

**Consumer Trader and Tenancy Tribunal
Chairperson's Direction**

**HOME BUILDING DIVISION
CLAIMS OR DISPUTES OVER \$30,000**

These directions have effect from 1 July 2009.

1.0 Introduction

- 1.1 These directions are issues pursuant to section 12 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (the CTTT Act) and set out the procedure which is to apply to all applications in the Home Building Division where the amount claimed or in dispute is over \$30,000.00 or over.
- 1.2 These directions replace CD 2003-3 issued on 28 July 2003.

2.0 Lodgement of applications

- 2.1 Applicants should only make an application when they are ready to proceed with their case, having obtained all the necessary experts reports and other relevant documents.
- 2.2 Applications are to be lodged on the approved Tribunal form and are to include, or have attached, a short typed document summarising, in numbered paragraphs, the basis of the application, including the final orders sought from the Tribunal. Applications should name the respondent(s) accurately, and clearly state the address or addresses of the respondent(s).

3.0 Cross-applications

- 3.1 If a respondent wishes to seek an order or orders against the applicant, the respondent must lodge a separate application, called a 'cross-application'.
- 3.2 Cross-applications should be lodged no later than the first direction hearing. Generally all applications and cross-applications about a matter will be heard and determined together, unless circumstances (for example, delay in lodging a cross-application) preclude such a course of action.

4.0 First directions hearing

- 4.1 A directions hearing will be held up to 42 days after lodgement of the application. The directions hearing must be attended by the parties, or by representatives with full knowledge of the case, able to advise the Tribunal as to the state of preparedness of the parties, and the steps needed to resolve the matter.
- 4.2 At the directions hearing the parties will be given directions for the exchange of evidence in chief, points of claim and points of defence in relation to the application and any cross-application which has been lodged.

- 4.3 Unless the Tribunal orders otherwise in a particular case, the applicant must provide its evidence in chief to the Tribunal and the respondent(s) 28 days from the first directions hearing, the respondent(s) must provide their evidence in chief to all other parties and the Tribunal in a further 28 days. The matter will then come before the Tribunal for a second directions hearing, which will normally be held by telephone.
- 4.4 Material to be provided must, unless it is impracticable or impossible to do so, be provided in a bound folder or series of folders, typed, in numbered paragraphs where appropriate, and, with numbered pages and a table of contents. Evidence in chief that is not provided in advance in accordance with these Directions is not admissible at the hearing of the matter, unless leave is granted.
- 4.5 The documents to be filed and served in accordance with the Tribunal's directions should include:

Applicant's Documents:

- The contract (that is, all signed or sealed contractual documents), if there was a written contract, or a written statement explaining how the parties agreed for the building work to be done.
- Any certificates of insurance.
- Any bills, invoices, receipts, accounts, bank statements or other evidence of requests for payment or of payment relevant to the case.
- Any experts reports on which the applicant intends to rely at the hearing.
- Any statements by witnesses other than experts on which the applicant intends to rely at the hearing.
- Any relevant photographs, video or audio tapes, or other evidence, and
- If the claim involves defective or incomplete work, a Scott Schedule. (A Scott Schedule is available on the Tribunal's website, and will be available at the First Directions Hearing).
- A concise chronology of relevant events.
- 'Points of Claim' that is, a brief summary of the claim, stating in point form the orders (for example, payment of money, repair of defective work) that are sought, and the reasons for seeking those orders.

Respondent's Documents:

- The contract (that is, all signed or sealed contractual documents), if there was a written contract, or a written statement explaining how the parties agreed for the building work to be done.
- Any certificates of insurance.
- Any bills, invoices, receipts, accounts, bank statements or other evidence of requests for payment or of payment relevant to the case.
- Any experts reports on which the respondent intends to rely at the hearing.
- Any statements by witnesses other than experts on which the respondent intends to rely at the hearing.
- Any relevant photographs, video or audio tapes, or other evidence, and
- If the claim involves defective or incomplete work, the completed Scott Schedule. (A Scott Schedule is available on the Tribunal's web site, and will be available at the First Directions Hearing.).
- A concise chronology of relevant events.
- 'Points of Defence' that is, a brief summary of the defence, stating in point form the reasons that the claim is opposed.

- 4.6 Parties must inform the Tribunal at the first directions hearing:
- if they require a summons for production of documents,
 - of any matters in the case likely to require special attention or individualised orders,
 - if they are seeking leave to be legally represented, and the name, address, telephone and fax number and e-mail address of the proposed representative,
 - if it is proposed to amend the application significantly, or
 - if the respondents propose to, lodge, or have lodged, a cross application.

5.0 Statement of Readiness

- 5.1 Seven days after the date for filing and serving of the respondent's documents, parties are to provide each other and the Tribunal with a document signed by a person with full knowledge of the matter or the lawyer with carriage of the matter, stating whether or not both parties have complied with the directions to date and any further steps necessary to be taken before the matter is to be set down for hearing, including whether or not the party requires an expert's conclave.

6.0 Second directions hearing

- 6.1 The statement of readiness will be considered at a second directions hearing which will be held approximately 14 days after the time allowed for filing and serving the respondent's documentation. The purpose of the second directions hearing is to ascertain the status of the matter and to set a timetable for the hearing of the matter. The second directions hearing will usually be held by telephone.

