HANDBOOK FOR

CIVIL LITIGANTS IN PERSON:

SUPREME COURT OF BERMUDA

The Judiciary acknowledges with gratitude the contributions made to this report by the individuals and organizations who gave us the benefit of their views, expertise, and experience.

Handbook for Civil Litigants in Person

The information in this booklet does not constitute legal advice.




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Preface

A **litigant in person** is a person, company or organisation that is not represented in court proceedings by a solicitor or barrister. Subject to the law on vexatious litigants, any person of full age and capacity is entitled to be heard by any Court or tribunal. Access to justice is a right, not a privilege.

While, in the vast majority of cases, people exercise their right of access to justice through the services of a lawyer, over the last decade, there have been an ever increasing number of litigants in person appearing in the Bermuda Courts. There are a number of reasons why individuals choose to represent themselves including: not being able to afford legal representation; mistrust of lawyers; lack of public funding for legal aid; not qualifying for legal aid either financially or because of the nature of the case; or the belief that they are best qualified at putting their case to the Court.

The Chief Justice of the Supreme Court of Bermuda has been mindful of this increase and the challenges presented to litigants in person as they navigate the judicial system in Bermuda. Civil litigation can be a rigorous process and navigating the technicalities of the law and rules of procedure is not an easy task. To that end, in the Bermuda Judicial 2016 Annual Report, the Chief Justice set as a goal for the Civil and Commercial division, the development and publication of this Litigant in Person Guide. [1]

This Handbook is intended to serve as a guide for civil litigants in person in the Supreme Court and to help to fill a void which members of the Court staff have been fulfilling on an *ad hoc* basis.[2]

It is hoped that this Handbook will play an important role in assisting litigants in person, whether pursuing claims or defending claims, as well as maintaining the judiciary's commitment to access to justice as a right available to all.

[1] The idea for this Handbook was inspired by Peter Miller, Assistant Registrar of the Supreme Court (2004-2016) and Senior Legal Aid Counsel (1996-2003), an adopted Bermudian native of Bangor.

[2] The need for a specialised handbook for litigants in the family and matrimonial jurisdiction has been identified and a similar guide is being developed for publication later in 2017.

Introduction

Ideally all disputes would be resolved without court intervention, but when that is not possible, the Courts must ensure that its processes and procedures can be understood by all litigants, whether represented or not.

It is not possible in such a basic guide to cover all of the procedural rules, and what follows is intended to provide a general overview of the civil litigation process. As it is important to understand the litigation process as a whole, this Handbook has been organised to review the process from beginning (i.e. considerations before commencing proceedings) to the end (i.e. the final hearing). The chapters are intended to give advice on the central areas of preparation and presentation, and are written in a summary fashion with consideration to the fact that litigants in person vary a great deal in relation to their abilities.

This Handbook is not a legal textbook, and it does not have the force or the authority of law. It does not provide a comprehensive explanation of law and procedure, and is not a substitute for proper legal advice being obtained. The information in this booklet does not constitute legal advice for any individual case.

Wherever possible this Handbook will refer to the source of the procedural rules so that they can be reviewed in more depth. The most common sources of the procedural rules and guidance are:

- **Rules of Supreme Court 1985**

All civil proceedings are governed by the Rules of the Supreme Court 1985 ("the Rules"). The Rules, and other legislation, can be found at https://www.bermudalaws.bm

As a starting point, the Court's approach to each case is guided by the 'overriding objective' which is set out Order 1A (1) of the Rules, which states that the Rules shall have the overriding objective of ensuring that cases are dealt with justly. This Rule goes on to say that dealing with cases justly includes:

(a) Ensuring that the parties are on an equal footing;
(b) Saving expense;
(c) Dealing with a case in the ways which are proportionate to –

i. the amount of money involved;
ii. the importance of the case;
iii. the complexity of the issues;
iv. the financial position of each party.

(d) Ensuring that it is dealt with efficiently, promptly and fairly;
(e) Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Order 1A (4) of the Rules goes further by stating that the Court must actively manage the cases before it which includes:

(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
(b) identifying the issues at an early stage;
(c) deciding promptly which issues need full investigation and trial;
(d) accordingly disposing summarily of the others;
(e) deciding the order in which issues are to be resolved;
(f) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
(g) helping the parties to settle the whole or part of the case;
(h) fixing timetables or otherwise controlling the progress of the case;
(i) considering whether the likely benefits of taking a particular step justify the cost of taking it;
(j) dealing with as many aspects of the case as it can on the same occasion;
(k) dealing with the case without the parties needing to attend at court;
(l) making use of technology; and
(m) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

Practice Directions

Practice Directions provide further guidance in relation to procedure and practice are issued by the Registrar and the Chief Justice. All Practice Directions can be found at https://www.gov.bm/supreme-court

Case Law

If you search the court website for "court judgments 2016" or "court judgments 2017", you will find published judgments of the Supreme Court and Court of Appeal.

Text Books

There are textbooks and guides that explain certain areas of the law, but generally speaking, they may be hard to understand without legal training. Student books may be more useful, but you should be careful using books that discuss legal principles that may not be applicable to Bermuda or that are out of date. Initial advice from a lawyer can be obtained if you are unsure of anything.

While some allowance will be made for the fact that a litigant in person is not a lawyer, they are expected to have a basic grasp of the relevant law and procedure. It is hoped that this Handbook will serve as a starting point for guidance and information for the litigant in person.

Overview of the Supreme Court: Civil and Commercial Division

Court System

- **The Judicial System of Bermuda** consists of the Magistrates' Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council is the final appellate court in London.

- The composition and constitution of the **Supreme Court** is defined by the Bermuda Constitution and its jurisdiction governed by the Supreme Court Act 1905, and various other laws.

- The **Supreme Court** is divided into criminal, civil, commercial, divorce and family and probate jurisdictions.

    - **Civil (general) matters**, where the amount in dispute exceeds $25,000;
    - **Commercial matters**, such as matters related to disputes concerning the activities of local and international companies and applications related to the restructuring and winding up of companies;
    - **Trust and Probate matters**, concerning the administration of trust or estate assets;
    - **Mental Health applications** appointing receivers to administer the assets of persons suffering from mental disability;
    - **Criminal matters** involving serious matters or indictable offences including trials and various pre-trial applications;
    - **Appeals** from Magistrates' Court and other statutory tribunals;
    - **Judicial Review applications** related to administrative decisions of Ministers and other public bodies;
    - **Divorce Petitions and ancillary applications** under the Matrimonial Causes Act as well as applications under the Minors Act and Children Act; and

- The **Supreme Court** is also responsible for:

    - Granting **Probate and Letters of Administration** for the estates of deceased persons;
    - **Bankruptcy** applications;
    - **Criminal Injuries Compensation Board** applications;
    - **Proceeds of Crime Act** applications;
    - Granting **Notarial Certificates** and **Registered Associates** certificates;
    - Issuance of **Subpoenas** and **Writs of Possession**; and
    - Processing **Foreign Service** documents.

Judicial Officers

- **The Judiciary** is established by the Constitution as a separate and independent branch of government. Its task is to adjudicate charges of criminal conduct, resolve disputes, uphold the rights and freedoms of the individual and preserve the rule of law.

- **The Mandate of the Judiciary** is to carry out its task fairly, justly and expeditiously, and to abide by the requirement of the judicial oath "to do right by all manner of people, without fear or favour, affection or ill-will".

