

Legal Ease and The Small Claims Court

Kim and Brenda are roommates. They often fight about one thing or another, but this time it's serious; this time it's about money. Kim is moving out and Brenda claims that she still owes her share of the payments on utilities and rent. They have attempted to reach a resolution informally a number of times, but without success. Brenda feels that she is in the right and is ready to go to court if she has to. But court is an expensive timely affair and she does not have her own lawyer (not that she could afford one). Her father suggested that she consider taking the matter to Small Claims Court. Small claims court is a simple way of claiming for a debt or damages without having to hire a lawyer.

Brenda totalled up what she felt Kim still owed on the expenses and found it to be \$1500 for the year. Claims filed with small claims court cannot exceed \$3000. If Brenda's claim is for more she can reduce the amount she claims in order to fall within the jurisdiction of the small claims court.

To bring an action in small claims, Brenda must obtain the necessary forms from the Clerk's Office of the Court of Queen's Bench of New Brunswick. Brenda must fill out two forms. These are the *Claim* and the *Notice of Claim*. She must fill out these forms in triplicate and file them along with a filing fee of \$35 with the Clerk.

Once Brenda (the plaintiff) files the claim, notice of the claim will go to Kim (the defendant). Kim then has 35 days to respond to the accusations made against her and to file a *Dispute Note* which allows her to defend herself against Brenda's claim and dispute the facts as Brenda relates them. If Kim fails to answer the allegations made against her, Brenda may file a *Request for Judgement* which allows the claim to be made without Kim's presence. If Kim does not dispute Brenda's claims at all, Brenda is free to get a judgement without having to go to court.

Brenda's father is cautious and reminds her that she and Kim are still in a position to avoid the emotional and financial costs of going to small claims court; they may still settle out of court even though the forms have been filed and fees paid. In fact, they may settle any time before the judge reaches a decision. If they do reach a settlement, their agreement should be written down, dated and signed by both. They are bound by their settlement agreement.

Unfortunately, Kim and Brenda are far beyond reaching an understanding; they both want to take the matter to court. To have a claim heard in small claims court, Brenda (plaintiff) must file a *Request for Hearing*. She will be mailed notice of the time and place of the hearing. In order to present a clear case without confusion, Brenda and Kim must prepare all relevant documents (receipts, cancelled cheques, photographs), organize their thoughts as to the sequence of events that led up to the court action and contact any witnesses they need to support their individual claims. The small claims hearing is informal; both parties have full opportunity to make their arguments. Evidence can be given by each party or other witnesses at the hearing who are under oath. Kim and Brenda may also use evidence in the form of a written statement with the judge's permission. It is important that they each make a clear and concise presentation so the judge has no doubts as to their individual positions.

Kim does have a lawyer. A lawyer is not required in small claims, but if she prefers, Kim may have a lawyer represent her. In fact, Brenda and Kim may have a lawyer, an articling student in the law, or even a friend represent them, as long as the judge has given his or her permission to have another person handle their cases.

The judge in this case decided that Kim did owe Brenda her unpaid living expenses. Kim was ordered to pay Brenda the \$1500. Brenda is responsible for collection the money. If Kim refuses to pay the money, Brenda may use further legal methods to collect her money. For example, an *Order for Seizure and Sale* may be issued by the Clerk. Under such an order, the Sheriff will seize Kim's personal goods and hold them until she pays the debt. Brenda may also collect the costs of the filing fee from Kim.

Kim is not pleased with the decision and wishes to appeal. She may do so by filing a *Notice of Appeal*. A judgement may only be appealed if it contains an error of law. Kim cannot appeal simply because she disagrees with the judge or with the facts as found by the judge. All decisions must be appealed within twenty five days of the oral decision or thirty days of the written judgement.

If you require more information about small claims, contact: Judicial District of Fredericton, Clerk's Office, PO Box 6000, 423 Queen St., Room 203, Justice Building, Fredericton, NB, E3B 5H1, Telephone: 453-2805.

This column is intended to be used as a guide only. It is not meant to be a replacement for professional legal advice. If you require further legal information or legal counselling, please contact a lawyer.

SWAT and Magic Johnson

Five NBA Championships, voted League MVP on three separate occasions, the spokesman for a number of sponsors, and now head of the Advisory Board on AIDS. Who would have thought that a legendary man such as Magic Johnson would become infected with the virus which causes AIDS (HIV).

Magic has been very open with the press and general public about his infection, and though he confessed that he was infected through heterosexual activity, some would still like to think that he is bisexual or an IV-drug user. These people are simply trying to make themselves feel better by denying that AIDS is infecting the heterosexual population.

Finding out that you are infected with HIV requires tremendous adjustment. Magic Johnson appears to have made this transition very well. Some individuals may cope with the news of HIV infection by denial. They may accept the fact that they are HIV+ but they deny that their disease will be fatal. This in not necessarily a bad method of coping, rather it may motivate or empower the individual to continue living life to its fullest. This appears to be what Magic Johnson has done. He has recognized the fact that he has the disease and thus he has given up professional basketball so that he can take better care of his body, impeding the progression of the disease. As well, he has made public his desire to beat the disease, and in becoming an AIDS Awareness advocate, help others to protect themselves from becoming infected with HIV.

Some individuals may have suspected that they have contracted the virus and the uncertainty of waiting for the results creates a lot of anxiety. The information that they are positive for HIV, confirms their suspicions, so that they know where they stand and are able to move forward with their life.

Many individuals become depressed, realizing the magnitude of their disease. Severe depression may lead to the contemplation of suicide. Fearing the physical pain and isolation of this disease, may become too much for an individual to cope with. The contemplation of suicide gives patients, infected with the virus, a certain amount of control over their own destiny. They may feel more at ease knowing that they always have the option of suicide if things get too rough. It is vital that they contact an AIDS support group so that they can obtain necessary social support, consisting of both information and emotional support, in this initial period. This type of help is available through AIDS New Brunswick.

When individuals learn that they are HIV+ they must consider, not only their own feelings, but also how others will react to their news. A large number of the general public are misinformed about HIV and share some very narrow minded views of those who have become afflicted with the disease. Those individuals who have contracted HIV through homosexual or bisexual contact may face further discrimination and rejection as the result of widespread homophobia.

Partners of Persons Living With HIV (PLWH) not only have to deal with the loss of a loved one, but they also have to deal with the fact that they may have been infected and will need to consider being tested. The uncertainty about their own health exacerbates anxiety caused by their partner's infection.

Although it is fortunate that a man of Magic Johnson's stature has come out to talk about AIDS, it is unfortunate that a tragedy like this had to happen for people to take note of the dangers of HIV. If he is half as successful with his fight against AIDS, as he has been on the basketball court, he will be around for a long time.

Residence Notice Board

The ladies of the Dunn request your presence at the L.D.H. dining hall on January 17th, 1992 at 7 p.m. for their first annual 24 hour Dunn Dance-a-thon. All proceeds go toward playground equipment for children of the Women of Transition House.

Pledges can be made by telephone 450-6546, 450-6599, or 450-6583. Teams must consist of six people with a minimum of two people per team on the dance floor at all times. Pledge sheets will be given out at a later date. Live band, D.J. and refreshments available throughout the night. Keep watching for updates!

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