

Summary Judgment and Summary Trials in Supreme Court

This guidebook provides general information about civil, non-family claims in the Supreme Court of B.C. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it. Legal advice must come from a lawyer.

Where You Can Get Help With Your Case

Information if You Represent Yourself

The BC Supreme Court Self-Help Information Centre (www.supremecourtselfhelp.bc.ca) provides legal information, education, and referral services for family and civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Vancouver location of the Supreme Court of British Columbia.

Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed under *legal advice* on the website for the BC Supreme Court Self-Help Information Centre.

Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court of BC. Not only do they ensure fairness to all parties involved in a lawsuit, they will guide you through every step of your case and set time limits for when certain steps must be done. You can find these Rules at the courthouse library, or on the court's website at www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

Forms

Official court documents (called court forms) must be used when you bring a dispute to court. You can print out blank forms for use in your lawsuit from the Supreme Court website. Go to www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms).

For information about family law claims, go to www.familylaw.lss.bc.ca.

Before you start your claim, you should consider talking to a lawyer to help you understand the law and the procedures that might apply to your case. You may be eligible to obtain free (pro bono) legal advice.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove;
- the possible legal arguments for your case.

You will also need to know about the Rules of Court and the forms that must be used in your lawsuit. If you do not understand these things, you might miss something (i.e. a deadline) and hurt your case. If you sue and lose, you might be ordered to pay the costs of the other party.

Summary judgment and summary trials in Supreme Court

This booklet explains how you can apply for a final judgment without having to go to a full trial. Summary judgment and summary trials are two different ways to obtain a final judgment without having to go through a full trial. The information about these procedures is set out in Rules 18 and 18A. Rule 18 deals with summary judgments. Rule 18A deals with summary trials. Both these Rules and any forms you need can be found at the locations and websites set out at the beginning of this guide.

This guide provides only a general overview about Rule 18 and Rule 18A and does not cover every aspect of these Rules. You will need to do more research on the law and Rules that apply to your specific case if you want to apply to the court under Rules 18 or 18A.

While summary judgments and summary trials speed up (and sometimes simplify) the trial process, they have complications of their own. Before you decide to apply under Rule 18 or Rule 18A, you may find it useful to consult a lawyer to find out whether either of these routes is appropriate for your case. Several different Rules may also apply (including, but not limited to, Rules 18, 18A, 17, 25, 40, 40A, 44, and 51A) and although summary judgments and trials can be shorter and faster, they can be complicated and consulting a lawyer will help you make a stronger case.

Summary judgment applications are intended to weed out those claims and defences that have no merit and will fail at trial. In other words, if you can show that the defendant has no real defence, you may be able to obtain summary judgment against him or her. Read Rule 18 for information about summary judgments.

A Rule 18A summary trial is an alternative to a full trial. Some of the differences between a full trial and a summary trial are that:

- evidence is given by affidavit rather than in person;
- because evidence is given by affidavit, the trial is dramatically shortened. For example, a five day trial might become a one day trial;
- a judge hearing a summary trial can decide that it is not appropriate for the case to be resolved in this way and can order that a full trial must be held.

Read Rule 18A for more information about summary trials.

Both summary judgment applications and Rule 18A summary trials are chambers applications and must follow the Rules, time limits, and procedures set out in Rules 44 and 51A, which govern chambers applications. See the guidebook called *Chambers Applications* for information and documents about chambers applications. Read that guidebook, together with this one, in order to prepare for a summary judgment application or a summary trial.

Note that the notice requirements relating to both summary judgment and summary trial applications are complicated and you should read the Rules 44 and 51A carefully to make sure that you do not miss any of these deadlines. Because these notice requirements are complicated, a flowchart is attached to the guidebook called *Chambers Applications* and you should refer to that flowchart to ensure that you understand the process.

Summary Judgment

Generally speaking, a summary judgment application should be made only in those cases where it is clear that the other party cannot win because he or she has no case or defence. A common example of an appropriate case for summary judgment might be when you have a claim for a debt owing to you and you can prove that the debt was incurred and that it has not yet been paid. The main question that the court considers on these applications is whether there is any genuine issue between the parties that requires a full trial to be resolved.

If you are the plaintiff, a summary judgment allows you to resolve the issues in your case and get judgment against the other party early on, saving you time and money. If you are the defendant, it allows you to stop the claim against you at an early stage.

Typically, a summary judgment application is made only after an appearance has been filed and the defendant is defending the proceeding. However, there are situations where a summary judgment application can be brought where the defendant has not filed an appearance or a statement of defence. Those situations are explained in greater detail below.

Either a master or a judge can hear a summary judgment applications. Summary judgment applications are heard in chambers.

a) Grounds for seeking summary judgment

If you are the plaintiff, you may apply for summary judgment under Rule 18 on the grounds that:

- (a) the other party does not have a defence against all or part of your claim; or

- (b) the other party does not have a defence against your claim except about the amount. In this case, you must be able to prove the amount you are owed.

