>DEFENDANT(S)</b>	
ADDRESS		
CITY, TOWN, MUNICIPALITY	British Columbia <small>PROV.</small>	POSTAL CODE      TEL. #
<b>THIRD PARTY</b>		
NAME		
ADDRESS		
CITY, TOWN, MUNICIPALITY	British Columbia <small>PROV.</small>	POSTAL CODE      TEL. #
<b>OFFER TO SETTLE:</b> The claimant(s) or defendant(s) or third party		
I, <u>NAME</u> offer to settle this claim(s) in the following terms:  _____ _____ _____ _____		
Dated _____	_____ Signature	
at _____	_____ Signature	
<b>TIME LIMIT FOR AN OFFER</b> An offer to settle may be made up to 30 days after the settlement conference or later if permitted by a judge. A party who receives an offer, has 28 days after being served with the offer, to accept the offer. No response will be considered a rejection.		
<b>ACCEPTANCE OF OFFER</b> To accept the offer to settle, the party must complete an Acceptance Of Offer (Form 19) and serve the other party within 28 days of being served with the offer.		
<b>FILING OFFER AND ACCEPTANCE</b> If a party served with an acceptance of offer files the offer and the acceptance in the registry, the acceptance becomes a payment order.		
<b>NOTICE OF PENALTY</b> A trial judge may order a party to pay a penalty if the offer to settle has been rejected. A penalty is in addition to any other expenses and may be up to 20% of the amount of the offer to settle.		
<b>THE COURT ADDRESS FOR FILING DOCUMENTS IS:</b> _____ _____ _____		
<b>EXPIRY DATE OF OFFER</b> _____		<b>REGISTRY USE ONLY</b>  Dated _____  _____ Signature

**OFFER TO SETTLE**

## STEP NINE: THE TRIAL



A trial is a public event where each party tells its own side of the case to a judge who makes a binding decision.

### Getting ready for your trial

Any time that Small Claims Court is open, you can go and watch trials. If you are going to trial soon, you should go watch other people's trials to learn a little about how a trial works. To find out when you can watch trials, ask at the Small Claims Court registry where you filed your "Notice of Claim," and they will tell you when trials are scheduled and where the courtrooms are.

To prepare for your trial, read your copy of the "Notice of Claim," read the Defendants' reply, think about how you will tell your side of the story to the judge, make notes if it will help you and read over any other documents you want to use as evidence. Gather all of your evidence together. Put your documents in an order you will remember, and most importantly, **BRING EVERYTHING TO COURT WITH YOU!**

Bring a copy of Form 10, the "Payment Order" form, with you to court, so that if you win, you will be prepared to write down what the payment order is. See page 70 in this book for details on payment orders.

### Special rules about how to behave in court

Court has a very strict set of rules. If you follow these rules, you will keep the judge happy, and the judge will be better able to listen to your case.

1. Stand every time the judge enters or leaves the courtroom.
2. Always call the judge "Your Honour."
3. Stand whenever you are speaking to the judge or when the judge is speaking to you.
4. Stand when you are asking witnesses questions.
5. Be polite and do not swear.
6. Wear your best clean clothes. Do not wear a hat.
7. Even if someone says something you disagree with, you have to wait your turn to talk. Do not interrupt anyone, especially the

judge! If you really feel you must interrupt someone other than the judge, stand up and say “I object, Your Honour.” Be ready to explain why you object. NEVER object to what the judge says. Wait until the judge finishes speaking, and then explain why you disagree.

8. Do not rush! It is your right to take your time to make sure that you cover all of your points.
9. Do not leave the courtroom until the judge tells you that you are excused.

**If you or one of your witnesses needs a translator, contact the Small Claims Court registry and ask them to arrange for a translator to come to your court date.**

### **Trial Procedure – Step by Step**

Here is a step by step guide to what will happen at trial.

1. The judge will enter the courtroom, and the clerk will ask everyone to stand up.
2. Everyone will then sit down. When the judge is ready to start, the clerk will ask you to introduce yourself and to spell your last name.
3. The judge will speak first, telling you what will happen in court that day.
4. You will be given the chance to speak first. The clerk will ask if you want to swear on a Bible or make an affirmation without a Bible. It makes no difference which you choose.
5. Tell the court your story. The judge may ask you questions. See page 62 for details.
6. The judge may read the facts back to you based on what you said and what you put in the “Notice of Claim.” The judge may ask you if you need to add or correct any information or facts if he or she has misunderstood.
7. As part of your story, you can disagree with things that the Defendant wrote in the reply form if they are not right. If you did not get the reply in the time limits set out for the reply, this is the time to tell the judge when you got the reply. See page 49 for details.

8. Give the judge any pictures or medical records or other evidence that you have. The judge will mark these as “exhibits.”
9. When you are done, the judge will ask if you have any witnesses to call. Call your witnesses and ask them questions. See below for details.
10. The judge might also ask your witness questions.
11. Then the Defendant might testify and might also call witnesses. You can ask the judge if you want to cross-examine the Defendant and the Defendant’s witnesses. See page 65 for details.
12. Once all of the Defendant’s witnesses have finished, if you wish to submit your argument, ask the judge if you can make a closing argument. See page 67 for details. Usually the Defendant is allowed to do a closing argument first.
13. At the end of the trial, the judge may adjourn the court until a later date or a later time on the same day, or give an immediate decision. See page 68 for details.

## Evidence

Bring all of your evidence to trial with you. See page 15–17 in this book for the different kinds of evidence you might have.

Some of your evidence might not be things but might be witnesses. Witnesses are people who saw what happened to you, or saw your injuries, and can come to trial to tell the judge about what they saw. These people need to come to court on the day of your trial.

## Witnesses

A person who you bring to court as a witness is “your” witness. Any person that the Defendant brings to court with them (the police officers, other witnesses) is “their” witness. If the judge asks you if you have any witnesses “to call,” the judge is asking you if you want anybody to speak to provide evidence. You should have at least one witness, and that is you! You may have more than one witness.

All witnesses must have actually seen what happened, seen the result of what happened to you, or seen or heard something relating to what happened that helps to prove the incident actually happened. It is not enough for a witness to have heard from you or from someone else about what happened, unless they personally heard a confession

or acknowledgement of what happened from one of the Defendant police officers.

At trial, you will be in the same position as lawyers you may have seen on television, asking the witness questions. Unfortunately, you are not allowed to ask your witnesses questions in the way that the lawyers on television ask questions. You cannot ask questions that have the answer in them, like “Did you see me get beaten up in the alley behind Carnegie?” These are called leading questions, and judges do not like them when you ask them to your witnesses. You can only ask leading questions to their (the Defendant’s) witnesses.

