HOW TO RUN YOUR OWN COURT CASE

A practical guide
to representing yourself in
Australian courts and tribunals

{NON-CRIMINAL CASES}

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Note for the reader
While every effort has been made to make the information contained in this book as up to date and accurate as possible to reflect the laws and the legal system of Australia as at August 2008, its contents are not intended as legal advice. Use it as a guide only and be sure to obtain legal advice for your specific legal problem.

11 Preparing your case part 2

Preparing your case for a hearing involves a number of steps. This chapter deals with collecting your evidence to prove the facts and researching the law that applies to your case. It includes information about different forms of evidence as well as some basics about legal processes, documents and the jargon. These matters are the nuts and bolts of litigation.

The decision-maker's first job at the hearing will be to determine what the facts of the case are, then to determine which law or laws apply. Then the decision-maker will apply that law to those facts in order to see whether the plaintiff has a case and whether the plaintiff has adequately proved that case.

The test of proof the decision-maker will use is the balance of probabilities. With this test, the plaintiff doesn't have to prove their case beyond reasonable doubt but must prove that it is more probable than not. And the **burden of proof** is on the plaintiff. This means that the obligation to prove the case is on the plaintiff. Regardless of what the respondent does or doesn't do, if the plaintiff doesn't sufficiently establish their case, then the claim fails and is dismissed. End of story.

The plaintiff's goal at the hearing, then, is to prove their case; that is, their version of the facts and interpretation of the law, on the balance of probabilities. The respondent's goal is to show why the plaintiff's claim must fail. The respondent usually does this by putting forward their own version of the facts and/or interpretation of the law.

Although your goals are different, whether you are the plaintiff or the respondent, your job at the hearing will be essentially the same. It is to lead the decision-maker, in a series of simple, clear and convincing steps, through your version of the facts and the law, to the result that you want. You must work to make it as easy as possible for the decision-maker to accept your version of the case and decide in your favour.

Remember, success in litigation depends on three things:

1- the strength of your evidence to establish the facts;
2- whether the law applies in your favour; and
3- how well you present your case.

These are the building blocks: the facts, the law and the presentation. Presenting your case is discussed in chapter 12.

The facts

Disputes are often about the facts. The disagreement might be about what you said or promised to do, whether you did it, how you did it, why you didn't do it, whether you delivered the goods, whether they were faulty, whether you were given a chance to rectify the problem. It might be about what care arrangements you can provide for your child, whether you were properly notified about a problem, whether you can afford certain payments, what your income is, how sick you are, whether it affects your work. These types of issues are all issues of fact.

Disputes about the facts are decided on the evidence presented by both parties. Most cases are easily won or lost on the strength of a party's evidence. So it is essential that you use reliable evidence to support the facts that you assert or any fact that may be disputed.

{ ***Golden Rule of Litigation:***
CONFIRM THE FACTS WITH EVIDENCE }

Evidence comes in many forms: verbal, written, even pictorial. Just about anything you can think of that can verify something can be used as evidence. For instance, hand-written agreements, formal contracts, invoices, receipts, quotes, bank statements, telephone records, government documents, expert reports, scale models, plans, letters, diary entries, photos, videos, the testimony of witnesses, can all be used as evidence.

Even notes taken at the time of an event might prove valuable as evidence later on. This is why it's important throughout the preparation of your case to keep an accurate record of all developments.

Obtaining the right evidence can be time consuming so you will need to collect your evidence as soon as possible. Also, with all evidence you wish to use, make sure you examine it very carefully. Does it say what you expect it says?

Before you go evidence-crazy, first, a word of warning: quality not quantity is what counts. Quality evidence ties in with exactly what you are asserting and directly verifies one or more elements of your case.

If it is indirect, vague, ambiguous or spurious, reject it and try if possible for better evidence. Sometimes though, evidence that merely favours rather than confirms your version of the facts may be the best you can get. Although this isn't ideal, it might be more than your opponent has.

If you need to provide the court or tribunal and the other party with your evidence before the hearing or as part of the claim or defence, unless otherwise requested, be sure to provide only copies and keep the originals to show at the hearing.

What follows are some simple tips on collecting the evidence you will need.

Photos, videos, digital images

These can provide excellent evidence to support your case. Not only do they add realistic and graphic detail, but by giving an

accurate record of the facts, they're a form of evidence that is difficult to rebut. They provide written documentary evidence and so strengthen the probability of your case.