- Commercial Courts #1 and #2 continue to be located on the 2nd floor of the Government Administration Building. Supreme Court Judges should be addressed as "My Lord" or "My Lady".

- The **Registrar** is the administrative head of the Judiciary, and also has jurisdiction to hear various procedural applications. The Registrar should be addressed as "Madam Registrar" or "Mister Registrar".

Registry of the Supreme Court

Government Administration Building, 2nd Floor- Civil & Commercial and Court of Appeal Registry

- **The Supreme Court Registry** is responsible for the administration of the Court of Appeal and the Supreme Court. All court documents should be filed at the designated registry location.

- As of November 2016, there are two locations for the Registries of the Supreme Court and the Court of Appeal: **Dame Lois Browne Evans Building, 3rd Floor** and **Government Administration Building, 2nd Floor.**

- **The Mandate of the Administration Section of the Judiciary** is to provide the services and support necessary to enable to Judiciary to achieve its mandate and to embody and reflect the spirit of the judicial oath when interacting with members of the public who come into contact with the Courts.

- The **Registry Staff** are responsible for:

    - Processing all court documents;
    - Receiving and processing applications for the grant of Probate or the Administration of intestate estates;
    - Providing support to the Justices of Appeal, Supreme Court Judges and the Registrar;

- Maintaining the resources required for the effective functioning of the Courts;
- Listing cases for hearing;
- Recording all events which take place during the course of a case;
- Maintaining the secure custody and safety of all court records;
- Making relevant information available for court users; and
- Collecting and accounting for all fees and fines received by the Courts.

- **Contact Details for the Registry**

Opening hours are daily from 8.45 a.m. to 4.30 p.m.

Address: 2nd Floor, Government Administration Building, 30 Parliament Street, Hamilton HM12

Telephone: (441) 292-1350

Website: www.gov.bm/supreme-court **Email**: supremecourt@gov.bm.

As a general rule, of course, all correspondence should be address to the Registrar or Assistant Registrar and copied to the opposing party. Correspondence should not be sent directly to the Judges or any other court staff.

If you send any correspondence to the Registry about your case, such as an adjournment, you must send a copy to the other side first and seek their views about it. It is important that the Registrar knows that the other party is informed about your letter and, if possible, that they know what the other party thinks about things you are proposing.

An exception is where a party is seeking relief (such as an order preventing a party from disposing of their assets) which would be defeated by warning the other party of the application. (Practice Direction No 25 of 2016 and Practice Direction No 6 of 2011)

Chapter One:
What are the alternatives to going to court?

Before commencing an action in court, you should consider whether there are other routes that you might pursue in order to achieve the desired result. Issuing proceedings in court should be considered as a last resort and the Court expects that people involved in court proceedings have made efforts to resolve matters before coming to court. These efforts might include:

i. Informal discussions

As a first step, you should try to speak to the person or the representative of the company about the dispute. It may be possible to resolve some, if not all, issues just simply by having a conversation. If you are unhappy with a service or work being carried out, you may wish to give the service provider a reasonable chance to address your issues.

ii. Letter before action

If these conversations fail, provided the time for commencing your claim is not about to expire, you may consider setting out your position in writing to the person or company. This may be helpful when dealing with a company's customer complaint procedure. Even if they do not agree with your position, their response may assist you to determine what further steps you wish to take. If you do choose to start court proceedings, you may eventually give this letter to the Judge in order to show the efforts you made to resolve the issues before coming to court.

iii. Regulatory and Investigatory Bodies

There are different regulatory bodies and investigative bodies that could deal with your complaint or issues more appropriately. For example, if your issue involves the sale of defective goods, you may benefit from consulting the Department of Consumer Affairs. If you feel you have a cause of action arising from unfair employment practices, you may well find it beneficial to speak to the Department of Workforce Development. The Human Rights Commission, the Police Complaints Authority and the Bermuda Bar Association are also bodies that may assist depending on the nature of your complaint. If you have a concern about how you have been treated by a Government Department, you may be able to obtain help from the Ombudsman's Office.

iv. Alternative Dispute Resolution

Alternative Dispute Resolution ("ADR") includes options such as negotiation, arbitration and mediation. (Collaborative law is another non-contentious way of resolving disputes in divorce matters, and further information can be found at http://www.cla.bm/)

Mediation is a process where parties are brought together to engage in discussions with the aim of finding a workable agreement between the parties. The process is overseen by a mediator who is neutral and who focusses the parties on problem solving and developing options.

These options are often less expensive than legal proceedings and can be swifter with a range of solutions which are not open to a Judge. However, ADR is only likely to work where both sides agree to pursue it. If you think ADR may be useful in your case, ask the Court staff to give you a list of contact addresses.

Chapter Two:
Do you have to be a litigant in person?

i. Legal Aid

The Legal Aid Office of Bermuda ensures legal representation to anyone who qualifies for a Legal Aid Certificate under the Legal Aid Act 1980. To apply, you need to complete the application form found at https://www.gov.bm/online-services/apply-legal-aid and bring it to the Legal Aid Office located at 20 Victoria Street, Hamilton HM11. You can also reach the office by telephone at 297-7617.

ii. Legal Advice Clinic

If you cannot afford a lawyer and do not qualify for legal aid, you may be able to get free advice from the legal clinic staffed by qualified lawyers at The Centre on Angle Street. The clinic is organised by the Bermuda Bar Association, and takes place on Thursday evenings (between 5.30 and 7.00 pm).

iii. Pro Bono Lawyers

Some lawyers undertake legal work for free or at reduced rates. The Bermuda Bar Association might also be able to put you in touch with a lawyer willing to give you some limited free (pro bono) advice. You can reach their office by telephone at 295-4540 or by email at bdabar@logic.bm.

iv. McKenzie Friends

There are lay people who offer legal advice or services to litigants in person either for a fee or on a pro bono basis. However, save for limited circumstances, only a barrister or solicitor can speak on your behalf in court. A McKenzie friend is someone known to the litigant in person who would provide help and support during the hearing. For example, they could assist with documents and remind the litigant in person quietly of questions to ask the various witnesses or points to make in closing. Currently, there is no regulation of McKenzie friends and caution should be used when taking advice from such persons.

Chapter Three: Getting Started

What relief can I seek from the court?

When considering your claim before the court, you should consider the Court's power to order certain relief. There is little point in going to Court if you cannot obtain the result that you seek. The main forms of relief available are:

- **Damages** – An order for money to be paid compensating the person bringing the case to court.

- **Specific performance** – An order requiring the opposing party to carry out contractual promises or obligations.

- **Injunction** – An order requiring a person to take a certain step (a mandatory injunction) or preventing him or her from doing something (a prohibitory injunction)

- **Declaration** – an order that states that an existing law is void or discriminatory, for example in a declaration that a marriage was void or that a Government Minister did not have the power to make a certain decision.

- **Statutory remedies** – some pieces of legislation (e.g. the Children Act 1998) provide for specialist orders (such as contact, residence or non-molestation orders).

You should state on your commencement document what remedies you are seeking.

Are there any time limits to getting started?

The law provides time limits for starting court proceedings. There are general rules in the Limitation Act 1984, but there are other laws that set out time limits as well. The law related to limitation periods can be complicated and only the very basic rules are set out below:

- For personal injuries or medical negligence, the case must be started within six years of the injury or the date when the plaintiff knew or should have known of his or her injury.

