

民事訴訟中的各個階段

What are the stages in a civil action

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on the Civil Justice Reform and the various stages in a civil action.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) and the Practice Directions for full details.
- Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 “Civil Justice Reform: Transitional Arrangements” of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

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Civil Justice Reform

1. *Objectives*

The Civil Justice Reform commenced operation on 2 April 2009. The main objectives of the Reform are to increase cost-effectiveness, ensure fair and expeditious administration of justice and facilitate settlement of disputes between parties at an early stage. The Court will be taking a more pro-active role in case management in order to achieve those objectives. Parties should bear in mind that litigation should be the last resort for resolution of their disputes. The salient features of the Civil Justice Reform are set out below.

2. *Case management*

2.1 There are two important emphases of the Civil Justice Reform. First, there should be minimum delay in getting an action to trial. Second, unnecessary interlocutory applications should be eliminated.

2.2 Parties are expected to identify the real issues at the early stage of the action and the Court will give a tight but realistic timetable for the parties to prepare for the trial. The Court will also be much less tolerant of non-compliance of its orders. Instead, it will be more ready to make drastic orders to ensure compliance with its orders and make summary assessment of costs against the party who has not complied with its orders.

3. *Alternative disputes resolution (ADR)*

Before taking out legal proceedings, parties should consider alternative resolutions for their disputes such as mediation or other forms of negotiations to settle their disputes. Even after legal proceedings have been taken out, they are encouraged to settle their disputes at any stage of the proceedings. In actions involving unrepresented litigants, the Court may in appropriate cases direct the parties to attempt mediation. See Practice Direction 31 on Mediation for details.

4. *Statement of truth*

Under Order 41A of Rules of the High Court and Rules of the District Court, pleadings, witness statements and expert reports are required to be verified by a statement of truth, unless the Court has directed that the document needs not be verified by a statement of truth. For more details, please see Leaflet 6 “What are statements of truth” of this series.

5. *Order 13A admissions*

Under the new Order 13A of Rules of the High Court and Rules of the District Court, a defendant in a money claim may make admission to the whole or part of the liability in order to save costs and time. For more details, please see Leaflet 7 “How to shorten legal proceedings: Order 13A admissions in monetary claims” of this series.

6. *Sanctioned offers and sanctioned payments*

To facilitate settlement between parties, Order 22 of Rules of the High Court and Rules of the District Court now provides that parties to an action may make sanctioned offer and sanctioned payment with a view to compromising the action. As they may have serious

consequences on costs and interests, litigants should pay careful attention to any sanctioned offer or sanctioned payment made by the other party and should consider seeking legal advice on such offer or payment. Please note that our staff in the Resource Centre for Unrepresented Litigants cannot give you any legal advice. For more details, please see Leaflet 8 “How to shorten legal proceedings: Sanctioned offers and sanctioned payments” of this series.

7. *Questionnaire and case management conference*

Under the Civil Justice Reform, after the close of pleadings, parties are required to prepare, file and serve timetabling and listing questionnaires and attend case management summons hearing (if applicable) and case management conference (note that checklist review hearings will continue to be held in personal injury actions). For more details, see the section below on “Proceedings after pleadings”.

8. *Milestone date*

8.1 Under the Civil Justice Reform, certain dates in the course of the litigation are regarded as the “milestone dates”. They are dates that the Court has fixed for a case management conference, a pre-trial review, the trial or the period in which a trial is to take place.

8.2 The parties may by consent vary the timetable for the preparatory steps for the trial provided that such variations cannot affect the milestone dates. The parties may not vary the milestone dates by consent. They have to make an application to the Court for doing so. The Court will only vary the milestone dates in exceptional circumstances.

8.3 It is very important to attend the hearing or trial on the milestone dates. Failure to attend these hearings or trial can lead to very serious consequences. For more details, please see the section below on “Proceedings after pleadings”.

