



**Second Study Commission
Civil Law and Procedure
71st Annual Meeting of the IAJ - Cape Town (South Africa)**

Answers to the 2024 Questionnaire from Canada

Written submissions - when do they turn from a help to a hindrance?

In Taipei, Taiwan, we decided that in 2024, our second Study Commission will focus on how written submissions in civil litigations can turn from an help to a hindrance and whether there are limits on written submissions in our various jurisdictions. If so, what these limits include.

We have limited the questionnaire to six questions and expect to receive brief, concise answers. The questions are as follows:

1. Are there any limits for written submissions in civil litigations in your jurisdiction in terms of the maximum length?

Under the Canadian Constitution, the matters of Property and Civil rights and the Administration of Justice, fall within the jurisdiction of the Provincial Legislatures. Laws and Rules of Practice and Procedure may therefore vary from province to province.

In each jurisdiction, Rules of Practice and Procedure may specify the deadlines for filing written pleas and the consequences of the failure to meet these deadlines. While applications to institute proceedings must generally be made in writing, in many cases, pleas may be presented orally and, in some instances, it is peremptory that it be done that way.

When written pleas can or must be produced in response to an application, it is not often that limits are imposed on their maximum length.

In general, pleadings are presented orally before the court by counsel, or by the parties themselves when they are unrepresented. However, written pleadings are becoming increasingly common.

In most provinces, there are no rules limiting the maximum length of written pleadings in civil litigation, except in the case of factums and presentations filed in appellate courts. This is also the case in certain types of cases before the lower courts, notably factums filed in support of summary judgment applications, applications for judicial review, and certain family law applications.

In all cases, the trial judge's management powers give him or her the right to limit the number of pages of written pleadings if he or she deems it appropriate.

2. Are there time limits for filing written submissions?

In all the provinces, there are Rules of Practice and Procedure that set the time within which written pleas must be filed with the court clerk. The filing of written pleadings may also be subject to certain time limits, but there is no uniform rule on this point from one province to another or from one court to another.

In Quebec, for example, the parties are not obliged to file written pleadings before the lower courts within a predetermined format or timeframe. In general, they are presented to the judge at the end of the trial to support or take the place of the lawyers' oral arguments. However, the judge hearing the case may ask the lawyers to submit their written pleadings in advance, so that he or she can familiarize himself or herself with the arguments of the parties and their authorities before the trial. This is also the case in other provinces.

In Saskatchewan, however, the situation is different. The rules of practice specify the format that written pleadings must follow, the time limit within which they must be filed, and the sanctions that apply in the event of non-compliance.

3. Are there limits in terms of a maximum number of additional submissions in a case?

No. In general, there are no limits in terms of the maximum number of additional submissions.

As written pleadings are filed at the time of trial or shortly before trial, it is uncommon for additional submissions to be filed, but it is possible. Unless there are exceptional circumstances,

no additional written pleadings are filed once the case has been taken under advisement. The trial judge may, however, invite the parties to submit additional submissions on specific questions of law that have not been addressed, if he or she deems it appropriate to do so.

4. Are there rules, including penalties or cost implications for breaches of these requirements?

In general, failure to comply with the filing deadlines set out in the Rules of Practice and Procedure may be sanctioned by foreclosure if requested by the opposing party, unless the defaulting party obtains an extension of time or is relieved of default by the court.

With regards to written pleadings, the situation varies but, in general, there are no specific sanctions or financial implications, but the trial judge may refuse to receive them if they do not comply with the court's directions or do not meet the requirements of the orders he or she has issued. Thus, he or she may refuse an exemption or an extension of time or ignore documents that do not comply with the instructions given or that are filed late, particularly when acceptance of the documents is likely to cause delays and generate additional costs for the opposing party.

5. Are these limits or requirements effective in reducing the number and length of written submissions and the time spent preparing for and determining a case?

In the majority of cases, the directives or orders issued concerning the form of written pleadings and the deadlines within which they must be filed are complied with, and the production of these documents facilitates the preparation and determination of the case, but there are still, unfortunately, cases where these requirements are not complied with. Unrepresented parties are becoming increasingly numerous. They are less familiar with the Rules of Practice and Procedure, and this raises the stakes.

6. What is the effect of written submissions on any hearing which subsequently takes place?

In general, written pleadings are very useful. They enable the judge to anticipate the legal claims of the parties, to verify the merits of their claims and to assess the relevance of the authorities cited where necessary.

7. Comments or suggestions as to what could otherwise prove to be effective.

It would be important for written pleadings and authorities to be filed in the court file at least 30 days before trial, and also to be available in digital format.