

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

What this Part is about: This Part allows a claim to be resolved through processes to expedite proceedings or avoid a full trial. These processes include:

- applications to resolve a particular issue or question, including a question of law;
- applications for summary judgment; and
- applications to strike out a pleading or other document.

TABLE OF CONTENTS

Part 7: Resolving Claims Without A Full Trial

DIVISION 1 Trial of Particular Questions or Issues

7-1 Application to resolve particular
questions or issues

7-6 Directions and terms

7-7 Stay of enforcement

7-8 Proceedings after summary
judgment against a party

DIVISION 2 Summary Judgment

7-2 Application for summary judgment

7-3 Evidence on application

7-4 Briefs required

7-5 Disposition of application

DIVISION 3 Striking Out or Amending Pleading or Document and Related Powers of Court

7-9 Striking out a pleading or other
document, etc. in certain
circumstances

PART 7: RESOLVING CLAIMS WITHOUT A FULL TRIAL

DIVISION 1

Trial of Particular Questions or Issues

Application to resolve particular questions or issues

7-1(1) On application, the Court may:

- (a) order a question or an issue to be heard or tried before, at or after a trial for the purpose of:
 - (i) disposing of all or part of a claim;
 - (ii) substantially shortening a trial; or
 - (iii) saving expense;
 - (b) in the order mentioned in clause (a) or in a subsequent order:
 - (i) define the question or issue or, in the case of a question of law, approve or modify the issue agreed to by the parties;
 - (ii) fix time limits for the filing and service of briefs, an agreed statement of facts or any other materials required for the hearing; and
 - (iii) set out any other direction to organize the hearing;
 - (c) stay any other application or proceeding until the question or issue has been decided; or
 - (d) direct that different questions of fact in an action be tried by different modes.
- (2) If the question is a question of law, the parties may agree on:
- (a) the question of law for the Court to decide;
 - (b) the remedy resulting from the Court's opinion on the question of law; and
 - (c) the facts, or may agree that the facts are not in issue.
- (3) If the Court is satisfied that its determination of a question or issue substantially disposes of a claim or makes the trial of an issue unnecessary, it may:
- (a) strike out a claim or order a pleading to be amended;
 - (b) give judgment on all or part of a claim and make any order it considers necessary;
 - (c) make a determination on a question of law; and
 - (d) make a finding of fact.

(4) Division 2 of Part 5 applies to an application pursuant to this rule unless the parties agree otherwise or the Court orders otherwise.

(5) A determination of a question or issue mentioned in subrule (1) is final and conclusive for the purposes of the action, subject to the determination being varied on appeal.

Information Note

In subrule 7-1(1), “a question or an issue” may include:

- a question of law,
- a question of fact,
- a question of mixed law and fact,
- a question of jurisdiction,
- a question of the legal capacity of the parties,
- a question of admissibility of evidence, and
- a question of the effect of other pending proceedings between the same parties with respect to the same subject matter.

Refer to Division 1 of Part 6 for rules respecting how to file an application and what may be filed with the application.

DIVISION 2

Summary Judgment

Application for summary judgment

7-2 A party may apply, with supporting affidavit material or other evidence, for summary judgment on all or some of the issues raised in the pleadings at any time after the defendant has filed a statement of defence but before the time and place for trial have been set.

Evidence on application

7-3(1) A response to an application for summary judgment must not rely solely on the allegations or denials in the respondent’s pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.

(2) The Court may draw an adverse inference from the failure of a party to cross-examine on an affidavit or to file responding or rebuttal evidence.

(3) An affidavit for use on an application for summary judgment may be made on information and belief as provided in rule 13-30, but, on the hearing of the application, the Court may draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

Information Note

A respondent to an application pursuant to this rule may file a response to the application pursuant to Subdivision 2 of Division 1 of Part 6.

Briefs required

- 7-4(1)** On an application for summary judgment, each party shall serve on each of the other parties to the application and file a brief consisting of a concise argument stating the facts and law relied on by the party.
- (2) The applicant's brief must be served and filed at least 10 days before the hearing.
 - (3) The respondent's brief must be served and filed at least 5 days before the hearing.
 - (4) If the applicant wishes to reply to any new matters raised in the respondent's brief, the applicant must serve and file a reply brief at least 3 days before the hearing.

