

INDEX

Please note:

1. “APP” references are to the appendices

2. References below include quotations from judicial decisions on the page indicated

Absolute Privilege, 175

Abuse of Process, 30, 49-50, 83, 118, 143, 146-147, 216, 246-248, 256, 316, 341, 352

Access to Justice, 9, 11-14, 16, 25, 31-32, 52, 91, 94, 96, 101, 162, 269, 274, 276, 282, 300-301

Adjectival Law, 98-99, 133

Adjournments, 51, 60, 81-84, 120, 123-124, 135, 148-155, 344

availability of counsel, 153

day of the motion, on, 152

directions given where trial date must be changed, 149

dissipation of assets, 150

history of delay, 149, 151-153, 155

long notice, on, 148-149, 152-153

scheduled timeline, failure to obey order, 152

See also Amendment, Interim, *infra*

See also Production and Disclosure, *infra*

service issues, 150

terms of, 154

to obtain further evidence, 123-124, 150

Adversarial System, 83, 96-98, 139

Adverse Possession/Easement, 169

Amendment, Interim, 78-88

delay, 87
misnomer amendment, 212
motion not to be heard with summary judgment motion, 81, 87
stay to permit, amendment, 82-84, 145

Appeals, 303-307

failure to exercise new powers, 108
from a Judge, 307-308
from a Master, 308-309
further evidence on, 124
proportionality, 94
Standard of Review, 309-313

Applications, 42-43

Arbitration, 25-26

Bankruptcy, 55-56, 127, 176, 181, 264, 298

Case Management - Motion, 51-53, 133

Case Conference, 52-54, 144, 146, 268, 272, 274
Civil Practice Court, 50-52
cross-examination, limits on, 139
further evidence, 107, 137
mini-trial, 5, 7, 10, 18, 22, 42-43, 67, 70, 105, 108, 134, 136-140, 159, 184, 196,
214, 236, 250, 264, 272, 274, 280, 285, 286, 322, 330
 not appropriate (Great Britain), 10
 when appropriate, 134-135
scheduling a long motion, 141
timeline for steps in motion, 145

Case Management - Trial, 5-6, 95, 269-285

Cheque Kiting, 176

Class Proceedings, 27-33

certification motion, 28-31, 33, 62
summary judgment, 27-39, 62, 157-164

Closed Pleadings, 39-41, 326

Commercial List - Toronto, 33-34

Common-Law Partners, 326

Complexity, 44, 88, 92, 196, 269, 271, 276, 301, 320, 331, 337

Concurrent Remedies, 66

Construction Liens, 182-189

Lien Reference and, 23

Contested Estates, 170-172

Contractual Interpretation, 172-174

Contributory Negligence, 46, 206, 265

Costs, 299-302

fraud, unfounded allegations, 301

Counterclaim/Crossclaim, 21, 36, 41, 69-70, 82, 86, 106, 115, 117, 125, 131, 138, 160, 161, 164-166, 189, 260, 224, 226, 244, 255, 264, 287-298

bills of exchange, 294

construction lien, 298

non-severable with main claim, 158-161

Rules 20.08 and 20.09, 21, 69, 189, 291-293, 295-296, 298

Credibility, Judging, 287-290

Criminal Charges, Pending, 180

Criminal Proceedings (Related), 245-249

Crown Wardship, 320, 328, 334, 342

Declaratory Relief, 170

construction lien, 182

Defamation, 41, 174-175, 212

Default Judgment and Summary Judgment, 39-40, 47-48, 69, 209, 297

Defendant

may not move for summary judgment (as opposed to dismissal), 40

Denial (Bare), 16-17, 21, 40, 85, 111, 113, 118, 123, 125, 151-152, 175, 200, 230-233, 235, 244, 251, 309, 322, 324, 328, 332, 334
Rule 20.02(2), 21, 111, 113, 202

Discovery plan, 19, 33, 57-58, 61, 276

Domain name, ownership of, 212

Efficient Scheduling – See Case Management - Motion, *supra*

Electronic devices in court, APP-1

Environmental Damage Claims, 211

Estate, collection against, 172

Evidence, 213 *et seq.*

admissions, generally, 241-245

affidavits, 1, 15, 17, 19-21, 42, 57-59, 61, 63-64, 82-83, 97, 105, 109-140, 143-144, 148, 151-153, 155, 180-181, 205, 213, 216-237, 240, 249, 251-252, 255-257, 261-262, 274, 276-277, 284-285, 287-288, 290, 322, 324-326, 328, 330, 332, 334-335, 343-344, 349, APP-3

lawyer's affidavit disfavoured, 113-114

waiver of privilege as, 128

legal argument, struck, 126

motion to strike, 142-148, 287

no personal affidavit delivered, 114, 234-236

privilege against self-crimination, 127

self-contradiction/prior inconsistent statement, 128-130

self-serving or conclusory statements, 63, 113-116, 124-126, 131, 229-233, 235, 262, 328, 334, 342

adverse inference, 17, 63-65, 114, 121-122, 124-125, 128, 178, 218, 222, 233-234, 251-252, 255-257, 260, 321