- For defamation, libel or slander, the case must be started within six years.

- For breach of contract the case must be started within six years.

- For judicial review, the case must be brought promptly and in any event not later than six months.

- Statutory remedies (appeals to and from the Supreme Court) may have shorter time limits and will be set out in the applicable Act.

- For minors and persons under a disability, there is often an extension of time to bring a case for six years after a minor has reached 18 years old or any other reason they are under a disability ceases to apply.

If a person wishes to bring a claim which is outside the limitation period, an application must be made to the Court by filing a summons. In deciding whether to extend time in cases where an extension can be granted, the Court will consider such matters as:

- The length of delay;

- The reason for delay;

- The prejudice if any to the other parties;

- The degree, if any, to which the other side has assisted or hindered the person taking the case in identifying the relevant facts;

- The duration of any disability affecting the person taking the case after the cause of action accrued;

- Whether the person taking the case has acted promptly and reasonably; and

- The extent to which medical or other expert advice has been taken.

Where do I start the proceedings?

- **Supreme Court vs Magistrates' Court**

The Magistrates' Court deals with civil cases up to $25,000, certain disputes between landlord and tenant (for example eviction and rent increases matters) and certain family law disputes (for example child maintenance and welfare matters).

Matters involving cases over $25,000 and cases relating to personal bankruptcy; mortgages; partition of jointly owned property; trusts, wills and estates; as well as, the management and winding-up of companies can only be dealt with in the Supreme Court. Mental Health applications appointing receivers to administer the assets of persons suffering from mental disability are also heard by a Judge of the Supreme Court in its civil jurisdiction.

The Supreme Court also hears appeals from Magistrates' Court and other statutory tribunals, and Judicial Review applications related to administrative decisions of Ministers and other public bodies.

- **Court of Appeal**

The Court of Appeal hears appeals from all divisions of the Supreme Court. It only sits three times a year, in March, June and November. There are separate rules and procedures for the Court of Appeal.

- **Tribunals**

Specialist Tribunals exist to deal with cases such as employment disputes, human rights complaints, immigration appeals and planning appeals. You should consider whether your claim should be made before such a Tribunal in the first instance.

Who are the parties?

In civil cases, the person who starts the proceedings the case is usually called the plaintiff and the other side is called the defendant. In judicial review cases, the person bringing the proceedings is called the applicant and the opposing party is the respondent. With appeal proceedings, the parties are the appellant (person starting the appeal) and respondent (person opposing the appeal).

If you are starting proceedings, you must refer to everyone who should be a party to your case in the court documents, and serve documents on them all. If more than one defendant or respondent is liable they should all be named in the court documents. With judicial review proceedings, a notice party is someone so closely affected by the decision that they have a right to be given notice of the application and an opportunity to be heard.

If you find out part-way through preparing for the hearing that someone else should be added to the case, you can usually apply to the court for this to be done. Applying to the court to join a party means filing a summons with the court and serving the summons on the person you wish to become part of the case.

If you are a defendant or respondent, and you believe that there are other responsible parties, you may make an application to add a party to the proceedings, and that party will be called a third party (or fourth party as the case may be).

What costs are involved?

A filing fee must be paid for each document filed with the Registry. Filing fees are paid by way of revenue stamps which can be purchased from the Tax Commissioner on the ground floor of the Government Administration Building. A list of fees can be requested from the Registry or found on the Court website.

You should also consider that once proceedings are finished, the normal rule is that the person who loses pays the costs of the successful parties. This is the case whether you are self-represented or not. This will normally mean that you have to pay most of the professional charges of the lawyers and expert witnesses together with their expenses. A litigant in person can also ask the Judge for their costs if they are successful and reference should be made to the decision which sets out when and how this happens. (Leyoni Junos and Minister of Tourism & Transport Civ 2008, No 259)

It is also worth noting that, even if a party has been successful, the judge may order costs against them if they have behaved unreasonably during the case. (See Chapter 8-Costs)

What documents do I need to prepare?

Civil proceedings may be begun by writ, originating summons, originating motion or petition. Orders 5 to Order 9 of the Rules explain which document is appropriate in each type of case. Judicial review cases are begun using a special procedure set out in Order 53 of the Rules. For bankruptcy, you should consult the Bankruptcy Rules 1990 and for winding-up companies, the Companies (Winding Up) Rules 1982.

Templates for each type of document are found at the back of the Rules. Court staff can also provide you with templates and guidance in relation to starting your proceedings. If you have begun a case using the wrong form, in some circumstances it can be changed to the right form by making an application to the court.

Once you have completed the documentation, it gets filed with the Registry with the applicable fees and then served on all the other parties.

How do I give the documents to the other party?

The writ, or other originating document (as well as pleadings, affidavits and other documents in the case) must be served on all the other parties by way of service. Service simply means that the documents are sent to the parties in a way required by the Rules so that it can be proved that the person to whom the document is addressed actually received it. Service is proved by an affidavit made by the person who served the documents. The requirements for most cases are set out in Orders 10 and 11 of the Rules.

As a general rule, the documents that start a case against a natural person must be served on them personally and on a company at its registered office. Personal service is carried out by handing the document to the person, at their home or some other place where they are known to be. The court will not ordinarily serve documents on your behalf. You will be responsible for serving documents personally unless you engage a professional process server or use the services of the court bailiffs.

If you do not know how to get in touch with the person to be served with the document, and cannot find out by making reasonable inquiries, you can apply to the court for an order for substituted service or for service to be deemed good where it is impossible to serve the documents. You will need to provide evidence in an affidavit of the steps you have taken to find the person's address.

The main method of service after a case is underway is by service on the other party or their attorney and the address they have supplied as their service address. Service by fax or e-mail is not permitted for any type of documents unless the parties agree or the court directs that electronic service is permitted.

What happens if I am served with documents?

If you are served with a writ, originating summons, originating motion or petition and you are named as a party, then you must decide how to respond. It is very important not to ignore service of legal documentation.

In the case of a writ or if required by an originating summons, if a defendant wishes to defend the proceedings, he or she must at least file a memorandum of appearance within 14 days of the service of the writ using Form No. 14 under the Rules. In the absence of an appearance, the plaintiff can apply for a judgment against the defendant without going to a hearing. Such a judgment is known as a 'default judgment'. You can apply to set aside a default judgment but the application must be made promptly and by application to the Judge.

If you are served with a document that requires your attendance in court, then you should determine where the proceedings are taking place and make the necessary arrangements to attend.

Chapter Four: Pleadings

What are pleadings?

Once the document commencing the proceedings has been served, the parties in most cases begun by a writ will go on to provide pleadings, which are a series of documents setting out the key facts and legal principles. Pleadings allow the parties to be informed in advance of the case they have to meet. They also inform the Judge about what will be argued at the hearing.

What is the order of pleadings?

Once proceedings have started, there are time limits within which procedural steps must be taken. The order and timing of pleadings is set out in Order 18 of the Rules.

- **Statement of Claim**

  The Statement of Claim is the legal document setting out the details of the claim in a case begun by a writ. It may be served with the writ, but must be served within 14 days after the memorandum of appearance is filed.

