

RULE 20
SUMMARY JUDGMENT

WHERE AVAILABLE

To Plaintiff

- 20.01** (1) A plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in the statement of claim.
- (2) The plaintiff may move, without notice, for leave to serve a notice of motion for summary judgment together with the statement of claim, and leave may be given where special urgency is shown, subject to such directions as are just.

To Defendant

- (3) A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

AFFIDAVITS

- 20.02** An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01(4), but on the hearing of the motion an adverse inference may be drawn, if appropriate, from the failure of a party to provide the evidence of persons having personal knowledge of contested facts.

FACTUMS REQUIRED

- 20.03** On a motion for summary judgment, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party, and file it, with proof of service, in the court office where the motion is to be heard, at least two days before the hearing.

DISPOSITION OF MOTION

General

- 20.04** (1) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest on the mere allegations or denials of his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.
- (2) The court shall grant summary judgment if,
- (a) The court is satisfied there is no genuine issue for trial with respect to a claim or defence; or
- (b) The parties agree to have all or part of the

claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

Only Genuine Issue is Amount

- (3) Where the court is satisfied that the only genuine issue is the amount to which the moving party is entitled, the court may order a trial of that issue or grant judgment with a reference to determine the amount.

Only Genuine Issue is Question of Law

- (4) Where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly.

Only Claim is for an Accounting

- (5) Where the plaintiff is the moving party and claims an accounting and the defendant fails to satisfy the court that there is a preliminary issue to be tried, the court may grant judgment on the claim with a reference to take the accounts.

WHERE A TRIAL IS NECESSARY

Powers of Court

- 20.05** (1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried and may order that the action proceed to trial by being placed forthwith, or within a specified time, on the docket.
- (2) At the trial the facts so specified shall be deemed to be established and the trial shall be conducted accordingly, unless the trial judge orders otherwise to prevent injustice.

Imposition of Terms

- (3) Where an action is ordered to proceed to trial, in whole or in part, the court may give such directions or impose such terms as are just, including an order,
- (a) for payment into court of all or part of the claim;
 - (b) for security for costs; and
 - (c) that the nature and scope of discovery, if any, be limited to matters not covered by the affidavits filed on the motion and any cross-examinations on them, and that the affidavits and cross-examinations may be used at trial in the same manner as an examination for discovery.

Failure to Comply with Order

- (4) Where a party fails to comply with an order for payment into court or for security for costs, the court on motion of the opposite party may

dismiss the action, strike out the statement of defence or make such other order as is just.

- (5) Where on a motion under subrule (4) the statement of defence is struck out, the defendant shall be deemed to be noted in default.

COSTS SANCTIONS FOR IMPROPER USE OF RULE

Where Motion Fails

- 20.06** (1) Where, on a motion for summary judgment, the moving party obtains no relief, the court shall fix the opposite party's costs of the motion on a substantial indemnity basis and order the moving party to pay them forthwith unless the court is satisfied that the making of the motion, although unsuccessful, was nevertheless reasonable.

Where a Party has Acted in Bad Faith

- (2) Where it appears to the court that a party to a motion for summary judgment has acted in bad faith or primarily for the purpose of delay, the court may fix the costs of the motion on a substantial indemnity basis and order the party to pay them forthwith.

EFFECT OF SUMMARY JUDGMENT

- 20.07** A plaintiff who obtains summary judgment may proceed against the same defendant for any other relief.

STAY OF EXECUTION

- 20.08** Where it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the court may so order on such terms as are just.

APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS

- 20.09** Rules 20.01 to 20.08 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.

Coles v. FitzGerald 2007 PESCTD 28

Summary judgment is not available in an action commenced pursuant to the *Mechanics Lien Act* R.S.P.E.I. 1988 Cap. M-4. Summary judgment against some of the defendants as well as partial summary judgment was denied because the court found there was a genuine issue for trial.

Johnston v. CADC & Ors. 2007 PESCTD 7

The summary judgment procedure can be used in a civil conspiracy case. The defendant's motion for summary judgment was granted because the plaintiff's claim that the defendant conspired with others against the plaintiff could not survive a good hard look.

Ayangma v. French School Board and Ano. 2007 PESCTD 12

The plaintiff's motion for summary judgment was dismissed. Pursuant to Rule 20.06(1), the court ordered the plaintiff to pay the defendants' costs of the motion on a substantial indemnity basis.

Ayangma v. French School Board and Ano. 2006 PESCTD 37; (2006), 259 Nfld & P.E.I.R. 354

A motion for summary judgment is not to be heard in stages but is to be considered as a whole after both parties have filed their evidence with respect to the motion. It is not proper to split a motion for summary judgment requiring the respondent to only file evidence if and when the mover meets the burden of establishing a basic case.

Metro Credit Union Ltd. v. McInnis 2005 PESCTD 39

The court granted partial summary judgment; granted a stay on the execution of that judgment pursuant to Rule 20.08 pending resolution of the remainder of the claims and, pursuant to Rule 20.05(2), the court made some material factual findings regarding part of the claim.