Proceedings commenced by a writ of summons

9. *Application*

9.1 This section explains the procedures in an action commenced by a writ of summons. Unless otherwise stated, the practice and procedure stated below is applicable in both the High Court and the District Court.

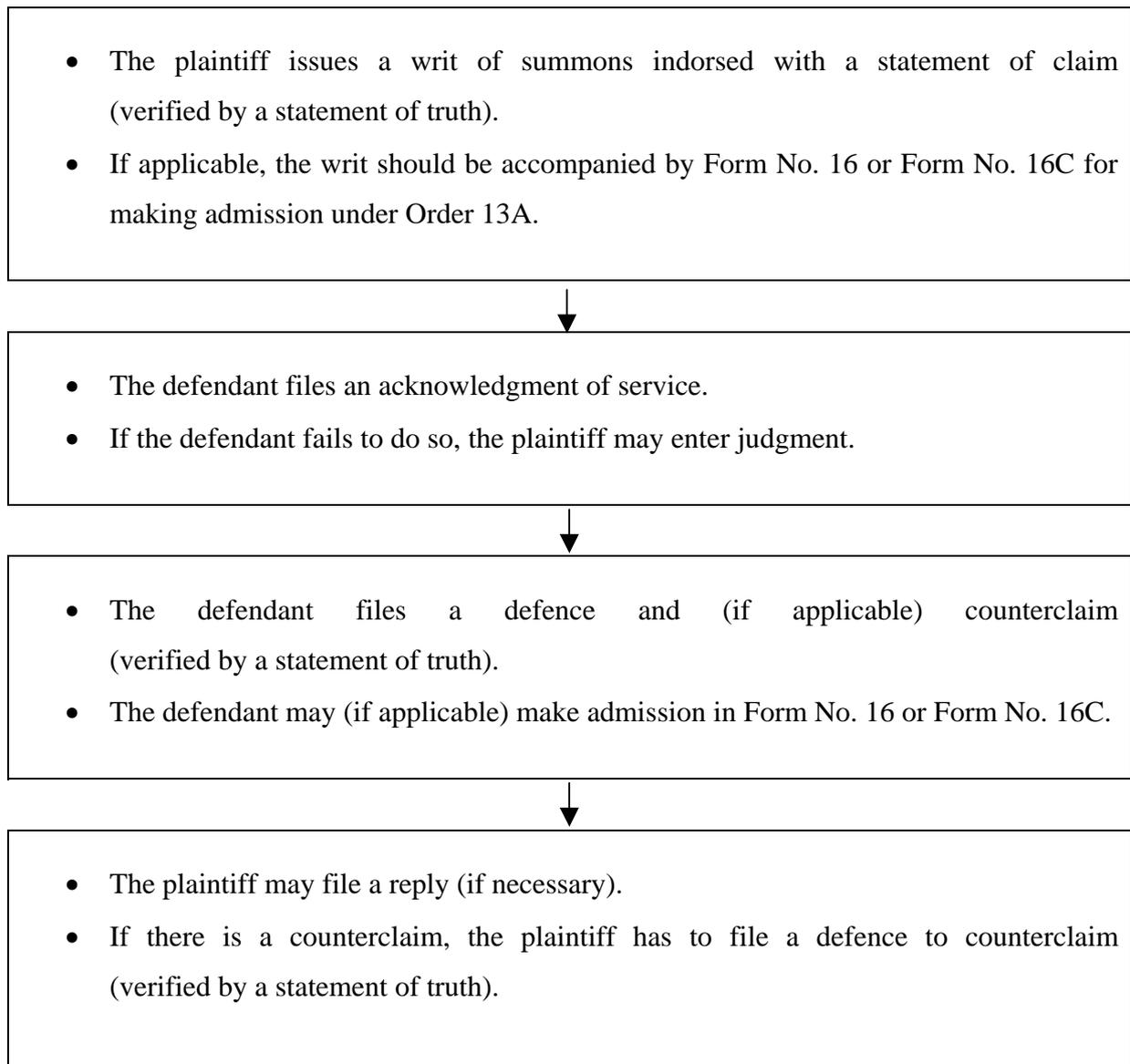
9.2 The writ of summons is most commonly used for commencing a civil litigation where there is a substantial dispute of the facts between the parties.