New Gaz. 23 Sep. 2022.

Disposition of application

- 7-5(1)** The Court may grant summary judgment if:
- (a) the Court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or
 - (b) the parties agree to have all or part of the claim determined by summary judgment and the Court is satisfied that it is appropriate to grant summary judgment.
- (2) In determining pursuant to clause (1)(a) whether there is a genuine issue requiring a trial, the Court:
- (a) shall consider the evidence submitted by the parties; and
 - (b) may exercise any of the following powers for the purpose, unless it is in the interest of justice for those powers to be exercised only at a trial:
 - (i) weighing the evidence;
 - (ii) evaluating the credibility of a deponent;
 - (iii) drawing any reasonable inference from the evidence.
- (3) For the purposes of exercising any of the powers set out in subrule (2), a judge may order that oral evidence be presented by one or more parties, with or without time limits on its presentation.
- (4) If the Court is satisfied that the only genuine issue is a question of law, the Court may determine the question and grant judgment accordingly.
- (5) If the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

(6) If the Court is satisfied there are one or more genuine issues requiring a trial, the Court may nevertheless grant summary judgment with respect to any matters or issues the Court decides can and should be decided without further evidence.

(7) If an application for summary judgment is dismissed, either in whole or in part, a judge may order the action, or the issues in the action not disposed of by summary judgment, to proceed to trial in the ordinary way.

(8) If an application for summary judgment is dismissed, the applicant may not make a further application pursuant to rule 7-2 without leave of the Court.

Information Note

If the amount of an award is referred for determination, Subdivision 2 of Division 5 of Part 6 applies.

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Directions and terms

7-6(1) If an application for summary judgment is dismissed, either in whole or in part, and the action is ordered to proceed to trial, in whole or in part, a judge may give any directions or impose any terms that the judge considers just, including an order:

- (a) specifying what facts are not in dispute;
- (b) defining the issues to be tried;
- (c) establishing a time line for pre-trial procedures;
- (d) regulating disclosure or production of documents or other evidence;
- (e) permitting evidence on the application for summary judgment to stand as evidence at trial;
- (f) specifying that the evidence of a witness be given in whole or in part by affidavit;

(g) specifying that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for them if, in the opinion of the Court:

(i) the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake or the importance of the issues involved in the case; and

(ii) either:

(A) there is a reasonable prospect for agreement on some or all of the issues; or

(B) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the Court;

(h) directing payment into Court of all or part of the claim; and

(i) directing security for costs.

(2) At the trial, any facts specified pursuant to clause (1)(a) are deemed to be established unless the trial judge orders otherwise to prevent injustice.

(3) In deciding whether to make an order pursuant to clause (1)(f), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration.

(4) If an order is made pursuant to clause (1)(g), each party shall pay that party's own costs.

(5) If a party fails to comply with an order pursuant to clause (1)(h) for payment into Court or pursuant to clause (1)(i) for security for costs, the Court on application of the opposite party may dismiss the action, strike out the statement of defence or make any other order that the Court considers just.

(6) If on an application pursuant to subrule (5) the statement of defence is struck out, the defendant is deemed to be noted in default.

Stay of enforcement

7-7 If it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the Court may make that order on those terms that the Court considers just.

Proceedings after summary judgment against a party

7-8 A plaintiff who obtains summary judgment may proceed against the same defendant for any other remedy and against any other defendant for the same or any other remedy.

DIVISION 3
Striking Out or Amending Pleading or Document and Related
Powers of Court

Striking out a pleading or other document, etc. in certain circumstances

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

- (a) that all or any part of a pleading or other document be struck out;
- (b) that a pleading or other document be amended or set aside;
- (c) that a judgment or an order be entered;
- (d) that the proceeding be stayed or dismissed.

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

- (a) discloses no reasonable claim or defence, as the case may be;
- (b) is scandalous, frivolous or vexatious;
- (c) is immaterial, redundant or unnecessarily lengthy;
- (d) may prejudice or delay the fair trial or hearing of the proceeding; or
- (e) is otherwise an abuse of process of the Court.

(3) No evidence is admissible on an application pursuant to clause (2)(a).