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DEFENDING A CIVIL CASE IN THE MAGISTRATE'S COURT

If you have received a General Procedure or Minor Case Claim, this information explains what options you have and the first steps you need to take.

When you receive the claim

Read it carefully. It will state the time limit for entering your defence.

You have several choices. You can:

- defend the claim;
- confess to the full amount of the debt;
- confess to part of the debt; *or*
- ignore the claim (Legal Aid does not advise this option).

Get legal advice

You should get legal advice about:

- Whether you have a defence to the claim;
- Your chances of success at trial; *and*
- What costs are involved.

In a Minor Case neither you nor the Claimant can be represented by a lawyer unless the court agrees. You can and should still get advice from a lawyer.

Defending the Claim

If you do not agree with the claim against you and want to defend it, you should:

- fill in the Intention to defend on the ‘Response to a Claim’ form; *and*
- lodge it at the court within the time limit.

If you don’t lodge the Response within the time limit, judgement can be entered against you.

If there is no time to get legal advice before the time limit runs out, and you believe the claim is wrong, you should:

- fill in the Intention to Defend;
- lodge the Response form at the court; *and*
- get legal advice as soon as possible.

Keep a photocopy of the Claim and the Response.

You may also object to the location of the Magistrates Court where the action has been started. See “Objecting to the venue” below.

You may defend the matter and file a “counterclaim” or claim a “set-off” if you believe:

- The Claimant owes you money for damages; *or*
- The Claimant’s claim should be reduced by an amount they owe you.

It is important to seek legal advice before making a counterclaim or claiming a set-off.

Admission in full (you admit the debt)

If you accept the Claimant’s claim of the debt and costs, you should:

- fill out the Admission of Claim section on the ‘Response To A Claim’ and sign it;
- lodge the Response at the Court within the time period; *and*
- make sure you keep a copy.

You can include an offer to pay in full or by instalments. Any offer to pay by instalments should be realistic.

The Registrar will then advise the Claimant of the admission and the judgement will be entered into the Court's records against you for the debt and the costs.

The Claimant can enforce a judgement made this way in the same way as if it were a decision by a Magistrate at trial.

The Claimant may accept your admission but refuse to accept your proposal for repayment by instalments.

Admission in part (you admit part of the debt)

You may admit that you owe only part of the amount claim and confess to that part only. To do this:

- complete the Intention to defend section, ticking the box next to "I admit to part of the claim in the sum of \$ and give Notice of Intention to Defend the balance of this claim;
- lodge the Response at the Court within the time period; *and*
- make sure you keep a copy.

You can include an offer to pay the part of the claim in full or by instalments.

There is a section on the form to do this. Get legal advice if you are unsure which section to complete.

If the Claimant is prepared to accept the amount you have admitted to as satisfying their claim, judgement will be entered into the court's records for the amount you admitted and costs. The Claimant can enforce a judgement made in the same way as if it were a decision by a Magistrate at trial.

The claimant may accept your admission but refuse your proposal to pay by instalments.

If the claimant refuses to accept your admission to part of the debt then the matter will proceed through the courts.

At trial the claimant will still have to prove that you owe them the whole amount. For example they cannot argue that because you confessed to \$1,000 of a \$5,000 claim, that they must now only establish that you owe that remaining \$4,000.

Default Judgement (you ignore the Claim)

If you don't lodge a Response at the court within the time stated, the Claimant may apply for a default judgement.

An application for a default judgement must be made within 12 months of the date the Claim was served on you.

If you have a default judgement entered against you, you may seek to have that judgement set aside and be allowed to defend the matter. The court will set aside the judgement in certain circumstances. You must apply within 21 days after the judgement was given.

It is important to seek legal advice about whether you are likely to succeed before applying to have a default judgement set aside.

Note: If the Claimant has not applied for a default judgement, you may still lodge the Response even if the time limit for filing it has expired. It is rare though, for the Claimant not to apply for a default judgement as soon as the time for entering a defence has expired.

Summary Judgement (only a General Procedure Claim)

Where the Claimant considers that the defence has no reasonable chance of succeeding, they may apply to the court for judgement without a trial. This is called applying for summary judgement.

A Defendant may also apply for a summary judgement. The defence must satisfy the Court that the claim has no reasonable basis for success.

Get legal advice:

- before applying for a summary judgement. There may be costs involved;
- if you receive notice of a summary judgement hearing; *or*
- if a summary judgement is made against you.

You can apply to get the summary judgement set aside. The application must be made within 21 days after the date of judgement. Get legal advice if you are out of time.

Assessment of Damages

In some cases the court will make a default judgement for the Claimant for the amount they are claiming.

Sometimes the court will want more proof that the amount being claimed is correct. This is called a hearing to assess the damages. The Registrar will make a date for the hearing and notify both the Claimant and you.

At the hearing the Claimant must provide proof of the damage by:

- having witnesses appear at the hearing; *or*
- having witnesses provide their evidence by Affidavit.

You are able to attend the hearing, but only to argue about the amount the Claimant is claiming.

The Magistrate will determine how much you have to pay the Claimant and this is recorded as a judgement.

Get legal advice about an Assessment of Damages hearing.

Objecting to the venue

If you think the claim should have been started in another court, you can apply for a change of venue. Complete the 'Application for change of venue' section (found under 'Intention to defend' on the Response form.)

- you must write on the form that you object to the venue; *and*
- state which Magistrates Court you believe it should be held in.

You will then need to complete Part G of the Response. Part G includes an Affidavit that tells the court why you think the venue should be changed.

An affidavit is a written statement of evidence. You must swear or affirm that the Affidavit is true in front of a registrar, Justice of the Peace or an authorised witness. It is a criminal offence to make false statements in your Affidavit.

The court has the power to change the venue if it would be more convenient or fairer to the parties to do so.

Notice of the objection is then sent to the Claimant who has a chance to argue why they believe the location to be correct.

If the claim has been started at the Magistrates Court:

- nearest to your home or business address which existed not more than 6 months before the Claim was issued; *or*
- the place where the claim arose either wholly or in part the court will be unlikely to change the venue.

The Registrar will notify you of the court's decision.

Statement of Defence

If you are defending a claim you will be required to make a statement of defence. See the information sheet called 'Statement of Defence.'

When a judgement is made against you

If a judgement has been made against you the Claimant will be called the Judgement Creditor and you are the Judgement Debtor.

The judgement creditor can ask the court to enforce the judgement against you and enforcement may include:

- selling you personal property or real estate;
- you having to attend at the court to give details of your income and assets;
- your employer having to put some of your wages towards the judgement debt; *or*
- further costs for you to pay.

If a judgement has been made against you and:

- you don't understand; *or*
- you don't have money to pay

Get legal advice. Don't just ignore the judgement.

Legal costs

General Procedure Claim

The Magistrate will usually order the loser to pay the winner's fees and legal costs, including lawyer's fees if lawyers represent one or both parties.

Minor case claim

The Magistrate will usually order that the loser pay the winner's allowable costs. Allowable costs are court and service fees.

Disputes in the Magistrates Court (Civil Division) can be settled at any stage until judgement is given.

The earlier settlement takes place, the less the costs will be.

If your defence has no legal merit you should settle the matter as soon as possible even if it means paying all or some of the other parties' costs up to the date of settlement.

A Claim in the Magistrates Court

