

小額錢債案件的一般法律 程序須知

General points to note about
small claims proceedings

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小額錢債審裁處
Small Claims
Tribunal

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小額錢債案件的一般法律程序須知

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1. 在一件案件中會有哪些聆訊

- 1.1 一般來說，一件案件的整個法律程序可以分為三個階段：簡短提訊、提訊和審訊。
- 1.2 此外，還有其他附帶的聆訊，例如把本審裁處的裁斷或命令作廢的申請的聆訊，以及覆核聆訊。
- 1.3 如果想知道關於上述法律程序的詳情，請參閱第5冊《怎樣準備和進行聆訊或審訊》，以及第7冊《申請把裁斷或命令作廢、覆核和上訴》。

2. 誰人應該出席聆訊

- 2.1 申索人和被告人都應該出席所有聆訊。
- 2.2 如果訴訟人是一個法團，應該由法團的董事或公司秘書簽署授權書，並蓋上公司印章，妥為授權一名法團的高級人員出席聆訊。如果訴訟人是一家獨資或合夥經營的商號，則其獨資東主或其中一名合夥人應該帶同授權書出席聆訊。
- 2.3 如果訴訟人以個人名義進行訴訟，但是卻希望由他的代表（不是大律師或律師）出席聆訊，便應該向審裁官申請許可。此項申請必須具備充分理由和證據，否則審裁官可以駁回申

請。如果沒有獲得審裁官的許可，訴訟人便應該親自出席聆訊，否則審裁官可以因申索人缺席而撤銷申索，或因被告人缺席而判決被告人敗訴。

- 2.4 訴訟人的代表（不是大律師或律師）必須符合以下規定才可以出席聆訊：
 - 能夠出示由訴訟人簽署的授權書；
 - 已經獲得審裁官的許可；以及
 - 對案件完全熟悉。
- 2.5 在審訊時，除了訴訟各方及/或他們已獲得審裁官的許可的代表須要出席外，他們所傳召的所有證人都應該出席審訊。
- 2.6 如果申索人或他的代表沒有如期出席聆訊，審裁官可以撤銷申索。
- 2.7 如果被告人或他的代表沒有如期出席聆訊，申索人可以申請登錄判被告人敗訴的判決。在這情況下，如果有證據顯示申索書和聆訊通知書已妥當地送達被告人，而申索人又能提出充分的證據來支持他的申索，審裁官便可以因被告人缺席而判決他敗訴。

3. 申請押後

- 3.1 任何押後聆訊的申請都應該在有必要時儘早提出，讓審裁官可以考慮有關的申請和作出跟進行動，例如通知訴訟各方申請的結果。
- 3.2 除非有充分的理由(商業理由或假期通常不會被視為充分的理由)和證據，否則審裁官可以駁回申請。請留意，如果你申請把聆訊押後，審裁官可能會判給訴訟的另一方因聆訊押後而引致的訟費。
- 3.3 申請把案件押後並沒有一定的格式，申請人可以寄信申請，在信中列明申索編號、法庭號數、聆訊日期、聯絡電話和申請理由。申請人最好能夠提出證明文件，例如另一方的同意書。申請書會呈交審裁官作批示，本審裁處會把申請的結果儘早通知申請人，如果審裁官批准把聆訊押後，本審裁處會通知另一方。

4. 申請修改申索書或反申索書

- 4.1 在審裁官作出判決之前，申索人和被告人都可以隨時修改他們的申索書或反申索書，但是在作出修改之前必須先得到審裁官批准。

- 4.2 訴訟人應該首先把他打算在申索書或反申索書中所作出的修改寫出來，然後分別送交本審裁處和另一方。審裁官可以進行聆訊以決定是否批准訴訟人作出有關的修改，也可以無須進行聆訊而作出決定。
- 4.3 在得到批准作出修改後，訴訟人必須親自到本審裁處的登記處修改他的申索書或反申索書，並在每次作出修改時繳付法例訂明的費用。申索書或反申索書不能夠透過郵遞、傳真或電郵等其他方式修改。
- 4.4 如果由於修改申索書或反申索書而須要再度提訊，則打算作出修改的一方便可能須要付給另一方因這項提訊而引致的訟費。因此，訴訟人應該在早期便確定他的申索書或反申索書中的資料正確無誤，以免產生不必要的訟費。