Instead, ask your witnesses the 4 W questions: Who, What, When, and Where, like “Where were you on February 1st, 2007 at 3:00 in the morning?” Here is a list of helpful questions for your witnesses:

1. What do you do for a living?
2. Where do you live?
3. Where were you on [the day of the incident; for example, February 1st, 2007]?
4. What were you doing?
5. What did you see?
6. Who did you see?
7. What did you do next?
8. When did all of this happen?

It is not enough for you to have a signed or sworn statement from your witness. The other side must be given a chance to cross-examine your witness, so the witness must actually come to court.

### *Preparing your witnesses*

Try writing down the questions you will ask your witness before the case. Review the questions with your witnesses before the trial. You are allowed to discuss the case with your witnesses, but you might not want to. The lawyer for the other side may ask your witnesses if they talked to you about the case and try to suggest that you told them to change their story. Whatever you do, do not tell your witnesses what to say!

The best thing to do is to ask your witnesses to wait out in the hall until you call them to come up to the witness stand. This way the judge will know that the story your witnesses are telling is what

they remember and that they have not changed their story to fit other people's stories they heard while waiting in the courtroom. Remind your witnesses to take their time while they are telling their story to the judge and to speak slowly and clearly. Remind your witnesses to be respectful to the judge.

### *Making sure your witness comes to court*



If you are going to use a “Summons to Witness” form, you must give a copy of the form to the witness at least 7 days before the trial date, after you have filed the form at the registry. The more advance notice, the better!

Most of the time, your witnesses will come to court if you just ask them to. However, if you think there is a chance that your witness will not come to court, you should fill out a form called the “Summons to Witness” form (Form 8) at the Small Claims Court registry. If the witness is served with this form at least 7 days before the trial date (see page 40 of this book for information on how to serve someone other than the City), the witness must attend. If the witness was served the form and does not attend, he or she could be arrested! A witness who has to travel to come to court may be able to recover reasonable travelling expenses if he or she has been served with a “Summons to Witness” form.

### **Testifying at trial: Telling your story**

You will be the main witness for your case, and the judge will likely ask you to tell your story. The best approach is to go first, and then call any other witnesses you have after you are finished. Here is the best way to tell your story:

1. Start by telling the judge what your case is about. For example, “This case is about the fact that Vancouver police officers with badge numbers 1234 and 1235 broke my car window on February 1st, 2007.”
2. Answer any questions from the judge with short answers that are to the point.
3. Tell your story in the order that everything happened. Start at the beginning; for example, “I was walking down the street when . . .” End at the end; for example, “My neck and head still hurt from what happened.”

4. Tell your story as if you were explaining what happened to someone who does not know you or the Defendants.
5. Stick to the facts! Answer the 4 W questions: Who? What? Where? When?
6. Be consistent. Try to give the same answers when the same questions are asked.
7. Do not go into your philosophy or opinion, like “All police are bad,” or “the police always beat up poor people.” Do not make generalizations, like “most police officers are good, but these police officers were bad.” The judge will make the decision based on the facts, not on your opinions.
8. Take your time, and relax.

After you are finished telling your story, the Defendant, or the lawyer for the Defendant, will ask you questions. The lawyer will try to ask you questions that point out any inconsistencies in your evidence and your testimony. He or she will also try to get you to admit that your story is wrong or that it did not happen the way you remember it.

Even though you may have been hurt or upset by the incident, and the questions you are being asked are difficult, you must try to stay calm and think about the questions before answering. Do not be afraid to ask the lawyer to make his or her questions clear before you answer, and do not be afraid to say that you do not know the answer if you do not know it.

If you urgently require a break during your cross-examination, you may ask the judge for a break. If you do not need a break, do not ask for one. You may also ask for a glass of water if you need one.

### Expert witnesses



**Give the other Defendants a summary of what your expert will say at least 30 days before trial. If you are using ordinary mail to send the summary, mail it 44 days before your trial date.**

Experts are the only witnesses who are allowed to give evidence without having seen or heard some part of the incident. An expert witness can give their opinion on what happened or about your injuries. An example of an expert witness is a doctor who could say how hard the police had to hit you to cause the bruise that you had, or how

long you need to be off work because of your injuries. Most times you will not need and will not be able to afford an expert witness, and it is often better to keep things simple and not have one. The notes from your doctor are not considered expert evidence, and you do not need your doctor there as a witness – just the records.

You will need to serve the Defendants with a summary of what your expert witness will say 30 days before the trial. You can give this summary by mailing it to them through ordinary mail. Anything sent by ordinary mail is considered served 14 days after you mail it, so you will need to put it in the mail 44 days before your trial date.

If you have not given the Defendant a summary of what your expert witness will say, you can still ask the judge if you can call the witness at the trial. “Calling the witness” means that you are asking that person to come up and speak to the court. The judge may or may not let you call the witness, and in these cases, the other side may get a postponement of the trial. If that happens, you may be required to pay the expenses of the other side for showing up for trial.

## Expert reports



**Give a copy of your expert report to the other side at least 30 days before trial.**

Expert witnesses are difficult and sometimes expensive to get to come to your trial. If your expert cannot go to court, the next best thing is to ask your expert to write a letter that explains his or her qualifications, opinion and the facts that the opinion is based on. This is called an “expert report.”

If an expert writes a report for you, you will need to serve the report to the other party at least 30 days before your trial date. This 30 days lets the Defendants get their own expert opinion or prepare to cross-examine your witness. Once the “Notice of Claim” has been served and you have received a reply (see page 46 of this book), you can serve a letter or report by sending it by ordinary mail to the Defendants using the addresses they put on the reply. Anything sent by ordinary mail is considered served 14 days after you mail it, so you will need to put it in the mail 44 days before your trial date.

Medical records are not expert reports. See pages 38–39 about the “Certificate of Readiness” form for instructions on what to do with medical records.

If you receive an expert's report from the Defendant and you think it is important that you be allowed to cross-examine the expert, you must notify the other party 14 days before the trial in writing that you want the expert to attend the trial. Be careful when you ask for the expert to attend the trial, because if the judge feels that it was unnecessary, you could end up paying the cost of bringing the expert to court.

### **Asking their witness questions: Cross-examination**

You will "call" your witnesses one at a time. Each witness will go up on the stand and tell what they saw. After they tell what they saw, the other side will have a chance to cross-examine your witnesses. Once that is done, the other side will be able to call their witnesses, who will probably be the police officers involved. The police officer will get up and tell his or her story. If you disagree with something he or she says, you can cross-examine.

