

Court file no. Insert

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Insert Name

PLAINTIFF

and

Insert Name

DEFENDANT

**FACTUM OF THE MOVING PARTIES,
Insert Name**

Insert Firm
Firm Address

Telephone: Insert
Facsimile: Insert

Insert Counsel (LSUC Number)
Solicitor for Insert Name

TO: Insert Opposing Counsel
Insert Address

Telephone: Insert
Facsimile: Insert

Court file no. Insert

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Insert Name

PLAINTIFF

and

Insert Name

DEFENDANT

**FACTUM OF THE MOVING PARTY,
INSERT NAME**

PART I – NATURE OF THE MOTION

1. This Factum is filed in support of a motion for summary judgment in favour of the Insert Name.

PART II – FACTS

2. Insert Details (including chronology and history of the litigation)
 - Insert Sources

PART III – ISSUES

3. The issues to be determined at the hearing of the motion are as follows:
 - i. Whether summary judgment ought to be granted in favour of the Plaintiff/Defendant.
 - ii. List any additional issues

PART IV – LAW AND ARGUMENT

Purpose of Summary Judgment Rule

4. The purpose of the summary judgment rule is to dispose of an action where it is shown that a trial is not necessary.

- ***Rules of Civil Procedure, R.R.O. 1990, Reg. 194, R. 20.04(2)***
- ***Kobilke v. Jeffries, 2014 CarswellOnt 5962 at para. 21 (S.C.J.)***

5. Rule 20 provides for granting summary judgment when:

- i. there is no genuine issue requiring a trial (Rule 20.04(2)(a), (2.1) and (2.2))
 - ii. the parties consent to summary judgment of the matter and the court is satisfied that granting summary judgment is justified (Rule 20.04(2)(b))
 - iii. only the amount is at issue (Rule 20.04(3))
 - iv. the only issue is a question of law (Rule 20.04(4))
 - v. the plaintiff's claim is for an accounting (Rule 20.04(5))
- ***Rules of Civil Procedure, R.R.O. 1990, Reg. 195, R. 20.04***

[Editor's Note: Choose section from below that applies to your motion and delete all sections that do not apply]

No Genuine Issue Requiring a Trial

6. Rule 20.04(2) of the *Rules of Civil Procedure*, provides that the court shall grant summary judgment in favour of a defendant if it is satisfied that there is no genuine issue requiring a trial with respect to a claim.

- ***Rules of Civil Procedure, R.R.O. 1990, Reg. 194, R. 20.04(2)(a)***

7. Rule 20.04(2)(a) represents a shift from the former Rule which required “no genuine issue for trial,” as opposed to “no genuine issue requiring a trial.”

- **Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 20.04(2)(a)**

8. The significance of this language shift was considered by Perrell J. in *Healey v. Lakeridge Health Corporation* wherein His Honour stated:

...[P]laced in the context of the other amendments to Rule 20, the purposes of the change from "no genuine issue for trial" to "no genuine issue requiring a trial" in the test for a summary judgment are: (1) to make summary judgment more readily available; and (2) to recognize that with the court's expanded forensic powers, although there may be issues appropriate for trial, these issues may not require a trial because the court has the power to weigh evidence on a motion for summary judgment.

- **Healey v. Lakeridge Health Corporation, 2010 CarswellOnt 556 at para. 23 (S.C.J.)**

9. The Supreme Court of Canada provided guidance on when the courts will find that there is no genuine issue requiring a trial on a motion for summary judgment:

[40].. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- **Hryniak v. Mauldin, 2014 CarswellOnt 640 at para. 40 (S.C.C.)**

[Editor's Note – if your issue is under this category, go to the Test for Summary Judgment section and continue from there]

****END OF SAMPLE****