If you intend to use them, it's important that they're taken at the relevant time. Before and after shots are ideal. Also, the images will need to be clear and taken from an adequate distance to capture the surroundings so they give context to the shot. Take close-ups as well, to add detail to the other shots. Use a familiar item to give an idea of scale. For example, place your finger beside the scratch that has damaged the car door.

Be selective with the final choice of images. Also, be sure to record on the back of each photo or on the video or CD of photos, the details of who took the photo or video, exactly when it was taken and exactly what the images are of. Number each image you intend to use. Some cameras automatically insert the date.

Witnesses

If there is a witness to support your case, confirm with them whether they are willing to give evidence at the hearing. Although a witness is often happy to oblige without payment, they may be entitled to payment from you for their time spent at the hearing and their transport costs to and from it. Check with the registry staff of the court or tribunal whether witness expenses are applicable and what the current rate of payment is.

If there is an unwilling witness that you are certain can support your case, you may wish to **summons** or **subpoena** them. This forces them to attend the hearing and be available to give evidence and be cross-examined. To summons or subpoena a witness, you will need to draft the actual summons or subpoena according to the format of the particular court or tribunal, have it served on the witness and have a copy filed with the court or tribunal. The witness expenses would also need to be paid.

At the hearing the witness can give evidence either in person or by telephone or video link-up. If by telephone or video, give

the registry staff plenty of notice so they can make the necessary arrangements.

In preparation for the hearing you might have to provide the court or tribunal and the other party with a written statement by the witness setting out their evidence. Depending on the type of case and the particular court or tribunal, it might be required in the form of an affidavit or else a signed statement. You'll find an explanation of these later in this chapter in the section 'Legal documents'.

Experts

Expert reports can be extremely valuable evidence. A report from your doctor, specialist, an engineer, architect, counsellor, consultant or health inspector can often verify particular facts of your case that are within their area of expertise and, most importantly, give an opinion about these facts. Often an expert's evidence is their opinion of what the facts are.

Where there are conflicting expert opinions offered as evidence, the decision-maker must choose between them. So a report that's clear, straightforward, authoritative and definite on the issues will have a better chance than one that is vague and non-committal.

The more authoritative the expert, the more valuable their evidence can be. For example, a report from a rheumatologist who specialises in your particular medical condition may be worth more than a report from your GP.

On the other hand, the stronger the expert's connection with your case the more important their evidence can also be. For example, a report from your family doctor of 15 years may be worth more than that of a specialist you have seen only once. The family doctor's report that documents the history of your condition, its effects on your daily life, the treatments that have been tried and how the condition has deteriorated over time can be extremely valuable as evidence. For this reason you may wish to get a report from both your specialist and your GP.

Before requesting your expert's report, think first about exactly what issue or issues the report must address and what facts it must verify. Then make the request for the report in writing. In it, explain the purpose of the report and list the specific items that need to be addressed in the report. In listing the items you want addressed, on no account tell the expert what to write in the report.

The report should contain the expert's credentials; that is, their formal qualifications and relevant experience. It should also contain the history of your contact with them and their connection with the matter in dispute as well as any facts they can verify and then their opinion on specific issues, based on your very specific questions posed in your written request.

One unfortunate reality is that what an expert says to you in conversation is sometimes quite different to what they're prepared to write down and offer as evidence. Understandably, after consideration, they may be more cautious in giving their written professional opinion.

Another unfortunate reality is that expert reports are often quite expensive. Your doctor, counsellor or other professional who sees you often might provide one free of charge, but don't expect it. It can be a time-consuming task.

When you write requesting the report, ask if they could notify you of the cost before it is prepared, so you have the opportunity to arrange for its payment or reconsider or withdraw the request. If you're on a low income you might want to also ask that there be no charge for the report, as it would cause you hardship.

The expert who provides the report may also be required as a witness at the hearing, so that their evidence can be cross-examined by the other party. Although they may be able to give their evidence by telephone or video link-up, they may still need to be paid witness expenses. This would be in addition to the cost of the expert's report. The expert witness may in the course of giving their evidence in court, need to verify that they have read the expert witness Code of Conduct.

Expert witnesses can prove quite expensive, and in some lucrative and contentious areas of law they are an industry in themselves. Make sure you clarify what costs will be involved before engaging an expert.