You are allowed to ask different questions of the Defendant's witness than your own witness. You can ask "leading" questions that suggest the answer to the witness, like "I wasn't resisting arrest, was I?" Do not ask the witness for his opinion, and do not give your opinion. Cross-examination is difficult to do well, but if you can ask questions without getting angry or telling your story again, you might want to try it. Here are some examples of how you can use cross-examination effectively:

1. Ask the witness questions about the part of their story you do not agree with; for example: "You said I was resisting arrest, but I was lying face down on the pavement and you weigh 50 pounds more than I do. How could I have resisted you?"
2. If you see the witness talking to other witnesses, ask the witness questions about whether he or she discussed the case with anyone else, for example: "Did you discuss what you were going to say today with your partner?" and/or "Did you read your partner's duty report?" and/or "Did you read your partner's notes of this incident?" The answer to these questions should be no. If it is yes, you can ask the judge at the end of the case to consider that the fact that both police officers said the same thing does not make their testimony stronger – it just shows that they shared their notes or discussed the case before testifying. You can say the same thing

to the judge at the end of the trial if the police officers are both sitting in the court listening to each other testify.

3. If you have a copy of the police officer's notes and duty report and you notice a contradiction between what they have said on the witness stand and what they have written down, you can ask them a series of questions like this:

"You wrote the duty report when this incident was fresh in your mind, isn't that true?"

"And you knew you had to be accurate in your duty report, isn't that true?"

"In your duty report, you wrote that it was 10:00 in the morning when you arrested me, correct?"

"And in your testimony today, you said that it was 10:00 at night when you arrested me, correct?"

"How do you explain that your evidence has changed?"

"Have you made any other mistakes in your testimony today, or in your duty report?"

At the end of the case, you can remind the judge of the contradictions in the police officer's testimony.

4. If the witness denies certain parts of your story, you must ask the witness about them. Ask questions like: "Isn't it true that you left me face down on the ground in handcuffs for ten minutes?" or "Isn't it true that you punched me in the head?"

### Changing your trial date



**If you need to change the date of your trial, go to the registry as soon as possible!**

You can ask the judge in writing to delay the trial if you have a very good reason for being unable to go to court on the date scheduled. You must first serve the Defendants with your written application for a delay at least 7 days before you ask the judge. You can serve them by ordinary mail, but the court considers ordinary mail served 14 days after mailing, which means you must mail the application 21 days before you ask the judge for the delay. You need to have a really good reason to change a trial date, such as surgery or a death or illness in your family.

Use Form 17, called “Application to a Judge.” Write that you are asking for an order to “postpone the date of the trial” and put down your reasons for the delay in the “reasons supporting this application.”

As soon as you know you will have a problem going to court on the date that is scheduled, apply for a delay. If you apply for a delay of your trial fewer than 30 days before the trial date, you must pay a fee if the court agrees to delay your trial. This fee must be paid within 14 days after the adjournment or within the time period set by the registrar. If you fail to pay the fee, the judge may decide that you cannot proceed any further. You may have to make an application to the registrar again to have the fee waived. See page 31 in this book on how to apply to have court fees waived.

## **Argument**

After all of the witnesses have gone up for both sides, the judge will ask if you have any final things you want to tell him or her about your case. This is called “argument.” Always talk to the judge during argument. Never talk to the other lawyer or to the police officers. You do not have to do argument if you do not want to. The judge will think about the law for your side by him- or herself. However, if you choose to do argument, here are things you can say to the judge to help your case:

1. **Summarize your evidence very quickly.** Remind the judge very quickly of what the evidence that proves what happened to you – for example, your witnesses or medical records or other evidence that supports what you say happened.
2. **Point out problems with what the other witnesses said.** For example, point out where witnesses disagree with each other or say something different from their reports. Or point out that the witnesses talked about the trial before or were sitting in the courtroom, or outside the courtroom, together. This means that the fact that they told the same story without any contradictions is not as important. For example: “Sergeant Brown said that he arrested me at 10:00 in the morning to you. But in his report, he said that he arrested me at 10:00 at night. Sergeant Brown also told the exact same story as Constable Green, but that could be because Sergeant Brown was sitting in the courtroom when Constable Green was testifying.”

3. **Compare your case to other cases.** Turn to page 81 in this book and read the “Case Law” section. Does some part of your case sound like one of these cases? If it does, you should tell the judge about it. If the judge thinks your case is similar to a part of the case you give him or her, the judge might give you a similar amount of damages or might agree with what the judge decided in the other case.

If you are going to use a case that is discussed in the “Case Law” section of this book, you can find a copy of the case on the Pivot website at [www.pivotlegal.org](http://www.pivotlegal.org). Click on the “How to Sue the Police and Private Security in Small Claims Court” link. You might find other cases there that fit what happened to you but are not in this book, because Pivot will keep updating the website with new cases as they happen even after the book is printed. Print off three copies of each of the cases you think are important: one for you, one for the judge and one for the lawyer on the other side. During your argument, give one copy to the judge, give one to the lawyer for the other side and keep one for yourself. Tell the judge why you think the cases you have brought up are important.

If the case you are looking for is not on the Pivot website, go to your local legal library to get a copy of the case for the judge and the lawyer on the other side. In most cities, law libraries are found in the courthouse. In Vancouver, the law libraries are located at the University of British Columbia and in the B.C. Supreme Court building at 800 Smythe Street, at the corner of Smythe and Howe streets. Tell the librarian what case you want, and he or she will help you find it and photocopy it. Make one copy of the case at the law library, then go somewhere else to make two more copies, since making copies at law libraries is usually very expensive.

## **STEP TEN: THE JUDGMENT**

### *When you receive your judgment*

It is unlikely that the judge will make a decision immediately at the end of your trial. More likely, the judge will say that the decision is “reserved.” A reserved decision means the judge needs to

think about the evidence and the law, before writing a judgment. The judgment is a written explanation to you by the judge about why he or she did or did not award you damages and, if you are awarded damages, the judgment will explain how much in damages you will get. The judge may tell you approximately when you can expect a decision if he or she reserves.

The judge may also make a finding right away and tell you that the “reasons” for the judgment will follow later. This means that the judge has decided whether or not to award you damages but that the reasons for this decision will be written out and sent to you later.

### *If you lose: Appeals*



**Appeals need to be filed in the Supreme Court within 40 days after the date on the written Small Claims Court judgment.**

A Small Claims Court decision can be appealed to the Supreme Court. The biggest difference between Supreme Court and Small Claims Court is that if you lose in Supreme Court, it is almost guaranteed that you will have to pay “costs.” Costs are an amount of money that the court awards to the winning person to cover the amount they had to pay their lawyer to go to court. The reason for costs is to discourage people from going to Supreme Court if they do not have a good case.