9.3 The writ of summons is a prescribed statutory form. Copies of it can be obtained from the Court Registry.

10. *An overview of an action begun by writ of summons*

The following chart outlines the main stages and proceedings in a civil action begun by way of writ of summons.

10.1 Pleading stage:



10.2 Close of pleading and preparation for trial stage:

- The parties have to fill in, file and serve timetabling questionnaire.
- If applicable, the parties may issue case management summons.
- Case management conference(s) held before Master/Judge.
- The parties have to make discovery and inspection of documents, exchange witness statements and (if applicable) expert reports.

10.3 Getting to trial:

- Pre-trial review hearing(s) held before Judge.
- Setting down the action for trial.
- The trial.

10.4 After the trial:

- Enforcement of judgment.
- Taxation of costs.

11. *The pleading stage*

11.1 The usual procedures at the pleading stage are as follows:

- The plaintiff commences the action by issuing and filing with the Court Registry a writ of summons. The writ of summons should be endorsed with a statement of claim. The plaintiff has to verify the statement of claim by making a statement of truth.
- The plaintiff has to serve the writ and statement of claim on all the defendants.
- With the commencement of the Civil Justice Reform, if the plaintiff's claim is only for payment of money, he should also serve the defendant with a statutory form (Form No. 16 or Form No. 16C) for the defendant to make admission under Order 13A of the Rules of the High Court (or the Rules of the District Court as the case may be).
- Within 14 days after being served with the writ, the defendant files an acknowledgement of service at the Court Registry, stating in it whether he intends to contest the claim. The Court will send a copy of it to the plaintiff.
- If the defendant is served with a Form No. 16 or Form No. 16C and he admits the monetary claim or any part of it and/or having admitted the claim, wishes to pay by instalments, he should complete the form, file it with the Court and also serve a copy on the plaintiff.
- If the defendant contests the claim, he should file and serve on the plaintiff a defence and (if applicable) a counterclaim. The defence and counterclaim have to be verified by a statement of truth. This has to be done before the expiration of 28 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later.
- If a defence is served, the plaintiff may file and serve a reply. If there is a counterclaim, the plaintiff has to file and serve a defence to counterclaim. The reply and defence to counterclaim has to be verified by a statement of truth and must be filed and served within 28 days after being served with the defence and counterclaim.

- At this stage, the pleadings are said to be closed.
- If a defendant does not file the acknowledgement of service and/or fails to serve a defence on the plaintiff within the prescribed time, the plaintiff can apply to the Court to enter judgment on his claim. If judgment is granted, a full trial is not required.
- If the plaintiff has an unliquidated claim (i.e. the amount of award has to be assessed by the Court, for example, for loss of profits or damages for injury to person or property), judgment on liability will be entered if the defendant fails to file the acknowledgement of service or defence. But the plaintiff will have to attend Court so that a Master or a Judge will assess the amount that he is entitled to.

11.2 **You should also note**

- The writ of summons may be amended once without first obtaining the Court's permission. The plaintiff and the defendant may also amend his own pleadings once before close of pleadings without first obtaining the Court's permission.
- Further amendments require permission from the Court. For amendment made without Court's permission, the other party shall have 14 days after service of the amendment to amend his own pleading and to file and serve the amended pleading.
- For amendment made with Court's permission, the Court will specify the time within which the other party may amend his pleading and file and serve the amended pleading.

