

Legal clinic seminar

Small claims court is a 'do-it-yourselfer's' forum

By ANI FEDERIAN
Herald staff writer

Attorney General Roy McMurtry says small claims court is an inexpensive informal forum for resolving disputes small in monetary terms but significant to the parties involved—and that's what it is.

You don't need a lawyer who will cost you \$70 an hour to go to small claims court. You can do it yourself, and the judge isn't expecting you to come with one either.

If you lose your case, costs are minimal, usually about \$30. If your opponent has hired a lawyer to represent him, it may cost you a little more, about \$50.

accident claims are settled daily by the small claims court.

If you have a bigger claim, then you'll have to find yourself a lawyer and take him with you to county court.

There are two types of claims. A debt or money demand is a claim for money that's owing to you under an oral or written contract. It could be a bounced cheque, failure to repay a loan or rent money.

In a claim for damages, the person suing, called the plaintiff, first has to prove to the judge that he has suffered some harm because of the defendant, the person being sued, has injured him or his property.

It's much easier to prove a debt than to claim for damages, Mr. Craig said.

You have a choice in which small claims court you wish to enter your claim. It may be the court in the area where the event took place or it may be where the defendant lives or carries on business.

Mr. Craig said it's best to sue in the court where the defendant lives because if you win the case, it'll be much easier for you to collect what's owing you.

Once you've selected your court, you file a claim with the court clerk. Mr. Craig stressed the importance of getting the defendant's name and address correct on the claim form.

Both the plaintiff and the defendant are then invited to make a summation of the case, something Mr. Craig said isn't necessarily done.

The judge then considers all the facts and almost always gives his judgment on the spot, he said.

If you're unsatisfied with the results of your judgment, you can request a new trial if crucial new evidence comes up, but the request must be within 14 days after the first trial.

Or, you can appeal to the Supreme Court of Ontario if the amount in dispute is more than \$500, but you'll need to take a lawyer with you.

If you win your case, the battle isn't over yet. You may have a hard time collecting the money that's owed. The responsibility for getting it is yours.

The court won't do it for you, but it can help you out. You can collect by claiming the money from a third party, through a method called "garnishment." Wages, bank accounts, money owing on a contract, and unpaid rent may be garnished. The court clerk can help arrange this.

You can go after the defendant's possessions—goods like a car, a boat or land may be seized and sold. The clerk issues a writ of execution allowing the bailiff of the court to seize the goods and hold them for auction.

But, if the defendant skips the province, there's not much you can do, at least not easily. The jurisdiction of Ontario courts ends at the provincial borders. You can't get money owing to you if your debtor has moved to another province unless you go through the whole court procedure in that other province, or you get your judgment registered there.

You can't go to jail in Ontario for being a debtor, but you can end up behind bars for contempt of court. Although small claims court is very informal, ignoring an order to appear in court or an order given by a judge can be a serious matter, and you may be found in contempt.

Legally Speaking...
a CLEO publication

Bankruptcy: Scourge or salvation?

By Gerald S. Giforgorten

It has been said that bankruptcy provides an honest debtor with an opportunity to rid himself of his debts and get a fresh start financially. It has also been observed that bankruptcy can provide an opportunity for a dishonest debtor—a deadbeat—to live it up in grand style and then leave his creditors holding an empty bag. The truth probably lies somewhere in between.

Bankruptcy has the effect of wiping out a person's (or a business') liabilities—the obligation to pay one's debts—except for certain debts like a fine or alimony. There are,

however, certain negative aspects to it.

A person who owes \$1,000 or more can go voluntarily into bankruptcy by filing an assignment with a Trustee in Bankruptcy, a person trained to handle a bankrupt's property. An involuntary bankruptcy occurs when one of a person's creditors who is owed \$1,000 or more decides to petition the person into bankruptcy. Most bankruptcies occur as a result of individuals voluntarily filing assignments. It is more frequent to see the petition used by a creditor where a business has difficulty paying.

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The claim form sets out the facts of the case. You just write out the story in your words, and submit it to the clerk who then issues a summons which is delivered to the defendant by the bailiff.

If the defendant disagrees with the claim made by the plaintiff, he can file a notice of dispute with the clerk of the court, a copy of which will be sent to the plaintiff.

If a notice of dispute isn't filed, the clerk will sign a judgment against the defendant which will allow the creditor to take such procedures as seizure of the defendant's bank account.

If a notice of dispute is filed, the case goes to court.

