

# INDEX

*Please note:*

1. “APP” references are to the appendices

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

**Absolute Privilege, 199**

**Abuse of Process, 36, 58-60, 94, 134, 161, 165, 250, 282-283, 285, 294, 339, 357, 388**

**Access to Justice, 10, 12, 14, 16, 29, 38-39, 62, 105-113, 185, 305, 310, 312, 319, 338, 339, 369**

**Adjectival Law, 112-113, 151-152**

**Adjournments, 60-61, 70, 95-99, 136-137, 140-141, 153, 167-175, 392**

availability of counsel, 172

day of the motion, on, 123, 172

directions given where trial date must be changed, 168

dissipation of assets, 170

history of delay, 168-169, 171-173

long notice, on, 167-168, 171-172

scheduled timeline, failure to obey order, 60, 172

*See also* Amendment, Interim, *infra*

*See also* Production and Disclosure, *infra*

service issues, 169

terms of, 173

to obtain further evidence, 140-141, 170

**Adversarial System, 98, 110-112, 158**

**Adverse Possession/Easement, 193-194**

**Amendment, Interim, 93-102**

delay, 102  
misnomer amendment, 243  
motion not to be heard with summary judgment motion, 95, 101  
stay to permit, amendment, 96-98, 164

**Appeals, 343-347**

failure to exercise new powers, 123  
from a Judge, 153-154, 347-349  
from a Master, 349  
further evidence on, 141  
proportionality, 108  
standard of review, 349-353

**Applications, 51-52**

**Arbitration, 30-32**

**Bankruptcy, 65-66, 144, 201, 205, 300, 334**

**Case Management - Motion, 60-62, 151**

Case Conference, 61-62, 64, 162, 163, 164, 308, 310  
Civil Practice Court, 59-62  
cross-examination, limits on, 157  
further evidence, 123, 156  
mini-trial, 6, 8, 11, 21, 25, 51, 78-79, 82, 120-121, 124, 152, 154-159, 162, 181, 210, 211, 213, 222, 227, 238, 248, 272, 287, 300, 310-311, 321, 326, 364, 375  
    not appropriate (Great Britain) 11-12  
    when appropriate, 152  
    Rule 50.13, 153  
timeline for steps in motion, 164

**Case Management - Trial, 7, 109, 305-322**

**Cheque Kiting, 201**

**Class Proceedings, 32-40**

certification motion, 34-40, 72  
summary judgment, 33-40, 72, 186

**Closed Pleadings, 47-49, 370**

**Commercial List - Toronto, 40-41**

**Common-Law Partners, 370**

**Complexity, 51, 53, 102-103, 106, 227, 305, 307, 312, 339, 361, 376, 383**

**Concurrent Remedies, 77**

**Construction Liens, 95, 207-216, 335**

Lien Reference and, 27

**Contested Estates, 194-196**

**Contractual Interpretation, 196-198**

**Contributory Negligence, 55, 237, 301**

**Costs, 337-341**

behaviour attracting Rule 20.06, 338-339

fraud, unfounded allegations, 339

**Counterclaim/Crossclaim, 24-25, 45, 49, 82-84, 96, 101, 122, 133, 142, 148, 157, 180, 183, 188-189, 216, 259, 262, 281, 292, 301, 324, 328-335**