  The Statement of Claim should set out every remedy sought e.g. financial compensation (damages), an order from the court to do something or stop something from happening (injunction), an order setting out the rights of the parties (declaration) etc. and set out the facts which the court will be asked to take into account in assessing damages such as any loss of earnings (special damage) and any factors relevant to general damages e.g. inability to play sport etc.

- **Statement of Defence**

  The defence must be served within 14 days of the Statement of Claim being served (or within 14 days of the time when it should have been served) setting out the defence case, dealing with each allegation in the Statement of Claim.

  A set-off or counterclaim should be lodged with the defence if such a claim is to be made.

What is required with pleadings?

It is very important to ensure that the documents you send to the court are accurate and contain all relevant information. If you fail to plead a matter in your documents, you may not be able to use it at the hearing unless the Judge grants you leave to do so.

Pleadings must be as concise and clear as possible and avoid irrelevant detail and repetition. They should use ordinary language. You should separate your points into short numbered paragraphs.

What happens if I miss a deadline?

Although the court often has a power to extend or shorten the time within which the steps are to be taken, you must make an application for an extension of time if the other party will not agree. Litigants who do not meet the timelines set by the Rules or in court orders may find that judgment is ordered against them or they may be ordered to pay any costs caused by their delay.

What happens when the pleadings are finished?

The close of this process (the 'close of pleadings') is 14 days after the last pleading is filed.

Chapter Five: Case Management

After the close of pleadings, the parties must turn their minds to preparing the case to proceed to the actual hearing before the Judge. There are several procedural requirements that must be followed, and they are summarised below. However, Order 24, Order 25, Order 34 and Order 38 of Rules should be carefully read and considered in detail at this stage of the proceedings.

What is a 'Summons for Directions'?

Within one month after the close of pleadings, the plaintiff must file a summons for directions. (If the plaintiff does not take this step, the defendant can file a summons for directions instead.) The Registry will issue a date for the parties to appear before a Judge so that the Judge can consider what steps may need to be taken in order to prepare the case for the hearing.

These appearances are called "directions hearings" and typically take place on a Thursday morning. The parties appear in the Judge's chambers and the hearing should only take 10 to 15 minutes. At the conclusion of the appearance, the Judge will make an order for directions which sets out the next steps and the timelines for taking those steps.

What directions or steps need to be considered?

Directions may cover any step in the proceedings including service issues, disclosure issues, providing further information, serving witness statements, instructing experts, preparing bundles of documents for trial and other trial preparation issues.

i. Exchange of Documents (Order 24 of the Rules)

The disclosure and inspection of documents is a crucial part of the litigation process. The process is known as discovery, and is dealt with in Order 24 of the Rules.

The discovery process is designed to ensure that all relevant documents are seen by the Judge at the hearing, and to ensure that all parties are able to take into account these documents when assessing and preparing their case. Every litigant owes a duty to give disclosure and this duty must be taken very seriously. In fact, the duty continues until the conclusion of the hearing so if a document is found during the preparation or during the

hearing, that document must be disclosed. Failure to comply with the obligations set out in Order 24 can lead to cost sanctions, and even your case being struck out.

Discovery of Documents

The process actually starts within 14 days after the close of pleadings, but is often the subject of a direction order or preliminary hearings before the main trial. The first step is to prepare and exchange a list of documents which lists all documents that are related to any matter in question at the hearing and that are in a party's possession, custody or power.

- **What is included as a "document**"?
- All relevant documents and materials whether adverse or favourable to the party.
- It includes words, numbers, images or other information stored in any medium such as a USB stick, microfiche, x-ray or DVD etc.
- **What does the list of documents look like**?
  - Form 26 of the Rules sets out the template for the list of documents and Form 27 sets out the affidavit verifying the list of documents. The list of documents has two schedules.
  - The first schedule has two parts: 1) a list of those documents the party is willing to disclose and 2) those which the party objects to disclosing (If you object to producing a document you must specify the ground of privilege in that schedule).
  - The second schedule should list documents which have been in the party's possession, control or power in the past, but as at the date of the list of documents are no longer in their possession, control or power.

Inspection of Documents

Once the lists of documents are exchanged, each party must allow the other party to inspect the documents referred to in the list (save for those that they object to producing), and they must allow copies to be taken. The Court may permit or the parties may agree to exchange documents electronically. If the documents in the first schedule of your list of documents are not too numerous, you should provide copies of them to the other parties as a courtesy.

If a party refuses to provide their list of documents, refuses to allow inspect or improperly objects to listing or producing a document, then the matter should be raised with the Judge either at first appearance on the summons for directions or by way of separate Summons seeking relief.

ii. Witnesses

When determining who you might call as a witness, you should consider the following:

- Witnesses can normally only give evidence of what they saw, heard or experienced or the inferences they drew from their perceptions.

- The only witnesses who can give evidence of their opinion are expert witnesses. For example, only a doctor can give evidence of his opinion that a certain course of treatment for a medical condition was not what a normally competent doctor would have provided. A structural engineer could give evidence as to why a bridge gave way. There are separate rules in place regarding expert witnesses.

- If you need to ask potential witnesses to give evidence, do so well in advance. If a witness is unwilling to attend, you can apply to the court for a document requiring them to attend (a subpoena) court to give evidence under Order 38, rules 7, 14 to 18 of the Rules.

- If you need a witness to bring a specific document to Court, you can apply for a special subpoena for them to do so, and you need to make the application well in advance of the hearing.

Historically, witnesses would attend a hearing and provide their evidence orally before the Judge and the parties. However, keeping in mind the overriding objective, the Rules now provide for the exchange of written witness statements prior to the hearing. This allows the parties to know the case against them in advance of the hearing, and saves time at the hearing as the witness statement will form the evidence.

Witness statements 'tell the story' by covering the facts that the witness is able to speak to in chronological order. As set out above, the statements can only contain fact, not opinion. They are normally typed and set out with numbered paragraphs. It is vital that the statement contains the truth and only the truth. If the maker of a witness statement makes a false statement, he or she is guilty of contempt of court.

Order 38, Rule 2A of the Rules sets out the procedure in relation to witness statements. The order for directions will set out the timeline for the preparation and exchange of witness statements, and as well, may deal with how many witnesses each party is permitted to call at the hearing.

Rule 4 of Order 38 sets out the requirements of witness statements and states as follows:

- Statements must include a statement that the contents of the statement are true to the best of the witness' knowledge and belief;
- Statements be dated and signed by the intended witness; and
- Must identify any documents referred to in the statement

iii. Evidence

The Judge will consider what evidence needs to be presented during the hearing, and if there are any issues with the evidence that the parties would like to use. These considerations may include:

i. Expert Witnesses Considerations

Expert evidence is opinion evidence and can only be given by someone with a high degree of skill, knowledge or experience in the relevant field. Common examples are: doctors, surveyors, engineers or valuers. Permission is required for all expert evidence and should be obtained by applying to the court well in advance of trial.

The Judge may limit the number of expert witnesses at the hearing. Wherever possible, the parties should try to agree a single expert jointly to express an opinion. Whether instructed by one party or both parties, an expert owes a duty to the court which overrides any duty he may owe to the party or parties instructing him.

