

怎樣準備和進行  
聆訊或審訊  
How to prepare for and  
conduct a hearing or trial

5



小額錢債審裁處  
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# 怎樣準備和進行聆訊或審訊

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## 1. 怎樣為簡短提訊作準備

- 1.1 你應該安排撥出至少半天或更多的時間來出席簡短提訊。
- 1.2 如果你委派代表出席，必須肯定他熟悉案件中的事實。
- 1.3 作為申索人或被告人，你或你的代表應該至少帶備以下文件(如果適用的話)出席簡短提訊：
  - (1) 你已經提交本審裁處的所有文件和另一方已經送達給你的所有文件。
  - (2) 能夠支持你的申索或抗辯(視乎情況而定)而又未曾提交本審裁處或送達另一方的所有文件的正本，以及這些文件的副本2套，以便一套提交本審裁處，另一套則送達給另一方。
  - (3) 如果你委派代表，你的代表應該帶同一份正式的授權書。有關委派代表的詳情，請參閱第4冊《小額錢債案件的一般法律程序須知》中的第2段。
  - (4) 如果你以一個法團的名義進行訴訟，便應該帶同一份最新的《周年申報表》(可以向公司註冊處申領)。

(5) 如果你以一家商號的名義進行訴訟，便應該帶同一份《商業登記申請書》(可以向商業登記處申領)。

1.4 此外，申索人也應該帶同下列文件(如果適用的話)出席簡短提訊：

- (1) 如果被告人是一個法團，便應該帶同被告人的《註冊辦事處座落地點通知書》(可以向公司註冊處申領)。
- (2) 如果被告人是一家商號，便應該帶同被告人的《商業登記申請書》。
- (3) 如果被告人是一個法團營業的商號，便應該帶同《註冊辦事處座落地點通知書》和《商業登記申請書》。

## 2. 簡短提訊會怎樣進行

2.1 請按照《聆訊日期地點通知書》中所指定的日期到達指定的法庭向該法庭的調查主任報到，調查主任會接見你和進行初步查訊，其中包括：

- 把案件分為“作出抗辯”或“不作出抗辯”兩類；
- 協助雙方自願達成和解；以及
- 如果雙方未能達成和解，則找出雙方的主要爭議點。

請記住，調查主任不能向你提供法律意見。

2.2 審裁官和調查主任都有責任調解糾紛。如果訴訟各方同意和解，調查主任會把和解協議呈交審裁官，由審裁官作出經各方同意的命令。有關的命令會以郵寄方式送交各方。

2.3 如果訴訟各方未能達成和解，本審裁處便會作出一些關於怎樣繼續進行案件的指示，例如指示各方提交和送達以下文件：

- 由被告人提交抗辯書和反申索書(若有的話)；
- 由申索人提交回覆書和反申索的抗辯書(若有的話)；
- 各名證人的證人陳述書；以及
- 其他支持文件，例如測量師報告或照片。

調查主任又會另定下次提訊的日期。訴訟各方應該按照這些指示如期提交和送達文件，如果申索人不遵從指示，審裁官可以撤銷其申索；如果被告人不遵從指示，審裁官可以無須進行審訊而判決被告人敗訴。此外，審裁官也可以判決不遵從指示的一方支付訟費。

2.4 審裁官可以在簡短提訊或其後的法律程序中隨時把不適宜在本審裁處提出的申索移交其他法庭或審裁處處理。

2.5 如果被告人在簡短提訊或其後的法律程序中所提出的反申索超越或不屬於本審裁處的司法管轄權範圍，審裁官會把整件案件(包括申索和反申索)移交合適的法庭或審裁處處理。

## 3. 提訊會怎樣進行

3.1 提訊是在簡短提訊之後和審訊之前所進行的聆訊。在審訊前有時須要進行不只一次的提訊，視乎案件的複雜程度和許多其他因素而定，例如訴訟各方是否已遵照本審裁處所作出的指示為審訊作好準備。

3.2 在提訊中，審裁官會處理以下事宜：

- 就案件中的爭議作出調查；
- 向訴訟各方解釋與案件有關的法律問題；
- 告訴訴訟各方他們可以考慮傳召哪些證人；以及
- 指示訴訟各方怎樣為審訊作準備，包括指示他們在某個指定的日期前交換證人陳述書和其他支持文件(不遵行審裁官的指示的一方可能會被判敗訴及/或須要支付另一方的訟費)。

3.3 為了確保提訊有成效，訴訟各方都應該熟悉案件的最新發展。此外，他們須要把已經提交本審裁處的文件，以及由另一方送達給他們的文件，全部都帶來，因為審裁官可能會在提訊中引用這些文件。

