



FIRST INTERNATIONAL  
DEBT COLLECTION



# MAGISTRATES COURT PROCEDURES

## MAGISTRATES COURT

The Magistrates Court deals with criminal matters as well as debt claims to the value of \$75,000.

## THE COURT ACTION COMMENCES

Once the Defendant (debtor) is duly served with his/her claim papers he/she must respond within 14 days of date of service by either admitting the debt or defending it. If the debtor fails to respond judgment is generally granted in favour of the plaintiff. Should the defendant dispute all or part of the claim then he/she must lodge a Notice to Defend. Both parties will then appear at a pre-trial review which will be conducted by a registrar of the court. The parties will be encouraged to clarify the issues and settle the matter. If it cannot be settled then the case will be listed for Trial or a Listings Conference to be heard by a magistrate. For claims of \$10,000 or less both parties can elect to have a less formal dispute resolution process. Should the parties resolve matters between them they can then advise the magistrate to withdraw the claim.

## AT THE TRIAL

Each party presents their case before the magistrate. Evidence is given under oath. Each party is then given the opportunity to ask questions and cross examine each other's witnesses. The parties are then given the opportunity to summarise their case.

After this the magistrate will make his decision.

## ENFORCEMENT

Should the magistrate award the case to the plaintiff, the 'judgment creditor' as he/she is then referred can collect the debt and cost from the 'judgment debtor'. If the debtor is unable to pay, a Means Inquiry will be held to assess the judgment debtor and conclude a periodical payment plan. Alternatively, the court may issue a Property (Seizure and Sale) Order for the sheriff or bailiff to carry out.

## WRIT OF EXECUTION

If the judgment creditor is still unable to collect from the judgment debtor a Writ of Execution can be taken out to seize the debtor's property; secure a Garnishee Order against the debtor's wages or bank account. However this is most uncommon with small claims.

## APPEAL

Provided it is a minor case, not decided by a magistrate, one can appeal to a magistrate in the magistrates court against the judgment on limited grounds. If it was a General Procedure Claim or Minor Claim decided upon by a magistrate one can appeal to the District Court. However, the appeal must be commenced within 21 days of date of judgment.