

31 March 2009

**THIS LETTER IS INTENDED AS A GUIDE ONLY TO CLIENTS WITH POTENTIAL CLAIMS AGAINST THE STATE – YOU SHOULD CONSULT WITH JEREMY SUTTON BEFORE PROCEEDING.**

Dear

**STEPS IN CIVIL PROCEEDINGS vs. [ ]**

1. I refer to our meeting with [ ] on [ ]. As agreed I set out below the steps to be taken at each stage of the court proceeding.

**Filing of Proceedings**

2. This involves the filing of the Statement of Claim and Notice of Proceeding. The Statement of Claim should contain sufficient particulars to enable the Defendant (and the Court) to understand the nature of the proceeding and the allegations that support the causes of action.
3. The Statement of Claim should also of course contain the causes of action, and the remedies sought from the Court. We are claiming the sum of [ ] on your behalf
4. As indicated in my previous letter, the Court filing fee for proceedings is [\$ ] (including GST) and the proceeding is filed in the District/ High Court. (Delete one)
6. We have already indicated to you [ ] that the cost of preparing the Statement of Claim is reduced by the fact that a large amount of these types of cases has already been done in this office. I expect our costs for preparing the Statement of Claim to be between [\$ ] and [\$ ] plus GST.

**Statement of Defence**

7. The Defendant has 30 days from the service of the Statement of Claim on it to file a Statement of Defence. We will give you a copy of that Defence when we have it for your comment.
8. The Court may at the time we file the proceeding, set the matter down for a Judge's telephone conference so that the Court is able to give directions as to timetable and process.

**Discovery and Inspection**

9. The next step after the statement of defence is discovery. Discovery is the process where the parties "discover" what evidence each party is to rely on to

make their case. Each party must let the other side, and the Court, see this evidence. We should seek discovery from the Defendant

10. The Defendant will want discovery from you in which case, a List of Documents will have to be compiled. This should be a simple exercise. You would “discover” or allow the Defendant to see the material that [ ] has on file, Documents and any notes of your meetings where either or both of us have attended, will of course be privileged from disclosure.

### **Affidavits**

11. Evidence supporting the claims will have to be written down and formalised. It is not the same as the criminal court where there is more emphasis on oral presentation there are few surprises in civil litigation of this nature. We will need to prepare a brief of evidence for you very soon.
12. The briefs will form the evidential base for the proceeding and need to be drafted carefully. We may need to instruct a private investigator and instruct our own experts if you have relevant documents, we need these as soon as possible.
13. The Defendant will have large resources normally to defend their position. The Police for example is used to going to Court. To give evidence. .

### **Hearing**

14. If a hearing is necessary, it will be a long way in the future. . I anticipate that we would need [days] about **80% of my cases settle before the hearing** Most awards made to our clients ( in or out of court ) are modest and if you want more details of the possible results , please contact me..
15. The hearing fee payable to the Court for a days hearing is \$1000.00 (including GST). If you are legally aided, this and other fees can be waived.
16. Written submissions will have to be prepared, filed in Court and served on the Defendant possibly up to 3 weeks ahead of the hearing. **It is likely take from 15 months to 2 years for your matter to get to hearing.** If your claim is strong, the Defendant may offer to settle the claim but this normally takes 6 to 12 months.

### **Costs**

17. The Court also has power to award costs and you would certainly be seeking costs as part of your claim.
18. .You have asked about the costs for this matter . It is very hard to estimate. In my discussions with [ ] we have erred on the conservative side and estimated a range of between \$[and] \$ plus GST depending on whether or not the matter goes to a full hearing and, ultimately, a judgment by the Court. It is my responsibility to keep costs reasonable .
19. If you are legally aided, then unless there are exceptional circumstances costs are not awarded against you if you lose. Therefore it is not normal for costs to be awarded against you if you are legally aided, , but it can happen

### **Legal Aid**

20. You may be able to apply for legal aid. I do legal aid work for many clients in this field . Legal aid generally is a loan and not a grant. **We will need to show your case has prospects of success for the matter to be granted and to continue on legal aid.** Sometimes aid is granted only for a few hours to investigate prospects of success. Legal aid takes up to 8 weeks to be

granted and may be withdrawn if your income increases for example. Aid may be withdrawn during the matter if the Legal Services Agency feels, the prospects are not good enough to justify aid

### **Team**

- 21 I operate a team approach in my office. I will supervise your file but on a day to day basis- [ ] will run your case. You are welcome to call or email us anytime.

If you have any questions, please contact me .

**Please sign and return the duplicate of this letter** to indicate you understand the steps we are taking for you and that you want to proceed.

Yours faithfully

**Jeremy Sutton  
Barrister**

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