

## Alberta introduces new ‘streamlined trial’ process, replacing summary trials

DECEMBER 5, 2023 6 MIN READ

### Related Expertise

- Corporate and Commercial Disputes

Authors: Matthew M. Huys, Erin Bower, Ashley Light

On November 8, 2023, the Province of Alberta amended the *Rules of Court*,<sup>[1]</sup> replacing the summary trial process with a new “streamlined trial” process. The *Rules of Court* amendment will come into force on January 1, 2024.<sup>[2]</sup> The amendment addresses two of the problems that plagued the previous summary trial process by stipulating that

1. issues of credibility, oral evidence, cross-examination or expert evidence are not, on their own, reasons to deny a streamlined process
2. any dispute over whether a streamlined trial is appropriate must be resolved in advance and on a summary basis

In doing so, the amendment has the potential to increase judicial efficiency and access to justice for civil litigants in Alberta.

### Background

Timely and affordable access to the civil justice system is an ongoing issue in our courts. In *Hryniak v. Mauldin*, the Supreme Court of Canada endorsed a “culture shift” in civil litigation to address an increasingly expensive and protracted trial process and facilitate access to justice.<sup>[3]</sup> This culture shift requires courts to favor proportionate, timely and affordable procedures in recognition that a full trial is not always necessary to achieve a just result.<sup>[4]</sup>

Under the current *Rules of Court*, there are two types of trials: standard trials and summary trials. Standard trials presumptively proceed based on oral evidence.<sup>[5]</sup> In theory, summary trials offer a shorter court proceeding by streamlining the evidentiary process.<sup>[6]</sup> Summary trials were intended to be an efficient option in cases where summary judgment<sup>[7]</sup> would be insufficient but where a full trial was not proportionate.

As noted in reported decisions, the summary trial process has been underutilized in Alberta.<sup>[8]</sup> This is largely because the current summary trial process carries significant risk for the party that applies for a summary trial.<sup>[9]</sup> The respondent to an application for a summary trial could object to the suitability of summary trial right up until the eve of the trial.<sup>[10]</sup> This means that there is a risk that the Court could decide a matter is not suitable for summary trial after the parties expend the time and money to fully prepare for one.<sup>[11]</sup> Further, a judge could decline to render judgement in favour of either party at the end of a summary trial,

adding additional uncertainty for litigants.<sup>[12]</sup> Litigants' reluctance to use the summary trial process exacerbates issues of delay and expense and compromises access to justice.<sup>[13]</sup>

In response to this issue, the Alberta Rules of Court Committee engaged with the judiciary and legal profession starting in 2020 to develop the streamlined trial process that will replace summary trials in 2024.

## The 'streamlined trial' process

The amendment repeals the summary trial process entirely, replacing it with a new, streamlined trial process.<sup>[14]</sup> The streamlined trial process will be available to litigants where a streamlined trial is

1. necessary for the purpose of the action to be fairly and justly resolved
2. proportionate to the importance and complexity of the issues, the amounts involved and the resources that can reasonably be allocated to resolving the dispute<sup>[15]</sup>

Notably, a streamlined trial may be appropriate even if affidavit evidence alone is insufficient to resolve the dispute. The amended *Rules of Court* state that the court will not consider a streamlined trial to be disproportionate solely because the matter requires some oral evidence, cross examination or expert evidence, or because issues of credibility arise.<sup>[16]</sup>

## Applying for a streamlined trial

Under the amended *Rules of Court*, the litigants have more clarity and control in seeking a streamlined trial.<sup>[17]</sup> If all parties agree that a streamlined trial is appropriate, they can write to the court with a proposed consent order directing a streamlined trial.<sup>[18]</sup> If the parties do not agree, one party can bring an application for a streamlined trial.<sup>[19]</sup> A party can also make a request through the case management process, or as otherwise directed by the court.<sup>[20]</sup>

The court also may also order a streamlined trial on its own motion in chambers, at a case conference meeting, at an application for judgment or at any other appearance.<sup>[21]</sup> The court must be satisfied a streamlined trial is necessary for the action to be fairly and justly resolved and is proportionate to the dispute.<sup>[22]</sup>

If the parties disagree over whether a streamlined trial is appropriate, a case conference or trial judge will decide this issue in a summary manner before the streamlined trial begins.<sup>[23]</sup> This addresses a significant risk with the former summary trial process because the court will decide whether a streamlined trial is appropriate *before* the streamlined trial. The court may also impose a cost award or other penalty on parties that object to a streamlined trial unjustifiably, which may discourage baseless objections.<sup>[24]</sup>