An expert witness will always be required to produce a written report and the Judge will fix a timetable for expert reports to be prepared and exchanged. The report from any expert containing his or her evidence should at least include:

- The expert's academic and professional qualifications.
- A statement outlining the purpose of the evidence.
- A timeline (chronology) of the relevant events.
- Details of documents or evidence relied on in the report.
- Relevant extracts of any expert or technical literature relied on.
- A history from the party instructing the expert;
- A summary of the conclusions reached.
- A statement of any expert's duty as an expert witness must be included in the report (see Practice Direction 11/2003).

ii. Medical Evidence Considerations

- When the Judge is giving directions in a personal injuries case, permission to rely on expert medical evidence at trial must be obtained and a timeline will be given for the exchange of reports.

- A medical professional will be aware of his or her duty to the court to give his or her expert opinion objectively and not to skew it to help the case of the party who has asked for the report. A statement of his or her duty as an expert witness must be included in the report.

iii. Pre-Trial Applications

There may be applications to the Judge by one or other party, heard by a Judge or Registrar, to ensure compliance with court procedures by obtaining an order. If you receive a Summons to attend before the court on such an application, you should attend and respond as best you can. You may also consider bringing your own such application if there are issues that you think the Judge should consider. These applications might include:

i. **Requests for Further Information** including discovery of document issues and requests for further particulars of a claim;

ii. Requests for **Permission to Use an Expert**;

iii. **Subpoenas** for witnesses to appear at the hearing or producing documentation;

iv. **Striking out the Claim** where the defendant or plaintiff asks the Judge to strike out the whole or part of the claim or defence when: (a) the statement of claim discloses no reasonable grounds (b) the statement of defence discloses no reasonable defence (c) the claim is frivolous or an abuse of the court process or (d) there has been failure to comply with a rule, practice direction or order.

v. **Summary Judgment** application where the Court is satisfied that either (a) the claimant has no real prospect of succeeding with the claim or the defendant has no real prospect of successfully defending the claim, AND (b) there is no other compelling reason why the case or issue should go to trial.

vi. **Preliminary Issue** where one particular issue is of such importance to the claim or defence that the Judge will set a separate hearing to determine that issue before the matter proceeds to a full trial.

vii. **Declaring a Litigant Vexatious** where a party has repeatedly commenced proceedings that are "frivolous and vexatious", i.e., they have no hope of success and are a waste of the court's, and the parties' time. In those circumstances, a Judge may make an order stopping a person from pursuing a particular case any further, and cannot start further legal proceedings without the permission of a Judge.

iv. Pre-Trial Review

In some cases, the Judge may order a pre-trial conference as part of the directions in order to ensure that the case is progressing and that parties have completed all of the necessary steps for the trial to take place. It is important that the parties consider their position before attending this review as it may be the last chance to obtain assistance in relation to procedural issues before the hearing. You should raise any questions or concerns that you have at this review so that the Judge can determine if any further steps should be taken before the trial date.

v. Setting Down for Trial (Order 34 of the Rules)

In order for the matter to receive a trial date from the Registrar, one of the parties (normally the plaintiff) must file a notice setting the case down for trial. The order for directions may provide a deadline for doing so.

The notice to set down the case must be filed with Registry with a bundle or binder of the following documents in chronological order: the writ, the pleadings, and all previous orders made in the proceedings.

The order for directions may also require the following documents to be filed with the Registry either before the matter is scheduled or before it is heard:

- **Court Bundle**

With the parties input, the Judge will determine what documents should be included and when the bundle should be filed with the Court. Generally speaking, two copies of this bundle or binder of documents should be filed at least 3 days before the hearing and may include:

i. A summary of the issues, and an agreed statement of facts.
ii. all witness statements that have been exchanged by the parties
iii. any expert reports
iv. the central documents that each party intends to rely on during the trial

The Judge has the discretion to include other documents if he or she deems them relevant and necessary.

❖ **Authorities**

If you are relying on legislation, case law and sections of legal text books, copies should be provided to the court and the other parties in a booklet form appropriately indexed and each page numbered so that everyone can find the documents easily when they are being discussed in court.

❖ **Skeleton Argument**

All parties in the case, including those without legal representation, are generally expected to prepare a written summary of their argument which is called a skeleton argument. There are exceptions like when the application is so short that a skeleton argument would be required or so urgent that there is not time to prepare one. A skeleton argument should at minimum:

i. Be typed if possible and contain numbered paragraphs and headings;
ii. Briefly identify the nature of the case and the relevant background facts;
iii. Identify the law to be relied on including references to relevant case law;
iv. Briefly refer to the facts in the context of the evidence to be called; and
v. Avoid arguing the case in great detail.

vi. Length and Date of Trial

The directions ordered by the Court will usually include an estimate of the length of hearing based on the party's submissions, and will provide a timeline for the parties to submit agreed dates for the hearing. So far as practicable, parties should try to agree dates and submit a list of proposed dates by way of a joint letter to the Registrar. If one party will not agree dates, then a letter should be sent to the Registrar explaining the efforts to reach an agreement and then providing the unilateral dates. The opposing party should be copied on that correspondence so that they are aware that the Registrar will set the dates without their input.

Chapter Six: Preparing the Hearing

There will likely be a period of time between the last directions hearing and the final hearing. This time should be used to prepare for the final hearing and that preparation could include:

1. Check the pleadings and disclosure documents to make sure that you have not missed anything.

2. Ensure that the trial bundle is complete and filed with the Registry.

3. Make sure that your witnesses know when and where the final hearing is taking place and confirm that they plan to attend voluntarily.

4. Meet with your witnesses and prepare them for the hearing by reading through their statement and reviewing the important documents. You can show them the other witness statements and show the conflict or disagreements in the statements. You may not "coach" a witness by telling them what to say.

5. Prepare to question the other side and their witnesses (i.e. your cross-examination).

6. Prepare your Skeleton Argument and make sure that it has been filed as required.

7. Once again consider whether settlement is possible and whether you should make an offer of settlement to the other side. It is better for settlement offers to be made in writing. If you do not want the Judge to see your offer, it should be marked "Without Prejudice". This way you can make an offer that is different than what you will be asking during the trial and the offer will not be used against you.

8. You may consider visiting the court to watch a hearing in advance of your hearing to see how a trial is conducted and how an attorney behaves in court.

Chapter Seven: Conducting the Hearing

How do I find where my case is being heard?

You will have received a written notice from the Court telling you when and where your trial is taking place, even if the date has been made in your absence. The Notice of Hearing will likely give you the address of the Court, but the specific courtroom can be found on the Weekly Court Calendar which is published at www.gov.bm/supreme-court.

Information about how to find the courtroom and other facilities can be obtained by reporting to the reception desk or a court associate.

What if I cannot come on the court date?

If you cannot come to court on that date you can apply in writing for another date although you may be required to attend before a judge to give an explanation of your need for an adjournment. If you need an adjournment you should apply as soon as possible.

What is the role of the Judge?

The courts in Bermuda use a system of adversarial hearings rather than fact finding hearings where a judge asks most of the questions. This does not mean that a hearing is to be a heated argument but rather a structured procedure permitting the opposing parties to bring evidence to support their argument and to test each other's evidence by cross-examination.

In an adversarial hearing the Judge's role is not to act as an investigator, but rather as a neutral referee between the parties. It is not the Judge's task to assist either side, and they must adhere to their oath which states they must ""to do right by all manner of people, without fear or favour, affection or ill-will".

The Judge will assist a litigant in person, who may be uncertain about court procedure, but he or she must be very careful not to appear to be favouring either party. For example, a Judge cannot give advice on the law, suggest legal arguments or question witnesses on behalf of the litigant in person.

