



Court of Queen's
Bench of Alberta

SUMMARY TRIALS

In the Age of Culture Shift

THE BOUNDARY OF “ACCESS TO JUSTICE”

- Scarce resources...
 - Increased number of SRLs...
 - Legal complexity...
-
- “The problem is not restricted to the Courts. Access to Justice does not mean unlimited access to Judges; or even increased access to Judges. It is a system-wide challenge that we face.” - McLaughlin, CJC.



TAKING THIS SERIOUSLY...

“Trials are a myth”

“A change of attitude is needed”

“The times, they are a changing”

“What can I do to resolve this litigation?”

Hryniak v. Mauldin:

The Culture Shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case.



ONE SUCH “PROCEDURE”:

**SUMMARY
TRIALS**



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WHAT ARE THEY?

- **NOT Summary Judgments.**
- Refer to *Weir-Jones*, 2019 ABCA 49 at paras 17-19:
 - Summary disposition is way of resolving without a trial; **summary trial is a trial.**
 - Summary judgment available any time during pretrial time. If unsuccessful, trial is needed. Summary trial creates *res judicata*. Therefore, no “continuum” between the two creatures.



... BUT CAN WE USE THEM?

- If there is objection, refer to Rule 7.8(3): If judge's opinion that claim is suitable for summary trial or if summary trial will facilitate resolution, then objection can be dismissed.
- Two questions to determine appropriateness: (1) Can court decide disputed questions of fact in affidavit or by other proceedings allowed for in rules? (2) Would it be unjust to decide issues in this way? (per Shelly J in *O'Neil v Yaskowich*, 2018 ABQB 599).



EFFORTS TO ENCOURAGE



- In Southern Region, strongly encouraged use of summary trials.
- Encouragement through:
 - Informal discussion
 - Case conference
 - Case management hearings
 - “New Ways for Families Program”
 - Private/Regular Chambers
 - Oral/Written decisions
 - Town Hall meetings



INITIAL RESULTS

| 2013 | Lethbridge | Medicine Hat | Total |
|----------------------|-------------------|---------------------|--------------|
| Summary Trials Set | 5 | 8 | 13 |
| Summary Trials Heard | 4 | 2 | 6 |
| Full Trials Set | 3 | 4 | 7 |
| Full Trials Heard | 3 | 1 | 4 |
| 2014 | Lethbridge | Medicine Hat | Total |
| Summary Trials Set | 4 | 9 | 13 |
| Summary Trials Heard | 3 | 4 | 7 |
| Full Trials Set | 12 | 11 | 23 |
| Full Trials Heard | 3 | 3 | 6 |
| 2015 | Lethbridge | Medicine Hat | Total |
| Summary Trials Set | 8 | 9 | 17 |
| Summary Trials Heard | 4 | 1 | 5 |
| Full Trials Set | 9 | 5 | 14 |
| Full Trials Heard | 6 | 0 | 6 |



INITIAL RESULTS - SUMMARY

| 2013-2015 | Total |
|----------------------|--------------|
| Summary Trials Set | 43 |
| Summary Trials Heard | 18 |
| Full Trials Set | 44 |
| Full Trials Heard | 16 |



HERETICAL POSITION?

- “A trial is a summary trial unless it needs to be a full trial.”

~ Jeff Hirsch
President FLSC

- Wrong in law, but let's just go with it for the purpose of provoking discussion.



THREE MAIN PROBLEMS

1. The Two-Step Process
2. Process for the Hearing
3. Judicial Scheduling



THE TWO-STEP PROCESS

- The Rules create a summary trial process that is complex, uncertain, unclear, and risky.
- **First Step:** Application.
- **Second Step:** Possible objection, then hearing on objection.
- BUT, we can mostly sidestep the two-step problem by more clearly articulating the process.



PROCESS FOR THE HEARING

- Must have hearing management order:
 1. Why is summary trial suitable?
 2. How long will trial take?
 3. What are the specific issues?
 4. What steps do the litigants need to take?
 5. What evidence will be permitted?
 6. Limits/requirements on affidavits?
 7. Oral evidence allowed? If so, limits on direct/cross?
 8. When are briefs required? Any limits?
 9. Reinforce finality.



JUDICIAL SCHEDULING

• Three things are required:

1. Time to read



2. Time to hear



3. Time to decide



SHARPENING YOUR WEAPONS

- **What to do in a summary trial?**
- (1) Ensure and (2) stick to procedural order.
- (3) Think of affidavits as examination-in-chief, (4) make sure they are admissible, and (5) focus cross-examination.
- (6) **In opening:** provide a roadmap; (7) **In closing:** fill in the colours.
- (8) Make documents easy to locate, and (9) use regular trial advocacy skills.



THANK YOU!



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