- All amended pleadings have to be verified by a statement of truth.
- If the defendant intends to defend the plaintiff's claim, he must plead to every allegation as pleaded in the statement of claim specifically. Any allegations not specifically denied by the defendant in the defence are deemed to be admitted by the defendant. The defendant should set out his own case if he denies the plaintiff's allegation. If he denies the plaintiff's allegation without setting out his own case, then the plaintiff only has to prove his case at the trial. The defendant is not permitted to put his case at the trial. The same applies to the plaintiff pleading to the counterclaim of the defendant.
- The allegations in the defence are deemed to be denied by the plaintiff even if the plaintiff does not file a reply.
- For guidance on preparing statement of claim, defence and reply, see the Explanatory Notes in the Sample Court Forms file available at the Resource Centre for Unrepresented Litigants or the Judiciary website.
- For details on making admissions in monetary claims under Order 13, see Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.
- For details on verifying a pleading by a statement of truth, see Leaflet 6 "What are statements of truth" of this series.

12. *Preparation for trial stage*

The usual procedures after close of pleadings are as follows:

- The parties have to exchange list of documents and make inspection of the documents. They also have to prepare and exchange witness statements and (if applicable) expert reports. For details, see Leaflet 4 "How to prepare for a hearing or trial" of this series.
- Upon close of pleadings, the parties are required to complete a timetabling questionnaire and file and serve it on all the other parties in the action.

- If one of the parties is a litigant in person, the plaintiff has to take out a case management summons to seek case management directions from the Court. Sample case Management summons may be obtained from the Resource Centre for Unrepresented Litigants or downloaded from the Judiciary website.
- A Master may give case management directions by making an order *nisi* without a hearing, but the parties may apply to vary the directions within 14 days after the order is made. Alternatively, the Master may call for a hearing to be attended by all the parties before giving case management directions.
- In the order *nisi* or at the hearing of the case management summons, the Court will give directions for the preparation for the trial. The Court will also fix the date for the case management conference (CMC).
- Before attending the CMC, the parties have to file a listing questionnaire. You should read Practice Direction 5.2 on Case Management for details. If the parties have completed all the preparations for trial, the Court may give leave at the CMC to set the action down for trial. If parties are not ready for trial, the Court may fix another CMC.
- Unless the Court directs otherwise, there will be a pre-trial review (PTR) before the trial Judge at least 8 weeks before the trial begins.
- All parties have to attend the CMC and the PTR, which are milestone dates. If the plaintiff does not attend the CMC or the PTR, the Court will strike out the plaintiff's claim provisionally. If the defendant does not attend the CMC or the PTR, the Court will strike out his counterclaim provisionally. The plaintiff or the defendant may apply to restore the claim or the counterclaim within 3 months after it is struck out. The Court will only restore it upon being satisfied that there is good reason for the party's absence. If there is no application to restore the proceedings within 3 months from the hearing of the CMC or the PTR, the claim or the counterclaim stands dismissed accordingly.

13. *Getting to trial stage*

13.1 When the case is ready for trial, the Court will give permission for the action to be set down for trial. The plaintiff will file an Application to Set Down an Action for Trial. The plaintiff has to give notice of setting down to all the parties in the action.

13.2 The action will be placed in either the Running List or the Fixture List. For actions in the Running List, the Court will not specify the trial dates in advance. The action will be called upon for trial a few days before the trial date and the parties will be given notice of it. For actions in the Fixture List, they will be listed for trial on specified dates.

13.3 For cases listed for trial on the Fixture List, the PTR will be held no later than 8 weeks before the trial begins. At the PTR, the trial Judge may consider the action and the issues and evidence involved and give further directions for the conduct of the trial. There may be more than one PTR if the Judge considers it necessary.

13.4 For details on how to prepare for a trial, see Leaflet 4 “How to prepare for a hearing or trial” of this series.

14. *Trial*

At the trial, the Court will hear the evidence and submissions adduced by the parties. At the conclusion of the trial, the Court may give judgment immediately or hand down the judgment in writing at a later date.