bills of exchange, 330

construction lien, 335

non-severable with main claim, 181-185

Rule 20.08, 24, 80-83, 216, 327-334

Rule 20.09, 24, 301

**Credibility, Judging, 29, 323-326**

**Criminal Charges, Pending, 204-205**

**Criminal Proceedings (Related), 281-286**

**Crown Wardship, 361, 373, 380, 389**

**Declaratory Relief, 194**

construction lien, 208, 213

**Defamation, 49, 198-199, 244**

**Default Judgment and Summary Judgment, 47-49, 56-57, 83, 241, 334**

**Defendant**

may not move for summary judgment (as opposed to dismissal), 49

**Denial (Bare), 18, 20, 127, 130, 135, 140, 142, 172, 199, 230, 265-266, 268, 270, 280, 288, 364, 367, 380**

Rule 20.02(2), 25, 127, 129, 233

**Discovery plan, 22, 40, 67, 68, 72, 312**

**Domain name, ownership of, 244**

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

**Electronic devices in court, APP-1**

**Environmental Damage Claims, 243**

**Estate, collection against, 196**

**Evidence, 247 *et seq.***

admissions, generally, 277-280

affidavits, 17, 20, 22, 24-25, 49, 50, 67-69, 71-72, 74, 75, 97, 111, 126-128, 130, 134-150, 162-163, 166, 171-175, 205, 235, 247, 250-271, 273, 285, 292-294, 297-298, 310, 321, 323-324, 326, 364, 368, 373-374, 376, 380, 381, APP-3

lawyer's affidavit acceptable, 145-146

lawyer's affidavit disfavoured, 130

waiver of privilege as, 145

legal argument, struck, 143

motion to strike, 160-167, 323

no personal affidavit delivered, 130, 269-271

privilege against self-crimination, 144-145

self-contradiction/prior inconsistent statement, 146-147

self-serving or conclusory statements, 75, 131, 132, 133, 149, 264-267, 268, 380, 389

adverse inference, 20, 74-76, 130, 133, 138-139, 142-143, 145, 202, 252, 254, 256, 268, 269-270, 274, 289, 293-294, 300, 362

Rule 20.02(1), 20, 138, 247, 252, 256, 293

assumed facts, 296

best evidence rule, 145, 210, 253, 255, 269

business records, 252, 263

criminal conviction, related, 281-286

deemed complete record, 274, 287-295

documents, affidavit necessary (or not), 66-74, 173, 259-262, 321

**Evidence** — *continued*

allegedly in possession of opposing party, 271  
double hearsay, 250-251, 263-264  
e-mails, of third party, 252  
examination transcripts, 272-276, 282, 324  
expert opinions, 23, 55, 202, 237, 256-263, 301-304, 399  
    affidavit necessary, 259-261  
        medical malpractice, 301-304  
    qualification of, 257-260, 262  
    Rule 20.05, 22, 25, 33, 300  
foreign law, 32, 126  
future facts, 286  
hearsay admissible, (Rule 39.01(4)), 138, 250, 254, 255, 257  
    child protection proceedings, 363, 372  
    family rule 16, 359-392  
improper evidence, 276-277  
intent/state of mind, 200, 203, 325  
information and belief, 20, 247, 250, 254-256, 263  
    Rule 20.02(1), 20, 247, 256  
new evidence, 284  
no personal affidavit, 130, 269-271  
oral testimony, 7, 12, 17, 21, 23, 25, 64, 70, 97, 118, 120, 132, 154, 156-159, 248, 272  
    conflict with exhibits, 132  
    direction at case conference, 64  
    family law subrule 1(7.2)(j), 368  
    family rule 16, 364  
    family rule 16(6.2), 364, 375, 378, 382, 386  
prior inconsistent statement, 146, 147, 274  
request to admit, 277-280  
specific facts, 20, 25, 126-129, 142, 264-269, 373-374, 376, 380-381, 385  
    family rule 16(4), 373, 376, 380  
    Rule 20.02(2), 28, 75, 127, 129, 233  
    unsupported assertions, 142  
speculation, 129, 130, 131, 133, 144, 163, 166, 217, 264, 265, 270, 271, 278, 296, 381, 384  
    withdrawal of admission, 278-279

**Examination/Cross-Examination**, 12, 22-23, 40, 44, 57, 61-62, 64, 66-71, 73-74, 109, 125, 128, 134-139, 144-145, 157-159, 160-162, 166, 171-173, 210, 252-253, 256, 272-276, 280-281, 293, 300, 304, 310, 312-313, 324, 368, 370, APP-4