All judges aim to treat all litigants fairly, courteously and equally. If you feel that you are not being treated in accordance with those principals, you should advise the judge about your concerns.

During the hearing, the Judge has three roles to perform:

- **Judge of Fact**
  The Judge listens to and assesses the reliability and credibility of witnesses. The Judge is entitled to and often does ask questions of the witnesses.

- **Judge of the Law**
  The Judge will determine issue of law during the course of the hearing such as the admissibility of evidence and the addition of witnesses.

- **Management of Trial Procedure**
  The Judge must ensure that the trial is conducted in an orderly manner and will make directions in relation to the order of events such as the calling of witnesses.

How am I expected to behave in court?

Whether your matter is being heard in open court or chambers, all parties that are present at the hearing must conduct themselves courteously and respectfully. The following are general tips to follow:

1. There are no strict rules on dress code but your appearance must show respect for the court and clothing should be sensible, tidy and appropriate. If you have a particular religious or cultural dress requirement, the court will respect it wherever possible.

2. Arrive early for your case and inform the receptionist that you have arrived. This way you can ensure that you have attended the correct place.

3. If your case has not been called and you have had to wait more than 30 minutes then please ask for information from the receptionist or other member of court staff.

4. Supreme Court Judges should be addressed as “My Lord” or “My Lady”.

5. No smoking, eating, drinking or chewing gum is allowed in court although persons addressing the court and witnesses have access to a glass of water if required.

6. No audio or video recording or photography is allowed.

7. Keep a careful note of what is being said by witnesses, the other side and the Judge so that you can refer to it later in the case if you need to.

8. Mobile phones must be switched off.

9. The proceedings will be recorded by the court's audio recording system called "Courtsmart", and the Judge will also make his or her own note of the evidence for his or her own purposes. If the Judge is making notes, be sure to speak slowly.

10. Avoid rhetoric and emotion which will not impress the Judge.

11. Only one person should speak at a time. The judge will ensure that people speak in turn and in an orderly fashion.

12. Ensure your voice can be heard but do not shout. Being rude to the other side or constantly interrupting is unacceptable and unlikely to help your case.

13. Be focused, concise and factual.

Can I have help in Court?

You may be permitted by the Judge to have assistance in court from a friend or supporter-known as a "McKenzie friend". That person may provide moral support for you, take notes, help with your case papers and quietly give you advice. That person cannot address the Judge, make oral submissions or question witnesses for you. They cannot act as your agent in relation to the proceedings or manage your case outside of court, for example, by signing and receiving papers on your behalf.

If you wish to have this type of assistance in court, you should inform the judge as soon as possible. You may be asked to provide certain information to confirm the suitability of your proposed support and you must keep in mind that the Judge has the discretion to refuse to permit you this type of assistance.

What is the order of evidence and speeches at trial?

i. Plaintiff's case

Opening Speech

The plaintiff will start by giving a short opening speech to introduce the case and the issues to the Judge (Note: You do not have to make an opening statement and can summarize your case at the end after the evidence has been heard if you prefer.) It may be useful to write down what you want to say in your opening submissions before the hearing. The judge will have read your skeleton argument in advance and you should build your opening around that. Try to summarise the main points of your argument in around 15 minutes. Keep in mind that the Judge may ask questions during this speech and you should be prepared to answer them to the best of your ability.

Witnesses

The plaintiff then presents their evidence by calling his or her witnesses. Remember the witness's evidence will be contained in their witness statement or affidavit. After the witness has taken the oath or affirmed, they will be shown a copy of their signed witness statement and asked if they confirm the truth of it or wish to add or change anything in it. The witnesses may also explain any recent developments that may have taken place in relation to what is set out in their witness statement since they made their statement. There is no need for the witness to repeat orally what he or she has said in their statement.

Do not make statements during your questioning. Your arguments may have been already made during your opening submissions and can in any event be made during your closing submissions at the end of the trial.

If the plaintiff is a litigant in person, they may also give evidence in support of their case. When it is their turn to become the witness, they will take the oath or affirmation and confirm the contents of their witness statement.

When the plaintiff's witnesses (or the plaintiff) have given their evidence, the defendant then has the opportunity to ask the witness questions- this is called cross-examination. When cross-examining, the other side can test the evidence of the

witness by asking them questions. This should be done in a straightforward, low-key manner and will be stopped by the judge if there is any badgering or bullying. Remember the time for making statements or speeches is at the conclusion of the hearing. Always be courteous even if the witness is not. You will have an opportunity in your closing statement to explain why the witness's statement is wrong.

After a witness is cross-examined, the party who called them as a witness will have the opportunity to question them again ("re-examination"). This is not an opportunity to bring out new points, but to correct or clarify any points which came up in cross-examination.

ii. Defendant's case

Once the plaintiff's evidence is complete, the defendant will follow the same procedure by calling their witnesses, confirming the witness statements, having the witnesses provide any updates and then having their witnesses cross examined by the plaintiff. The defendant can also re-examine their witnesses after cross-examination.

iii. Final Submissions

At the end of the hearing each side will have the opportunity to sum up their case. This usually happens immediately following the last witness. However, if you need time to collect your thoughts and prepare, you should ask the Judge for that time.

Your final submissions are important as it is your chance to persuade the Judge to your point of view. Your skeleton argument can form the basis of your final submissions. Explain to the Judge why your view should be preferred and why the other side's witnesses are not reliable. If the evidence has not come out as you have expected, you may have to adjust your arguments to take into account the actual evidence rather than the initial witness statements. Speeches should be kept as short as necessary.

Again, the Judge may ask you questions during your submission and you should listen to the question and answer the question the best that you can.

When will I get the Judge's ruling?

Sometimes the Judge will give a decision immediately after the submissions or he or she may withdraw to their chambers for a short time to consider the case and then give a ruling. Or the case may be adjourned to another date to prepare the judgment, which may then be given in writing or orally. The Registry will tell you the date when the decision will be delivered in court. Sometimes the written judgment will be sent to the parties without a further hearing.

The judgment will set out what the case is about, what the legal and factual issues are, what evidence was heard, what factual findings were made by the Judge, what legal principles were applied by the Judge and then the Judge's conclusion.

Why is a Court Order prepared?

The ruling is given effect by making an order, and it is the order that will be enforced. The order is signed by the Judge, stamped with revenue stamps and sealed by the Registry. In some cases, the Court will draw up the order but if there is an attorney involved, they may draw up the order. Whenever an order is prepared, it will be sent to the other side for comments before it is reviewed and signed by the Judge.

Can I appeal?

If you wish to appeal a decision of the Registrar, then you should review Order 58 (1) which sets out the timeline (5 days after the judgment, order or decision) and the procedure for starting the appeal.

If you wish to appeal a decision of a Judge in chambers (not the final decision), then you should review Order 58 (8) and Order 2 of the Rules of the Court of Appeal of Bermuda, which sets out the timeline and the procedure for starting the appeal.

If you wish to appeal the final decision of a Judge, then you should review Order 2 of the Rules of the Court of Appeal of Bermuda, which sets out the timeline (6 weeks from the date that the order or judgment is signed and perfected), and the procedure for starting the appeal.

Chapter Eight: Costs

Costs are far too extensive a topic to make anything but the briefest of comments in this Handbook. Cost rules and procedures are dealt with in Order 62 of the Rules. Reference should also be made to Practice Directions No 15 and No 18 of 2016 in relation to the taxation process.