15. *After the trial*

The usual procedures after the Court has given the judgment are:

- Enforcement of the judgment by the successful party.
- Taxation of the costs of the action of the party ordered by the Court to be entitled to costs.

Proceedings commenced by originating summons

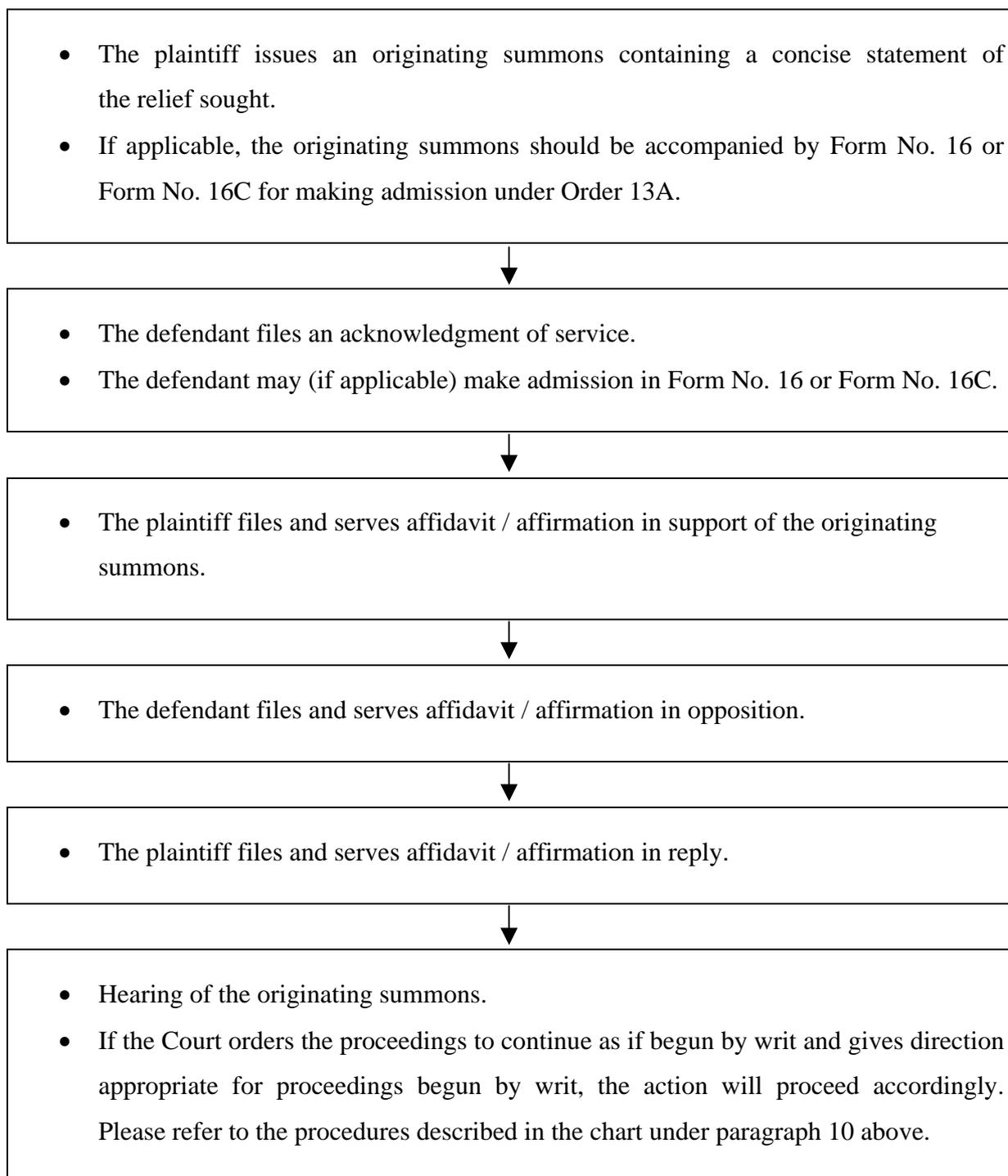
16. *Application*

16.1 This section explains the procedures in an action commenced by originating summons. Unless otherwise stated, the practice and procedures are applicable in both the High Court and the District Court.