It is a good idea to talk to a lawyer about your case and show the lawyer the judgment to get advice about whether it is a good idea to appeal. See page 78 in this book for information on how to contact a lawyer.

Supreme Court can also be more difficult for you if you do not have any legal training. The forms and rules are not as easy to understand. The people at the Supreme Court registry can help you figure out how to file your appeal. You can find the B.C. Supreme Court registry closest to you by calling Enquiry BC at 1 800 663 7867.

*If you win: Collecting your money*

**The sooner you file your payment order, the better.**

If you win your case, the court will not collect your money for you. There are a number of ways you can collect your money. Here are the steps you will need to follow:

1. If you win your case, the judge will make a “payment order.” A payment order is where the judge tells the Defendant how much the Defendant has to pay you. Write this down in the correct parts of Form 10, the “Payment Order” form. If you do not have a copy of the form, just make notes of who has to pay you and how much they have to pay. If you do not get it written down, wait until after the judge leaves and ask the court reporter to read it back to you so that you can write it down exactly. If you have difficulty with reading and writing, tell the judge, and the judge will help you fill out the payment order form.
2. Once you have filled out the payment order form, give it to the registry, where it will be signed and entered in the court records. This is called “filing” the order.
3. This step works for settlement offers that are accepted and for payment orders. Once you have filed the order or settlement offer and acceptance, send a copy of the form(s) by ordinary mail to the person or people who lost the case or settled with you. Use the addresses that you filled in for the “To:” part of your “Notice of Claim” form (step four in this chapter). The Defendant who was ordered by the judge to pay you is called the “debtor.” When you mail the form, include a letter asking for prompt payment. The letter should have your address, the Defendant’s address, the date, and at least one line that reads: “Please send payment of your judgment debt of \$\_\_\_\_\_ to me at the above address within 3 weeks of the above date.”

*If the Defendant does not pay the money the Defendant owes you*

If the Defendant does not send you the payment within the deadline that you set in your letter, you will need to take other steps. Usually

you will have no difficulty collecting if you win because the city will pay quickly and will usually pay for its employees if they are sued. You have 10 years to collect the money the Defendant owes you, but you should try to collect it immediately.

Here are the steps you should take if the person does not pay you after you send the person a judgment. Details on all of these steps are available in the book produced by the Small Claims registry called *Getting Results*. You can ask for a copy at the Small Claims Court registry.

1. **Apply for a payment hearing.** A payment hearing will give you information about where the Defendant works and banks, and whether the Defendant owns any land or cars. You can use this information to “garnish” the Defendant’s wages or bank accounts.
  - a. You can apply for a payment hearing by going to the registry and telling the person who works there that you want a payment hearing. That person will give you a “Summons” form (Form 12), which you should fill out and return to the registrar. The registrar will keep one copy and give the rest back to you with the date of the hearing.
  - b. You must serve one copy of this completed form to the Defendant using one of the methods listed on page 41 of this book at least 7 days before the hearing date. Fill out a “Certificate of Service” form (Form 4) after you have served the Defendants who have not paid. See page 44 for details on how to fill out a “Certificate of Service.”
  - c. Go to court on the hearing date. Be ready to ask the person who owes you money questions about:
    - i. Where they bank, what their account numbers are, what the bank branch numbers are;
    - ii. If they own any land;
    - iii. If they have any “equity” in their house;
    - iv. If they own any cars;
    - v. If they own any other valuable assets like jewellery, art, musical instruments, tools, shares in a company, bonds, etc.
2. **Garnishing:** If you find out where the person banks or works, you can “garnish” their wages or accounts. Garnishing means that the

employer or bank will send money to the court instead of to the Defendant. Ask the Small Claims registry how to garnish an account or employer of the Defendant. Details on this process are available in the book produced by the Small Claims registry called *Getting Results*.

3. **Seizing:** If you find out that the person has a car, a house or land, you can have this property seized (taken away) by the bailiff. A bailiff is a court official who has the power to take the Defendant's property to enforce a judgment. Show the information that you received from the payment hearing to the Small Claims registry and ask them to help you figure out whether you can seize any of this property. You can only seize certain things, and only if those things are worth more than a certain amount of money. Ask the registry how to get a bailiff to seize property. Details on this process are available in the book produced by the Small Claims registry called *Getting Results*.
4. **Registering against land:** If the person owns land, you can file your judgment with the land registry office. Details on this process are available in the book produced by the Small Claims registry called *Getting Results*.



# COURT MEDIATION PROGRAM

**SOMETIMES YOUR CASE MAY** go to what is called “mediation” instead of to trial. In mediation, you sit down with the Defendants and a mediator to talk about the case and try to find a solution. The mediator is an independent person chosen by the court.

There are three ways that your case may go to mediation. Your case may go to mediation if:

1. It is one of the first 30 cases that have a “Reply” form filed in the Robson Square Small Claims Registry;
2. The judge at the settlement conference decides to refer your case to mediation, and you agree to go to mediation; or
3. You, or the Defendants, fill out a “Notice to mediate” form (Form 21) and give it to the Small Claims registry.

## **How mediation works**

If your case is scheduled for mediation, you must go. If you do not go, a judge might decide to stop your case. You can bring a lawyer or a friend with you, but if you bring your friend, ask permission from the mediator for your friend to stay with you. If your case goes to mediation, you might be able to find a solution and you might not. Bring all of your evidence with you to mediation. Do not bring witnesses, but write out what your witnesses will say and bring those notes.

Do not agree to anything you don't think is right just to make the mediator or the Defendant happy. Only agree if there is a solution reached that you are happy with. If the mediator cannot help you reach an agreement with the Defendants, the mediator will send your

case to court for a trial. There is no punishment or penalty for not agreeing with a mediator, other than having to wait longer for your case to be settled and receive payment if you win.

**If you have any questions about mediation, you can contact the Court Mediation Program staff at 604 684 1300. Outside the Lower Mainland, call 1 877 656 1300.**

# 5 IMPORTANT CONTACT INFORMATION

Pivot Legal Society  
678 East Hastings Street  
Vancouver, B.C.  
V6A 1R1  
Tel: 604 255 9700

Small Claims Court Registry in Vancouver  
Vancouver 'Robson Square' (Provincial Small Claims,  
Family & Youth Courts)  
Box 21, 800 Hornby Street  
Vancouver, B.C.  
V6Z 2C5  
Tel: 604 660 8989  
Fax: 604 660 8950

Small Claims Court Registries Outside Vancouver  
Call Enquiry BC to ask for the location nearest you:  
1 800 663 7867

City of Vancouver Law Department  
Attention: City Clerk  
#401, 515 West 10th Avenue  
Vancouver, B.C.  
V5Z 4A8  
Tel: 604 873 7512

## Greater Vancouver Area Police Departments

Vancouver Police Department

312 Main Street

Vancouver, B.C.