If you are the defendant, you can apply for a summary judgment on the ground that there is no merit to all or part of the claim that is being made by the plaintiff.

b) Summary Judgment where no appearance or statement of defence has been filed

You would normally apply for a summary judgment in a case where the defendant has entered an appearance and is defending the proceeding. Where a proceeding is undefended, meaning that none of the defendants have filed an appearance, you usually proceed under Rule 17 to obtain default judgment. A plaintiff can also seek default judgment against a defendant under Rule 25 where that defendant has filed an appearance but has failed to file a statement of defence within the time required by the Rules. For more information on how to apply for default judgment see the guidebook called *Alternatives to Trial*.

Under the Rules, it is permissible to use the default judgment procedure for the following types of claims:

- (a) *A claim for liquidated damages.* Liquidated damages is a term used in the Rules to describe a claim where the amount you are owed can be easily determined by reference to documents or other evidence. For example, a claim for damages under a contract of sale where the purchaser agreed to pay a certain amount plus interest on any overdue amount would be a claim for liquidated damages (see Rules 17(3) and 25(4));

- (b) *A claim for unliquidated damages.*
Unliquidated damages is a term used in the Rules to describe a claim where the amount you are owed must be assessed and determined by the court. For example, if a plaintiff claims an amount for pain and suffering arising from an injury, the court will need to consider the evidence to determine the nature of the injury and what amount the plaintiff is owed as a result of the injury (see Rules 17(5) and 25(6)); or
- (c) A claim for the return of goods wrongfully detained (see Rules 17(6) and 25(7)).

If your claim is *not* one of the above types of claims and the defendant has not filed an appearance or a statement of defence, then you will have to make a summary judgment application under Rule 18 in order to get final judgment (see Rule 18(1)).

c) Evidence in a summary judgment application

Witnesses are not generally permitted in a summary judgment application. All evidence is set out in affidavits. This means that the information in your affidavit must be clear and accurate because it is crucial to your case. Make sure that your evidence does not conceal any facts and is absolutely frank. You may want to consult a lawyer when you prepare your affidavits to make sure that you have included everything necessary and that they do not contain information that should not be included. The affidavits determine the success or failure of your summary judgment application.

In a summary judgment application you are asking for a final order. For that reason, the person who swears any affidavit supporting your application must have direct knowledge of the facts contained in the affidavit. In other words, the person swearing the affidavit should not give evidence about facts that

someone else told him or her. Information told to someone by another person is called hearsay evidence and it is not allowed by the court in applications for final orders (see Rule 51(10)). If this means you have to file five affidavits in order to have all the facts sworn to by the people who have direct knowledge of them, then that is what you will have to do.

If you are the plaintiff, your affidavits must set out:

- the facts that prove the claim you are seeking judgment on; and
- confirmation that the person swearing the affidavit knows of no facts constituting a defence to the claim you are seeking judgment on, except possibly as to the amount of the claim.

If you are the defendant, your affidavits must set out:

- the facts that prove that there is no merit in the plaintiff's claim; and
- confirmation that the person swearing the affidavit knows of no facts that support the claim.

Make sure your affidavits:

- are organized in a way that makes sense;
- are easy to read and grammatically correct;
- are concise and to the point, but give all the facts required; and
- set out the facts in chronological order.

The guidebook called *Chambers Applications* will give you further helpful information on what other steps you need to take to prepare for a summary judgment application.

d) What can the court order?

Once the court has heard your summary judgment application, the judge or master has broad powers to make the order that would be just in the circumstances. It is important to keep this in mind because you may go to court and find yourself ordered to do something you had not thought of.

If a plaintiff applies for summary judgment, the court may:

- grant judgment on all or part of the claim;
- impose terms on the plaintiff, including making him or her wait to get paid on the judgment (this is called a “stay of execution”) until the defendant has

resolved its counterclaim or third party proceeding;

- allow the defendant to defend the whole claim or any part of the claim at a trial;
- give directions for the hearing of evidence at trial;
- dismiss the action, with the consent of all parties;
- award costs; or
- grant any other order it thinks just.

If a defendant applies for summary judgment, the court may:

- dismiss the proceeding; or
- make any of the orders set out above.

Summary Trial

Like a summary judgment, a summary trial is based on affidavit evidence. However, in a summary trial, you may present other evidence to the court in addition to affidavits. This evidence could include:

- answers to interrogatories;
- selected questions and answers from examinations for discovery;
- admissions made in response to a notice to admit; and
- expert reports.

For information about all these types of documents, see the guidebooks called *Discovery Process* and *Preparing for Trial and Trial*.

A summary trial can result in a judgment even if there is a dispute between the parties about the facts behind the claim or the defence to the claim. This is different than a summary

judgment, which is only given if there is no outstanding issue that needs to be resolved.

A summary trial can be applied for when:

- a defence has been filed;
- a statement of defence to a third party notice has been filed;
- a statement of defence to a counterclaim has been filed.

