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## CIVIL AND CRIMINAL PRE-TRIAL PROCEDURES TEACHER AND STUDENT POST-VISIT RESOURCE

This resource is for both teachers and students to use for future reference after the FBLEP 'Civil and a Criminal Pre-Trial Procedures' empty court activity.

### Civil Pre-Trial Procedures

1. Initiating Document and Outline of Claim

*The person making the claim (known as the Plaintiff in the Superior Courts and Claimant in the Magistrates Court) lodges a Writ (Superior Courts) or a Claim (Magistrates Court).*

*The document will contain either a short paragraph explaining the claim (known as an Endorsement of Claim in the Superior Courts) or a full summary of the facts of the case. This is known as a Statement of Claim.*

2. Service of Initiating Document

*The Writ/Claim must be served on the other party within 12 months of filing.*

*Service of the document will inform the defendant of the case against them and the court in which the case is to be heard.*

3. Memorandum of Appearance

*Defendants have between 10-21 days to file a notice either accepting or denying that the court has jurisdiction to hear the case. Service of this document informs the Plaintiff that the Defendant intends to defend the claim.*

4. Defence and Counterclaim

*The Defendant files a document outlining the facts relied upon to say that the Plaintiff is not entitled to the remedy sought.*

*In this document, the Defendant will usually accept or deny specific paragraphs of the Statement of Claim.*

*The Defendant can also file a document setting out the facts that support a claim by the Defendant against the Plaintiff.*

5. Directions Hearing

*Before trial, parties are required to attend court for short hearings about how the case will run. The focus of the hearings is ensuring that the case progresses to trial as quickly and efficiently as possible.*

6. Mediation

*This step is mandatory in all civil cases and is held before a Judge or Registrar of the Supreme Court. It aims to reduce the amount of cases that proceed to trial.*

*Everything that is said during this process is confidential – it cannot even be used at trial.*

## 7. Evidence – Documents and Witnesses

*Each party must disclose all of the evidence that they will rely upon at trial. Each party must allow the other party to inspect (and take copies of) any document relevant to an issue in dispute which may help to prove or disprove their case. Also, parties must exchange the statements of witnesses that they intend to call at trial.*

*This process is called Discovery in the Superior Courts and Disclosure in the Magistrates Court. Generally, evidence that is not disclosed to the other party cannot be used at trial.*

## 8. Commercial and Managed Cases List

*If a case requires closer Judicial management it will be placed on a list designed to closely tailor the pre-trial processes for the case. A case may be listed here if:*

- *it needs to be determined in a very short time so some steps have to be omitted or truncated;*
- *there is a large number of parties;*
- *there are very difficult legal questions; or*
- *there is some other aspect of the case which requires greater court resources.*

## 9. Certificate of Readiness for Trial

*Before a case can be listed for trial the parties must file a certificate which states that all parties are ready for the trial to take place. The parties will confirm various matters such as the length of trial, the number of witnesses and any special arrangements which have been agreed or ordered.*

## Criminal Pre-Trial Procedures – District Court

### 1. First Appearance – Magistrates Court

*All charges, regardless of seriousness, begin in the Magistrates Court. During the first appearance the prosecution notice (the charge) is read to the accused and the accused may apply for bail.*

### 2. Pleas / Committal Mention

*After receiving legal advice the accused is required to enter a plea. If the accused pleads not guilty or if they are unsure how to plead they will appear at a Committal Mention Date. The prosecution must provide all of their evidence to the accused prior to Committal Mention.*

### 3. Trial Listing Hearing

*After the accused has been provided with all of the evidence against them they will be committed (formally transferred) to the District Court to appear at a Trial Listing Hearing. At the TLH the parties discuss issues relevant to the trial and a trial date will be set.*

### 4. Trial

*At trial, the prosecution have to prove to the jury beyond a reasonable doubt that the accused person is guilty of the offence. The accused person does not need to prove that they are innocent. If the accused person is found guilty they will be sentenced at the conclusion of a trial, or at a later date.*

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## Criminal Pre-Trial Procedures – Supreme Court

1. First Appearance – Magistrates Court  
*All charges, regardless of seriousness, begin in the Magistrates Court. During the first appearance the prosecution notice (the charge) is read to the accused and the accused may apply for bail.*
2. Stirling Garden’s Magistrates Court  
*If the Supreme Court has jurisdiction to hear the charges the accused, after their first appearance, will be immediately remanded to appear in the Stirling Gardens Magistrates Court. Due to the Supreme Court’s limited jurisdiction, the SGMC is able to effectively streamline pre-trial processes.*
3. Pleas/Committal Mention  
*After receiving legal advice the accused is required to enter a plea. If the accused pleads not guilty or if they unsure how to plead they will appear at a Committal Mention Date. The prosecution must provide all of their evidence to the accused prior to Committal Mention.*
4. First Appearance – Supreme Court  
*Once the accused person’s charges have been committed (formally transferred) to the Supreme Court the accused will have a ‘First Appearance’. At the First Appearance the Judge will seek to confirm the not guilty pleas and set provisional trial dates.*
5. Status Conference  
*At a status conference trial dates will be confirmed and all parties will ensure the matter is ready to go to trial. The court will inquire as to whether there are any matters that need to be dealt with prior to trial, for example in relation to the admissibility of evidence.*
6. Directions Hearing  
*If a complex issue or dispute is raised at a Status Conference the judge may order a Directions Hearing so any issues can be resolved prior to trial. At a Directions Hearing each party will make submissions and the issue will be resolved.*
7. Trial  
*At trial, the prosecution have to prove to the jury beyond a reasonable doubt that the accused person is guilty of the offence. The accused person does not need to prove that they are innocent. If the accused person is found guilty they will be sentenced at the conclusion of a trial, or at a later date.*