In preparing for your trial, evidence, affidavits, and witnesses are important. You can subpoena witnesses, and it is best to do so, even if they promise to show up. If something prevents them from attending, say an accident, you can get an adjournment of your trial from the judge only if they have been subpoenaed. Otherwise the judge will not likely be sympathetic.

Mr. Craig advised discussing what witnesses will say with them before your day in court.

During the trial, the plaintiff makes his case first before the judge. He presents his evidence and calls forward his witnesses to answer his questions.

"You can take notes with you," said Mr. Craig. Everything can be planned ahead of time, including the questions to be asked of the witnesses. It's perfectly fine to refer to notes, he said.

Following the plaintiff's presentation of evidence, the defendant is given the chance to cross-examine the plaintiff's witnesses before he presents

his case and his witnesses to the judge.

Both the plaintiff and the defendant are then invited to make a summation of the case, something Mr. Craig said isn't necessarily done.

The judge then considers all the facts and almost always gives his judgment on the spot, he said.

If you're unsatisfied with the results of your judgment, you can request a new trial if crucial new evidence comes up, but the request must be within 14 days after the first trial.

Or, you can appeal to the Supreme Court of Ontario if the amount in dispute is more than \$500, but you'll need to take a lawyer with you.

If you win your case, the battle isn't over yet. You may have a hard time collecting the money that's owed. The responsibility for getting it is yours.

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Interim head named at women's hostel

Adele Service is the new acting director of Halton Women's Place, the hostel for abused women and their children in Milton now completing its first year of operation.

Ms. Service, a member of the hostel staff, replaces Loretta Costigan, who is pursuing studies. A permanent director is expected to be appointed by Dec. 1.

In its inaugural year, Women's Place accommodated about 300 women and children who had suffered emotional or physical abuse and had to leave their homes. The 24-hour emergency hostel provides shelter, food and a supportive atmosphere, making referrals to appropriate social or legal agencies where necessary.

Funding remains an ongoing concern of the hostel's directors. A penny sale will be held Nov. 21 from 1 to 5 p.m. at St. Paul's United Church in Milton, with all proceeds to Women's Place. Anyone with items to donate for sale are urged to contact Pat Smith at 878-9335.

Directors are also seeking volunteers, particularly those with needed skills such as carpentry, plumbing and appliance repair, to help around the hostel. Halton residents who have household items that may be of use to the

hostel are welcome to give a call and arrange donations. Items still needed include towels, children's clothes, housecoats, slippers, personal care items, canned food, single bed sheets, vaporizers, toboggans, skates and bikes or trikes.

For an indication of how Women's Place helps its guests during their brief stays, see the poem reprinted from the hostel's fall newsletter in today's Herald editorial page Poet's Corner.

