

FAMILY CROWN SERVICES OPERATIONAL MANUAL

SUMMARY JUDGMENTS	New	Office of the Attorney General / Family Crown Services	Policy 34
Policy Title	New or Amended	Division / Branch / Section	Policy #

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SUMMARY JUDGMENTS

1. Introduction

Rule 22 of the *Rules of Court* sets out where summary judgment is available and the applicable procedure.

Since the “cultural shift” recognized by the decision of the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, summary judgments have become more widely used and have been granted by Courts across the country in many contexts including child protection.

The goal is a more expeditious and less costly proceeding. A timely, but fair and balanced hearing is essential.

The following Rules of Court are also to be noted:

- Rule 1.02 - Application
- Rule 1.02.1 - Proportionality
- Rule 1.03 - Interpretation
- Rule 73.02 - Application of Other Rules
- Rule 73.08 - Scope of Proceeding

2. Statement of the Policy

Family Crown Counsel shall consider filing a Motion for Summary Judgment in every child protection proceeding where there is a significant amount of evidence in favour of granting the order being sought by the Minister of Social Development, and where “There is no arguable point based on any evidence presented by the Respondent that either parent faces some better prospects than those that existed at the time the Department became involved, nor to the effect that either parent has developed some new ability as a parent.” *Children’s Aid Society of the Regional Municipality of Waterloo v. M.(A.)*, 2015 ONSC 2496

2.1 Factors to consider when contemplating filing a Motion for Summary Judgment

In addition, there are several factors which Family Crown Counsel should consider when contemplating filing a Motion for Summary Judgment, such as:

- (a) Disastrous or notably abusive parenting;
- (b) Respondent(s) is/are incapable of parenting;
- (c) Whereabouts of the Respondent(s) are unknown and have been for a significant amount of time;
- (d) A significant amount of time has passed since the Respondent(s) has/have seen the child;
- (e) Respondent(s) is/are incarcerated and will so remain for a significant period of time;
- (f) Respondent(s) has/have no safe, secure place to live with no prospect of acquiring same within a reasonable timeframe;
- (g) Respondent(s) is/are not following services or maintaining contact with the Minister;
- (h) Respondent(s) has/have consistently missed visits with the child;
- (i) There is no reasonable prospect of family reunification;
- (j) No Responding Documents have been filed; and
- (k) Any other factor that may have a significant negative impact upon the best interests of the child which, as always, remains primordial.

Due to the fluid nature of child protection matters, the above noted factors should also be reconsidered/reassessed immediately before filing a Motion for Summary Judgment.

3. Applicable test in Summary Judgment Motions

In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 the Supreme Court of Canada set out the applicable test in a Motion for Summary Judgment as follows:

On a Motion for Summary Judgment, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure. If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

The Court of Appeal of New Brunswick recently examined the test under Rule 22, in light of *Hryniak* (supra), in *O'Toole v. Peterson*, 2018 NBCA 8.

For New Brunswick jurisprudence regarding Summary Judgment please refer to:

New Brunswick (Minister of Social Development) v. A.A., 2018 NBQB 38
New Brunswick (Minister of Families and Children) v. A.G., 2019 NBQB 039
New Brunswick (Minister of Social Development) v. A.S., 2019 NBQB 077
Nouveau-Brunswick (Ministre des familles et des enfants) c. J-S.M., 2019 NBBR 081

4. Related documents

New Brunswick Rules of Court