Government documents

Government records often contain valuable information. Your Medicare, Centrelink, Veterans' Affairs or government housing file, your medical records from a public hospital, police reports, information about development applications, planning proposals and community consultations are all examples of government documents.

If you are appealing a government decision and you need more information, or you know that a government department has a document that you need in order to prove your case, you can obtain a copy of that document or your complete file from that department. You do this using the various state or territory or federal **FOI laws**.

FOI means Freedom of Information. According to these laws, a government department must, upon request, provide you with a copy of the documents you ask for, within a specified time, unless they come within certain exceptions.

Your request may be refused, for instance, if it relates to the personal affairs of someone else or would be a breach of confidence, or would affect the national economy or security or interfere with the operations of that department. It may be refused if the document contains confidential information that could jeopardise commercial interests between the government and another party. Or it may be refused if it would take an inordinate amount of time to locate the particular document. Or else your request may be approved partially, with the release of some documents and not others, or with portions of the text blocked out.

Unfortunately, increased privatisation of government work means that more and more documents are no longer obtainable

under FOI because, technically, they aren't government documents. Some arrangements have been made to overcome this, but only in limited areas.

Where FOI is available, you may be charged a fee for your FOI request, calculated on the amount of time it takes to prepare the release of the documents. Some routine requests have a fixed cost. Waiver (exemption from the fee) may be available if either the documents relate to your personal affairs or if you are on a low income and the cost would cause hardship. It is likely that the information you're requesting does relate to your personal affairs. If this is the case, in your FOI request be sure to ask for waiver of the fee and give the reason.

The trick with FOI, to have your request approved and processed smoothly and quickly, is to make the request both as specific and narrow as possible but as broad and general as necessary. This means you have to know exactly what documents to ask for. For example, within one department there may be several files in your name. There may be a payment file, a debt file, an application file and a citizen file. The information might also be on files that don't bear your name, like a property file that bears the address of the property.

Remember, too, that less and less of the crucial documents are being held in actual paper files. You might need to request, in addition to your file, all relevant computer records, including what are called screen dumps.

Before lodging your request, contact the FOI officer within the relevant department to discuss where the information you want might be located, whether it is available under FOI and how best to frame your request. Ask too about the cost and waiver requirements.

Then make your request in writing, marked to the attention of the FOI officer within that department. Some departments have their own FOI request forms. The request can generally take up to a month to process.

If the response to your FOI request is unsatisfactory, you can appeal it. The response letter you receive from the FOI officer should contain the details of how to appeal the FOI decision.

Non-government information

Information held by private companies may be available to you under provisions of the various *Privacy Acts*. For example, access to information that companies have about you, like credit records or your details held on databases, is usually granted upon request and payment of a standard fee. Contact the privacy officer of the company involved.

Medical records

You can apply for your records and medical file from a public hospital under FOI (see the previous section on 'Government documents'), by applying to the hospital's medical records department. There will be a standard fee, but ask that it be waived because it refers to your personal affairs.

You have no legal right to your medical records from a private hospital or doctor. The records belong to them. Of course, you can still request access to them, and access might be granted upon payment of a fee. But if refused, only a court order could force access to them. You could apply to the court to order that the documents be produced under subpoena, but recent cases show it is unlikely you'd succeed.

Police reports

You can generally obtain a copy of the report of police attendance at an incident involving you by applying in writing to the Police Department. There may be a fee for this report. Or, you could try formally applying for it under FOI (see the section in this chapter on 'Government documents') and asking for waiver of the fee because it concerns your personal affairs.

Other ways to obtain information

Information can also be obtained by subpoena. Check with the registry staff whether the court or tribunal you are using has subpoena powers. If so, you can issue a subpoena to produce documents, addressed to the person or business that holds the documents. This forces that person or business, within a specified time, to deliver the documents to the court where they are held for the duration of the litigation.

The return date specified on the subpoena is the date by which the documents must be delivered to the court. On that date, at a certain time, both parties can attend the court to inspect and take copies of the documents. There may be a charge, usually the reasonable expense of making the documents available.

The court or tribunal will probably have its own **subpoena** forms and procedure that you must follow. On the form, be sure to accurately identify the documents you wish to see and be sure to direct the subpoena to the right person. Within large corporations, like banks, this is often the 'public officer'.