**Factum, 21, 100, 121-123, 143, 162, 250, 274, APP-4**

Rule 20.03, 21, 122

**Family Law Rule 16, 359-392**

**Foreign Judgments, 239-241, 334**

**Forgery, 76, 98, 202**

**Fraud, 36, 148, 187, 200-207, 227, 238-241, 265, 282-284, 301, 333, 339**

costs, 339

credibility issues, 200

criminal conviction, 281-286

pending criminal charges, 204-205

**Fraudulent Preference or Conveyance, 205-207**

**Full Appreciation Test Disfavoured, 5, 13, 67, 103, 108-109, 115, 116, 118,  
186, 196, 198, 200, 203, 204**

**Insurance Claims, 46, 89, 126, 242**

**Interrogatories, 74**

**Judgment for Responding Party, 41-47**

“boomerang” summary judgment, 43

judge not bound to grant, 47

**Judgment in accordance with admissions (rule 51.06) , 18, 19-20, 209, 277,  
280**

**Judges’ Role, 66, 110-113, 121, 258, 304, 382**

class proceedings, 40

new fact-finding powers, 12, 120, 123-124, 154-155, 181-182, 197, 248, 288,  
320, 349, 375, 382

*prima facie* case, 124, 128, 130, 156, 201, 254, 283, 299, 360, 373, 380

remain seized of matter, controversy, 152, 306, 308-309, 313, 321

two-step process, 155, 223-224, 248, 287, 365

**Jurisdiction, 6, 20, 27-29, 32, 35, 45, 58, 62-64, 80, 81, 98, 109, 111, 116, 170,  
196, 210, 239-241, 282, 295, 296, 308-312, 323, 326, 328, 345-347, 360-361,  
383, 385, 386, 389, 396, 398, 399, APP-4**

of masters, 28, 213, 325

appeal, 345-347

**Jurisdiction** — *continued*

of masters — *continued*  
    construction liens, 210, 213  
    reference, 27

**Jury Notice, 77-82, 217**

directed verdict and, 79-80  
presumptive right to jury trial, 77-78

**Landlord and Tenant, 158, 213, 215, 242**

**Limitations, 36-37, 42, 102, 145, 153, 158, 180, 184, 187, 228-235**

and relief from forfeiture, 158, 233  
due diligence (plaintiff), 230  
fraudulent concealment, 36, 239  
knowledge of damage vs. extent of damages, 234  
real property/mortgage claims, 193, 235

**Matters Set Down For Trial, 52-56**

**Mediation, 15, 77, 300**

**Medical Malpractice, 269, 298, 301-304**

**More than One Motion, 57-58**

**Mortgage, Improvident Sale, 101, 133, 258-259, 261-262**

**Motion for Directions (Rules 1.04, 1.05), 66, 94, 102, 153, 160-162, 194, 311, 320, 361**

estates, 194-196  
partial judgment, 361

**Motion, decision to proceed, 5**

**Motion, timing of, 59-62**

**Motion to Dismiss, 45-47, 48, 122, 139, 153, 229-230, 292, 297-301**

unsettled law and, 90-91

**Motion To Strike Or Stay, 160-167**

*See also* Prematurity, *infra*  
motion for directions, 160-162

**Moving Party Onus, 18, 127, 161, 211, 247, 254, 297, 362, 396, 400**

*prima facie* case, 128, 156, 254, 283

**Notice of Discontinuance, 102**

**Novel causes of Action, 85**

*See also* Unsettled Law, *infra*

**Parol Evidence Rule, 198, 252**

**Partial Summary Judgment, 7, 28, 31, 39-40, 45, 50, 55, 64, 68, 72-73, 91, 96, 125, 157, 162, 169, 177-192, 194-195, 204, 209, 211, 212, 214, 216, 220, 236-237, 280, 282, 284, 306, 309, 311, 330-332, 338, 353, 360, 370, 372, 385-386, APP-4, APP-5**