5. 中止申索或反申索

- 5.1 在審裁官作出判決之前，申索人或被告人都可以隨時提交《中止申索通知書》或《中止反申索通知書》以中止申索或反申索。有關的表格可以到本審裁處的登記處索取，也可以到司法機構的網址下載。此外，訴訟人也可以透過本審裁處的互動音頻電話錄音系統經由傳真取得有關表格。

- 5.2 如果申索人在簡短提訊之前決定中止申索，便無須先得到審裁官批准，只須要填妥有關的表格，然後送交本審裁處和把副本送達被告人便可。
- 5.3 如果申索人在簡短提訊之後決定中止申索，或被告人在簡短提訊之後決定中止反申索，便須要先得到審裁官批准。除非審裁官已給予批准和下令取消聆訊日期，否則訴訟各方必須按照原定日期出席聆訊。

6. 執行判決

- 6.1 請注意，如果訴訟某一方獲判勝訴，但敗訴的一方卻拒絕遵行判決，那麼勝訴的一方便可能須要向敗訴的一方展開強制執行判決的法律程序。本審裁處不會主動為勝訴的一方強制執行判決，換句話說，本審裁處不會為勝訴的一方向敗訴的一方追討判定款項。
- 6.2 如果想知道關於怎樣強制執行判決的詳情，請參閱第8冊《怎樣執行判決》。

7. 電郵

- 7.1 本審裁處不接納以電郵形式提交的申索書或反申索書、抗辯書、答覆書或抗辯書的回覆書、證人陳述書或任何其他有關的文件。
- 7.2 本審裁處也不接納以電郵形式對任何指定案件作出查詢或申請。這些查詢或申請必須以書面形式作出，並由訴訟人妥為簽署和註明日期。此外，這些查詢或申請必須儘早作出，讓審裁官有足夠的時間考慮和回覆。

8. 證據和舉證責任

- 8.1 訴訟各方都必須搜集證據以支持自己的案情。一般來說，提出指控的一方須負舉證責任，但是審裁官也可以隨時指令另一方提出證據。證據可以有不同的形式，包括證人的口頭證供、文件、照片、錄音帶、錄影帶、光碟或貯存於任何磁帶或光碟中的電子資料等。

- 8.2 申索人最好能夠儘早搜集所有證據，尤其是證人的陳述書。同樣地，被告人在收到申索書後也應該儘早準備自己一方的證人陳述書。

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General points to note about small claims proceedings

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1. What kind of hearings will there be from the beginning to the end of a case

- 1.1 In general, from the beginning to the end of a case, the proceedings can be divided into three stages, namely, call-over, mention hearing(s) and trial.
- 1.2 In addition, there are other subsidiary hearings, e.g. hearing for application to set aside or review an award or order of the Tribunal.
- 1.3 For detailed explanations on those proceedings, please refer to the Pamphlets 5 and 7, namely “How to prepare for and conduct a hearing or trial” and “Application to set aside, review and appeal”.

2. Who should attend the hearings

- 2.1 Both claimant and defendant should attend all hearings.
- 2.2 If the party is a corporation, an officer of the corporation properly authorised by a letter signed by the director or company secretary and affixed with company chop may attend. If the party is a sole proprietorship or a partnership, the sole proprietor or a partner properly authorised by a letter should attend.
- 2.3 If the party is an individual and wishes his representative (other than counsel or solicitor) to attend the hearing, the party should apply for permission from the Tribunal. Unless the application

is supported by good justified reasons and evidence, the Tribunal may not allow such application. Unless the party has the Tribunal’s permission, the party should attend the hearing in person; otherwise the Tribunal may, in the absence of the party, dismiss the party’s claim (if the party is the claimant) or enter default judgment against the party (if the party is the defendant).

- 2.4 A representative of the party (but not counsel or a solicitor) may attend provided that:
 - the representative can produce a letter of authorization signed by the party;
 - permission is obtained from the Tribunal; and
 - the representative is fully familiar with the case.
- 2.5 At trial, in addition to the parties and/or their representatives allowed by the Tribunal, all witnesses from whom the parties wish to adduce evidence should attend.
- 2.6 If neither the claimant nor his representative appears in person at the time fixed for the hearing, the claimant’s claim may be dismissed.
- 2.7 If neither the defendant nor his representative appears in person at the time fixed for the hearing, the claimant may apply to enter judgment against the defendant. In such event, if it appears that the claim forms and notice of hearing have been properly served on the defendant and the claimant can provide sufficient evidence to prove his claim, the Adjudicator may enter default judgment against the defendant.