For access to information held by the other party intended for use at the hearing, procedures of **discovery** are often available. Discovery enables you to obtain a list of documents and also to inspect the documents that the other party will be relying on. It will also give you a useful picture of the substance of their case and reduces the risk of surprises at the hearing.

Discovery also allows you to issue a set of written questions about the case that the other party must answer as part of the preparation stage of the case. These are called **interrogatories** and aim to get the other party to make certain admissions.

Discovery is quite a formal procedure. It isn't always available and might not be necessary or appropriate because the other party may be quite open about any information they have and the evidence they are using. If you decide that discovery is needed, check with the registry staff to see if it's available and what the procedures are.

If you're thinking of using the court's formal powers of subpoena, discovery or interrogatories to obtain information, get some legal advice first about whether this is necessary and whether it's the best option for getting what you need. These procedures will add to the time and expense of the case and of your opponent's case. Should you lose, these costs may be recovered from you.

Rules of evidence

To ensure a high standard of justice and at the same time protect people's rights, our legal system has developed certain rules about evidence. Under these rules, some types of evidence are not **admissible** in a court of law.

The **rules of evidence** can be found in the state and federal *Evidence Acts*. Put simply, although there are exceptions, the basic rules of evidence are as follows:

- evidence that is irrelevant is inadmissible;
- hearsay evidence (that is, evidence that relies on what someone else alleges) is not admissible;
- opinion evidence is not admissible unless it is from an expert and is an opinion within their field of expertise;
- evidence about someone's bad character is usually inadmissible;
- evidence that is privileged information is inadmissible;
- evidence that would be against public policy to divulge, for example, information that threatens national security, is not admissible.

The formal rules of evidence and their application have become quite technical and are often not strictly enforced in the lower courts. Also, some specialty courts and tribunals are not bound by the rules of evidence at all or they can be dispensed with by the consent of both parties. This aims to reduce the formality and prevent complex legal arguments about the admissibility of the evidence.

In these courts and tribunals, however, this does not mean that 'anything goes'. A party can still object to a piece of evidence being accepted. The decision-maker, in deciding whether to admit the evidence, will apply common sense and may use the rules of evidence as a guide.

In relation to evidence generally, it can also be reasonably expected that the decision-maker will enforce a party's right to have adequate opportunity to examine the other party's evidence and to have adequate opportunity to respond to it.

The law

Knowing the law is as important to your case as knowing the facts. It isn't good enough to organise your evidence but neglect the legal aspect of your preparation and just rely on general principles of fairness and justice and hope that these will prevail. The legal system deals in fairness and justice every day by applying the law. So while you're obtaining and documenting your evidence, begin at once researching the relevant law.

To succeed, the law must work in your favour. You will need to be able to show how your case fulfils the necessary legal requirements and/or how the other party's does not.

This doesn't mean that when you represent yourself you are expected to become an overnight legal expert. However, you should know the law that will be applied in your case and how it will be applied to the facts.

For example, in family law, if you are trying to increase the contact hours you have with your child, the relevant legislation may say that, in determining the care arrangements for a child, the child's interests are paramount. The decision-maker, in applying the law, will look at the facts presented by both parties about the care arrangements and will weigh up which arrangements best fulfil the law; that is, which ones will be in the best interests of your child.

Now look at your facts. For instance, you may be able to show

in your evidence the beneficial things you've been doing during the current contact hours and how your child might benefit from increased contact. Perhaps you have been providing after-school learning opportunities or important contact with extended family members, educational outings, or sharing time with the child's friends. Perhaps you can show valuable reasons to increase contact that are in the best interests of your child.

By researching the law and then understanding how it fits to your facts, you're developing an indispensable legal skill. This step is crucial to the preparation of your case.

{ ***Golden Rule of Litigation:*** KNOW THE LAW }

{ ***Golden Rule of Litigation:***
KNOW HOW THE LAW APPLIES TO THE FACTS }

But knowing the law isn't just about doing the research. You will also need to learn about some of the basic legal processes that courts and tribunals use. What follows are some hints on doing your legal research as well as explanations of various legal documents, information about drafting, filing, serving and **tendering documents** and a few words about the use of legal jargon.

Legal research

Often the clues to get you started on your legal research are contained in the documents you already have. For example, government decisions usually quote which law has been applied, contracts sometimes mention the laws governing that contract and, if you are the respondent, the claim itself may refer to the law relied on.

