

RULE 41 – TRIAL

Application

- (1) This rule applies to
 - (a) an action, and
 - (b) a petition that is transferred to the trial list under Rule 50(12)(d).

Request for trial date

- (2) A trial date may be obtained from the trial coordinator after approval of the trial date from a judge in a case management conference.

Notice of trial

- (3) Notice of trial in Form 39 shall be filed within 14 days from receiving the trial date by the party obtaining the trial date.
- (4) Notice of trial shall be delivered to or personally served upon all other parties of record within 7 days of filing, but not less than 28 days before trial, unless otherwise ordered.
- (5) The court may direct that an action be set down for trial at a particular time and place and that the notice of trial be issued by the registry.

Place of trial

- (6) The place of trial shall be at Whitehorse, but the court may order that the place of trial be changed or that the trial be heard partly in one place and partly in another.

Time of trial

- (7) The trial shall be heard on the day appointed by the notice of trial or so soon thereafter as may be convenient.

Court may adjourn trial date, etc.

- (8) The court may order the adjournment of a trial or fix the date of trial of an action or issue, or order that a trial shall take precedence over another trial.

Duty to inform registry

- (9) Each party to an action entered for trial shall give the registry without delay all available information as to the settlement of the action or affecting the estimated length of the trial.

Trial record for the court

- (10) The party who obtained the notice of trial shall file a trial record for the court, which trial record must contain
- (a) the pleadings as amended,
 - (b) particulars delivered pursuant to a demand, together with the demand made,
 - (c) any order made governing the conduct of the trial, and
 - (d) any document ordered by a judge.

Powers of clerk respecting trial records

- (11) The clerk may direct inclusion in the trial record of any document the clerk thinks necessary or may reject a trial record that, in the clerk's opinion,
- (a) does not contain all the pleadings,
 - (b) contains a document other than those set out in subrule (10), or
 - (c) is illegible.

Trial record documents to be marked

- (12) Each document referred to in subrule (10) that is required for the trial record shall contain the date that the document was filed, or, where it was not filed, the date that the document was prepared, completed or made.

Filing and delivery of trial record

- (13) The party referred to in subrule (10) shall file the trial record not more than 30 days and not fewer than 14 days before the scheduled trial date and shall deliver a copy of the trial record immediately after filing to all other parties of record.

Amended trial record

- (14) Where a pleading is amended after delivery of the trial record, the party who obtained the notice of trial, at least one day before the trial, shall file an amended trial record and deliver a copy to all other parties of record.

Direction as to trial record

- (15) Where the court directs that an action be set down for trial under subrule (5), it may also direct one of the parties to prepare, file and deliver a trial record.

Failure to file

- (16) Failure to file, deliver or personally serve the notice of trial or the trial record may result in the action being struck from the trial list.

Trial without jury generally

- (17) Subject to the *Jury Act*, a trial shall be heard by the court without a jury.

Trial of one question before others

- (18) The court may order that one or more questions of fact or law arising in an action be tried and determined before the others, and upon the determination a party may move for judgment, and the court, if satisfied that the determination is conclusive of all or some of the issues between the parties, may grant judgment.

Trial by different modes of trial

- (19) The court may order that different questions of fact arising in an action be tried by different modes of trial.

Calculation of amount by officer of the court

- (20) In an action in which it appears that the amount to be recovered is substantially a matter of calculation, the court may direct an inquiry, assessment or accounting under Rule 32.

Failure of all parties to appear at trial

- (21) If no party is in attendance when the trial of an action is called, the action shall be struck off the trial list.

Failure of one party to appear at trial

- (22) If a party is not in attendance when the trial of an action is called, the court may proceed with the trial, including hearing a counterclaim, in the absence of that party.

Court may set aside judgment

- (23) The court may set aside a verdict or judgment obtained where a party does not attend the trial.