

**“I received a
Civil Recovery demand
letter for shoplifting
- what should I do?”**



What is a claim for damages?

Can I be sued?

I was caught shoplifting; do I
have to pay?

A guide to civil law for people in Ontario
who have been caught shoplifting

**JUSTICE
FOR CHILDREN
AND YOUTH**

This pamphlet gives you some general information about your legal rights. There are exceptions! If you have any questions, speak to a lawyer or legal worker.

Some words used in civil recovery letters and what they mean:

Damages: Money paid as compensation for a loss or damage

Trespass to goods: Unlawfully causing damage to someone's goods or belongings

Conversion: Using someone's goods or belongings without permission

Punitive damages: Money ordered to be paid by a court as punishment for bad behaviour or to set an example

Without Prejudice: Words used at the beginning of a letter to say that the person is leaving it open to make other claims or take a different point of view before finally settling a legal claim

What is a civil recovery demand letter?

Some retail companies, such as Zellers Inc., Shoppers Drug Mart and Walmart, send demand letters to people who have been caught shoplifting in their stores, or to parents of young people who have also been caught. In most cases, the store has recovered the items stolen and therefore, is not claiming the value of what was taken.

The letters are often signed by a lawyer and demand payment of amounts in the range of \$300.00 to \$475.00 to a collection agency, called "Civil Recovery" for what they claim to be the costs of detecting shoplifters in their stores.

The letters sometimes suggest that if you don't pay by a certain date the amounts will increase.

I was caught shoplifting: do I have to pay?

The letters themselves are not the same as a court order. You can choose to pay the amount or not. If you do not pay, the store can start a lawsuit. It has

been our experience that it is rare for the lawyer or company to follow up with a court action if someone refuses to pay. So, you can choose to ignore the letter.

But do not ignore a Statement of Claim.

What is a Statement of Claim?

This document starts a court action against you. If you are served with a statement of Claim from Small Claims Court of the Superior Court of Justice, you will be required to respond with a Defence. If you do nothing, the court can make an order against you for the full amount that the store is claiming.

You should consult a lawyer if you receive a Statement of Claim.

Can they force me to sign a document before I leave the store?

Some store security guards try to have you sign a document before allowing you to leave the store. You do not have to sign this document. If you do sign the document, you are not required to make the payment claimed.

It is not legal for someone to threaten to have you charged by the police if you do not sign a document or agree to pay them money. It is not legal for someone, other than a police officer, to refuse to let you leave if you do not sign a document.

It is legal for the security guard to keep you at the store until the police arrive. They must call the police within a reasonable time.

It is legal for someone to use reasonable force to arrest or detain you if they have caught you shoplifting and you try to run away.

Will I have to pay the amount they are asking for?

In Ontario law, you are responsible to pay people to compensate them if you caused them harm by stealing things that belong to them or by trespassing on their property. However, in most cases of shoplifting the items are recovered and the store has not lost money. The letters claim money for their security costs.

In one case in Ontario, the court ordered that the person pay a total of \$300.00 for what is called punitive damages (as a form of punishment). The problem with this decision, is that the person ordered to pay the amount never defended the case at the appeal level. Also, no criminal charges were laid against the shoplifter. Both of these facts might mean that if another case were to be argued in court with a different situation, it might be decided differently. For example, if

you were charged criminally for theft, the court might not order punitive damages, or order that you pay a lower amount, depending upon what happened in criminal court.

If you are sued and go to court, a judge might order that you pay something to the retailer.

It is your decision whether you feel morally obligated to pay any money to the store without a court order.

My child was caught shoplifting, but the letter is addressed to me. Do I have to pay?

No. Parents are only legally responsible for harm caused by their children if parents are negligent in the way they supervised them or directed their children to cause the harm.

The letters refer to the *Parental Responsibility Act* as the basis for the store's claim against you. This Act only states that a parent might have to prove they were not negligent. This does not mean that a parent is always legally responsible for their children's actions.

It is unlikely that a court would find parents negligent for allowing their teenager to go shopping with friends at the mall.

In one court case in Manitoba, the court ordered that Zellers Inc. pay back the money that a parent paid in response to a civil recover demand letter. The court said that the parent was not required to pay the money and that the store had no right to keep it.

If the letter is addressed to someone under 18, does he or she have to pay?

The responsibility to pay is the same whether the person who shoplifted is an adult or a person under 18 years of age. A young person might not have the same ability to pay.

For further advice or information:

Justice for Children and Youth (if the letter involves a person under 18)

GTA: 416-920-1633

Elsewhere in Ontario: 1-866-999-5329

Your local community legal aid clinic: www.legalaid.ca

Lawyer Referral Service (half hour free legal advice with \$6.00 telephone charge)

1-900-565-4577

If under 18 call 1-800-268-8326 (no charge)

This pamphlet is intended for people living in Ontario. Its purpose is to give general information about how to respond for a demand for money from a retailer after a shoplifting incident. Speak to a lawyer or legal worker about specific questions. The information was accurate as of April, 2006.



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