V6A 2T2

Tel: 604 717 3535

Maple Ridge (Ridge Meadows) and Pitt Meadows RCMP

11995 Haney Place

Maple Ridge, B.C.

V2X 9B8

Tel: 604 463 5221

Richmond RCMP

6900 Minoru Boulevard

Richmond, B.C.

V6Y 1Y3

Tel: 604 278 1212

Burnaby RCMP

6355 Deer Lake Avenue

Burnaby, B.C.

V5G 2J2

Tel: 604 294 7922

New Westminster Police

555 Columbia Street

New Westminster, B.C.

V3L 1B2

Tel: 604 525 5411

Surrey RCMP

14355 – 57th Avenue

Surrey, BC

V3X 1A9

Tel: 604 599 7619

Coquitlam and Port Coquitlam RCMP  
2986 Guilford Way  
Coquitlam, B.C.  
V3B 7Y5  
Tel: 604 945 1550

North Vancouver RCMP  
147 East 14 th Street  
North Vancouver, B.C.  
V7L 2N4  
Tel: 604 985 1311

West Vancouver Police  
1330 Marine Drive  
West Vancouver, B.C.  
V7T 1B5  
Tel: 604 925 7300

Delta Police Department  
4455 Clarence Taylor Crescent  
Delta, B.C.  
V4K 3E1  
Tel: 604 946 4411

Port Moody Police Department  
3051 St. John's Street  
Port Moody, B.C.  
V3H 2C4  
Tel: 604 461 3456

White Rock RCMP  
15299 Pacific Avenue  
White Rock, B.C.  
V4B 1R1  
Tel: 604 531 5527

Langley RCMP  
22180 – 48A Avenue  
Langley, B.C.  
V3A 8B7  
Tel: 604 532 3200

### **To talk to a lawyer for free**

#### *Vancouver only*

University of British Columbia law students offer assistance under the supervision of a lawyer to people with Small Claims cases. This service is only available in Vancouver. You can call them to make an appointment at 604 822 5791.

#### *Vancouver and all of B.C.*

Throughout B.C., including Vancouver, you can call Access Justice at 604 878 7400 or visit their website at [www.accessjustice.ca](http://www.accessjustice.ca) for information on how to make an appointment to discuss your Small Claims case with a lawyer. They give advice for free.

The Salvation Army also offers free legal advice throughout B.C. on Small Claims cases for people with low or no income. You can call the Salvation Army lawyers at 604 296 3816.

The Law Line of British Columbia will also give advice to people on Small Claims cases with low or no income. If you have a family of four people or fewer, you cannot make more than \$26,000 per year if you want to use this service. You can call the Law Line at 604 408 2172 (Vancouver and Lower Mainland) or 1 866 577 2525 (outside Vancouver).





# CASE LAW

**WHEN YOU SUE POLICE OFFICERS** and the city, the judge will be looking for whether there are facts that match other cases that have happened before. Check the following cases to see if your case is similar to other cases that the courts have decided.

You can get damages (see page 6) for several types of police misconduct (see page 2), including:

- Wrongful arrest and detention;
- Unlawful seizure of property;
- Unlawful searches; and/or
- Assault, negligent use of force and battery.

In order for the judge to find that one of these types of police misconduct happened to you, you must show the judge that all of the required facts are there.

Read each section below to see if one applies to you. Think about whether the facts in your case seem similar to the facts in these other cases. More than one case may be similar to what happened to you, so be sure to read them all.

You will get a chance at the end of your case to do something called “argument.” Argument is where you try to convince the judge that you deserve damages for what happened to you. The best way to make your argument strong is by matching the facts of your case to a case that has happened before. See page 67 of this book for details about argument.

To use one of the cases below during your trial, you will need to get a paper copy of the case. You can get copies of cases from a law library or from the Pivot website.

### **Wrongful arrest and detention**

Police are only allowed to arrest you if:

- they have reasonable grounds to think that you committed or are about to commit a crime;
- they find you committing a crime;
- there is a warrant for your arrest; or,
- you are breaching the peace, or about to breach the peace, by causing a disturbance in public.

Police officers need to have what the court calls reasonable and probable grounds for an arrest, or else the arrest is illegal and you can sue the police for that arrest. Here are some cases that give examples of police officers who did not have reasonable and probable grounds to arrest someone. In each case, the court gave damages to the person who was illegally arrested.

You can also sue the police if you have been “jacked up,” or detained and searched, but not arrested. Your right not to be stopped and searched for no reason is legally protected by section 8, your right to be free from unreasonable search, unlawful arrest and seizure, by section 9, and your right to a lawyer by section 10, all of which are found in the *Canadian Charter of Rights and Freedoms*. Police need reasonable grounds to stop someone, and they must explain what those reasons are to the person they have stopped. The reasons must include specific information based on the particular person and the offence they are investigating. Reasons cannot be based on stereotypes – for example, “You look like a drug dealer.”

Here are some cases about wrongful arrest:

**Thornton v. Hamilton-Wentworth (Regional Municipality) Police Force**, [1999] O.J. No. 1250 (Ont. Ct. J. (Gen. Div.))

*What happened in this case:*

Two police officers arrested a man and held him for six and a half hours because he said that he wished his wife was dead. The police believed that he had threatened his wife. The man had drunk five or six bottles of beer. The judge disagreed with the police and awarded damages of \$7,500 for the wrongful imprisonment and \$300 for the plaintiff's legal fees in obtaining his release from imprisonment. The judge commented that the man saying he wished his wife was dead was not "reasonable and probable" grounds to believe the man had committed an offence and should be arrested.

*How you can use this case:*

- **If you had been drinking when you were arrested (five or six drinks):** You can point to this case to tell the judge that this amount of alcohol does not mean that your evidence should not be believed.
- **If you were causing a disturbance in your apartment or house before the police arrived:** You can point to this case to show the judge that police should not be allowed to arrest you unless you have done something worse.
- **If you were detained for a time period that is close to six and a half hours:** You can tell the judge about this case to help the judge figure out how much money to give you. For example, if you were detained for fewer than six and a half hours, you should get less than \$7,500. If you were detained for more than six and a half hours, you should get more than \$7,500.

**MacCormack v. Halifax (City) Police, [1999] N.S.J. No. 463 (N.S.S.C.)**

*What happened in this case:*

Police arrested a man because the man matched some, but not all, of the description of a person who had committed a sexual assault. The police did not ask him any questions before arresting him. Furthermore, the man told them at least six times that he had an alibi during the time of the assault. The man was handcuffed in front of his neighbours and then held for six hours before he was released. The man lost his job and had to see a psychiatrist because of the arrest.

