



Pro Bono  
Students  
Canada

Winnipeg Copwatch Project: Phase 1  
Final Report

Student contributors: Julia Negrea; Kara Bashutski; Sloane Bernard

Reviewing lawyer: Ian Histed

Jason Hatherly & Celia Valel-Church  
Joint Coordinators, PBSC Manitoba  
200G Robson Hall, 224 Dysart Rd  
University of Manitoba R3T 2N2  
manitoba@probonostudents.ca  
Phone: 474-7908

**1. There appears to be no cost to fix a trial date, whereas in Ontario it's \$150. Can you confirm there's no cost?**

There is no cost to schedule a trial date like there is in the general division (\$500.00).

**2. Can any fees be waived due to lack of ability to pay? Presumably this would mostly be the \$30 statement of claim. If so, how do we show this? In Ontario, claimant's fees can be waived with an affidavit proving that they are low income.**

Manitoba does not have any waiving of fees.

**3. Can we serve police officers and security guards at their work?**

Service of claims on police officers can be effected by delivery of a true copy of the claim, together with an acknowledgment of receipt card to the lawyer for the Chief of Police at the Public Safety Building.

- **Who can personally serve the person?**

Anyone over 18 can serve a defendant—claimant, their agent, process serving company, etc.

- **Could "substitutional service" be of use to us? How does it work? When should we use it?**

Applications for substitutional service must be made to the court and are decided on a case-by-case basis; to get substitutional service, you must make at least 2, sometimes 3, attempts to serve in the usual way. Regarding cops, this would have to be personal service at their work since we will not have their home address.

- **Do we actually need affidavits that statements of claim were served, or can we just have the claimant swear under oath at pre-trial/trial?**

After serving, the server must go to the Court and complete a declaration of service; this is not exactly an affidavit, and it can be used as proof with oral testimony at trial.

**4. How many copies of the statement of claim do we have to file?**

One must be filed for the court, and a true copy must be filed for each defendant.

**5. Do you have to pay to amend the statement of claim?**

Police officers, without exception, will be defended by counsel. Amendments will be arranged through counsel and can occur at any time even during the hearing. No fees required.

- **When during this process can you do it?**

Amending the statement is free, but then it must be reserved to all the parties. The best thing is to do it within the first 30 days of filing; however, you can do it up to 10 days before the hearing date.

- **Why might you want to do it?**

You might want to amend if new information comes to light, or where the plaintiff realizes an important piece of evidence or further cause of action was not included in the original statement.

## **6. Anything we should know about the \$150 deposit you have to pay if you live outside of Manitoba?**

Queen's Bench rule 76.06 says the amount required is \$150 and s.18 of the *Small Claims Practices Act* states that anyone who habitually resides outside of Manitoba must provide security for the costs.

**QB rule: 76.06** For the purposes of section 18 of the Act, the amount required as security for costs shall be \$150.

### **Foreign claimants**

**18** Where it appears that a person who seeks to file a claim under this Act is a person who is habitually resident outside Manitoba, the court officer shall not accept the claim for filing unless the person provides security for costs in such amount as may be prescribed in the rules.

The Manitoba Courts [website](#) states that the \$150 is payable by cash, certified cheque, or money order and is held until the matter is concluded and the appeal period has expired (reprinted below):

A claim may be filed at any one of 13 Court of Queen's Bench offices in Manitoba (see the "**Small Claims Court Locations**" Section). The filing fee is payable by cash, cheque, or money order. Parties filing from outside Manitoba must also pay a separate \$150 as security for costs, payable by cash, **certified** cheque or money order. The security is held in court until the matter is concluded and the appeal period has expired.

Section 3(4)(e) and (f) of *The Court of Queen's Bench Small Claims Practices Act* specifically excludes any proceeding that involves or is likely to require determination of questions relating to: allegation of malicious prosecution, false imprisonment, or defamation, and an allegation of wrongdoing by a judge or justice (copied below).

### **Excluded proceedings**

**3(4)** This Act does not apply to a proceeding that involves or is likely to require determination of questions relating to

- (a) the ownership of real property or an interest in real property;
- (b) the interpretation or enforcement of a testamentary disposition;
- (c) the administration of a trust or an estate;
- (d) a matter appropriate to a family proceeding as defined in section 41 of *The Court of Queen's Bench Act*;
- (e) an allegation of malicious prosecution, false imprisonment or defamation; or
- (f) an allegation of wrongdoing by a judge or justice.