bifurcation order, 178

frivolous, vexatious claims, 91, 188, 338-339

inappropriate, where, 179-180, 181-185

non-severable claims, 181-185

parties, 191-192

severable claims, 185-190

statement of defence delivered, where, 177

stay of execution, 24, 82-83, 327-334

Rule 20.08, 24, 82-83, 327-329, 331-334

undisputed balances, 190-191

**Party Status, 35, 64-65**

**Personal Injury, 184, 189, 235-237, 292**

summary judgment available, 235, 237

**Pleadings, Function of, 34, 37, 98-100, 280-281, 311**

amending mid-motion, 98-99

bills of exchange, 330

class actions, 36

closed pleadings, 47-49, 370

in alternative acceptable, 146-147

motion to strike, 28, 65, 397

small claims, 397

premature claim, 29

Rule 20.02(2), 25, 28

set-off, 31, 45, 84

statute declaratory of general law, 101



**Premature Motion, 160-167**

*And see* Production and Disclosure, *infra*

**Prior Default Judgment Motion, Setting Aside, 56-57**

**Prior Summary Judgment Motion, 57-58**

**Probate, grant of, 195**

**Production and Disclosure, 66-74**

adjournment in respect of, 167-175

order for, 67-68

specific request for production, 69

unnecessary for single-issue motion, 72

**Professional Negligence, 243, 387**

**Proportionality, 10-12, 16, 33, 40-42, 49, 61, 72, 78, 105-113, 121, 131, 149, 151, 162, 194, 198, 204, 249, 305, 307, 310, 319-320, 337, 369-370**

contested estates, 194

costs, 337

**Qualified Privilege, 199**

**Quantum Meruit, 243**

**Real Estate Contracts, Failed, 244-245**

**Reference re: damages, 25, 188**

Rule 20.04(3), 25, 190

**Refusals, 61, 75-76, 135, 145, 161, 164-165, 205, 274, 294**

**Release, 181, 183, 191, 204, 221, 222, 227, 238, 386**

***Report on the Civil Justice Reform Project, 12***

***Res Judicata/Issue Estoppel, 36, 46, 48, 57, 94, 106, 189, 227, 235, 237-239, 301, 311, 321, 345, 356-357, 399***

**Responding Party, Onus, 127-150**

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

affidavit, failure to deliver, 128, 139, 148

*And see:* Adverse Inference, *supra*

**Responding Party, Onus** — *continued*

bankruptcy privilege, alleged, 144

bare denials, 199, 270

Rule 20.04(1), 270

benefits from all justifiable inferences, 129

conclusory contentions prohibited, 96-97, 129, 131, 265, 270-271, 302

failure to cross-examine, 134, 171, 294

lawyer's affidavit disfavoured, 130, 139

when useful, 130

legal submissions not evidence, 143

parallel criminal proceedings, 128-129, 205, 281-286

reasonable doubt ineffective, 285

re: Rule 12, 398

self-contradiction/prior inconsistent statement, 146-147

self-serving statements, bald assertions and, 75, 131-133, 147-148, 298, 373, 380, 389

specific facts only, 20, 25, 127, 129, 142, 264-269, 373-374, 376, 380-381, 385

Rule 20.04(2), 25

testimony in conflict with documents, 132

theoretical arguments, speculation, 144

triable issue, 5, 11, 48, 51, 57, 82, 84, 91, 92, 93, 96, 107, 111, 125-127, 129, 131, 146, 147, 185, 190, 209, 223, 252, 264-266, 279, 295, 331, 364, 365, 367, 381, 384

more than "arguable" issue, 57

prior default set aside, 48

self-serving evidence ineffective, 131

**Rule 20, Text of, 20-25**

**Set-Off, 31, 45, 84, 100, 130, 187, 190, 216, 259, 262, 328, 330-334**

construction lien, 216

must be pleaded, 100, 328, 330

stay of execution, 328-334

**Setting Aside a Summary Judgment, 355-357**

**Settled Law, 90-92**

**Settlement, 7, 15, 31, 33, 61, 95, 180, 188, 197, 220, 221-227, 249, 384-385, 400**

enforceability, factors to consider, 224-225

promotion of, 7, 188

**Simplified Procedure, 12, 46, 50-51, 55, 69, 74, 173, 300, 321-322**

adjournment, 173  
limitations issue, 322  
prematurity of motion and, 68  
summary trial, 157, 173, 209, 212, 312, 321

