

Appendix A

Rules 7.5 to 7.8 set out the process by which a party applies for a summary trial and a judge rules on whether a summary trial process will be permitted. Rule 7.8(1) states, "The respondent to an application for judgment by way of a summary trial may object to the application *at* or before the hearing of the application..." (emphasis added). Sub rule (2) states that a notice of objection and anything the objector intends to rely upon must be filed 5 days or more before the objection is scheduled to be heard.

Thus, the rules expressly provide that a respondent has the right to wait until 5 days before the date scheduled for the summary trial to give notice of objection, and then have their objection heard at the time originally scheduled for the summary trial hearing. One of the concerns with the summary trial process is that it is difficult for anyone to know whether the summary trial will be permitted to occur until the date actually scheduled for the summary trial. The process chosen in this case, to obtain this ruling in advance of the scheduled date, avoids that uncertainty.

The concern about uncertainty could be addressed if parties were to follow a bifurcated process. That process could be as follows:

Step 1:

An application in Form 36 is filed, returnable in regular chambers. The application should be supported by an affidavit and other evidence to be relied on by the applicant (*rule 7.5(2)(d)*). A summary trial is a trial so the following points should be remembered:

- Evidence should conform to the law of evidence.
- Each witness should provide one fresh affidavit.¹

Step 2

If the respondent consents, or does not object to the summary trial process the parties may submit the application by way of a desk application or speak to the matter in chambers. The chambers judge will review the application and may order the application to summary trial and direct the clerk to set the matter for summary trial hearing.

Step 3

If the respondent objects to the application (*rule 7.8*) the respondent may provide an affidavit limited to evidence required to determine the objection.

Step 4

The chambers judge will hear the application and if the objection is dismissed (*rule 7.8(3)*) may order the application to summary trial and direct the clerk to set the matter for a summary trial hearing.

¹ See *UB's Autobody v. Reid's Welding* (1981), 1999 ABQB 956

Step 5

The clerk fixes a date for hearing.

Step 6

The respondent files its affidavit and other evidence (*rule 7.6*).

Step 7

If necessary, a conference is held with the assigned judge to resolve evidentiary issues (*rule 7.5(3)*) or applications to adduce viva voce evidence.

Step 8

Summary trial proceeds on the hearing date. The Judge makes a decision after summary trial and grants judgment unless *rule 7.9(2)* applies.

Clerk's Stamp

***SCHEDULE "B"**

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

PARTY 1

PARTY 2

DOCUMENT

**DRAFT SUMMARY TRIAL HEARING
ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

**DATE ON WHICH ORDER WAS
PRONOUNCED:**

LOCATION OF TRIAL:

**NAME OF THE JUDGE WHO MADE THIS
ORDER:**

UPON ____ (eg. **THIS APPLICATION** pursuant to Part 7 Division 3; **ORDER** pursuant to Part 4 Division 2);

AND UPON READING OR HEARING READ the evidence filed in support of [and in opposition to] this application;

AND UPON HEARING the submissions by or on behalf of the parties;

AND UPON IT APPEARING to the Court that: (select which is/are applicable)

- a) the issue or question raised on the claim is suitable for a summary trial;
- b) the claim generally is suitable for a summary trial;
- c) the summary trial will facilitate resolution of the claim or a part of it;

AND UPON IT APPEARING that a procedural order pursuant to Rule 4.11 will assist in managing the action;

IT IS HEREBY ORDERED THAT:

1. The hearing in this action shall proceed to a ____ day summary trial [on a date certain; or on a date to be scheduled by the trial co-ordinator by not later than ____];

ISSUES

2. The issues or questions to be determined at the summary trial shall be [be as specific as possible]:
 - a)
 - b)

TRIAL READINESS [Note: Here set out any preparatory matters that need to be completed such as questioning, compliance with undertakings, disclosure, provision of expert reports)

3. Party 1 shall _____ on or before _____.

4. Party 2 shall _____ on or before _____.

5. Both parties shall _____ on or before _____.

6. Form 36 shall be filed by _____ on or before _____ (or dispense with need

for Form 36).

EVIDENCE

7. Each party shall file one single concise affidavit, based upon that party's personal knowledge and containing all the evidence, including admissible records/documents, which they intend to rely on at the summary trial. Party 1's affidavit shall be due on or before _____, and party 2's affidavit shall be due on or before _____. Any rebuttal evidence pursuant to Rule 7.5(3)(a) shall be filed by _____ on or before _____.

8. Each party may question the other on the affidavits but must complete that questioning on or before _____. A copy of the transcript of the questioning shall be filed for use as evidence on or before _____.

9. Each party is permitted to provide direct testimony for a total maximum of _____ minutes. Each party shall be subject to cross-examination generally, as in a full trial, but the total maximum time for cross-examination of each party shall be _____ minutes.

[Direct testimony of party, witness or expert may be limited to discrete topics, with non-controversial topics being addressed via affidavit.]

10. Party _____ may file an affidavit deposed to by _____, attaching _____'s proposed expert report and his/her qualifications to provide expert testimony in the area of _____ on or before _____. Party _____ may file an affidavit deposed to by _____, attaching _____'s proposed expert report and his/her qualifications to provide expert testimony in the area of _____ on or before _____.

11. Party 1 may provide concise affidavit evidence from _____ based upon personal knowledge and attaching admissible records/documents. Party 2 may provide concise affidavit evidence from _____ based upon personal knowledge and attaching admissible records/documents. The deadlines for the filing of these affidavits and rebuttal evidence from each party are the same as in Paragraph 7.

12. Each witness shall be subject to cross-examination generally, as in a full trial, but the total maximum time for cross-examination of each witness shall be _____ minutes. If a witness is not made available for cross-examination then the affidavit of that witness shall not be used as evidence in the summary trial.

13. Each party may file those portions of transcripts from questioning for discovery of the other party for use as evidence. The deadline for filing any such transcripts shall be the same as the deadlines specified in Paragraph 7.
14. The parties shall exchange proposals for an agreed statement of facts on or before _____, and upon review of respective proposals, party ___ shall file the resulting agreed statement of facts with the Court on or before _____.
15. Should any party wish to call additional witnesses or evidence pursuant to Rule 6.11 not specified in this Order, the party shall apply at a case conference pursuant to Rule 4.10 before Justice _____ .

ARGUMENT

16. Each party shall file a brief limited to ___ pages, including the facts relied on, reasons for the relief requested, and any legal or other arguments. Party 1 shall file by _____ and party 2 shall file by _____.
17. The parties will each be limited to ____ minutes for closing arguments. Counsel for the party to give the first closing argument will be allowed a maximum ___ minute response to the closing argument of the other party.

CONCLUSION

18. Subject to rule 7.9, the judicial determination of the issues at the summary trial shall be a final judgment, not an interim judgment, with respect to those issues.
19. If the parties reach agreement on some or all the foregoing issues, the Court shall be immediately advised.
20. Except for emergencies, no other applications shall be brought by either party prior to the hearing date without leave of Justice _____.
21. Party ___ shall pay the Clerk of the Court the required fee to set the matter for Summary Trial no later than _____ (same date as the Form 36).
22. Costs of this application and responsibility for the filing fee will be determined at the summary trial.

23. A copy of this Order shall be provided to the trial coordinator's office.

**JUSTICE OF THE COURT OF QUEEN'S
BENCH OF ALBERTA**