

小額錢債案件中的
所需文件
Documents required in
a small claim case

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小額錢債案件中的所需文件

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1. 證人陳述書

- 1.1 證人陳述書是民事訴訟中常見的證據形式，內容應該包含證人在法庭作證時將會陳述的事實。證人所陳述的事實必須要是自己親身知道或經歷的事實，否則審裁官可以不接納這些事實作為證據；即使接納，也不會太過重視或甚至完全不予重視。（舉個例說，你就一宗交通意外的發生經過作證，但是意外發生時你並不在現場，因此，你在審訊中告訴審裁官的只是來自別人口中敘述的意外發生經過。由於這些證供不是你親身知道或經歷的，因此這些證供便極有可能不獲審裁官所接納。）
- 1.2 如果訴訟各方想審裁官知道不同證人在不同時間所遇到的事情，便須要由各名證人分別作出證人陳述書，而每一份陳述書中所載述的事實都應該是由該名證人所親身知道或經歷的。
- 1.3 由於證人是親身知道或經歷有關事實的人，因此，證人陳述書應該以個人名義作出，而不能夠以法團或商號的名義作出，因為法團和商號都不是個人。
- 1.4 如果訴訟各方是一個法團或一家商號，證人陳述書便應該由法團或商號中親身知道或經歷有關事實的高級人員、僱員或任何其他人士作出。

- 1.5 通常，申索人和被告人都會在庭上作證，這樣的話，他們便應該作出證人陳述書。如果在審訊中還會有其他證人作證，這些證人也應該作出證人陳述書。
- 1.6 證人陳述書應該用字簡潔，但是也要內容詳盡，以涵蓋所有與申索 / 反申索和爭議事項有關的事實。證人陳述書的空白表格可以向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，有關表格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。
- 1.7 證人陳述書中的事實最好能夠按時間順序分段陳述，而每一段都須要編上段落號碼。
- 1.8 證人應該在證人陳述書的結尾簽名和寫上他的姓名。

2. 專家證人

- 2.1 有些申索 / 反申索會涉及審裁官知識範圍以外的一些技術性問題，例如汽車修理費用是否合理，或者某一種貨物或服務的質素是否已達到行內可以接受的標準等。在這情況下，訴訟人便可能需要聘用專家協助舉證。不過，專家的收費可能會很昂貴，所以如果你不肯定是否需要專家協助的話，可以向審裁官徵詢意見。

- 2.2 上文第1段有關證人陳述書中所提及的基本規定也適用於專家證人的陳述書。

3. 照片

- 3.1 訴訟各方有時候會想把一些照片或草圖呈堂。嚴格來說，拍攝那些照片或繪畫那些草圖的人須要出庭作證，以證明那些照片或草圖是由他們拍攝或繪畫的。不過，如果另一方並沒要求拍攝者或繪畫者親自把那些照片或草圖呈堂的話，這些人便無須出庭作證。
- 3.2 關於把彩色照片提交本審裁處和送達另一方的規定，請參閱下文第5.2段。

4. 其他文件

- 4.1 如果訴訟各方想以其他文件作為證據，例如發票、收據、信件等，便須要考慮傳召親身知道這些文件的內容的證人來作證。關於這方面的事宜，請參閱上文第1.1段。這些證人最好能夠作出證人陳述書，以解釋那些文件的內容和重要性。

5. 須要提交本審裁處和向另一方送達的文件副本

- 5.1 訴訟各方應該根據審裁官所發出的指示/命令，把所有證人陳述書和他們想用作證據的其他文件的副本提交本審裁處。此外，他們也應該同時把這些陳述書和文件的副本向另一方送達。提交文件的一方應該保存這些文件的正本，以供審裁官或另一方於審訊或聆訊中查閱。
- 5.2 如果有關文件是彩色的，而彩色的部分又具有重要性的話，你便應該把有關文件的彩色副本提交本審裁處和向另一方送達。舉個例說，如果你想以照片（通常都是彩色而不是黑白的）作為證據，便應該把那些照片送交本審裁處和另一方。照片應該貼在A4大小的紙上，每張照片都應編上號碼。

6. 編配頁碼

- 6.1 在訴訟的過程中，訴訟各方有時會向本審裁處提交和向另一方送達越來越多的證人陳述書和文件。因此，理想的做法是把所有文件都全部編上頁碼，以便當你想引用某份文件時，審裁官和另一方都可以輕易地根據你所提供的頁碼找到那份文件。