If your case involves a specific agreement, whether written or oral, the terms and conditions of that agreement will form part of the legal requirements and may well require research. Make sure you are on the right track by consulting a free legal advice service

about the appropriate law for your case. Check with them what it means, how it applies and what other law or laws might benefit your case. Also check whether there are any useful cases on the subject. Keep a list of the relevant laws and cases for your quick reference.

For information about the range of free legal services available, refer back to chapter 6 'Where to go for help'. For a copy of the relevant laws, try the internet, law libraries, the largest of the public libraries or the appropriate government department. Also, for a copy of laws and cases, go to <www.austlii.edu.au>.

Other useful materials are law dictionaries, digests, casebooks, law reports, journals, case citators and regular law textbooks on the subject. There are also excellent handbooks and loose-leaf services that explain the legal requirements and procedures in specific areas of law. Always check that the information in these written resources is still current.

To understand how a particular court or tribunal is interpreting and applying a particular law or legal term, look at the relevant case law of that court or tribunal. For example, you might want to know how your Tenancy Tribunal has defined the term 'fair wear and tear' or how the Family Court is interpreting 'live separately under the one roof'. To find the relevant cases, the website of the particular court or tribunal should contain a record of its recent decisions, if not all its decisions. Also use the AUSTLII database <www.austlii.edu.au>. Search the cases selecting the particular court or tribunal.

You may wish to extend your search to the case law of other courts or tribunals. Using <www.austlii.edu.au>, search for the particular law or legal term selecting all cases.

If you do extend your search to other courts and tribunals be aware that the decision of one legal body isn't necessarily binding on another and, depending on a number of factors, it may be of little value. If you find such a case, get legal advice about its usefulness for your case.

Also be aware that sometimes the same term might have different meanings under different laws and the different meaning might not have relevance to your case. The meaning of 'income' under a *Taxation Act*, for instance, might be different to its meaning under a *Social Security Act*. Check the definition section of the legislation involved.

If you find a case that's helpful to you, you might want to use it at the hearing as a precedent, to guide the decision-maker. If so, make sure that its facts and relevant issues apply to the circumstances of your case, and also that the case would be binding on your court or tribunal. There's nothing to be gained from confusing or misleading the decision-maker or wasting their time, using cases that are of no application to yours. Take a copy of the case and, if possible, its case citation and get legal advice about its usefulness to your case.

Case citation is a system of identifying a case according to its location in a particular law journal or law report. For centuries, important cases have been reported in various journals and reports and these have become the official record for case law. Although the internet is fast replacing the need for these journals and reports, the case citation is still the major identifier for a case.

For example in *Smith v Jones* 109 ALJR 32, *Smith v Jones* refers to the name of the case. *ALJR* means *Australian Law Journal Reports*. The number before this is the volume number and the number after is the page number. So, the case of Smith and Jones is in volume 109 of the *Australian Law Journal Reports* at page 32. Similarly, *42 NSWLR 3* means volume 42 of *New South Wales Law Reports* at page 3, and so on. Some journals and reports are issued yearly, so they are identified not by a volume number but by a year.

And when you refer to a case, for example, *Smith v Jones*, say 'Smith and Jones', not 'Smith versus Jones'. Similarly, when you refer to an Act, use its full title including its year, for example, *Disability Discrimination Act 1992.*

Apart from the laws relating to your dispute, there are also laws governing the particular court or tribunal that you are using. These Acts often have accompanying Regulations and also Rules that deal with the detail of what the court or tribunal can do and how it does it. The *Family Law Act 1975* and its accompanying *Family Law Rules,* for instance, govern the Family Court. The Victorian Supreme Court has a *Supreme Court Act 1986* and various *Supreme Court Rules* as well as a range of *Supreme Court Regulations*, which set out the powers and procedures of that court. There may also be uniform court rules, as in New South Wales under its *Civil Procedure Act 2005.*

Important information is contained in laws like these. For example, how many days you've got to lodge an appeal, the money limit on matters the court can deal with, who can make a claim, and what kinds of orders can be made.

Many courts and tribunals also issue their own Practice Directions that further refine their procedures. So, if you have a specific query about the powers or procedures of a particular court or tribunal, and the information you have received from the website, facts sheets or the registry staff doesn't satisfy you, check with these original sources.