**Small Claims Court, 393-401**

motion to strike, 395-397, 398  
pleadings, 395, 397, 398, 400  
text of Small Claims rule 12.02, 397

**Special Urgency, 20, 47-48, 170**

Rule 20.01(2), 47-48, 170

**Specific Performance, 222, 243**

**Stay of Execution, 24, 327-335**

bills of exchange, 330, 331-332  
for production, 68, 70-72  
foreign judgment, 334  
mortgage claim, 328, 333-334  
    injunction, 334  
partial judgment, 330-333  
Rule 20.08, 24, 327-335

**Stay of summary judgment motion, 160-167**

for amendment, 164, 166  
test, 167

**Strike-Out Motion, 24, 28, 48, 63, 86, 93, 96, 120, 160, 163, 165, 230, 323, 326, 360, 395-398**

Rule 20.05, 305-306, 310-312, 321, 326  
small claims, 395-398

**Test Cases, 65-66**

**Test for Summary Judgment, 5, 28-29, 106, 110, 115-150, 163, 360, 380, 384**

appeal, 121, 141, 361  
conflicting experts, 235, 254, 256  
conflicting inferences, 124-125  
factum required, 121-123  
family law, 360, 384

**Test for Summary Judgment** — *continued*

full appreciation, 13, 16, 67, 103, 108-109, 115-116, 118, 186, 196, 198, 200, 203-204, 234, 313-314  
inadequacy of pleadings and evidence, 124, 131  
lack of expert testimony, 55, 133, 169, 260-261  
conflict of laws, 32  
    medical malpractice, 301-304  
material facts, 115-116, 125, 126, 129, 141, 146  
    declaration that these are not in dispute, Rule 20.05, 306, 308, 310, 312  
    family law, 368, 377  
    pleadings, 127  
    Rule 20.05, 22  
settlement, 221-227  
simplified procedure, 150  
small claims, 393-394, 398  
standard for granting, 117-118  
triable issue, 5, 107, 111, 125-126, 127, 129, 131, 146, 147, 185, 190, 209, 223, 252, 259, 261, 295, 331, 381, 384  
    admissible evidence, 7, 122, 130, 251  
    appeal, 108, 141, 142, 146, 295  
    family law, 384  
    lack of corroboration, 251  
    mini-trial directions, 11, 51, 248, 287  
    no foundation in law, 91  
    *res judicata*, 46, 48, 57, 106  
    resulting from amendment, 95  
    self-contradiction, 266  
    self-serving testimony, 131-132, 264-267, 298  
    settlement, 223  
    withdrawal of admission, 279

**Third Party motion for summary judgment, 182, 236, 301**

Rule 20.09, 301

**Trial, Order for, 17, 21-22, 25, 28, 51, 107, 307, 310-312, 314, 320, 362, 368**

family law, 371  
family mini-trial, 375  
family rule 1(7.2), 367  
family rule 16(9), 367-368, 384  
mini-trial, 154-159, 310, 321, 364  
Rule 20.05, 22, 25, 109, 157, 308-312, 321, 368  
“salvaging a failed summary judgment motion”, 312

INDEX

---

**Undertakings, 18, 61, 62, 66, 69, 74, 134, 135, 148, 161-162, 164-165, 274, 293, 294, 308**

**Undue Influence, 195, 202, 204**

**Unjust Enrichment, 95, 243**

**Unsettled Law, 16, 85-90, 396**

legislation supersedes, 91

public policy and, 86

**Vexatious Litigant Motion, 241**

**Voluminous Materials, 103**

**Witness, cross-examination of, 69, 71, 73, 134-139, 157, 159, 171-175, 252, 256**

failure to, 44, 50, 134, 135, 138-139, 171, 294

Rule 39.03, 137, 173, 252

source of information and fact of belief, 254

time limit, 157, 312, 313

**Wrongful Dismissal, 79, 133, 188, 216-220, 230, 310**