

Magistrates Courts

Practice Direction No. 5 of 2024

Issued: 8 April 2024

Applications

Introduction

1. This Practice Direction applies to all civil applications made in accordance with the *Uniform Civil Procedure Rules 1999* (UCPR) in a particular Magistrates Court.
2. Nothing in this Practice Direction is to be taken as removing or limiting the discretion of a Magistrate.

Time Estimates for Applications

3. Time estimates given by Practitioners to the Registry when applications are filed must allow time for the Magistrate to read the material during the hearing, hear submissions from all parties to the application, and (if likely) deliver *ex tempore* reasons. If Counsel is retained at the time the application is filed, the estimate is to be that of Counsel.

Communications with the Court

4. Unless there is a proper basis for a unilateral communication (for example – where the proceeding has not been served on the other party), a party who communicates with the Registry in accordance with this Practice Direction by email, must:
 - (a) confirm that the communication is with the consent of all other parties; and
 - (b) copy all other parties into that email communication.
5. When a communication is sent to the Court by email, to which this Practice Direction applies, the subject matter field must contain the name of the matter, the matter or case number, the date of hearing and the type of hearing.

Draft Orders for Applications

6. Parties who seek orders from the Court should submit a draft order electronically. If this is not possible a physical draft order may be handed up at the hearing of the application.
7. If a Magistrate amends and/or endorses a physical draft order the Registry will scan the amended and endorsed order into the electronic file.

8. The Magistrate may direct that a draft order reflecting the orders or amendments made by the Magistrate be submitted by a party for endorsement. (Rules 660 and 661).

Agreement as to Orders before Return Date

9. If all parties to an application agree upon orders to be made on the application before the return date, they may submit a draft order to the particular Magistrates Court seeking that the order be made without appearance of the parties. Any communication must expressly state that all parties to the application consent to the making of the draft order submitted. The communication may contain explanatory material about the application and the reasons for the orders sought.
10. The draft order must:
 - a. State that it is a consent order:
Example – *“BY CONSENT IT IS ORDERED THAT – “*
 - b. Display all parties to the Proceeding in the court heading (i.e., not display an abbreviated court heading),
 - c. Be submitted in PDF format.
11. If a draft order cannot be submitted 48 hours before the application any email enclosing a draft consent order is to be sent to the Registry before 3 pm on the date before the return date.
12. Parties should expect that only straightforward applications will be disposed of by orders made without appearance and should be prepared to attend Court if the Magistrate sitting in applications is not prepared to make orders without an appearance.
13. If the Magistrate sitting in Applications does make an order before the return date:
 - a. The Magistrate will endorse the draft order and the file will be endorsed *“order as per endorsed draft”*,
 - b. the email (and any attachments to it) will be placed in the electronic file.
14. This procedure is separate from, and additional to, the procedure allowed by rule 666 and form 59A of the UCPR (Consent orders made by registrar) and the procedure allowed by rule 489(1) of the UCPR (Proposal for decisions without oral hearing).

Callover

15. The Magistrate conducting the callover may ask for adjournments and consents at the beginning of the callover. Parties who have agreed to a draft order should mention it at this point. If an exercise of discretion is involved, the matter may be dealt with as a short matter after the callover.

Example – *“For the Applicant/Plaintiff. This is an application for disclosure. The parties have agreed to a draft which I hand up/ which was electronically submitted on [date].”*

16. Generally, after consents and adjournments have been dealt with, the Magistrate may call each of the remaining applications on the list. When the Magistrate calls the name of the Proceeding, the parties must state the party for whom they act; the type of application; and the time the application is expected to take to hear.

Example – *“For the Applicant/Plaintiff. This is a summary judgment application. One hour.”*

17. Time estimates are to be given at the callover in accordance with paragraph 3.

Outline of Argument

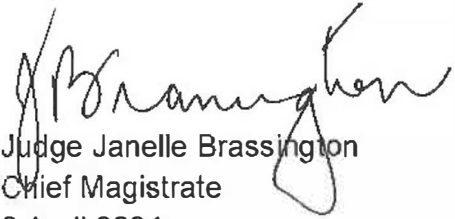
18. Parties who wish to provide a written outline or argument should either electronically submit it in advance or seek leave to file a physical copy with another working copy at the commencement of the hearing.
19. Outlines of Argument should be exchanged as early as practicable prior to the hearing.
20. An Outline of Argument must:
- a. List the material the party reads on the application. Filed documents should be identified by the date of filing of the document;
 - b. List the material the party seeks leave to read and file on the application, and the date of each document;
 - c. Identify the issues for determination in the Application before the Court;
 - d. Address that the Court has jurisdiction to decide the matter before it;
 - e. Summarise the party’s argument;
 - f. Identify relevant cases and legislation;
 - g. Usually not exceed six (6) pages.
21. In a complex matter, parties should email their outlines of argument to the relevant Magistrates Court Registry by 2 pm the day before the return date of an application. The email should be copied to all other parties to the application. This is not a process of exchange: each party is to act independently.

Costs

22. The Court may determine costs at the conclusion of the application in accordance with Magistrates Court Practice Direction 18 of 2010.

Definitions

23. ***A particular Magistrates Court*** is as defined in Practice Direction 4 of 2024.

A handwritten signature in black ink, appearing to read 'J. Brassington', written in a cursive style.

Judge Janelle Brassington
Chief Magistrate
8 April 2024