As well, there are *Acts Interpretation Acts* in each state and territory and also federally. These laws give meanings for terms that are commonly used in legislation.

Bear in mind, there's a law for almost everything and it's easy to get sidetracked. So once you know you are on the right track, make sure you stay on it. Don't get bogged down by irrelevancies or by trying to trace everything back to its legal source. Constantly monitor the usefulness of your research and how it relates to your case.

If you're lucky, the relevant law that you're researching will be quite straightforward and commonsense. It will set out simply and clearly what must be fulfilled for the claimed remedy to be granted. If you're not so lucky, the relevant law will either be

very brief with a huge body of associated case law that interprets it, or else so detailed and technical that you might as well read it backwards to understand it.

In any case, read it carefully, take a copy of the relevant excerpts, and get more legal advice if you need to. If you do get advice, take note of any key words used during the advice session for use later if you wish to consult legal textbooks or other materials.

But do not go overboard with your legal research. It will cause unnecessary panic.

At this stage of the preparation of your case, do not despair that you aren't a lawyer and don't know all the answers. If you are having problems, the best course is to admit your difficulties and get some help.

Don't despair either, if your legal research doesn't provide you with a watertight case that can be expressed in 'black-and-white' terms. Very few can. Chances are, if your case was an easy, right/wrong type it would have been resolved long ago and you wouldn't be needing to go to court now.

Equally, be cautious if you find yourself thinking you're onto a sure-fire winner. You may be missing something important. Every lawyer has a story of their latest open-and-shut case that they just lost, so be careful.

Return instead to the basics; that is, the claim, the defence and your lists. Now, using these with your legal research and by applying the law to the facts, give yourself a simple account of your case. Assess its merits.

Although you may not have a clear-cut winner, you do need to have at least an arguable case. If your best instincts, your legal research and your legal advice indicate that your chance of success is slim, you have several options. You can carry on regardless, withdraw or discontinue the case, get more advice, get a lawyer, or approach the other party and attempt a settlement. If you have any doubts about these options get more legal advice, then reassess. Be aware that if you do have no chance of success and you

carry on regardless, you will not only be wasting the court's time, the other party's time and your own, but you also risk costs being awarded against you.

Legal documents

You are already familiar with legal documents like the claim and defence, but in the course of your litigation you may need to know about and provide others. Some courts and tribunals can be flexible about particular documents and can dispense with some of the requirements if you are representing yourself. Check with the registry or the website of the court or tribunal.

Here is an explanation of a few different types of legal documents. You may not need to use any of them. If you do, check with the website or registry of the court or tribunal for their specific requirements and, if possible, a sample document to help you draft your own.

An **affidavit** is a written statement accepted by the court or tribunal as evidence because its contents have been sworn or affirmed in the presence of an authorised person. It has a specific format and there are penalties for making false statements in an affidavit.

A **witness statement** is a witness's written statement that may be required by a tribunal instead of the more formal affidavit. It usually follows a simple format and is just signed and dated, not sworn or affirmed.

Both kinds of documents are written in the first person ('I') and must include the person's name, address, occupation and their version of the relevant facts; that is, the things they are verifying. In these documents, be specific about when, where and what.

A **statutory declaration** is a written statement declared before an authorised person, often a Justice of the Peace. It is similar in some ways to an affidavit but does not carry as much weight in a court or tribunal.

A **certified copy** of a document verifies that it is a true copy

of the document. On the copy are the words or a stamp that says 'this is a true copy of such-and-such document'. It is then signed and dated, usually by a certified person, like a Justice of the Peace (JP) or solicitor.

A **statement of issues** and a **statement of facts and contentions** are documents required by some tribunals. Both parties generally need to provide them, but there may be exemptions if you are self-represented. These statements give the decision-maker a useful picture of the dispute from both sides. As it says, the first one is to clarify the issues, so it will probably be short. The second one, however, tells the story of the case (the facts) and then how those facts satisfy the law (the contentions), so it will be longer. With both types of statement, remember to sign and date the document.

A **certificate of readiness** signals that the preparations are completed and the case is ready for hearing. In it you estimate the length of time needed for the hearing, how many witnesses you will be calling and, if any, the details of the lawyer representing you. It might have a different name, like **compliance certificate** or **hearing information form**.

A **notice of discontinuance** is lodged by the plaintiff. It notifies the court or tribunal that you are withdrawing the claim. It may have another name, like **notice of withdrawal**.