MacPherson v. Ellis 2005 PESCAD 10

Pursuant to rule 20.04 the onus is on the moving party to establish there is no genuine issue for trial. Once this onus has been discharged, the responding party has the evidentiary burden of showing there is a real chance of success on the pleading it has filed.

BMO v. Masseau 2004 PESCTD 09

The bank's motion for summary judgment was granted. The bank established there was no genuine issue for trial on the material facts and the defendant failed to establish there were material facts in issue which would raise a genuine issue for trial.

Bank of Montreal v. Dockendorf 2004 PESCTD 33; *Dockendorf v. Bank of Montreal* 2005 PESCAD 9

The bank's motion for summary judgment was granted. The defendant did not file any evidence in response to the motion and the defendant failed to establish there was a genuine issue for trial.

Royal Bank v. McCabe 2004 PESCTD 45

A motion for summary judgment brought by the bank was denied. The defendant's statement of defense, and the evidence she presented on the motion established there was a genuine issue for trial.

Mullin v. PriceWaterhouseCoopers 2003 PESCTD 82

The defendant sought summary judgment on the issue of whether the pleadings disclosed a genuine issue for trial. The issue allegedly raised by the pleading was whether the defendant owed a duty of care to the plaintiff in relation to opinions provided to a third party. The court granted the defendant summary judgment finding the plaintiff had not established a genuine issue for trial.

Blue Heron Enterprises Inc. v. Bradley & ors., [1999] P.E.I.J. No. 22 (Q.L.) (P.E.I.S.C.-T.D.)

Summary judgment is not available in an action to enforce a lien under the *Mechanics Lien Act*, R.S.P.E.I. 1988, Cap M-4.

Ayangma v. NAV Canada & Navaux 2001 PESCAD 1

The challenge on a motion for summary judgment in a defamation action is in distinguishing between questions of law and fact. If the only issue relates to a question of law, the defamation action could be finally resolved by the Motions judge on a motion for summary judgment. On the other hand, if there are issues of fact, the Motions judge must decide if it is a genuine issue of material fact which requires a trial for resolution.

Gallant v. Piccott 2000 PESCAD 17

A statutory onus provision - s.287 of *Highway Traffic Act* R.S.P.E.I. 1988 Cap. H-5 - created a genuine issue for trial which, in the circumstances of this case, could only be resolved by a trial.

Murphy v. Tignish Credit Union Ltd. and Aylward (1997), 147 Nfld. & P.E.I.R. 188 (P.E.I.S.C.-A.D.)

Appeal from an order of the Chambers judge dismissing an application for summary judgment. It was not for the Chambers' judge, or the court on appeal, to assess whether the allegations of the plaintiff are true or sufficient, on a balance of probabilities, to establish the plaintiff's claim. The role of the Chambers judge is to assess the evidence presented on the motion and make a determination whether it raises a genuine issue for trial.

Canfield et al. v. P.E.I. (1996), 144 Nfld. & P.E.I.R. 165 (P.E.I.S.C.-T.D.)

Applicant seeking order for summary judgment. Mechanism to resolve a proceeding when there is no genuine issue for trial. Party making motion must satisfy the court of this.

Simmonds v. Murphy (1996), 137 Nfld. & P.E.I.R. 332 (P.E.I.S.C.-T.D.)

Application for summary judgment - Purpose of Rule 20 is to remove from the trial system all matters where there is no genuine issue to go to trial. On hearing a motion, the chambers judge is to take a hard look at the evidence that is brought forth on the motion. The onus of establishing there is no triable issue is on the moving party; however, a respondent cannot sit back. If the respondent wishes to succeed it should put its best foot forward. When an issue of genuine credibility arises, a trial is required.

MacCallum v. Charlottetown (City) (1995), 127 Nfld. & P.E.I.R. 300 (P.E.I.S.C.-A.D.)

There must be no question as to all the material facts disclosed by the pleadings before the court can find there is no genuine issue for trial. The onus is upon the applicant to prove there is no issue as to all the material facts, and if discharged, the responding party must then show there is a genuine issue arising from the material facts, which requires a trial for determination.

Read v. Read et al. (1995), 133 Nfld. & P.E.I.R. 166

Partial summary judgment can be obtained in a situation where the claims are separate and distinct. Summary judgment can also be obtained for part of a single claim where such part is severable and liability for the balance of the claim is not affected.

Johnston v. Montreal Trust Co. of Canada (1994), 123 Nfld. & P.E.I.R. 245 (P.E.I.S.C.-A.D.)

Material before the chambers judge disclosed there was a genuine issue for trial as to whether there was a default by the primary debtor thereby triggering the liability of the guarantor. Order of the chambers judge entering summary judgment was set aside.

Agpro Services Inc. v. MacKinnon et al. (1994), 119 Nfld. & P.E.I.R. 239 (P.E.I.S.C.-T.D.)