3.4 審裁官在每次提訊時都會與雙方查核他們是否已經搜集了足夠的證據來支持他們各自的理據。審裁官只會在雙方證實不會再提出其他證據時才會擇定審訊日期。

3.5 審裁官可能會詢問訴訟各方是否願意和解，這是恰當的做法。審裁官可以積極協助和鼓勵訴訟各方和解，如果訴訟各方願意和解，審裁官便會作出有關的命令。

## 4. 怎樣為審訊作準備

4.1 當審裁官擇定審訊日期時，訴訟各方應該已經知道他們在審訊中將會傳召哪些證人、打算倚賴哪些證人陳述書和哪些其他文件。訴訟各方應該仔細地記下自己想在審訊中提出的所有證據，以防遺漏任何重點。此外，訴訟各方應該確保自己的證人會如期出席審訊，而證人則應該在出席審訊前把自己的證人陳述書重溫一遍。

4.2 如果有任何證人不願意出席審訊，訴訟人可以向審裁官申請發出證人傳票，以確保有關的證人會出席審訊。這項申請應該在審訊日期前至少3個星期提出，申請表格(表格409-S)可以向本審裁處的登記處索取。申請人須要支付法例訂明的證人費。

4.3 訴訟各方應該仔細閱讀由另一方送達的證人陳述書和文件，以清楚了解對方的理據和他的證人將會作出甚麼證供；在仔細閱讀那些文件後，還應該構思怎樣盤問對方的每名證人。

## 5. 審訊會怎樣進行

5.1 訴訟各方和他們的證人都必須出席審訊。如果申索人缺席，審裁官可以剔除其申索；如果被告人缺席，而申索

人又能夠提出證據支持他的申索，審裁官便可以在被告人缺席的情況下判決被告人敗訴。

5.2 證人會在經過宗教式或非宗教式宣誓後作出口頭證供。如果證人被發現在庭上說謊，可以被刑事檢控和被判入獄。

5.3 申索人和 / 或他的證人會首先作供，之後才輪到被告人及 / 或他的證人。每名證人作供的程序大致上分為3個階段：

- 主問

證人在這個階段中會向審裁官陳述他認為與案件有關的事實。

- 盤問

證人在這個階段中會回答由另一方所提出的問題。

- 覆問

盤問完畢後，傳召證人的一方可以向證人提出問題，但覆問問題只能限於澄清一些在盤問期間所引發的事宜。

5.4 由於訴訟各方都有機會向自己的證人或另一方的證人提問，因此，把證人的證供筆錄下來會有助你進行你的提問。

5.5 在所有證人作供完畢後，訴訟各方可以作出結案陳詞，這並不是強制性的。作出結案陳詞並不是提出證供，而是向審裁官重點指出證人的證供的強弱。

5.6 審裁官會在審訊的最後階段宣布判決；如果案件涉及複雜的爭論點，則可能須要押後宣判。此外，如果審裁官認為訴訟各方須要提交進一步的證據，也會把審訊押後。

## 6. 在聆訊中的行為舉止

6.1 在本審裁處的聆訊中，如果有人作出具有侮辱或恐嚇成分的行為，或者是故意干擾聆訊，審裁官都可以即時判處有關的人士罰款10,000元和入獄6個月。

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# How to prepare for and conduct a hearing or trial

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## 1. How to prepare for the call-over

- 1.1 You should make arrangements to set aside at least half a day or more for attending the call-over.
- 1.2 If you appoint a representative, ensure he is familiar with the facts of the case.
- 1.3 As a claimant or a defendant, you or your representative should bring along at least the following documents (as applicable) at the call-over:
  - (1) All documents you have filed with the Tribunal and received from the other party.
  - (2) All original documents which support your claim or defence (as the case may be) but have not been filed or served, and 2 sets of photocopies for filing with the Tribunal and service on the other party.
  - (3) If you appoint a representative, a proper letter of authorization. For details about appointing a representative, please refer to paragraph 2 of Pamphlet 4 “General points to note about small claims proceedings”.
  - (4) If you are a corporation, a copy of the updated Annual Return (obtainable from the Companies Registry).

- (5) If you are a firm, a copy of the Business Registration Application (obtainable from the Business Registration Office).
- 1.4 In addition, the claimant should also bring along the following documents (as applicable) at the call-over:
- (1) If the defendant is a corporation, a copy of the defendant's Notice of Situation of Registered Office (obtainable from the Companies Registry).
  - (2) If the defendant is a firm, a copy of the defendant's Business Registration Application.
  - (3) If the defendant is a corporation trading in a 'trading name', a copy of both Notice of Situation of Registered Office and Business Registration Application.

## 2. What happens at the call-over

- 2.1 Please report to the Tribunal Officer inside the courtroom specified in the Notice of Place and Day fixed for Hearing. The Tribunal Officer will interview you to deal with preliminaries, which may include:
- classifying a case as defended or undefended;
  - helping to bring about a settlement (on a voluntary basis); and
  - identifying the main issues in dispute if a settlement is not reached.
- Remember that the Tribunal Officer cannot give you legal advice.
- 2.2 It is the duty of both the Adjudicator and the Tribunal Officer to attempt to mediate the dispute. If the parties agree to settle, the Tribunal Officer will submit the settlement to the Adjudicator for a consent order. The consent order will be sent to the parties by mail.
- 2.3 When the dispute cannot be settled, directions will be given for the future conduct of the case, e.g. for the filing and service of:
- defence and counterclaim (if any) by the defendant;
  - reply and defence to counterclaim (if any) by the claimant;
  - witness statements; and
  - other supporting documents such as surveyor's reports or photographs.

