

Ministry of Labour vs the Small Claims Court



If your rights are violated at work, you can decide between filing a claim at the Ministry of Labour or suing your employer at the Small Claims Court. You cannot choose both for the same issue. In deciding where to start your claim, decide how much time and effort you are willing to spend, as well as what outcome you are looking for.

If you are unsure, please call the Workers' Action Centre at 416-531-0778 for more information about any issue you have with your rights at work or to explore your options.

Small Claims Court

Advantages

- **Chance to win more.** A court can order payments beyond the Employment Standards Act (ESA). For example, the court can order your employer to pay more than the minimum ESA termination pay.
- **Court may consider more issues.** For example, even if it's not part of your original claim, a court might consider whether an employer acted against your human rights as well.

Disadvantages

- **Upfront costs to sue.** Each stage of the Small Claims Court process requires you to pay a fee. For example, claimants must pay \$102 for filing a claim and \$290 for setting a trial date. You may ask the court to waive some fees, but the fee waiver is only available to those who are very low income.
- **Penalty if you lose.** Furthermore, if you lose your claim, you may have to pay a penalty to cover the fees of your employer, though the penalty is usually capped at 15% of the amount you're claiming.
- **Winning does not guarantee you are paid.** It is your responsibility to collect the money from your employer after you win. This process can be slow, complicated and add additional costs.
- **Can take longer than the Ministry of Labour.** After filing your claim, it can take anywhere between 1 to 3 years before your claim goes to trial.
- **More complicated process.** While you do not need a lawyer, having one might be helpful.
- **Maximum amount of money awarded is \$35,000.**
- **Small Claims Court cannot order your employer to give you your job back.**

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Ministry of Labour Employment Standards Claim

Advantages

- **Simpler.** An Employment Standards Officer will investigate your claim by gathering evidence and asking questions of you and your employer before making a decision on your claim.
- **Cheaper.** There are no costs to file a claim and there is no penalty for losing.
- **Quicker.** The process from starting your claim to reaching a decision can take 6 to 9 months.
- **More than \$35,000 in damages possible.** There is no limit to the amount of money awarded.
- **Support to collect wages.** The Ministry of Labour will help collect money owed from your employer.

Disadvantages

- **Only Employment Standards Act minimums.** Though you may be owed more under common law, the Ministry of Labour can only grant you up to ESA minimums. By suing at the Small Claims Court, you may receive more for termination, and you can sue for other damages due to human rights violations, emotional distress or the return of personal property.
- **Independent contractors cannot make claims.** If you are a self-employed independent contractor, you cannot use the Ministry of Labour. If, however, you also claim and are able to prove that you are misclassified and should be an employee, then you may be able to make a claim with the Ministry.

	Ministry of Labour	Small Claims Court
How complicated?	Simpler	More complicated
Cost to file a claim	Free	\$100 to file, up to \$400+ for other fees.
Penalty for losing	No	Yes, but the penalty is typically capped at 15% of claim.
Grounds to make decision	Employment Standards Act	Common law, human rights, ESA.
Maximum monetary award	No limit	\$35,000
How long does it take?	Approximately 6 - 9 months	Approximately 1 to 3 years
Time limit to make claim	2 years	2 years
Collection if you win case	Ministry of Labour / Finance	You are responsible for collecting the money.