Rule 20.02(1), 17, 121, 218, 222, 255

assumed facts, 258-259

best Evidence Rule, 128, 183, 221, 234

business records, 218, 228

criminal conviction, related, 245-249

new evidence, 248

deemed complete record, 238, 250-258

documents, affidavit necessary (or not), 56-63, 153, 224-227, 241, 282

allegedly in possession of opposing party, 236

double hearsay, 216-217, 228-229

e-mails, of third party, 218

Evidence — *continued*

examination transcripts, 236-240, 246, 288
expert opinions, 20, 46, 177, 206, 221-227, 265-268, 350
 affidavit necessary, 224, 226
 medical malpractice, 262, 265-268
 qualification of, 222-225, 227
 Rule 20.05, 19, 22, 264
foreign law, 27, 110
future facts, 249-250
hearsay admissible, (Rule 39.01(4)), 67, 213, 216, 218, 220-221, 226, 256, 321, 330, 335
 child protection proceedings, 321, 327
 family rule 16, 319-344
improper evidence, 240-241
intent/state of mind, 179, 289
information and belief, 17, 213, 216, 220-222, 238
 Rule 20.02(1), 17, 213
no personal affidavit, 114, 234-236
oral testimony, 5, 11, 15, 18, 19, 22, 54, 59, 83, 104, 115, 138, 141, 177, 236, APP-2
 conflict with exhibits, 115
 direction at case conference, 54
 family law subrule 1(7.2)(j), 324
 family rule 16, 322
 family rule 16(6.2), 322, 330-331, 333, 336, 339
prior inconsistent statement, 128, 130, 238
request to admit, 241-244
specific facts, 17, 21, 111-113, 124, 229-233, 328-329, 332, 334-335, 339, 343
 family rule 16(4), 328, 332, 334
 Rule 20.02(2), 21, 111, 113
 unsupported assertions, 124
speculation, 113, 115-116, 126, 144, 148, 190, 229-230, 259, 338
withdrawal of admission, 242-243

Examination/Cross-Examination, 1, 10, 19, 20, 33, 42, 48, 51-52, 54, 56-60, 62-66, 95, 109, 112, 118-120, 122, 127-128, 134, 139-140, 142-144, 147, 153, 155, 180, 184, 218-219, 221-222, 236-242, 244-245, 256, 264, 267, 274, 276-277, 288, 324, 326, APP-4

Factum, 17, 78, 86, 106-107, 115, 126, 143, 148, 216, 238, APP-4
Rule 20.03, 17, 106

Family Law Rule 4, 320, 322, 334, 338

Foreign Judgments, 208-210, 298

Forgery, 65, 177

Fraud, 29, 130, 163, 175-182, 197, 208-211, 230, 235, 246-248, 265, 297, 301
costs, 301
criminal conviction, 246-248
pending criminal charges, 180

Fraudulent Preference or Conveyance, 181-182

Full Appreciation Test Disfavoured, 4, 11, 88, 94-95, 101-102, 162, 178-179

Insurance Claims, 38, 74, 110, 113, 210

Interrogatories, 63

Judgment for Responding Party, 34-39

“boomerang” summary judgment, 35
judge not bound to grant, 39

Judgment in accordance with admissions (rule 51.06), 241, 243

Judges’ Role, 56, 96-99, 330, 336

class proceedings, 30, 32
new fact-finding powers, 11, 105, 136-138, 158-159, 214, 309, 331, 336
prima facie case, 108, 112-113, 137-138, 219, 247, 263, 328, 334
remain seized of matter, controversy, 132, 268-269, 281
two-step process, 134, 270, 272-273, 285

Jurisdiction, 5, 16, 23-25, 27, 29, 37, 49, 53, 69, 83, 95, 97, 102, 158, 172, 183, 208-210, 246, 258, 272-274, 276, 287, 290, 292, 298, 305-307, 319, 332, 337, 340, 347, 348, 350, APP-4

of masters, 24, 289
 appeal, 289
 construction liens, 182-183
 reference, 23

Jury Notice, 66-68, 190

directed verdict and, 68

Landlord and Tenant, 140, 186, 188, 210-211

Limitations, 29-30, 35, 52, 87, 135, 140, 163, 169, 198-204

Limitations — *continued*

and relief from forfeiture, 140, 202
due diligence (plaintiff), 199
fraudulent concealment, 29, 208
knowledge of damage vs. extent of damages, 202-203
real property/mortgage claims, 169, 198, 204