The judge found that the officers did not have reasonable and probable grounds for the arrest and that the plaintiff deserved damages of \$12,000 and an amount of money for his lost wages.

*How you can use this case:*

- **If you were arrested without a warrant based on a description given to the police:** You can use this case to tell the judge that the police must be careful when arresting someone based on a description alone.
- **If you lost your job or the opportunity for a job because you were wrongly arrested:** You can use this case as an example of where the court gave damages for lost wages of a person whose wrongful arrest caused him or her to lose a job.
- **If you were detained for a time period of about six hours and it caused you serious mental distress:** You can use this case as an example of what damages you should get because of the mental distress the arrest caused you. The court will probably only give you this large amount of money if you can prove you had to see a psychiatrist, psychologist or counselor because you were so upset about the arrest. Otherwise, the court will probably give you a lower amount, like in the case of Thornton (see page 82). You can prove that you should receive the higher amount by having a doctor or counselor write a letter for you.

**Costain v. Ryhorchuk, [1987] S.J. No. 519 (Sask. Q.B.)**

*What happened in this case:*

A man was arrested for drinking and driving. On the way back to the police station he kicked the divider between the back seat of the police car and the front seat of the police car. The police officer pulled over and hit the man, breaking two of his teeth. At the police station, the man lit a cigarette, and the police officer threw him against the wall to make him spit it out. The man was held in jail from 1 a.m. to 7 p.m. The judge said that the man was in jail for 12 hours longer than he should have been and that the man should have been released at 7 a.m. The judge gave the man \$1,500 in damages for the broken teeth and being thrown against the wall. The judge gave the man \$4,000 in damages for being held in jail for 12 hours for no reason.

*How you can use this case:*

- **If you were put in the drunk tank at night but not released the next morning:** You can use this case to say that you should be released first thing in the morning after being put in the drunk tank the night before. If you are not released in the morning, you can use this case to show how much money in damages you should get.
- **If you were put in jail for 12 hours for no reason:** You can use this case to show the judge that \$4,000 is what you would have received in damages in 1987, but that now you should receive more due to inflation.
- **If you behaved badly when the police arrested you:** You can use this case to show that even if you were not behaving well, you can still get damages if the police use too much force.

**Campbell v. Edmonton (City) Police Service (1986), 2 W.W.R. 444; [1985] A.J. No. 538 (Alta. C.A.)**

*What happened in this case:*

Police received a tip from a person that a woman was selling drugs in front of a theatre. The police searched and arrested a woman in front of the theatre, but it was the wrong woman. She was not told that she was being arrested for selling drugs until she was in the police car. The court awarded damages of \$2,200 for the 15 to 20 minute illegal arrest and the strip search when she arrived in jail. The court said that a person must be told why he or she is being arrested.

*How you can use this case*

- **If you were arrested or detained by police but they did not tell you why:** This case says that the police must tell you why you are being arrested or detained. If you were not told why you were being arrested or detained after you asked, and the police had no reason to stop you or arrest you, you can use this case as an example of the damages you should get for not being told why you are being arrested or detained. You should point out that this case is 20 years old and the amount should be increased for inflation (paragraph 24 of the decision).

**Collis v. Toronto (City) Police Services Board, [2004] O.J. No. 4037 (Ont. Sup. Ct. J. (Sm. Cl. Ct.))**

*What happened in this case:*

A woman was arrested at a protest and had conditions put on her release. One condition was that she not give a speech at a protest unless it was part of her job. The woman gave a speech at a protest and told the audience it was as part of her job. A police officer who knew what the conditions of the woman's release were told the police officers at the protest to arrest the woman. The woman showed the police officers at the station her conditions of release, but they ignored them. The woman was held in jail for 10 days. The judge gave the woman \$10,000 in damages.

*How you can use this case:*

- **If you were arrested and held for a long period of time and the charges against you were dropped:** You can use this case to show how much you should receive in damages if there was no reason for you to be arrested in the first place.
- **If you were arrested for violating your bail or release conditions, but you did not violate your bail or release conditions:** You can use this case to show the judge that police officers need to carefully check someone's release conditions to make sure that they are not arresting someone for no reason.

**Sangha v. Home Depot of Canada Inc. (2 May 2005), Surrey, C56306 (B.C. Prov. Ct.).**

*What happened in this case:*

A man was arrested by a Home Depot security guard for shoplifting. The security guard believed the man had stolen a light bulb. The man had not stolen a light bulb. The man was held for 45 minutes by the security guard, was photographed, and was forced to sign a document that said he was never to enter a Home Depot store again. The judge gave the man \$4,000 in damages.

*How you can use this case:*

- **If you were arrested or detained by a police officer for a time period from 15 to 45 minutes for no reason:** You can use this case to show the judge that the amount of damages you should receive is \$4,000.
- **If you were arrested or detained by a security guard for no reason:** You can use this case to show that a security guard is not allowed to arrest you and hold you for no reason.

**Nolan v. Toronto (Metropolitan) Police Force [1996] O.J. No. 1764**

*What happened in this case:*

A man was legally arrested, but he was detained by the police for no legal reason. The police made racist and other insulting comments to him. The judge gave \$2,500 for the illegal detention. The judge also gave \$2,500 because the police caused the man unnecessary mental distress by making mean and inappropriate comments. The judge also gave \$5,000 in punitive damages for the racial comments.

*How you can use this case:*

- **If police made racist, sexist, homophobic or other inappropriate comments to you:** You can use this case to show the judge that you should receive punitive damages, and that the amount of damages you should receive is \$5,000. You should also say that this case shows you should receive damages if the comments caused you mental distress, and that the amount should be about \$2,500 even if the mental distress is not very serious.
- **If you were legally arrested, but after the police discovered that you had not done anything wrong, they still kept you detained:** You can use this case to show the judge that the police must release you right away if they find out they arrested you by mistake or if they should have found out that they arrested you by mistake.

## Unlawful seizure of property

If the police took your property in Vancouver, be sure to check with the property room at the police station at 312 Main Street, just North of Main and Hastings Streets. The property room is open Monday to Friday from 9 a.m. to 5 p.m. Be sure to bring identification with you, because if the police have your property, they will not give it to you unless you can prove who you are. If the police have your wallet or ID, you can ask the property room staff to check the ID in your wallet to make sure it is you.

