

Nova Scotia Civil Procedure Rules

Amendment

February 26, 2016

Rule 13 - Summary Judgment is amended by replacing Rules 13.01 to 13.07 with the following:

Scope of Rule 13

- 13.01 (1)** This Rule is for summary judgment on evidence in an action and summary judgment on pleadings in an action or an application.
- (2) This Rule is not for economical disposal of a claim or defence that may have some merit, to be determined through assessment of credibility or otherwise, which purpose may be served by any of the following:
- (a) provisions of Rule 4 - Action for early assignment of trial dates;
 - (b) provisions of Rule 5 - Application for an application in court and Rule 6 - Choosing Between Action and Application;
 - (c) Part 4 - Alternate Resolution or Determination, except Rule 13 - Summary Judgment;
 - (d) Part 12 - Actions Under \$100,000.
- (3) This Rule is not for disposal of frivolous, vexatious, scandalous, or otherwise abusive pleadings, which purpose is served by Rule 88 - Abuse of Process.

Interpretation

13.02 In this Rule 13, “statement of claim” includes all or part of a statement of claim, statement of claim against third or subsequent party, statement of counterclaim, and statement of crossclaim, and the grounds in a notice of application and in a notice of respondent's claim, and “statement of defence” includes all or part of a statement of defence and the grounds in a notice of contest in answer to a statement of claim.

Summary judgment on pleadings

13.03 (1) A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:

- (a) it discloses no cause of action or basis for a defence or contest;
 - (b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court or tribunal;
 - (c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.
- (2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:
- (a) judgment for the party making a claim, when the statement of defence is set aside wholly;
 - (b) dismissal of the proceeding, when the statement of claim is set aside wholly;
 - (c) allowance of a claim, when all parts of the statement of defence pertaining to the claim are set aside;
 - (d) dismissal of a claim, when all parts of the statement of claim that pertain to the claim are set aside.
- (3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.
- (4) A judge who hears a motion for summary judgment on pleadings may adjourn the motion until after the judge hears a motion for an amendment to the pleadings.
- (5) A judge who hears a motion for summary judgment on pleadings, and who is satisfied on both of the following, may determine a question of law:
- (a) the allegations of material fact in the pleadings sought to be set aside provide, if assumed to be true, the entire facts necessary for the determination;
 - (b) the outcome of the motion depends entirely on the answer to the question.

Summary judgment on evidence in an action

- 13.04 (1)** A judge who is satisfied on both of the following must grant summary judgment on a claim or a defence in an action:
- (a) there is no genuine issue of material fact, whether on its own or mixed with a question of law, for trial of the claim or defence;

- (b) the claim or defence does not require determination of a question of law, whether on its own or mixed with a question of fact, or the claim or defence requires determination only of a question of law and the judge exercises the discretion provided in this Rule 13.04 to determine the question.
- (2) When the absence of a genuine issue of material fact for trial and the absence of a question of law requiring determination are established, summary judgment must be granted without distinction between a claim and a defence and without further inquiry into chances of success.
- (3) The judge may grant judgment, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.
- (4) On a motion for summary judgment on evidence, the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented.
- (5) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by affidavit filed by the contesting party, affidavit filed by another party, cross-examination, or other means permitted by a judge.
- (6) A judge who hears a motion for summary judgment on evidence has discretion to do either of the following:
 - a) determine a question of law, if there is no genuine issue of material fact for trial;
 - b) adjourn the hearing of the motion for any just purpose including to permit necessary disclosure, production, discovery, presentation of expert evidence, or collection of other evidence.

Time for bringing motion for summary judgment on evidence

- 13.05** (1) A motion for summary judgment on evidence may be made any time after pleadings close and before a date assignment conference is requested, unless a judge directs otherwise.
- (2) A judge who conducts a date assignment conference and directs that a motion for summary judgment on evidence may be made must set a deadline by which the motion is to be heard.

Damages may be determined

- 13.06 (1)** A judge hearing a motion for summary judgment on evidence must grant judgment for an amount to be determined, if the only issue for trial is the amount to be paid on the claim.
- (2)** The judge may determine the amount, or order an assessment, accounting, or reference.

Order for summary judgment

- 13.07 (1)** An order for summary judgment may provide any remedy the court provides on the trial or hearing of a proceeding.
- (2)** The judge may stay an order for summary judgment until a related proceeding is determined.

Hearing after dismissal of motion for summary judgment on evidence

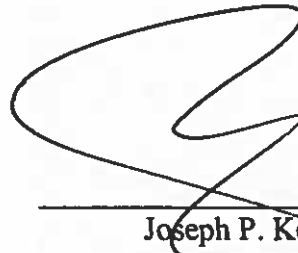
- 13.08 (1)** A judge who dismisses a motion for summary judgment on evidence must, as soon as is practical after the dismissal, schedule a hearing to do either of the following:
- (a)** give directions for the conduct of the action, if it is not converted to an application;
 - (b)** on the motion of a party or on the court's own motion, convert the action to an application in court, set a time and date for the hearing of the application, and give further directions as called for in Rule 5 - Application.
- (2)** A judge who gives directions for the conduct of an action that is not converted may include directions that do any of the following:
- (a)** restrict discovery in view of disclosure made through an affidavit or cross-examination on an affidavit;
 - (b)** narrow the issues to be tried by specifying what facts are not in dispute;
 - (c)** regulate disclosure or production of documents, electronic information, or other evidence;

- (d) permit evidence on the motion for summary judgment to stand as evidence at trial;
- (e) provide for a speedy trial.

Certificate

I, Joseph P. Kennedy, Chief Justice of the Supreme Court of Nova Scotia, certify that on February 26, 2016, a majority of the judges of the court made the foregoing amendment to the *Nova Scotia Civil Procedure Rules*.

Signed February 29, 2016

A handwritten signature in black ink, appearing to be 'J.P. Kennedy', written over a horizontal line.

Joseph P. Kennedy
Chief Justice of the Supreme Court of
Nova Scotia