An important thing to keep in mind is that the judge must be satisfied that your case is suitable for a summary trial before granting judgment. If the judge decides that it is not possible to resolve your claim on the basis of the evidence presented or it is not efficient to hear the case on a summary trial, the judge can order that a full trial must be held. In this situation, the judge can also make a variety of different orders to get the matter ready for trial (see Rule 18A(13)).

Summary trials are heard by a judge in chambers and although they are meant to be short, they generally require more than 2 hours. This means that written arguments and lists of authorities (i.e., the relevant case law and legislation you will be relying on) must be provided to the court. For more information on what is required in an application that will take longer than 2 hours, see the guidebook called *Chambers Applications*.

Masters cannot hear summary trials.

If you already have a trial date, you should be aware that a Rule 18A application must be heard by the court *at least 45 days* before the date set for trial (see Rule 18A(1.1)). You will have to take this into account in scheduling a date to have the application heard.

a) Evidence in a summary trial application

Summary trials rely on written evidence, so make sure that your written evidence is complete and accurate. It is crucial to your case. Make sure as well that your evidence does not conceal any facts and is absolutely frank.

The court takes your evidence – affidavits, interrogatory answers, expert reports or opinions, examination for discovery questions and answers – and uses it to make a final judgment on the issues.

Because this evidence is so important to your case, you may want to consult a lawyer about how much and what type of evidence you should use at the summary trial. A lawyer will be able to advise you about whether you need an expert report or opinion, whether you should include interrogatories or examination for discovery questions and answers, and the form in which they should be presented.

In a summary trial you are asking for a final order. For that reason, the person who swears

any affidavit supporting your application must have direct knowledge of the facts contained in the affidavit. In other words, the person swearing the affidavit should not give evidence about facts that someone else told him or her. Information told to someone by someone else is called hearsay evidence and the court does not allow this kind of evidence. In applications for final orders (see Rule 51(10)). If this means you have to file five affidavits in order to have all the facts sworn to by the people who have direct knowledge of them, then that is what you will have to do.

Make sure your affidavits :

- are organized in a way that makes sense;
- are easy to read and grammatically correct;
- are concise and to the point but, contain all the facts required; and
- set out the facts in chronological order.

You can also provide to the court relevant interrogatory answers and examination for discovery questions and answers. Do not include entire transcripts, but make sure that the information:

- is well organized;
- includes everything needed to prove your position;
- does not include anything that is not needed;
- puts the questions and answers together and numbers them; and
- is easy to read.

Bring the original discovery transcript with you in case the court requests it.

You can also provide expert reports or opinions to the court. For further information about expert reports see the guidebook called *Preparing for Trial and Trial*. Make sure they meet the requirements of Rule 40A, which deals with expert reports. Expert reports or opinions may be crucial to your case. Consider this early on when planning your case.

If you have an expert opinion or report to present to the court, make sure the report contains:

- the qualifications of the expert; and
- the facts and assumptions the expert used to write the report.

b) Documents required for application

In general, you will need the following documents to apply for your summary trial application:

- a notice of motion;
- an outline;
- supporting affidavits;
- a notice of hearing;
- a brief containing your argument.

Although not always necessary, it is helpful for the judge if you can reach an agreement with the other party to prepare the following documents for the hearing:

- a joint book of affidavits and documents; and
- a joint book of authorities (i.e., relevant case law and legislation).

The guidebook called *Chambers Applications* sets out further helpful information about how to prepare for a chambers application. All the documents and Rules referred to in this guidebook can be found at any courthouse library or at the websites set out at the beginning of this guide.

What can the court order?

Either before or when a summary trial application is heard, the judge has broad powers to make the order that would be just in the circumstances. These powers are set out in Rule 18A. It is important to keep this in mind because you may go to court and find yourself ordered to do something you had not thought of.

At or before a summary trial, the court may:

- grant judgment in favour of any party, on either part of the claim or all of the claim;
- impose terms about enforcement of the judgment (such as when it must be paid);
- award costs;
- order that the action be heard by way of a full trial;
- order that either party must file and deliver certain documents within a fixed time;
- order that a person who has sworn an affidavit in the litigation, or an expert who has provided a statement, must attend for cross-examination;

- order that cross-examinations on affidavits (if required) be completed within a specific time period;
- order that no further evidence can be given after a certain time; or
- order a party to file and deliver a brief, containing contents as ordered by the court, within a specified time period.

Remember the court will not order all of these things. But keep in mind that if you appear before the court, any of these things might be ordered and you need to be prepared for this.

For the next steps, see the guidebooks called:

Chambers Applications

Alternatives to Trial

Preparing for Trial and Trial

*Expedited Litigation in Supreme Court
- Rule 68*

For definitions of common court terms, see the guidebook called:

Common Supreme Court Terms

This guidebook is part of a series, *Guidebooks for Representing Yourself in Supreme Court*, produced by:



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