Claims for general damages up to \$2,000.00 can be heard in small claims court. Subsection 3(1)(a) of *The Court of Queen's Bench Small Claims Practices Act* provides

**3(1)** A person may file a claim under this Act

- (a) for an amount of money not exceeding \$10,000. which may include general damages in an amount not exceeding \$2,000.;

The reason you cannot sue in small claims for malicious prosecution or false arrest is that both of those actions carry a right to a jury trial. Although you could frame an action for false arrest as a claim for a remedy for arbitrary detention, the matter would likely be treated the same way and dismissed for want of jurisdiction.

### **7. Is there an exhaustive list of torts we can look at somewhere?**

No, new torts are continually evolving, such as the recent recognition in Manitoba of the action for sexual harassment. For a list of common torts one should look in a textbook such as Osborne's book *The Law of Torts*.

### **8. Can we make use of charter rights violations, as you can in Ontario in small claims court?**

**- how can we best do this?**

**- what is the relationship between torts and charter rights violations?**

There does not appear to be any statutory reason why a remedy for a Charter violation may not be claimed in small claims court. A claim for a remedy under section 24(1) of the Charter requires notice to the Attorney General of Canada and the Attorney General of Manitoba (see the *Constitutional Questions Act*). There is a close relationship between tort and Charter remedies and there are numerous precedents where damages have been awarded. For example, note the similarity between an action for trespassing and an action for a violation of the right to be secure against unreasonable search and seizure, or the connection between false imprisonment and arbitrary detention.

**9. Can we get an extension on the statute of limitations if someone has been spending all their time since the incident in question pursuing justice through LERA or another method? Or should they be launching claims at the same time or instead of LERA or other oversight body complaints to avoid this problem?**

Requests for an extension on a limitation period on the basis that the plaintiff was pursuing justice through the Law Enforcement Review Agency (LERA) have no statutory grounding. If there is a concern that the statutory limitation period will expire prior to the finalization of LERA's proceedings, and if there is a desire to pursue a civil remedy, then a statement of claim should be filed prior to the expiration of the limitation period.

LERA is not a functioning forum for addressing misconduct by police officers. LERA as it is structurally biased in favour of the defendants. For a typical example, unlike in a civil case, a police officer has the right to remain silent in LERA proceedings. The notion that LERA has successfully disciplined a police officer is dubious. When the police defendants are sued for punitive damages, they have recently been pleading in their defence that any claim for punishment has to go before LERA. Whether that will ever be accepted by the courts is another matter, but it shows what the police prefer.

The other oversight body, in the case of the Winnipeg Police, is the Winnipeg Police. Paradoxically, the WPS Professional Standards Unit is far more effective than LERA at disciplining police officers.

**10. Is there a "notice of trial" form, as in Ontario? If so, is there a payment associated?**

There is no notice of trial form.

**11. How do we know who the lawyer is to write to for disclosure? Can we find out before pre-trial?**

Small claims do not have examinations for discovery or the right to pretrial disclosure of any kind. Once the police defendant is served, you will be hearing shortly from City Legal Services, which will most likely be requesting an adjournment. Depending on the lawyer you are dealing with, there might be some possibility for a pretrial exchange of evidence.

**12. It appears that small claims here is only for monetary compensation for damages, and you cannot ask for an apology, whereas in Ontario you can also ask the court to compel an apology. Can you confirm that's true? Presumably if you reach a settlement you can ask for such a thing.**

Traditionally, apologies play no role in civil proceedings in Manitoba. Whenever a settlement is concluded it is almost invariably on the basis of confidentiality and a continuing denial of liability by the defendants.

The *Apology Act* is not used in small claims court - you cannot ask for an apology. The Small Claims Court only awards a monetary judgment; or, in the case of a motor vehicle accident, determine liability (Manitoba Courts, Court of Queen's Bench SMALL CLAIMS DIVISION Information Sheet).

**13. Can the claimant suggest the court compel restorative justice methods like a sentencing circle? Can it be included in the terms of a settlement. Any advice on where to find more information on how to do so?**

No, the claimant cannot suggest the court to compel restorative justice methods like a sentencing circle. Money is all you get in small claims court, plus occasionally some moral vindication by a third party.