16.2 Originating summons is usually suitable for cases where there is only little or no dispute of fact and the parties only raise issues of law for the Court's determination. In case the Court finds that there is a substantial dispute of facts, the Court may order that the proceedings should proceed as if they were by way of writ. The Court may then give directions appropriate to the proceedings of a writ of summons. The procedures applicable to an action begun by writ will also apply.

17. *An overview of an action commenced by originating summons*

The following chart outlines the main proceedings in a civil action begun by way of originating summons.



18. *The originating summons*

18.1 The originating summons is a prescribed form. Copies of it can be obtained from the Court Registry.

18.2 The plaintiff should set out a concise statement of the claim and the relief or remedy he seeks in the originating summons.

18.3 If the plaintiff's only claim is for payment of money, he should serve the originating summons together with Form No. 16 or Form No. 16C for making admission to the whole or part of the claim.

18.4 The procedures of filing and serving an originating summons are similar to those for filing and serving a writ of summons.

18.5 Within 14 days after being served with the originating summons, the defendant has to file and serve an acknowledgement of service, indicating whether he wishes to contest the action.

18.6 If the defendant is served with Form No. 16 or Form No. 16C and he admits the whole or any part of the claim and/or having admitted the claim, wishes to pay by instalments, he should complete the form, file it with the Court and also serve a copy on the plaintiff. See Leaflet entitled 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

18.7 The defendant may make a counterclaim in the same proceedings instead of bringing a separate action.

19. *Affidavits / affirmations*

19.1 Within 14 days after the service of the acknowledgment of service, the plaintiff has to file and serve the affidavit (or affirmation) in support of the originating summons.

19.2 Within 28 days after receipt of the plaintiff's affidavit or affirmation in support of the originating summons, the defendant may file and serve the affidavit / affirmation in opposition if he is disputing the plaintiff's application.

19.3 Within 14 days after the defendant files the opposing affidavit / affirmation, the plaintiff may file further affidavit / affirmation to reply to the defendant's affidavit / affirmation. No further evidence may be filed unless the Court gives permission to do so.

19.4 For the preparation of affidavit / affirmation, see Leaflet 4 "How to prepare for a hearing or trial" of this series.

20. *At the hearing*

20.1 Unless the Court makes an order that the persons who had made affidavits / affirmations have to attend Court for cross-examinations, the deponents are not required to attend Court at the hearing. If the Court has made such an order, they must attend Court to be cross-examined. If they fail to attend, their affidavits / affirmations may not be admitted as evidence at the hearing.

20.2 At the hearing, if no oral evidence is to be adduced, the plaintiff will make submission first to open his case. This will be followed by the defendant's submission in opposition. The plaintiff can make a final submission in reply.

20.3 If witnesses are to be called, the plaintiff's witnesses will testify after the plaintiff makes the opening submission. The defendant's witnesses may give evidence after the defendant has opened his defence. Afterwards, the defendant will make the closing submission, followed by the plaintiff's closing submission.

20.4 After hearing the evidence and submissions, the Court may give judgment immediately or hand down the written judgment at a later date.

20.5 If a defendant does not file an acknowledgement of service within time or if he states in the acknowledgement of service that the proceedings are not contested, the plaintiff still has to fix a date to have the matter heard. The Court will give relief to the plaintiff if it is satisfied that the plaintiff is entitled to such relief.

21. *After the hearing*

The usual procedures after the Court has given the judgment are:

- Enforcement of the judgment by the successful party.
- Taxation of the costs of the action of the party ordered by the Court to be entitled to costs.

Judiciary
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