A **notice of motion** is a way of petitioning the court, especially a higher court like the Supreme Court. In it, you formally apply to the court to make certain orders. Many legal actions are started with a notice of motion.

General rules for drafting legal documents

The degree of formality required for drafting documents varies with the type of case and the court or tribunal involved. Again, you may be able to get a sample of the particular document from the website or registry.

Although each court and tribunal has its own requirements of

style and format, there are also some general rules for drafting any legal document so that the other party and the court or tribunal can identify its basics at a glance.

The document will begin with the full title of the court or tribunal, the matter or file number of the case and the names of the parties, with their title, such as plaintiff and respondent. Then comes the title of the actual document and its substance.

Often each paragraph of the substance of the document is numbered and generally concludes with the signature and title of the person or their lawyer. At the bottom of the first page, at least, is a line, then a footer, giving the name and address of the source of the document. It might be the name and address of the lawyer who prepared the document and it is the address for service of documents on that party. If you are representing yourself, put your own name and address for service of documents on you.

Filing and serving documents

To file a document you lodge it at the registry of the court or tribunal and, if required, pay a filing fee. Once it is accepted and stamped, it is considered filed. Usually extra photocopies of the document need to be filed together with the original.

The courts are developing some capacity for filing documents online. While still limited in its scope and application, this procedure will eventually become more widely available.

Service of a document is its delivery to the other party or their lawyer. There are rules and time limits for serving a document. Check whether it can be served by post or fax, or whether it must be served in person.

If it needs to be served in person, it must be hand delivered. You can do this yourself or arrange for a process server to do it. For service in person, an **affidavit of service** may need to be completed by the person who served it. This verifies the delivery. Check with the registry or website.

Be sure to obey any time limits for lodging documents. If this

time limit expires, you may need to apply for an **extension of time** or get **leave to apply out of time**. This means getting special permission from the court or tribunal and there's no guarantee you'll get it.

{ ***Golden Rule of Litigation:***
OBEY THE TIME LIMITS FOR LODGING DOCUMENTS }

Tendering documents

Documents are tendered by presenting them to the court in the course of the hearing. Generally it is important to tender the originals of the documents, not copies. Copies can be used but are generally not considered to be the best evidence.

You can tender documents at the beginning of your presentation or throughout. It is a good idea to have an extra copy of the document to give the other party for their records. The other party can object to the tendering of a document in the same way as with other evidence, for example, if it is irrelevant or it contains hearsay. If you wish to question a witness about information contained in a certain document, you may need to tender the document and have it accepted by the court before asking the questions.

Documents that are tendered remain with the court until after the hearing is finalised. They are often returned to you by mail some time after the result.

Legal jargon

Congratulations! You have already digested an enormous stock of legal jargon. You're now familiar with terms like plaintiff, respondent, claim, defence, cross-claim, counter claim, default judgment, limitation date, extension of time, without prejudice, summons, subpoena, waiver, affidavit, service and tendering. These are some of the basics in the jargon of litigation.

A well-known trick of lawyers opposing you when you represent yourself is to try to confuse and intimidate you with lots of

unnecessary jargon. This ploy can be easily short-circuited if each time you hear a term you don't understand, you ask its meaning.

Whenever and wherever you come across jargon that is relevant to your case, whether it's in a phone call, a letter or court document or said by a lawyer, a court official or judge, ask for an explanation. If the explanation is full of jargon, respectfully ask again. Ask someone else. Do more research. Get some legal advice. Keep asking until you are satisfied. Of course, avoid being belligerent or aggressive, as it will only alienate the party or the court, but make sure you find out.

If you're afraid to ask questions, you risk losing control of your case unnecessarily. It will be of no use to you if you find out too late what a crucial term meant or what the main argument was about. It will be of no use either if you are intimidated into paralysis by an opponent whose only advantage is an oversupply of jargon.

Our legal system tries hard to be accessible to everyone, not just lawyers. And unlike a lawyer, you have no precious credentials to protect. So go ahead and ask, ask, ask all those silly sounding, honest questions and don't be embarrassed in the least. You'll be surprised what you can learn from them and the confidence you'll gain too, from knowing exactly what's going on.

{ ***Golden Rule of Litigation:***
DON'T BE AFRAID TO ASK QUESTIONS }