## The record

Once the court orders a streamlined trial, the parties will have joint responsibility to prepare the record and must

1. identify the real issues in dispute

2. agree on relevant and material facts and records that are not in dispute
3. ensure that only the relevant and material evidence necessary to resolve the dispute is contained in the trial record
4. organize the record and the evidence to expedite the streamlined trial and assist the trial judge<sup>[25]</sup>

## Procedure

The main procedural difference between a streamlined trial and a full trial is that evidence will be entered by affidavit, unless the court gives direction otherwise or the rules of evidence require oral evidence.<sup>[26]</sup> Otherwise, streamlined trials will be subject to the same procedural rules as full trials, subject to modifications that the streamlined trial judge deems necessary.<sup>[27]</sup> Future practice notes may also modify the applicable procedure.<sup>[28]</sup>

## Finality

A streamlined trial is a full trial on the merits giving rise to a final decision.<sup>[29]</sup> Unlike the previous summary trial process, which enabled a judge to decline to render judgment in favour of either party at the end of the trial, the new streamlined trial process appears to remove that discretion from the court.<sup>[30]</sup>

## Implications

The amended *Rules of Court* provide greater certainty for civil litigants seeking an expedited trial process. The court must decide any objections to the streamlined trial process beforehand, which removes the risk associated with the previous summary trial process that parties will prepare for a summary trial only to find out too late that the court considers a summary trial inappropriate. The amendment also clarifies that the streamlined trial process can handle issues of credibility and the weighing of expert evidence by specifying that these issues, on their own, do not render a streamlined trial disproportionate.

Of course, how the streamlined trial process will work in practice is uncertain. Under the amended *Rules of Court*, judges still have discretion to decide whether a streamlined trial is appropriate. The amendment does not include a presumptive list of actions for which a streamlined trial is appropriate, which would have provided greater certainty for litigants. While the new streamlined trial process has the potential to have a positive impact on access to justice and judicial economy in Alberta, the extent to which litigants utilize the streamlined trial process and how courts interpret and apply it remains to be seen.

---

[1] *Alberta Rules of Court*, Alta. Reg. 124/2010 (*Rules of Court*).

[2] Alta. Reg. 126/2023, amending Alta. Reg. 124/2010 (the amendment), s. 19.

[3] *Hryniak v. Mauldin*, 2014 SCC 7 [*Hryniak*], para. 2.

[4] *Hryniak*, para. 2.

[5] *Rules of Court*, r. 8.17; *Weir-Jones Technical Services Incorporated v. Purolator Courier Ltd*, 2019 ABCA 49 (*Weir-Jones*), para. 17.

[6] *Rules of Court*, r. 12.49; *Weir-Jones*, para. 17.

[7] Summary judgment is a separate process under the *Rules of Court* where one party brings an application to resolve a dispute *without* a trial on the basis there is no genuine issue for trial. An unsuccessful summary judgment application means that a trial is needed.

[8] *Benke v. Loblaw Companies Limited*, 2022 ABQB 461 (*Benke*), paras. 6-7.

[9] *Benke*, para. 6.

[10] *Rules of Court*, r. 7.8.

[11] *Benke*, paras. 6-7.

[12] *Rules of Court*, r. 7.9.

[13] *Benke*, para. 7.

[14] Amendment, s. 8.

[15] Amendment, s.11, r. 8.25(1).

[16] Amendment, s. 11, r. 8.25(3).

[17] Amendment, s. 11, r. 8.25(1).

[18] Amendment, s. 11, r. 8.26(1)(b).

[19] Amendment, s. 11, r. 8.26(1)(a).

[20] Amendment, s. 11, r. 8.26(1)(c) & (d).

[21] Amendment, s. 11, r. 8.25(2).

[22] Amendment, s. 11, r. 8.25(1).

[23] Amendment, s. 11, r. 8.27.

[24] Amendment, s. 11, r. 8.27(2).

[25] Amendment, s. 11, r. 8.28.

[26] Amendment, s. 11, r. 8.30(2).

[27] Amendment, s. 11, r. 8.30(1).

[28] Amendment, s. 11, r. 8.30(1).

[29] Amendment, s. 11, r. 8.31.

