

## NEWS

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### NEW FEDERAL COURT SUMMARY JUDGMENT AND SUMMARY TRIAL RULES

New Federal Court rules concerning summary judgment and summary trial were brought into force on December 10th, 2009 (Gazetted December 23rd, 2009).

The new rules are designed to expand the possibility for expedited determinations in all kinds of cases falling under the Court's jurisdiction (and thus including maritime, intellectual property, administrative judicial review and cases by/against the federal government) with the exception of "simplified actions" (essentially where the claim is for not more than \$50,000).

Previously, there was a summary judgment procedure, but which in practice was severely limited in scope. A motion for summary judgment could be brought by a plaintiff or by a defendant or third party, but would only be granted in cases which (a) presented no genuine issue for trial, or (b) presented a genuine issue for trial, but the Court was able on the evidence to find the facts necessary to decide the questions of fact and law. The interpretation given to the rules was that (b) was confined to cases in which there was no real dispute as to facts and no issues of credibility; consequently, in practice the bar was so high that in reality few cases qualified for summary judgment mechanism.

The summary judgment rules themselves are left largely unchanged, but are integrated with the wholly new rules regarding summary trial. If the Court on a motion for summary judgment is satisfied that there is a genuine issue for trial, it now has the added option of determining the issues by way of summary trial and making any necessary orders for the conduct of a summary trial. In short, the Court on a summary judgment motion is now able to deal with differences of evidence via recourse to the new summary trial procedure.

The summary trial procedure is initiated by way of motion also. However, while it is on its face a motion to obtain

an order directing that the matter be tried summarily, and therefore presenting a threshold issue to be decided, the summary trial procedure itself is in fact part and parcel of the initiating motion. Both the moving and responding parties are required to include in their motion materials all of the evidence on which they rely, including affidavits, admissions, expert witness affidavits or statements, and all or portions of discovery transcripts. No further affidavits or statements can be used unless it is proper rebuttal evidence by the moving party, or with leave of the Court.

The Court can make any order required for the conduct of the summary trial, including requiring a deponent (the person giving an affidavit) or an expert to attend for cross-examination.

The Court will dismiss the motion if it finds that the issues raised are "not suitable" for summary trial or that a summary trial would not assist "in the efficient resolution of the action". On the other hand, if the Court is satisfied that there is "sufficient evidence for adjudication, regardless of the amounts involved, the complexities of the issues and the existence of conflicting evidence" it can grant judgment either generally or on an issue, unless it would be "unjust" to decide the issues on the motion.

While litigants will seek to use the new rules where they consider appropriate, the Court is going to be called on to interpret the rules' functioning, as some things are left unsaid in the black and white of their text. Notably, the Court is going to have to circumscribe the parameters and procedure between the determination whether or not something should be put to summary trial and the summary trial itself.