

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Consolidation Period: From December 31, 2011 to the [e-Laws currency date](#).

Last amendment: 2009, c. 33, Sched. 6, s. 50.

Stay of proceedings

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O. 1990, c. C.43, s. 106.

Consolidation of proceedings in different courts

107.(1) Where two or more proceedings are pending in two or more different courts, and the proceedings,

- (a) have a question of law or fact in common;
- (b) claim relief arising out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason ought to be the subject of an order under this section,

an order may, on motion, be made,

- (d) transferring any of the proceedings to another court and requiring the proceedings to be consolidated, or to be heard at the same time, or one immediately after the other; or

- (e) requiring any of the proceedings to be,

- (i) stayed until after the determination of any other of them, or

- (ii) asserted by way of counterclaim in any other of them. R.S.O. 1990, c. C.43, s. 107 (1).

Transfer from Small Claims Court

(2) A proceeding in the Small Claims Court shall not be transferred under clause (1) (d) to the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court. R.S.O. 1990, c. C.43, s. 107 (2); 1996, c. 25, s. 9 (17).

Idem

(3) A proceeding in the Small Claims Court shall not be required under subclause (1) (e) (ii) to be asserted by way of counterclaim in a proceeding in the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court. R.S.O. 1990, c. C.43, s. 107 (3); 1996, c. 25, s. 9 (17).

Motions

(4) The motion shall be made to a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 107 (4); 1996, c. 25, s. 9 (17).

Directions

(5) An order under subsection (1) may impose such terms and give such directions as are considered just, including dispensing with service of a notice of readiness or listing for trial and abridging the time for placing an action on the trial list.

Transfer

(6) A proceeding that is transferred to another court under clause (1) (d) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court.

Discretion at hearing

(7) Where an order has been made that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise. R.S.O. 1990, c. C.43, s. 107 (5-7).

PROCEDURAL MATTERS

Jury trials

108. (1) In an action in the Superior Court of Justice that is not in the Small Claims Court, a party may require that the issues of fact be tried or the damages assessed, or both, by a jury, unless otherwise provided. R.S.O. 1990, c. C.43, s. 108 (1); 1996, c. 25, s. 9 (17).

Trials without jury

(2) The issues of fact and the assessment of damages in an action shall be tried without a jury in respect of a claim for any of the following kinds of relief:

1. Injunction or mandatory order.
2. Partition or sale of real property.
3. Relief in proceedings referred to in the Schedule to section 21.8.
4. Dissolution of a partnership or taking of partnership or other accounts.
5. Foreclosure or redemption of a mortgage.
6. Sale and distribution of the proceeds of property subject to any lien or charge.
7. Execution of a trust.
8. Rectification, setting aside or cancellation of a deed or other written instrument.
9. Specific performance of a contract.

10. Declaratory relief.
11. Other equitable relief.
12. Relief against a municipality. R.S.O. 1990, c. C.43, s. 108 (2); 1994, c. 12, s. 41; 2006, c. 21, Sched. A, s. 16.

Idem

(3) On motion, the court may order that issues of fact be tried or damages assessed, or both, without a jury. R.S.O. 1990, c. C.43, s. 108 (3).

Composition of jury

(4) Where a proceeding is tried with a jury, the jury shall be composed of six persons selected in accordance with the *Juries Act*. R.S.O. 1990, c. C.43, s. 108 (4).

Verdicts or questions

- (5) Where a proceeding is tried with a jury,
- (a) the judge may require the jury to give a general verdict or to answer specific questions, subject to section 15 of the *Libel and Slander Act*; and
 - (b) judgment may be entered in accordance with the verdict or the answers to the questions. R.S.O. 1990, c. C.43, s. 108 (5).

Idem

(6) It is sufficient if five of the jurors agree on the verdict or the answer to a question, and where more than one question is submitted, it is not necessary that the same five jurors agree to every answer. R.S.O. 1990, c. C.43, s. 108 (6).

Discharge of juror at trial

(7) The judge presiding at a trial may discharge a juror on the ground of illness, hardship, partiality or other sufficient cause. R.S.O. 1990, c. C.43, s. 108 (7).

Continuation with five jurors

(8) Where a juror dies or is discharged, the judge may direct that the trial proceed with five jurors, in which case the verdict or answers to questions must be unanimous. R.S.O. 1990, c. C.43, s. 108 (8).

Specifying negligent acts

(9) Where a proceeding to which subsection 193 (1) of the *Highway Traffic Act* applies is tried with a jury, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the proceeding is brought. R.S.O. 1990, c. C.43, s. 108 (9).

Malicious prosecution

(10) In an action for malicious prosecution, the trier of fact shall determine whether or not there was reasonable and probable cause for instituting the prosecution. R.S.O. 1990, c. C.43, s. 108 (10).