Police officers are allowed to seize property that they have reasonable grounds to believe is connected to a crime. Property includes money, identification, medication and drug paraphernalia including rigs, pipes, etc. The police do not have to return illegal property to you such as drugs, illegal guns, other weapons, used pipes or rigs.

If the property the police took from you is not required for an investigation, and they know who owns the property, the police officer who took the property from you must return it to you as soon as possible, according to section 489.1 of the *Criminal Code*.

When officers keep or destroy your property without any reason, you can sue them or ask the court to order the police officer to return your property.

If you sue a police officer in Small Claims Court for not returning your property, you may not get your exact property back if you win. Instead you might get damages equal to the value of your property. For example, if you lost a \$500 bike, you might get \$500, but not the bike.

If you want the property itself returned, you will need to make an application to a Justice of the Provincial Court (Criminal) for an order that the thing taken from you be returned to you. Tell the Provincial Court (Criminal) registry you want to make an application under section 490(7) of the *Criminal Code* for return of seized property. An application like this is too detailed for this book. If you need help making an application for the return of your property, see page 78 in this book for information on finding a lawyer who can help you for free.

## Unlawful searches

Police officers may perform a “pat-down” search for weapons when they have legally detained a person. They may also feel for drugs if they have reasonable grounds to believe a person has drugs. However, if a lawful arrest is not made, searches inside your clothes are not allowed.

Strip searches, where you must remove all of your clothes, are only allowed in particular situations where police have reasonable and probable grounds to believe a person is hiding weapons or drugs in their body cavities or under their clothes. These searches can only be done by officers of the same sex as you and must be done in private.

Here are some cases about illegal searches:

**Nagy v. Canada, [2005] A.J. No. 36 (Alta. Q.B.)**

*What happened in the case:*

A woman arrived at the Edmonton International Airport. Somebody told the police that the woman was travelling with a man who was carrying drugs. The woman was arrested and strip searched by police, who believed she was carrying illegal drugs. She was also taken to a doctor for an internal cavity search, induced vomiting, three enemas, and x-rays of her stomach and abdomen. She was not carrying any drugs. The police officer involved destroyed his notes. The judge awarded damages of \$50,000 total, with \$30,000 for the illegal arrest and search, and \$20,000 for mental injuries caused by the incident.

*How you can use the case:*

- **If the police officers involved do not have any notes of what happened to you, or if they destroyed their notes:** You can use this case to argue that the judge should be less likely to believe police officers who do not have any notes of the incident (paragraph 10 of the decision).
- **If the police officers relied on information about your friend, but not you, to arrest you:** You can use this case to say that information is not enough to let them arrest or search you (paragraph 47).
- **If you were strip searched or had an internal cavity search and the police had no reason to do that search:** You can use this case to tell

the judge how much you should get in damages. In this case the woman got \$30,000 for the internal cavity search and arrest (paragraph 126).

See also *Campbell v. Edmonton (City) Police Service* in the “wrongful arrest” section of this book at page 85.

### **Assault, negligent use of force and battery**

According to section 25 of the *Criminal Code*, the police are justified in using as much force as is reasonable, proper and necessary to carry out their duties. However, if the police use too much force, you can sue them for any injuries they have caused you. Unreasonable force can cause broken bones and teeth, head injuries, scrapes, cuts and bruises. It can also result in mental suffering and pain.

Here are some cases about assault, negligent use of force and battery:

**Dennis v. City of Vancouver**, [2000] B.C.J. No. 1971 (B.C. Prov. Ct.)

*What happened in this case:*

Police officers entered a man’s apartment without permission and without a warrant. The police thought that the man might have a weapon. They also worried that the man had not been very stable and had been violating a court order. They sent their police dog into his bathroom to bite and hold the man. The dog bit the man on the arm. The man was awarded \$5,000 because the police should not have entered the man’s apartment. There was no emergency that allowed the police to enter without a warrant to arrest the man. The man had not started his case in time because he had been in jail. The judge said that being in jail was a reasonable excuse for not starting a case in time.

*How you can use this case*

- **If the police entered your house without a warrant to arrest you:** If there was no emergency, the police were not chasing you, the police had no reason to think you would harm yourself or someone else inside the house, and the police had no reason to think you were destroying any evidence of a crime, the police need to get a warrant before entering your house. You can use this case to show that even

if you broke the law and the police had a right to arrest you, that if the police entered your house/apartment/hotel room without a warrant and there was no emergency, you should get damages.

- **If you were bitten by a police dog:** If no serious injuries other than scars were caused by a police dog biting you, you can ask the judge to consider this case as an example of how much you should get in damages if the police used too much force.
- **If you had to wait to start your case until you got out of jail:** You can use this case to show the judge that being in jail is a “reasonable excuse” for not starting your case in time. If you have a reasonable excuse, then the judge will not throw your case out of court because you started it too late.

**Sam v. City of Vancouver, [2005] B.C.J. No. 496 (B.C.S.C.)**

*What happened in this case:*

A man was in his yard when a police dog bit him. The dog was on a leash held by a police officer. The judge said that the police officer accidentally let the dog bite the man once, and that was okay, but that he should have been able to stop the dog from biting more than once. The court gave the man damages of \$2,000 for the bites.

*How you can use this case:*

- **If you were bitten more than once by a police dog:** You can use this case to show that a police officer must be in control of his or her dog. For example, you can argue that if you stopped resisting after the first bite, there is no reason why the police dog should have been allowed to bite you more than once.

**Carpenter v. City of Vancouver [1995] B.C.J. No. 2317**

*What happened in this case:*

A 14-year old was going through the glove compartment of a car that had a broken window. The police saw him and set a police dog on him. The boy was exiting the car when he was bitten by the police dog. He then tried to hide from the dog in another car. The boy’s arm was broken when he was kicked by a police officer or when he was handcuffed. The court gave the boy damages of \$20,000, but

took \$10,000 off because he was involved in a crime and therefore contributed to what happened.

*How you can use this case:*

- **If you were committing a crime when the police assaulted you:** You can use this case to tell the judge that even if you were committing a crime, the police can only use as much force as is necessary to arrest you. They are not allowed to use more force than they need.
- **If the two or more police officers involved do not tell the same story:** You can use this case to argue that police officers are trained to observe and remember, and that they should not be believed if one officer's evidence is very different from another's (see paragraphs 6, 68, 69 and 97 of this decision).

**Rosario v. Canada (Royal Canadian Mounted Police) [2000] B.C.J. No. 242**

*What happened in this case:*

A man was a passenger in a car where the driver was drunk. The car had an accident, and the man and the driver hid in a field near the car. The police arrived with a police dog. The man put his hands up when he saw the police dog and said that he had no weapons. The police released the dog on the man, and the dog bit the man's shoulder. The judge gave the man \$15,000 in damages.

