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Edmonton, Alberta **Calgary, Alberta**

Chair

Patrick D. Kirwin
Kirwin LLP
Edmonton, Canada

Faculty

Master A.R. Robertson QC
Court of Queen's Bench of Alberta
Calgary, Alberta

Joseph V. Miller QC
Weir Bowen
Edmonton, Alberta

Jeffrey B. Champion QC
Bishop & McKenzie LLP
Edmonton, Alberta

Donna C. Purcell QC
Warren Sinclair LLP
Red Deer, Alberta

Vivian R. Stevenson QC
Duncan Craig LLP
Edmonton, Alberta

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The Role of Questioning in the Summary Judgment and Summary Trial Environment

Prepared by:

Donna Purcell QC

Warren Sinclair LLP

Legal Education Society of Alberta

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THE ROLE OF QUESTIONING IN THE SUMMARY JUDGMENT AND SUMMARY TRIAL ENVIRONMENT

INTRODUCTION

This paper will address options and issues to approaching questioning where summary judgment or summary trial is or may be relevant. Further, this paper will address the use of Alberta Rules of Court Rule 6.8 and the advantages that potentially lie within its use.

CREATING A RECORD FOR SUMMARY JUDGMENT APPLICATIONS

Summary Judgment – Rules 7.2-7.4

These rules authorize a court to issue **Judgment via a Chambers Application** because the merits of the claim or defence are sufficiently clear that a trial is not required.

Rule 7.3 authorizes a **court** to give **part or full judgment** in an action **if:**

(a) There is **no defence to the claim** or part of it;

(b) There is **no merit to the claim** or part of it;

(c) The **only real issue is as to amount.**

Affidavit evidence in support is required and must be based on personal knowledge (cannot be based on information and belief: R. 7.3 requires an affidavit "swearing positively" to the facts).

The respondent does not bear the same positive evidential burden. In *Court v Campbell*, 2012 CarswellAlta 1798 (Q.B.), the applicants argued that hearsay evidence is not allow on summary judgment applications but the court agreed that while that was true, it was permitted from the respondents.

Summary Judgment is issued when the court is satisfied that a full trial is not required to resolve the issue(s) because there is **no merit (or no defence in the case of a defendant)** to the respondent's case.

Currently, the courts employ a **two-step analysis** to determine if a matter can be decided by Summary Judgment:

1. Procedural: is there sufficient evidence to determine the issue(s)?
2. Substantive: does the evidence make clear that the respondent's case has no merit?