7.0 Listing for hearing

- 7.1 Matters will normally be listed for hearing at the second directions hearing. The Tribunal will attempt to accommodate the views of the parties as to available dates.

8.0 Compliance with Tribunal Timetables

- 8.1 Compliance with the timetables and other directions set by the Tribunal is mandatory, and cannot be altered, even if the parties consent, except with leave of the Tribunal.
- 8.2 If parties wish to depart from any direction made by the Tribunal, whether seeking extensions of time, adjournment of hearings (including directions hearings) they must seek leave.
- 8.3 If leave is granted the party seeking leave may be required to pay the costs of any other party inconvenienced by the alteration, including costs of any hearing at possibility of a costs penalty before seeking leave.
- 8.4 Applicants for leave to depart from Tribunal directions or their representatives will be required to establish that the departure from directions is necessary for the adequate running of the case, was not avoidable by management of the proceedings with due diligence, and that the leave, if granted, will not unduly disadvantage any other party(ies).

9.0 Further Directions Hearings

- 9.1 A directions hearing may be listed at any time if the matter requires it, or the parties have not complied with these Directions or with specific directions made by the Tribunal. Either party may make a request for a directions hearing if the need arises. The request should be in writing, be sent to the Tribunal and all other parties, and set out the reasons for which the directions hearing is sought.

10.0 Settlement

- 10.1 The Tribunal actively promotes and encourages settlement at all stages of proceedings. At any time the Tribunal may order, or a party may request, that conciliation, mediation, or other alternative dispute resolution process take place, assisted by a Tribunal mediator or conciliator as appropriate.

11.0 Expert Conclaves

- 11.1 An expert conclave is a meeting between the expert witnesses, usually on site, at which the experts discuss the issues on which they have prepared reports, with a view, as far as possible, to clarifying matters in dispute and reaching agreement or narrowing points of difference.
- 11.2 Conclaves will be chaired or facilitated by a Tribunal member. The Tribunal member's role does not include the making of orders or directions in the case or the production of a report or the giving of evidence as to the conclave. Evidence of things said or done at a conclave is not admissible in the hearing unless all parties agree.
- 11.3 Unless otherwise ordered, the applicant is to liaise with the respondent(s) and arrange a suitable date for a conclave to be held on site, and advise the Tribunal of that date no later than 14 days after the second directions hearing.
- 11.4 A revised Scott Schedule is to be prepared and signed by the experts and filed by the Applicant's expert no later than 28 days after the date of the conclave.
- 11.5 Parties are responsible to ensure that their experts comply with Tribunal timetables.
- 11.6 Experts are expected to comply with the Chairperson's Direction 2003-02 "Expert Witness Code of Conduct".

12.0 Tribunal Appointed Experts

- 12.1 In appropriate cases, generally with the parties' consent, the Tribunal may appoint an independent expert to assess the issues in dispute and prepare a report for the advice of the Tribunal and the parties in accordance with section 48N of the *Home Building Act 1989*.
- 12.2 The expert's costs are to be borne equally by both parties.
- 12.3 Where the Tribunal appoints an expert the parties may not call their own expert witness or tender any other expert report except with the leave of the Tribunal.

13.0 Summonses to Produce Documents (sections 40 and 42 of the CTTT Act and regulation 30 of the CTTT Regulations 2002)

- 13.1 The Tribunal encourages parties to arrange informal disclosure of relevant documents.
- 13.2 Summonses to produce documents should be requested by parties as early as possible, preferably in a document annexed to the application or at the first directions hearing and return dates will be set, where possible, before a Tribunal member well in advance of the hearing.
- 13.3 Return dates will not normally be set less than 14 days before the hearing; late applications for summonses to produce will usually be returnable at the hearing. The Tribunal will determine issues of access, photocopying, and the like on the return date.
- 13.4 The procedures which are to apply to summonses are set out in Chairperson's Directions CTTT CD2004-3 "Summons to Attend and Give Evidence Summons to Attend and Produce Documents or other things"

14.0 Adjournments

- 14.1 No Tribunal process or fixture (including final hearing, directions hearing, mediation, conciliation or expert conclave) may be adjourned without the express approval of the Tribunal.
- 14.2 Applications for adjournment must, unless precluded by the circumstances, be made in writing and well in advance of the date set by the Tribunal. Applications for adjournment must clearly state the reasons for the application and be accompanied by supporting documentation where available. The party seeking an adjournment must advise other parties of the application, and obtain the written consent of the other parties where possible.
- 14.3 Unless an adjournment is expressly granted, parties should assume that the listing for which the adjournment is sought will proceed, and attend as directed with all appropriate witnesses, representatives, and documentation.
- 14.4 Parties should ensure adjournment requests comply with Chairperson's Directions CTTT CD2004-1 "Requests by parties for adjournment of Tribunal proceedings".

15.0 Withdrawal of Application

- 15.1 An application to the Tribunal may be withdrawn at any time by sending a notice in writing to the Registrar.
- 15.2 If, immediately before the application to the Tribunal was made, the applicant was subject to a rectification order by an inspector, the application may not be withdrawn except with the leave of the Tribunal. When granting leave to withdraw the application, the Tribunal may restore the rectification order (section 48(l) of the Home Building Act).

Kay Ransome

Chairperson

18 June 2009