3. Application for adjournment

- 3.1 Any application for adjournment should be made as soon as the necessity arises so as to enable the Tribunal to consider the application and attend to any follow-ups, including notifying the outcome of the application to the parties.
- 3.2 Unless with good justified reasons (business reasons or holidays are usually not accepted as good reasons) and evidence, the Tribunal may refuse the application. Please bear in mind that arising out of the application for adjournment, it is possible for the Adjudicator to award costs to the other party.
- 3.3 There is no standard format for making an application to adjourn the case. Applicant may send in a letter, specifying the claim number, the court number, the hearing date, the contact phone number as well as the reasons in support of the application. It is desirable that the application is supported by documentary proof such as the consent letter of the other party. Application would be submitted for the Adjudicator's direction. Applicant would be notified of the outcome as soon as possible. If the application is granted, the other party will also be notified of the adjournment by the Tribunal.

4. Application for amendment to claim or counterclaim

- 4.1 A claimant may amend his claim or a defendant may amend his counterclaim at any stage before judgment is given. But permission from the Adjudicator to amend is required before

amendment can be made.

- 4.2 A party should first write out his proposed amended claim or amended counterclaim and then send a copy each to the Tribunal and to the other party. The Adjudicator will then decide whether the proposed amendment will be allowed with or without holding a hearing.
- 4.3 If permission to amend is granted, the party must attend the Tribunal Registry to amend his claim or counterclaim in person and pay the prescribed fee each time he amends his claim or counterclaim. Amendment to the claim or counterclaim cannot be made by any other means such as post, fax or email.
- 4.4 If further mention hearings are required as a result of any amendment to the claim or counterclaim, the party proposing the amendment may have to bear the costs of that hearing to the other party. To avoid unnecessary costs, a party should make sure his claim or counterclaim particulars are correct at an early stage.

5. Discontinuance of claim or counterclaim

- 5.1 At any stage before the Adjudicator gives his judgment, a claimant may discontinue his claim or a defendant his counterclaim by filing a Notice of Discontinuance of Claim or Notice of Discontinuance of Counterclaim. Parties may approach the Tribunal Registry for the relevant forms. They can be downloaded from the Judiciary's website or obtained by fax via the Interactive

Voice Recording System of the Tribunal.

- 5.2 If the claimant chooses to discontinue his claim before call-over, permission from the Adjudicator to discontinue the claim is not required. The claimant is only required to fill in the relevant form, send it to the Tribunal and serve a copy to the defendant.
- 5.3 If the claimant chooses to discontinue his claim or the defendant his counterclaim after call-over, permission from the Adjudicator is required. Unless permission is granted and the hearing date is vacated by the Tribunal, parties must attend the hearing as originally directed or scheduled.

6. Execution of Judgment

- 6.1 It is important to note that if a party is awarded a judgment in his favour but the party who loses the case refuses to comply with the judgment, the winning party may have to commence enforcement proceedings against the losing party. The Tribunal will not take initiative to enforce the judgment for the winning party, i.e. the Tribunal will not chase the losing party to pay the judgment sum to the winning party.
- 6.2 For details on how to enforce a judgment, please refer to Pamphlet 8 “How to enforce a judgment”.

7. Emails

- 7.1 Filing of documents, including claim or counterclaim, defence, reply, witness statement and/or all other relevant documents by email is not acceptable.
- 7.2 Enquiry and/or application of any kind in relation to any specific case by email is not acceptable, either. Such enquiry or application must be made in writing and duly signed and dated by the party to the proceedings. Such enquiry and/or application must be sent to the Tribunal well in advance so as to allow the Adjudicator sufficient time to consider and reply to the same.

8. The evidence and burden of proof

- 8.1 Each party to the proceedings must collect evidence to support his case. Generally speaking, the burden of proof is on the party who makes the allegation. But this is always subject to the directions of the Tribunal, which may order the other party to adduce the evidence. Evidence can be in various forms, including oral evidence from witnesses, documents, photographs, audio or video tapes or discs or electronic data contained in any tapes or discs etc.

8.2 It is advisable for the claimant to obtain all evidence, in particular, written statements from the witnesses at an early stage. The defendant should likewise prepare witness statements after receiving the claimant's claim.

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