What is the general rule?

The Judge has complete discretion as to the award of costs and the determination is made at the conclusion of the final hearing. The Judge may make an order in relation to costs as part of the final judgment, or may ask the parties to return for a separate hearing just on the issue of costs.

In civil litigation, the normal rule is that the party who loses the case pays their own costs and those of the winning party. Costs may be awarded on a 'standard basis' or on the 'indemnity basis', the latter being a more generous scale.

Even if you have no costs because you ran your own case, you may have to pay a substantial amount in any event. If you are not sure that your case will succeed, this is an important factor to bear in mind.

What are the exceptions?

i. Offers to Settle

Either party to proceedings can make a formal offer to settle at any point during the proceedings. Such an offer may protect that party from an order of costs against them. For example, if the defendant thinks that they should pay $20,000 towards the plaintiff's claim of $50,000, they can offer to pay the $20,000 amount. If the plaintiff refuses and continues to trial and the Judge only orders the defendant to pay $20,000 or less, then the Judge will likely order the plaintiff to pay all costs incurred after the offer was made.

Neither party can tell the Judge that an offer to settle was made on a "without prejudice" basis and must never tell the Judge about the terms of such an offer before the end of the hearing. Once the Judge has made a final decision and is determining the issue of costs, then the parties should advise him or her about any offers to settle.

ii. Conduct

The Judge may also penalise a party in costs if he or she has not behaved properly in the course of litigation. That may be by reducing the winning party's award of costs or by requiring the losing party to pay the winning party's costs on the indemnity rather than the standard basis.

Can Litigants in Person claim their costs?

A litigant in person can also ask the Judge for their costs if they are successful and the starting point is Order 62 (18) of the Rules. A claim for costs can include the following items:

(a) Costs for work done and disbursements incurred in the same categories as if the work had been done by a legal representative;

(b) Payments reasonably made by you for legal services related to the conduct of the proceedings;

(c) Any costs incurred in obtaining expert assistance in assessing the costs of the claim.

Reference can be made to the decision of Leyoni Junos and Minister of Tourism & Transport Civ 2008, No 259 on the issue of costs claimed by a litigant in person.

How are costs determined?

Once a side is awarded their costs by the Judge, parties should try to agree the amount of costs to be paid. If no agreement can be reached, the party who was awarded their costs (the 'entitled party') will prepare a Bill of Costs setting out the time spent and the various fees. The Bill of Costs should be filed with the Registrar along with a request for a taxation hearing. When the Bill of Costs is filed, a copy must be sent to the other side so that they have notice of the application for a taxation hearing and they are provided with one last chance to reach an agreement in relation to the amount of costs. At the taxation hearing, the Registrar will assess the amount of costs claimed by the entitled party

Chapter Nine: Enforcement

Obtaining a judgment is only the first step and if the defendant does not pay or obey the order, you will have to enforce the judgment to get any monies due to you.

The first step is getting a copy of the Order from the Registry and ensuring that the Judgment and Order have been served on the defendant. The order will usually give a date by which the money needs to be paid. If no date is given, the defendant (now called the Judgment Debtor) usually has 14 days to pay the plaintiff (now called the Judgment Creditor). If the Judgment Debtor does not pay as ordered, you will have to find a means of enforcing your judgment. The court does not do this for you. You have to make an application for one or more means of enforcement.

Does the Judgment Debtor have any assets or income?

Before you start enforcement proceedings, you may want to consider whether the Judgment Debtor is worth pursuing and whether the Judgment Debtor has any assets or income from which the debt can be paid. You can do so by conducting an examination of means before the Registrar. During this examination, the Judgment Debtor will be asked questions under oath regarding his or her financial position, and can be ordered to produce documents to confirm their financial position. Order 48 of the Rules sets out the procedure for the examination of Judgment Debtor.

What are the most common enforcement methods?

Some of the methods of enforcement available to the Judgment Creditor are:

i. Writ of Fieri Facias/ Writ of Execution

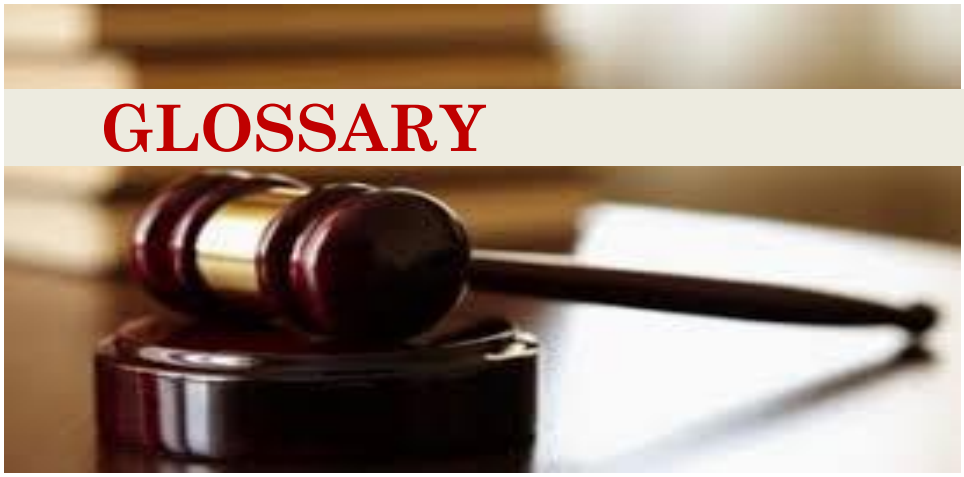
A Writ gives a Judgment Creditor the ability to have the Deputy Provost Marshal General (the Bailiff's office) seize assets from the Judgment Debtor and auction them for sale. This has historically been the most effective means of enforcement, but only if the Judgment Debtor has assets of value worth seizing. The procedure for obtaining a Writ of Execution such as Writ of Fieri Facias is set out in Order 46 of the Rules.

ii. Garnishee Order

The Court has the ability to order that a Judgment Debtor's funds held in bank accounts or owed to them by their employer be paid directly to the Judgment Creditor. The procedure for obtaining a garnishee order is set out in Order 49 of the Rules.

iii. Judgment Summons

A Judgment Summons requires a Judgment Debtor to appear before the Court to determine how payment will be made. If the Court determines that the Judgment Debtor has wilfully refused to pay the judgment debt (in others words he has the ability to repay the debt but simply has chosen not to do so) the Court has the power to commit the Judgment Debtor to prison. In reality, committal to prison rarely occurs and in the normal course, a method of repayment is determined.



- **Advocacy –** the skills of arguing and explaining a client's case in court.
- A**dversarial –** when two or more parties are arguing their case and the Judge's role is like that of a referee.
- **Affidavit –** a statement in writing, made by swearing or affirming before a commissioner for oaths, which court rules allow to be used in some cases instead of having a witness come to court.
- **Case –** the proceedings, arguments and evidence in court and the court hearing.
- **Chambers hearing** - any hearing before the final trial of the matter.
- **Civil case –** any type of case which is not a criminal case.
- **Close of Pleadings –** pleadings are deemed to be closed 14 days after service of the reply, or, if there is no reply, after service of the defence or after the defence to any counterclaim.
- **Court Order –** any formal decision of the Court.
- **Creditor –** a person who is owed money by a debtor.
- **Criminal case –** a case about whether someone is guilty of a crime and, if so, how they should be punished.
- **Cross-examination –** asking questions of a witness called by an opposing party in court.
- **Counterclaim –** a claim for damages or another remedy by a defendant against a person who has sued him.