Matters Set Down For Trial, 43-47

Mediation, 12, 66, 264

Medical Malpractice, 233, 262, 265-268

More than One Motion, 48-49

Mortgage, Improvident Sale, 86, 116, 223, 226, 227, 339

Motion for Directions (Rules 1.04, 1.05), 56, 81, 87, 142-144, 171, 275, 284, 320

an independent motion, 142
estates, 171
partial judgment, 320

Motion, timing of, 87-89

Motion to Dismiss, 38, 40, 106, 122, 135, 199, 255, 261, 263
unsettled law and, 76

Motion To Strike Or Stay, 142-148

See also Prematurity, *infra*
motion for directions, 142-144

Moving Party Onus, 16, 111, 142, 175, 179, 185, 213, 218-219, 259, 321, 343, 347-348, 351

prima facie case, 112, 137, 247, 343

Notice of Discontinuance, 88

Novel causes of Action, 73 *See also* Unsettled Law, *infra*

Parol Evidence Rule, 174, 218

Partial Summary Judgment, 6, 24, 26, 32-33, 37, 42, 46-47, 54, 58, 62-63, 77, 82, 109, 138, 150, 157-167, 170-171, 179, 183-184, 186-187, 189, 193, 206-207, 243, 246-247, 270, 273, 275, 293-295, 300, 312, 319, 327, 339-340, APP-4-5

frivolous, vexatious claims, 77, 164, 300-301

non-severable claims, 158-161

parties, 163

severable claims, 162-166

statement of defence delivered, where, 157

stay of execution, 21, 69, 291-298

Rule 20.08, 21, 69, 291-293, 295-296, 298

undisputed balances, 166-167

Party Status, 29, 54-55

Personal Injury, 161, 165, 205-206, 255

summary judgment available, 205

Pleadings, Function of, 28, 30, 84-85, 244-245, 275

amending mid-motion, 84

bills of exchange, 294

class actions, 30

closed pleadings, 39-41, 326

in alternative acceptable, 129-130

motion to strike, 24, 55, 348-349

small claims, 348-349

premature claim, 25

Rule 20.02(2), 21, 24

set-off, 26, 36, 70

statute declaratory of general law, 86

Premature Motion, 142-148

And see Production and Disclosure, *infra*

Prior Default Judgment Motion, Setting Aside, 47-48

Prior Summary Judgment Motion, 48-49

Probate, grant of, 171

Production and Disclosure, 56-63

adjournment in respect of, 148-155

order for, 57-58

unnecessary for single-issue motion, 61

Professional Negligence, 212, 240

Proportionality, 4-5, 9, 11, 14, 27, 33-35, 41-42, 51-52, 61-62, 91-99, 105, 114, 132-133, 144-145, 170, 174, 179, 215, 269, 271, 274, 282-284, 299, 325-326
contested estates, 170
costs, 299

Qualified Privilege, 174-175

Quantum Meruit, 212

Reference re: damages, 22, 165
Rule 20.04(3), 22, 166

Refusals, 51, 64-66, 118, 127, 143, 145, 147, 180, 238, 256-257

Release, 159-160, 167, 179, 194, 197, 207, 276, 340

Report on the Civil Justice Reform Project, 11

Res Judicata/Issue Estoppel, 30, 38, 40, 47, 79, 92, 165, 197, 204, 206-207, 265, 275, 284, 305, 316-317, 350

Responding Party, Onus, 111-132

adjournment for further evidence, *see* Adjournment, *supra*

affidavit, failure to deliver, 112, 122, 130

And see: Adverse Inference, *supra*

bankruptcy privilege, alleged, 127

bare denials, 175, 235

Rule 20.04(2), 235

benefits from all justifiable inferences, 113

conclusory contentions prohibited, 82, 109, 113, 115, 124-126, 230, 232, 234-235, 266

failure to cross-examine, 117, 152, 257

lawyer's affidavit disfavoured, 113-114, 121-123

when useful, 114

legal submissions not evidence, 125-126

parallel criminal proceedings, 112, 127, 180, 245-249

reasonable doubt ineffective, 248

re: Rule 12, 350

self-contradiction/prior inconsistent statement, 128-130

self-serving statements, bald assertions and, 64, 114-116, 131, 229-233, 262, 328, 334, 342, 351

Responding Party, Onus — *continued*

specific facts only, 17, 21, 111-113, 124, 229-235, 251, 328-329, 332, 334-335, 339, 343