The case will be adjourned to another date for mention. All parties should comply punctually with such directions. If the directions are not complied with, the claim may be dismissed or a judgment entered against the defendant without trial. Costs may also be ordered against the party in default.

2.4 Claims inappropriately commenced in the Tribunal may be transferred to other courts or tribunals either at the call-over or at any subsequent stage of the proceedings.

2.5 If, during the call-over or at any subsequent stage of the proceedings, the defendant lodges a counterclaim which exceeds or which does not fall within the jurisdiction of the Tribunal, the whole case, i.e. claim and counterclaim, will be transferred to the appropriate court or tribunal.

### 3. What happens at a mention hearing

3.1 Mention hearings are hearings after the call-over but before trial. Depending on the complexity of the case and on many other factors, including the readiness of the parties in complying with directions given by the Tribunal in preparing the case for trial, there may be more than one mention hearing before trial.

3.2 At the mention hearing, the Adjudicator may:

- inquire into the dispute of the case;
- explain the law relating to the case to the parties;

- inform parties whom they might consider calling to give evidence; and
- direct parties on how to prepare for the trial, including directing the parties to exchange witness statements and other supporting documents before a specified date (if you do not comply with the Adjudicator's direction, you may lose your case and/or lose costs to the other party).

3.3 In order to ensure the mention hearing is constructive, all parties should get themselves familiar with the latest development of the case. They are also required to bring along all documents they have filed with the Tribunal and received from the other party as the Adjudicator may refer to those documents during the hearing.

3.4 At each mention hearing, the Adjudicator will review with the parties as to whether they have collected sufficient evidence in support of their respective cases. The Adjudicator may fix a date for trial only if all parties confirm that they have no further evidence to produce.

3.5 The Adjudicator may ask the parties whether they are willing to settle. It is proper for the Adjudicator to actively help and encourage the parties to settle. If the parties are willing to settle, the Adjudicator will make an order.

## 4. How to prepare for a trial

- 4.1 When the Adjudicator fixes a date for trial, the parties should have had an idea of what witnesses to call and what witness statements and other documents they wish to rely on at trial. The parties should make careful notes of all evidence they wish to adduce at trial so that nothing important will be left out. The parties should also make sure their respective witnesses will attend trial on the trial date. Before trial, the witnesses should refresh their memories of what they have stated in their witness statements.
- 4.2 If any witness is unwilling to attend trial, the party may apply to the Adjudicator for leave to take out a witness summons to secure such witness' attendance. Such application should be made at least 3 weeks before the trial date. A form for such application (Form 409-S) can be obtained from the Tribunal Registry. Prescribed witness expenses will have to be paid by the applicant.
- 4.3 Each party should peruse all the witness statements and documents served on by the other party in order to fully understand what the other party's case is and what evidence his witnesses will give. After perusal of those documents, each party should formulate his line of cross-examination on each of the other party's witnesses.

## 5. What happens at a trial

- 5.1 All parties and their witnesses must attend the trial. If the claimant is absent, the Tribunal may strike out the claim. If the defendant is absent, the Tribunal may enter judgment in his absence provided that the claimant can prove the case.
- 5.2 Witnesses will give oral evidence on oath or affirmation. A witness who is found not to have told the truth in court may be liable to criminal prosecution and imprisonment.
- 5.3 The claimant and/or his witnesses will give evidence first. Thereafter the defendant and/or his witnesses will give evidence. The giving of evidence by a witness is broadly a three-stage process:
  - Examination-in-chief  
This is the stage where the witness gives the Tribunal an account of facts which he thinks relevant.
  - Cross-examination  
At this stage, the witness will answer questions put by the other party.
  - Re-examination  
After cross-examination, the party who calls the witness may put questions to the witness to clarify the matters raised in the cross-examination only.

- 5.4 As all parties will have a chance to question their own witnesses and those of the other party, taking notes on the evidence given by witnesses will help you prepare your questions.
- 5.5 After all witnesses have given evidence, the parties may make final submissions. Making of final submissions is optional. It is not evidence giving but to highlight the strength or weaknesses of the evidence given by the witnesses for the Adjudicator's consideration.
- 5.6 The Adjudicator may deliver judgment at the end of the trial or on a later date if the issues involved are complicated. If the Adjudicator thinks it is necessary for the parties to provide further evidence, the trial will be adjourned to a later date.

## **6. Behaviour at hearings**

- 6.1 At any hearing in the Tribunal, if a person behaves in an insulting or threatening manner, or wilfully interrupts the hearing, the Adjudicator may summarily sentence that person to a fine of \$10,000 and imprisonment for 6 months.

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