- **Damages –** money paid to one party by the other to compensate for a wrong. Damages are referred to as 'liquidated' where they are easily calculated, such as a debt owed or the cost of repairing a car, or 'unliquidated' where they are less easily calculated, for example compensation for pain, suffering and injury.
- **Debtor –** a person who owes money to a creditor.
- **Directions hearing –** a hearing at which a Judge or Registrar will ensure that the case is proceeding as efficiently and proactively as it should, and will help the parties define what work still needs to be done.
- **Disclosure –** giving access to a document or other evidence relevant to a case to other parties in advance of the hearing.
- **Discovery –** notifying, and exchanging with the other parties, documents (including paper and electronic documents, maps and photographs, sound and video recordings and information stored in any other way) which are or have been in your possession, custody or control and which are relevant to the case and are not protected by privilege.
- **Enforcement –** making sure that a court order is obeyed.
- **Evidence –** the verbal and written statements of witnesses, documents, opinions of experts and other facts which support a party's case.
- **Ex-parte application –** an application made to a Judge by one party to a case without the other party/parties being required to be there.
- **Expert report –** a report about medical, accounting, engineering or other specialist technical evidence, prepared by a professional with expertise in that area. An expert is the only type of witness who can give evidence about his or her opinion.
- **File documents –** documents contained in the court file which is stored at the Registry
- **Guardian ad litem –** a relative or friend who defends a case on behalf of a person under a disability named as a defendant or third party.
- **Hearing –** the trial of a case or preliminary issue in Court.

- **Hearsay evidence –** Evidence of a statement someone made which is presented in Court in some other way than by their direct spoken evidence or affidavit (for example "she told me she saw the accident" rather than "I saw the accident"). A previous written statement or a description by someone else of what that person told them would both be hearsay. Hearsay evidence is not always allowed and, if admitted, it may have less weight than a statement given by someone in court whose evidence can be tested by cross-examination.
- **Interested party –** someone who is not a party but who the Court decides has a proper interest in the proceedings and should be notified about the hearing so that they can ask the judge's permission to participate.
- **Interlocutory application –** an application relating to a procedural matter which has to be decided by a Judge (or the Registrar) before the final decision can be made in a case (for example, a challenge to one party's refusal to give discovery, or an application for substituted service).
- **Judgment –** the Judge's decision and his or her reasons for making it. A judgment can be spoken or in writing.
- **Lawyer**- a barrister and attorney admitted to the Bermuda Bar under the Supreme Court act 1974 and licensed under the Bermuda Bar Act 1974 to offer legal advice and representation.
- **Litigant –** a person who is a party in a case.
- **Litigant in person –** a person who is a party in a case and does not have a lawyer.
- **Payment into court–** payment of money into court which the payer believes is a reasonable figure to settle a case, but which the other party will not accept. If the other party does not "beat the payment in" by being awarded a higher sum by the judge, they may not have all their costs paid by the losing party and may have to pay the costs of the other party arising after the date of the lodgement. Unless the other party accepts the payment in or the case is concluded, the judge must not be told about the payment in.
- **McKenzie friend –** a person who supports and advises a personal litigant in court, but usually does not speak on their behalf.
- **Medical negligence case –** a civil claim for damages where negligence by a doctor, dentist or other healthcare professional is alleged.
- **Minors –** people who are less than 18 years old.

- **Money in court –** money paid into court when, for example, a party makes a lodgement of a sum they believe is reasonable to settle a case, or where the person to whom damages should be paid is a person under a disability.
- **Next friend –** a relative or friend who brings a case on behalf of a person under a disability.
- O**rder 53 Notice of Application for Leave –** the document which starts a judicial review case. It is named after Order 53 of the Rules, which states what must be in an Order 53 application.
- **Originating motion –** a document which starts some kinds of Supreme Court cases, described in Order 5, rule 5 and Order 8 of the Rules.
- **Originating summons –** a document which starts some kinds of Supreme Court cases, described in Order 5 rule 4 and Order 7 of the Rules.
- **Party –** the plaintiff, defendant or third or other party in a court case.
- **Person under a disability –** a person under 18 years old or a person with mental incapacity, who cannot be a party in a court case without the help of a next friend or guardian ad litem.
- **Petition –** the document which starts a divorce or partition of property case, and some other kinds of cases, described in Orders 9 and Order 102, rule 5 of the Rules and in the Matrimonial Causes Rules 1974.
- **Pleadings –** a series of documents setting out the facts and legal submissions, including statutory duties, relied on in the case.
- **Privilege –** rules of law which protect a document, recording or other information from being disclosed to the other party to proceedings.
- **Proceedings –** a shorthand term for all the court procedures and documents before the final court order.
- **Process server –** a professional who serves documents.
- **Prohibit –** prevent.
- **Proof beyond reasonable doubt –** the standard of proof in a criminal case (note: not proof beyond the shadow of a doubt), which leaves the Judge or jury without the sort of doubt that would affect their decisions in their ordinary life.
- **Proof on the balance of probabilities –** the standard of proof in a civil case – "more likely than not", or more than 50% likely.
- **Rebuttal –** evidence, or a pleading, which tries to show that the other party's evidence and arguments are not accurate.

- **Reply –** as well as its usual meaning, this is a technical legal term for the pleading in which a defendant to a case replies to the Statement of Claim.
- **Right of audience –** the right to speak in a particular court on behalf a party.
- **Serve –** court documents are served when they are sent to a person or company in a way required by court rules, so that it can be proved to the Judge that the person to whom they are addressed actually received them.
- **Rules**-Rules of the Supreme Court 1985, which set out the procedural rules for most civil proceedings in the Supreme Court
- **Set off –** a claim by a defendant that the person who sued them owes them an amount of money which should be "set off" against the sum the person is suing them for.
- **Setting down –** telling the Registry or Judge that a case is ready for hearing.
- **Settlement –** a solution to a case agreed by the parties before the hearing, usually involving the payment of damages.
- **Skeleton argument –** a summary of the arguments a party will make before the Court.
- **Statement of claim –** the pleading in which the person bringing a claim in the Supreme Court sets out in detailed summary the claim they are making
- **Stay of enforcement –** part of a court order which stops it coming into effect as long as a condition (such as making regular payments of a debt) continues to be met.
- **Submissions –** the speeches that lawyers or personal litigants make to the Court.
- **Subpoena –** an order from the Court requiring a person to attend for a case, either as a witness or in order to bring a specific document to court.
- **Substituted service –** a method of serving documents which the Court directs where service by ordinary means is impossible e.g. where a party cannot be found or is evading service.
- **Witness –** someone who has personally seen, heard, or otherwise experienced the events which the case is about, such as someone who saw a car crash. A witness can only report what they saw, heard or experienced and the inferences they draw from those facts. They cannot give evidence of their opinion.

- **Witness (expert) –** a person with professional qualifications and expertise such as a doctor, engineer, accountant or forensic scientist who can carry out tests, give an expert opinion, or otherwise help the judge to understand what happened, and why it happened. An expert witness can give opinion evidence.
- **Writ –** a document which starts a case.