Rule 20.04(2), 21

testimony in conflict with documents, 115

theoretical arguments, speculation, 126

triable issue, 4, 10, 40, 42, 47, 70, 76, 78, 79, 82, 93, 97, 109, 111-112, 114-115, 125, 128, 130, 161, 166, 217-218, 224, 226, 229, 230, 231, 233, 243, 257-258, 262, 294-295, 313, 322-323, 329, 335, 338

more than “arguable” issue, 47

prior default set aside, 39-40

self-serving evidence ineffective, 114

Rule 20, Text of, 17-22

Set-Off, 26, 36, 70, 82, 85, 113, 163, 166, 189, 224, 226, 292-297

construction lien, 189

must be pleaded, 85, 292, 294

stay of execution, 292-297

Setting Aside a Summary Judgment, 315-317

Settled Law, 76-78

Settlement, 6, 13, 26-27, 51, 81, 164, 173, 193-197, 215, 338-341, 350

promotion of, 6, 164

Simplified Procedure, 10, 37, 41-42, 46, 59, 63, 153, 157, 178, 264, 285

adjournment, 153

prematurity of motion and, 61

summary trial, 139, 153, 184, 186, 276, 285

Small Claims Court, 345-352

motion to strike, 347-351

pleadings, 346, 348-349, 351

text of Small Claims rule 12.02, 348-349

Special Urgency, 17, 39, 150

Rule 20.01(2), 39, 150

Specific Performance, 109, 211

Stay of Execution, 21, 291-298

bills of exchange, 294

Stay of Execution — *continued*

for production, 56-58, 60, 64, 99
foreign judgment, 298
mortgage claim, 292, 296-297
 injunction, 297
partial judgment, 293-296, 298
Rule 20.08, 21, 291-296, 298
summary judgment motion, must be asked for on, 296, 298

Stay of summary judgment motion, 142-147

for amendment, 145, 147

Strike-Out Motion, 20, 24, 40, 54, 72, 79, 82, 105, 142-146, 148, 199, 287, 290, 319, 347-351

Rule 20.05(2)(6), 269-270, 275-276, 285, 290
small claims, 347-351

Test Cases, 55-56

Test for Summary Judgment, 4, 23-24, 92, 96, 101-132, 144, 319, 338

appeal, 102, 105-106, 108-112, 121-129, 320
conflicting experts, 205, 222
conflicting inferences, 108-110
factum required, 106-107
family law, 319, 338
full appreciation, 14, 11, 14, 57, 88, 94-95, 101-103, 146, 162, 172, 174, 178-179, 203, 277-278, 289
inadequacy of pleadings and evidence, 108, 114
is substantive, 24
lack of expert testimony, 46, 116, 150, 225-226
 conflict of laws, 27
 medical malpractice, 265-268
material facts, 101-102, 110, 113, 125, 128
 declaration that these are not in dispute, Rule 20.05, 128, 172
 family law, 320, 323
 pleadings, 111
 Rule 20.05, 19, 110
settlement, 193-197
simplified procedure, 132
small claims, 345-346, 348-349
triable issue, 4, 93, 97, 109, 111-112, 114-115, 125, 128, 130, 161, 166, 217-218, 224, 226, 233, 257-258, 294, 338
 admissible evidence, 109, 217
 appeal, 93, 109, 111-112, 125, 128, 166, 217, 224, 258

Test for Summary Judgment — *continued*

triable issue — *continued*

- family law, 338
- lack of corroboration, 217
- mini-trial directions, 10, 42-43, 214, 250
- no foundation in law, 76
- res judicata*, 40, 46, 92
- resulting from amendment, 81
- self-contradiction, 231
- self-serving testimony, 114-116, 229-233, 262
- settlement, 207, 209
- withdrawal of admission, 243

Third Party motion for summary judgment, 159, 206, 264

Rule 20.09, 264

Trial, Order for, 15, 18, 22, 24, 42, 93, 137, 151-152, 271-272, 274, 276-278, 284, 321, 324

- family law, 327
- family mini-trial, 330
- family rule 1(7.2), 324
- family rule 16(9), 324, 338
- mini-trial, 137-140, 272, 274, 290, 322
- Rule 20.05, 19, 22, 95, 139, 271-276, 284, 324
- “salvaging a failed summary judgment motion”, 269

Undertakings, 16, 52-53, 56, 58, 63, 118, 131, 143, 145, 147, 238, 256-257, 272

Undue Influence, 171, 177, 180

Unjust Enrichment, 81, 212

Unsettled Law, 15, 71-78, 347

- legislation supersedes, 77
- public policy and, 72

Vexatious Litigant Motion, 210

Voluminous Materials, 88

Witness, cross-examination of, 58, 61-62, 118-122, 139-140, 152-155, 218, 221

- failure to, 36, 42, 116-118, 121-122, 152-153, 257
- Rule 39.03, 120, 153, 218

INDEX

Witness, cross-examination of — *continued*

source of information and fact of belief, 220

time limit, 139, 214, 276-277

Wrongful Dismissal, 67, 116, 164, 189-193, 199, 274

