

RULE 19 – SUMMARY TRIAL

Application for summary trial

- (1) A party may apply to the court for judgment, either on an issue or generally, in any of the following:
 - (a) an action in which a defence has been filed;
 - (b) a petition in respect of which a trial has been ordered under Rule 50(12)(d);
 - (c) a contested family law or *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.), proceeding;
 - (d) a third party proceeding in which a statement of defence to third party notice has been filed;
 - (e) a proceeding by way of counterclaim in which a statement of defence to counterclaim has been filed.

When application must be heard

- (2) An application under subrule (1) must be heard at least 45 days before the date set for trial in the proceeding.

Setting application for hearing

- (3) Unless otherwise ordered, an application under subrule (1) must be set for hearing in accordance with Rule 48.

Evidence on application

- (4) Unless the court otherwise orders, on an application under subrule (1), the applicant and each other party of record may adduce evidence by any or all of the following:
 - (a) affidavit;
 - (b) an answer, or part of an answer, to interrogatories;
 - (c) any part of the evidence taken on an examination for discovery;
 - (d) an admission under Rule 31; or
 - (e) a written statement setting out the opinion of an expert, if:
 - (i) the statement conforms with Rule 34(5); or
 - (ii) the court orders that the statement is admissible even though it does not conform with Rule 34(5).

Application of Rule 42

- (5) Rule 42(29)(a) and (d), (30), (31) and (33) to (35) applies to subrule (4).

Application of Rule 34

- (6) Rule 34(7) and (8)(a) applies to an application under subrule (1).

Filings with application

- (7) A party who applies for judgment under subrule (1):
- (a) must serve with the application and the other documents referred to in Rule 47(5), every statement of expert opinion, not already filed, on which the party will rely; and
 - (b) must not serve any further affidavits, statements of expert opinion or notices except
 - (i) to adduce evidence that would, at a trial, be admitted as rebuttal evidence;
 - (ii) in reply to an application filed and delivered by another party of record; or
 - (iii) with leave of the court.

Notice of evidence to be used on application

- (8) Notice shall be given of the answers to interrogatories, the evidence taken on an examination for discovery and the admissions on which a party seeks to rely as follows:
- (a) by an applicant, in accordance with Rule 47(5); and
 - (b) by a party who is not an applicant, in accordance with Rule 47(6).

Preliminary orders

- (9) Where the parties disagree about whether a matter is suitable for summary trial, any party may apply for directions at an Appearance Day or a case management conference and the court may order that:
- (a) the application under subrule (1) be adjourned; or
 - (b) the application under subrule (1) be dismissed on the ground that:
 - (i) the issues raised by the application under subrule (1) are not suitable for disposition under this rule; or

- (ii) the application under subrule (1) will not assist the efficient resolution of the proceeding;
- (c) a party file and deliver, within a fixed time, any of the following on which it intends to rely:
 - (i) an affidavit;
 - (ii) a notice under subrule (8);
- (d) a deponent or an expert whose statement is relied on attend for cross-examination, either before the court or before another person as the court directs;
- (e) cross-examinations on affidavits be completed within a fixed time;
- (f) no further evidence be adduced on the application after a fixed time; or
- (g) a party file and deliver a brief, with such contents as the court may order, within a fixed time.

Timing of preliminary application

- (10) An application for an order under subrule (9) may be made at an Appearance Day or case management conference or, with the consent of all parties, at the same time as an application under subrule (1).

Judge not seized of application

- (11) A judge who makes an order under subrule (9) is not seized of the application under subrule (1) unless the judge otherwise orders.

Judgment

- (12) On the hearing of an application under subrule (1), the court may:
 - (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application;
 - (b) impose terms respecting enforcement of the judgment, including a stay of execution, as it thinks just; and
 - (c) award costs.

No further application without leave

- (13) If the court does not grant judgment under subrule (12), the applicant may not make a further application under subrule (1) without leave of the court.

Directions

- (14) If the court is unable to grant judgment under subrule (12) and considers that the proceeding ought to be expedited by giving directions, the court may order the trial of a proceeding generally or on an issue and may order that:
- (a) the pleadings be amended or closed within a fixed time;
 - (b) a party file and deliver, within a fixed time, to each party as specified by the court, a list of documents or an affidavit verifying a list of documents in accordance with the directions that the court may give;
 - (c) applications be brought within a fixed time;
 - (d) a general application for directions be brought within a fixed time;
 - (e) a statement of agreed facts be filed within a fixed time;
 - (f) all procedures for discovery be conducted in accordance with a schedule and plan directed by the court, and the plan may set limitations on those discovery procedures;
 - (g) the obligation to pay conduct money to any of the parties or persons to be examined be allocated in the manner specified in the order;
 - (h) an examination for discovery or a pre-trial examination of a witness be of limited duration;
 - (i) a party deliver a written summary of the proposed evidence of a witness within a fixed time;
 - (j) the evidence in chief of a witness be of limited duration;
 - (k) the evidence in chief of a witness be given in whole or part by the production of a written statement;
 - (l) experts who have been retained by the parties meet, on a without prejudice basis, to determine those matters on which they agree and to identify those matters on which they do not agree;
 - (m) evidence be adduced in a manner provided by Rule 42(46) and (53);
 - (n) a party deliver a written summary of the whole or part of the party's argument within a fixed time;

- (o) all or any part of the submissions of counsel be in writing or of limited length;
- (p) a case management conference be held at a time and place to be fixed at which any of the orders in this subrule may be made;
- (q) the proceeding be set for trial; and
- (r) a settlement conference be held.

Right to vary or set aside order

- (15) A court may, before or at trial, vary or set aside an order made under subrules (9) and (14).

Order if jury notice filed

- (16) A party may apply to the court for judgment under subrule (1) notwithstanding the fact that a party may have filed a jury notice.