

Second Study Commission

Civil Law and Procedure

66th Annual Meeting of the IAJ – Cape Town (South Africa)

Questionnaire 2024

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 litigation can turn from a 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 short but concise answers. The questions are as follows:

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

In our jurisdiction written submissions are also referred to as skeleton arguments. There are various time limits depending on the type of case. Examples include:

Chancery/Business and Property Court - trial skeletons should not be longer than necessary and not exceed 50 pages in length including appendices and schedules save in exceptional circumstances.

Administrative Court - should not exceed 25 pages although the court can grant permission to exceed.

Technology and Construction Court - referred to as opening notes - to be of modest length proportionate to the size and complexity of the case.

Appeals - should not normally exceed 25 pages and should only be filed and served where the complexity of the issues of fact or law in the appeal justify them: or would assist the court in respects not readily apparent from the papers in the appeal.

2. Are there time limits for filing written submissions?

There are time limits for filing depending again on the type of case

Chancery/Business and Property Court - to be filed and served not less than 2 clear days before the trial date or if earlier 1 clear day before the judge is due to begin reading for the case

Administrative Court - if no specific judicial direction has been ordered then they are to be filed and served not less than 21 days before a substantive hearing or warned date

Technology and Construction Court - subject to a specific judicial direction, they are to be filed and served 2 clear working days before the start of trial

Court of Appeal - the appellant must file their skeleton argument when filing their appeal notice. The respondent who files a respondent's notice must file and serve their skeleton within 14 days of filing the respondent's notice

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

Courts would normally require an application if a party wished to file additional submissions as parties are limited by rules and practice directions. Some courts will allow a party to apply at a pre trial review to extend the number of pages which may be granted depending on the complexity of the case. Notwithstanding, parties representatives will on occasion file additional submissions and the trial judge will have to decide how to deal with them

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

There can be penalties or costs implications. Examples include:

Business and Property Court - where the practice direction is not complied with then the costs of the skeleton argument/submissions may be disallowed in whole or in part

Administrative Court – the judge can disallow costs if the rules or practice direction are not complied with

Even where no express rule to penalise is enshrined in a rule or practice direction the judge has the ability to act on a discretionary basis if the rules are breached and may penalise the non compliant party in costs

In addition, the judge can return the submissions if excessive and highlight the requirements of the relevant practice directions

In [WWRT v Carosan Trading et al VG 2022 CA016](#)- a Commercial Court case decided in the Eastern Caribbean Supreme Court, Judge Jack measured the skeleton arguments as a percentage of the length of the book War and Peace by Tolstoy. He highlighted that the book word count was 587,287 as against the combined word count of the Claimant's skeletons - 29,855 words, as being 5.08% of the length of the novel. On that occasion he had to read them but was open to costs applications in respect of the increased costs through service of these skeletons /submissions.

In [FG v HJ6](#) - involving the same Claimant counsel as in the WWRT case, counsel submitted a skeleton of 62 pages – 22,300 words equating to 3.8% of the length of War and Peace. The trial judge refused to read it and referred counsel to the Civil Procedure Rules CPR 1.1(2)(e) and the case of [Heydt Invest SA v Mex Clearing Ltd. BVIHC \(COM\)2021/0073](#). Counsel was required to provide a skeleton of a more reasonable length to avoid the judge summarily assessing the costs of opposing counsel who had had to read the long skeleton – in the Heydt case the judge had penalised the non compliant party in costs by awarding the opposing party costs relating to the additional work involved in reading the lengthy document and additional work in preparation as a result

Other potential orders for non compliance include disallowing the cost for preparing a written submission or cutting the brief fee of the counsel who has not complied

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

Yes if adhered to and if costs sanctions are enforced. By reducing the length of written submissions, preparation time can be reduced for advocates and certainly for judges. The time then allotted to the case is more appropriate and parties can be on a more equal footing

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

They should enable all those involved in the case to relatively quickly note the issues involved including those agreed and those in dispute. Advocates will be aware of the Civil Procedure Rules - CPR 1.1 the Overriding Objective and the requirements on them when engaging in civil proceedings. The rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost

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

Most effective is likely to be ensuring adherence to the practice directions and guidance, so that advocates do not file long written submissions in contravention and to ensure preparation by all is in a manageable timescale whilst also allowing parties to be on a more equal footing

Consistency of adherence is important.