



MEMORANDUM FOR UNREPRESENTED CIVIL LITIGANTS

Obtain legal representation

This memorandum sets out some material which may help unrepresented civil litigants. However, parties who participate in civil litigation should if possible have legal representation. This is because a knowledge of the law, of court practice, and an ability to analyse facts from a legal perspective, are the province of specialised court lawyers. You may be very disadvantaged if you are not able to call on that level of expertise. You should speak to a lawyer before you proceed further.

Preparation

The issues in a case are defined by the pleadings, usually the Statement of Claim and the Statement of Defence. These are important documents that should clearly show the key facts relied on by each party, the areas of agreement and disagreement, and the causes of action.

After these documents have been filed, there are likely to be orders requiring the discovery of relevant documents, and these documents must be made available for inspection by the other side.

There are conferences that are held where those and other orders relating to the preparation of and conduct of the trial are made. Unrepresented litigants must participate in those, and file any required documents. Timetable orders will be made that must be complied with.

Conduct in Court

When appearing before a judge in court, litigants must always treat the court, and all persons involved in the court process, including opponents, with courtesy. This is because the court process can only work if the ordinary requirements of civility are maintained as a framework for the issues to fully be aired and argued. In particular:

- You should wear formal and conservative clothing: for men preferably a jacket, tie and trousers, and for women attire of a similar standard. Shorts, sandals, bare shoulders, or provocative clothing are not appropriate.
- You must be punctual.
- You will be shown where to sit when the case is called. You should stand when the judge enters the courtroom and leaves the courtroom. You should stand when you are being addressed by the judge, or you are addressing the judge. You should be seated when not speaking or being spoken to.
- Do not interrupt when other persons are speaking to the judge. When they conclude you will be given a chance to speak, or you may ask for an opportunity to speak.

- Address the judge as “Your Honour” or “Sir” or “Ma’am”.
- Do not interrupt the judge, and do not express feelings when a decision is being delivered.
- There are water and glasses available in court. Do not bring in or consume beverages or food.
- Show respect for the court process at all times, and do not communicate to others, have cell phones on, or use computers while the court is in process.

Opening a case

A plaintiff opens a case. The opening should set out the issues in the case, and the plaintiff’s position in relation to those issues. A defendant opens in the same way at the end of the plaintiff calling all its evidence.

Witnesses

Witnesses file their primary evidence by written brief, or evidence that is lead by open questions. Open questions, as distinct from closed questions, are those which do not indicate the answer. A closed or leading question indicates the answer, e.g. “You did agree to the proposal didn’t you?” An open question leaves the answer open, e.g., “How did you respond to the proposal?”

After the evidence of a witness has been read or lead, there is then the opportunity for the other party to cross-examine. In cross-examination you are allowed to ask leading questions. If you are cross examining you must put the key points of your case that differ from the evidence of the witness, to the witness, so that that witness has an opportunity to give his or her views on the point.

After cross-examination, the party that called the witness may re examine that witness. That re-examination can only relate to matters that arose in cross-examination, and there should be open and not leading questions.

Closing a case

Once all the evidence is called, the parties give their closing submissions, where they state to the judge the propositions of law and fact on which they rely, and answer points raised by the other side. Normally the defendant goes first, the plaintiff second, and a short right of reply may be given to the defendant.

The role of the judge

The judge has the tasks of controlling the procedures of the court, making any rulings that are necessary, and ultimately that of deciding the case. The judgment may be given at the conclusion of the case or reserved and given in writing at a later point.