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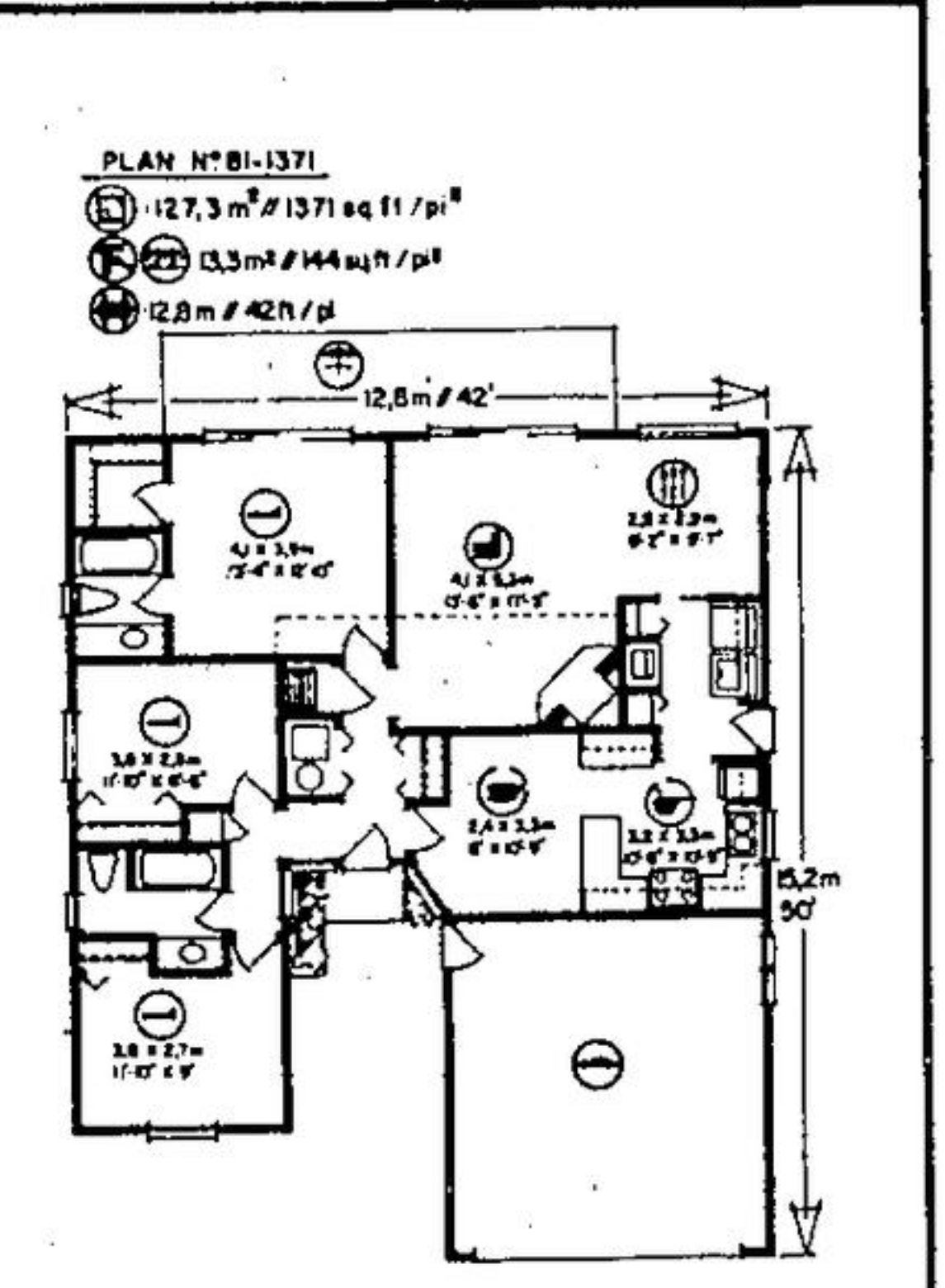
A Home Of Your Own

Here's a charmingly traditional non-basement bungalow which is perfectly suited to the narrow-to-medium frontage residential building lot, and which provides in excess of 1,300 square feet of well-organized finished floor area, plus a further 144 square feet of storage space in the unfinished loft above the main living area. The traditional exterior is finished in horizontal channel siding, with a frame chimney and shingle or shake roof.

The sheltered main entry leads into a spacious reception foyer and outerwear storage area, from whence traffic moves forward down a short hallway and right, into the L-shape living-dining room combination. The living room features a corner-positioned, energy-efficient, zero-clearance fireplace and a wide sliding glass walk-through which provides access to the spacious rear patio. The dining area separates from the kitchen by a convenient pocket door and utility area.

The well-organized U-configuration kitchen-dinette combination has a step-saving work triangle configuration, generous counter-top work surfaces and ample cupboard storage. The dinette could be furnished with either a dining suite or built-in banquette-style nook furnishings.

To the rear of the kitchen is positioned a convenient laundry facility, with a side-by-side configuration of washer and dryer, and a generous linen storage closet. The central hallway contains the heater and hot water tank, concealed behind louvered bi-fold doors for ease of servicing. Adjacent to this utility closet is a cupboard containing a ladder access to the spacious storage loft.



THREE-BEDROOM BUNGALOW IDEAL FOR NARROW LOT



All three bedrooms are positioned to the left of the floor plan and are well away from the main entertaining area for freedom from disturbance. Each has ample closet storage facilities and good exposure for view and natural lighting. The large master bedroom features a wide sliding glass walk-through which provides access to the rear patio, a full walk-in closet and a three-piece ensuite bathroom with tub.

The design affords optimum use of available space and provides excellent rearward exposure to capitalize on the view.

Plans for design No. B1-1371 may be purchased either by the single set, at a cost of \$125.00 for the first set and \$25.00 for each additional set, or by the package. A five-set plan package, including the first set, is economically priced at \$180.00 and an eight-set package, also including the first set, is only \$220.00.

Whichever method you choose, please include \$5.00 for postage and handling. Ontario residents please add 7% sales tax.

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To order any of these items please send cheque or money order, payable to the Home of the Week. Address to: Home of the Week, c/o The Halton Hills Herald, Unit 1, 151 Carlingview Drive, Rexdale, Ontario, M9W 5E7.

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