The material filed in support of the motion for summary judgment and the material filed in opposition to the motion satisfied the court that a genuine issue of trial did exist. Although

the plaintiff was unsuccessful in bringing the motion, it was not unreasonable to have done so. The defendants were awarded party and party costs to be assessed and payable forthwith.

Westland Homes Ltd. et al. v. Schurman (M.F.) Ltd. (1993), 101 Nfld. & P.E.I.R. 122 (P.E.I.S.C.A.D.)

On hearing an application for summary judgment the chambers judge may assess the facts and the applicable law to determine if there is a genuine issue for trial.

Barclays Bank Agricultural Finance Corp. v. Miscouche Sales & Service Ltd. et al. (1992), 100 Nfld. & P.E.I.R. 129 (P.E.I.S.C.-T.D.)

The applicant must set out specific facts and cogent evidence organized to show that there is a genuine issue for trial.

The following decisions also address issues arising on an application for summary judgment and they affirm the principles set forth in the cases noted above.

Jay v. DHL 2007 PESCTD 5

S.P. v. Child & Family Services 2005 PESCAD 10

Taylor & ors. v. Corney & ors. 2004 PESCTD 71

Collings & Collings v. PEI Mutual Insurance Co. 2002 PESCTD 59

National Bank v. Stevenson 2000 PESCTD 17, (2000) 184 Nfld. & P.E.I.R. 95

DesRoches v. Di-Carra Inc. & Carragher, [1999] P.E.I.J. No. 33 (Q.L.) (P.E.I.S.C.-T.D.)

The Bank of Nova Scotia v. Savoie, [1999] P.E.I.J. No. 29 (Q.L.) (P.E.I.S.C.-T.D.)

Dale v. The Guardian & ors., [1999] P.E.I.J. No. 18 (Q.L.) (P.E.I.S.C.-T.D.)

United Brotherhood of Carpenters and Joiners v. Bradley & ors. (1999), 174 Nfld. & P.E.I.R. 102 (P.E.I.S.C.-T.D.)

Stevenson v. National Bank of Canada (1998), 161 Nfld. & P.E.I.R. 33 (P.E.I.S.C.-T.D.)

Parker v. Ledwell, Larter and Driscoll (1997), 159 Nfld. & P.E.I.R. 58 (P.E.I.S.C.-T.D.)

Davis v. Walkup (1997), 150 Nfld. & P.E.I.R. 233 (P.E.I.S.C.-T.D.)

Stewart v. MacLeod (1997), 158 Nfld. & P.E.I.R. 11 (P.E.I.S.C.-T.D.)

Stratford (Town) v. Ellsworth (1997), 157 Nfld. & P.E.I.R. 177 (P.E.I.S.C.-A.D.)

MacLeod (c.o.b. Grant MacLeod Construction Management) v. 2950243 Canada Inc. [1997] 1 P.E.I.R. 419 (P.E.I.S.C.-T.D.)

Lenentine v. Robichaud (1996), 140 Nfld. & P.E.I.R. 270 (P.E.I.S.C.-A.D.)

Read v. Read et al. (No.2) (1995), 131 Nfld. & P.E.I.R. 102 (P.E.I.S.C.-T.D.)

Lotito v. Scantlebury (1995), 129 Nfld. & P.E.I.R. 58 (P.E.I.S.C.-T.D.)

Canadian Imperial Bank of Commerce v. MacKenzie (1995), 135 Nfld. & P.E.I.R. 203 (P.E.I.S.C.-T.D.)

Boertien v. Carter et al. (1995), 131 Nfld. & P.E.I.R. 8 (P.E.I.S.C.-T.D.)

Century 21 Colonial Realty Inc. v. Dickson-Thompson (1995), 128 Nfld. & P.E.I.R. 165

(P.E.I.S.C.-T.D.)

Pitre v. Jeffery (1994), 119 Nfld. & P.E.I.R. 335 (P.E.I.S.C.-T.D.)

MacKinnon v. MacDonald (1994), 120 Nfld. & P.E.I.R. 178 (P.E.I.S.C.-T.D.)

Arsenault v. Holland College, [1994] 2 P.E.I.R. 230 (P.E.I.S.C.-T.D.)

Royal Trust Corp. of Canada v. Jamieson, [1994] 2 P.E.I.R. 193 (P.E.I.S.C.-T.D.)

Crosby's Construction Ltd. v. Matheson, [1994] 1 P.E.I.R. 123 (P.E.I.S.C.-T.D.)

Morrissey v. Morrissey (1993), 114 Nfld. & P.E.I.R. 122 (P.E.I.S.C.A.D.)

Tignish Credit Union Ltd. v. Murphy (1993), 109 Nfld. & P.E.I.R. 287 (P.E.I.S.C.-T.D.)

Singh v. Mills (1992), 97 Nfld. & P.E.I.R. 165 (P.E.I.S.C.-T.D.)

Central Guaranty Trust Co. v. Peters, [1992] 2 P.E.I.R. D29 (P.E.I.S.C.-T.D.)

Wheatley v. MacLeod, [1991] 2 P.E.I.R. D33 (P.E.I.S.C.-T.D.)