*How you can use this case:*

- **If the police officer's lawyer argues the police officer did not intend to hurt you with the police dog:** You can use this case to show that a police officer must keep full control of his or her dog at all times.
- **If you were hiding from the police when you were arrested and injured:** You can use this case to show that even if you were hiding from the police and trying not to be caught that the police cannot use force on you unless you are pushing, kicking, punching or physically resisting them.

**Ethier v. Saskatoon (City), [1989] S.J. No. 280 (Sask. Q.B.)*****What happened in this case:***

The police arrested a man for drunk driving. He did not resist arrest, but he did yell at the police officers and was rude to them. The man was kicked by one of the police officers. He went to the doctor, and the doctor said a ligament in the man's leg was torn from the kick. The man had to wear a cast for eight weeks. The judge awarded the man \$4,500 for pain and suffering.

***How you can use this case:***

- **If you were injured by the police:** If you had a torn muscle or ligament caused by a police officer, you could use this case to show the judge how much you should get for damages.
- **If you were angry, yelling or swearing at the police, were rude, or generally did not cooperate with police:** You can use this case to show that even if you are yelling at police or are rude, or you do not cooperate, the police are not allowed to hit you. This case says that the police cannot hit or kick you if you are not using your body to resist arrest by pushing, hitting or kicking the police officers.



# 7 COMMUNITY RESOURCES IN VANCOUVER

**BECAUSE MOST OF THE PEOPLE** who use this book will be from Vancouver, here is a list of resources available in Vancouver to help you prepare for your case.

**Phones** – DERA (12 E. Hastings Street) offers a cheap phone answering service for \$3 per month that offers your own phone number and extension for people to call you. Free phones are available at:

- Carnegie Centre (corner of Main and Hastings, 401 Main Street)
- Lifeskills Centre (corner of Cordova and Jackson, 412 East Cordova Street).

**Photocopying and faxing** – Discount photocopying is available at some locations in Vancouver.

- If you are a member of VANDU (2nd Floor, 50 E. Hastings Street), they have cheap photocopy and fax services available.
- DERA (12 E. Hastings Street) offers cheap photocopying and faxing.
- The Broadway Youth Resource Centre (691 East Broadway) offers cheap photocopying and faxing.

**Mailboxes** – DERA (12 E. Hastings Street) offers cheap mailboxes for rent.

**Pens and places to work** – VANDU (2nd Floor, 50 E. Hastings Street), the Carnegie Centre library (corner of Main and Hastings) and Lifeskills Centre (corner of Cordova and Jackson) all offer quiet places to work.



# 8

## IMPORTANT WORDS TO KNOW

**Aggravated Damages** – Money the court orders the Defendant to pay if the Defendant caused you damages related to embarrassment or humiliation.

**B.C. Supreme Court** – A court like Small Claims Court, but not as easy to use without the help of a lawyer. There is no limit on claims, but if your claim is less than \$25,000, you may be penalized for not using Small Claims Court instead.

**Claimant** – You, the person who files the “Notice of Claim” form to start the lawsuit. In other courts, the Claimant is called the “Plaintiff.”

**Damages** – Money the court orders the Defendant to pay you for injuries or damage to you or your possessions that the Defendant caused.

**Default Judgment** – When you win your case without having to present the facts because the Defendant did not reply to your “Notice of Claim” form.

**Defendant** – The person, city, province, or company that you are suing in Small Claims Court. If you are suing more than one party, together they are the Defendants.

**Detachment** – A police officer’s detachment is the office where the police officer works.

**Evidence** – The documents, photos, testimony and anything else you will use to prove your case.

**False Imprisonment** – An authority figure stopping you for no legal reason.

**General Damages** – Money the court makes the Defendant pay to compensate for pain and suffering the Defendant caused you.

**Limitation Period** – The amount of time you have to complete an important step in your lawsuit. For example, the limitation period for filing your “Notice of Claim” form in Small Claims Court if you want to sue a municipality (city) is 6 months after the incident.

**Litigation Guardian** – An adult you ask to appear with you for all of your court appearances if you are under 19 years old.

**Mediation** – A meeting between the Defendants, the Claimant and an independent third party appointed by the court where the Defendants and the Claimant talk about the case and try to find a solution.

**Notice of Claim** – The form you use to start the lawsuit.

**Police Misconduct** – When a police officer does his or her job in a way that hurts people, without a legal reason for acting that way.

**Punitive Damages** – Money that the court orders the Defendant to pay as a punishment for behaving very badly.

**Registry** – The court administration office where you can pick up blank forms and drop off completed forms.

**Reply** – The form the Defendant uses to answer the “Notice of Claim” form.

**Serving a Document** – Giving a copy of that document to another person in a special way so that the court knows that person received it.

**Settle** – Settling the case means that the Defendant wants to pay you money to stop your court case without going to court.

**Settlement Conference** – A private meeting between the Claimant, the Defendants and a judge where the judge looks at the claim and suggests to one side or both sides that they try to settle their differences to avoid trial.

**Small Claims Court** – A special court designed for people who do not have lawyers to help them. The maximum claim is \$25,000.

**Solicitor General of British Columbia** – The elected official in the provincial government in charge of policing in the province of B.C.

**Special Damages** – Money you get to help you pay for specific expenses you had that were caused by the Defendant. For example: doctor’s fees, repairs to your property, replacement costs for property, lost time at work.

**Unlawful Search** – A search of you or your property for no legal reason.

**Wrongful Arrest** – Arrest by police or security guards for no legal reason.

**Wrongful Seizure of Property** – When police take your legal possessions that were not used in a crime and do not return them.

Electronic copies of this book are available for free on the web at [www.pivotlegal.org](http://www.pivotlegal.org). To order a hard copy of this book, send a note specifying the number of copies you would like to order, along with \$20 for each copy to cover printing, shipping and handling to:

Pivot Legal Society  
678 East Hastings Street  
Vancouver, B.C.  
V6A 1R1

Don't forget to include your mailing address.



*How to Sue the Police and Private Security in Small Claims Court* is a guide to be used in conjunction with advice from a lawyer on how to sue the police or private security guards in British Columbia's Small Claims Court system.

This book covers the following types of misconduct:

- Wrongful arrest;
- False imprisonment;
- Unlawful searches; and
- Illegal seizure of property.

The logo for PIVOT, featuring a stylized 'P' inside a square followed by the word 'PIVOT' in a bold, serif font.

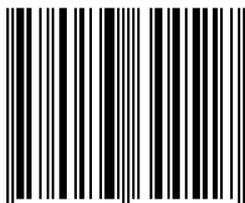
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