- 6.2 申索人的文件的頁碼應該以“C”為字頭，因此第1頁是“C1”，第2頁是“C2”，如此類推。被告人的文件的頁碼則應該以“D”為字頭，因此第1頁是“D1”，第2頁是“D2”，如此類推。

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Documents required in a small claim case

Content

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1. Witness statement

- 1.1 Witness statement is the usual form of evidence in civil proceedings. It should contain an account of the facts the witness will give as evidence in court. The facts contained in the witness statement should be within the personal knowledge of the witness; otherwise, the Adjudicator may refuse to admit them as evidence or give little or no importance to them even if they are admitted as evidence. (For example, you want to prove how a traffic accident took place. However, you were not there when the accident occurred. At trial, you relate to the Adjudicator what others had told you about how it happened. Such evidence does not come from your personal knowledge and therefore is unlikely to be admitted by the Adjudicator as evidence.)
- 1.2 The party may wish to present to the Tribunal events happened on different occasions encountered by different witnesses. In that case, it is necessary to prepare a number of witness statements, each of which should contain an account of facts the statement maker, i.e. the witness, has personal knowledge.
- 1.3 Since a witness is an individual who has personal knowledge of the relevant facts, a witness statement should be a statement of an individual witness. A corporation or a firm is not an individual and thus not capable to make any witness statement.

- 1.4 If a party is a corporation or a firm, its witness statement(s) should be given by its officer(s), employee(s) or any other individual(s) who has/have personal knowledge of the relevant facts.
- 1.5 Usually the claimant and the defendant may wish to give evidence in court themselves. In that case they should prepare their own witness statements. Where there are other witnesses who will give evidence in court at trial, statements of those witnesses should also be prepared.
- 1.6 Witness statement should be concise in style but comprehensive in contents, covering all the facts relevant to the claim/ counterclaim and the disputes. Blank witness statement form can be obtained at the Tribunal Registry. It can also be downloaded from the Judiciary's website or obtained by fax via the Interactive Voice Recording System of the Tribunal.
- 1.7 It is advisable that in the witness statement, the facts should be set out in a chronological order with separate numbered paragraphs.
- 1.8 The witness should sign at the end of his statement with his name on it.

2. Expert witness

- 2.1 There are occasions where a claim or counterclaim involves technical issues outside the Adjudicator's knowledge, e.g. the

reasonable cost of repairing a damaged vehicle or what the accepted quality standards are for particular goods or services. In such event, appointing an expert to prepare a witness statement or an expert report may be necessary. However, it can be expensive. You may see fit to ask the Adjudicator for advice if you are not sure whether the help of an expert is needed.

- 2.2 The basic requirements set out in paragraph 1 above are applicable to the statement of an expert witness.

3. Photographs

- 3.1 In some cases, parties may wish to produce photographs or sketches. Strictly speaking, the makers of those photographs or sketches are required to give evidence that those photographs or sketches were taken or prepared by them. However, if the other party does not insist on production of those photographs or sketches by their makers, calling of the makers can be dispensed with.
- 3.2 Please refer to paragraph 5.2 below for requirements for filing and serving coloured copy of photographs.

4. Other documents

- 4.1 If a party wishes to rely on other documents, e.g. invoices, receipts, letters, etc., he has to consider calling the witness who has personal knowledge of the contents contained in those

documents to give evidence. In this connection, please refer to paragraph 1.1 above. Preferably such witness will give a witness statement explaining the contents and significance of those documents.

5. Copy documents to be filed with the Tribunal and served on the other party

- 5.1 Copy of all witness statements and other documents the parties wish to rely on should be filed with the Tribunal in accordance with the directions/orders given by the Tribunal. In addition, an identical copy of those documents filed with the Tribunal should also be served on the other party at the same time. Original of those documents should be kept by the filing party but they should be ready for inspection by the Tribunal or the other party at any hearings or trial.
- 5.2 Where a document is coloured and the coloured part carries significance, you should file with the Tribunal and serve on the other party coloured copy of that document. For example, if you wish to rely on photographs (normally coloured, not black and white), copy of those photographs should be given to the Tribunal and the other party. Photographs should be affixed on A4 size paper and numbered.

6. Pagination

- 6.1 As the case goes along, more and more witness statements and documents will be filed and served by the parties. It is a good practice to paginate them as a whole so that when you refer to the pagination of a particular document, the Adjudicator and the other party can easily identify the same document.

- 6.2 For the claimant's documents, the pagination should start with "C" so that the first page is "C1", the second page is "C2", etc. For the defendant's documents, it should start with "D" so that the first page is "D1", the second page is "D2", etc.

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