

CIVIL PRACTICE NOTE 7

VEXATIOUS APPLICATION/PROCEEDING SHOW CAUSE PROCEDURE (GENERAL POWERS TO STAY OR DISMISS A FRIVOLOUS, VEXATIOUS, OR ABUSIVE APPLICATION OR PROCEEDING)

Introduction

1. This Practice Note sets summary procedures in the Court of Queen's Bench of Alberta to be followed under Alberta Rules of Court, Alta Reg 124/2010, R 3.68 for a claim, defence, action, application, or proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process [Apparent Vexatious Application or Proceeding or "AVAP"].

Order to Stay, Dismiss Application or Proceeding

2. In accordance with Alberta Rules of Court, R.3.68 (reproduced below), and the summary procedures set out in this Practice Note, the Court may make an order to stay or dismiss an AVAP:

- (a) on its own initiative,
- (b) upon the written request of any party to a proceeding, or
- (c) after notification from a Clerk of the Court, Complex Litigant Management Counsel, or Case Management Counsel.

Summary Procedures

3. Unless the Court orders otherwise, an order to stay or dismiss an AVAP shall be made on the basis of written submissions, if any, in accordance with the following summary procedure:

- (a) The Court shall direct the Clerk to serve an AVAP Notice to the party filing the AVAP [Apparently Vexatious Litigant or "AVL"] that the Court is considering making an order to stay or dismiss an AVAP.
- (b) The AVL may, within 14 days after receiving the AVAP Notice, respond and:
 - i) file with the Court a Written Submission of no more than 10 pages in length in reply to the AVAP notice, and
 - ii) serve that Written Submission on every other party to the proceeding.
- (c) If the AVL does not file and serve a Written Submission that complies with paragraph 3(b), the Court may stay or dismiss the AVAP without any further notice to the AVL or to any other party.
- (d) A party who is served with an AVL's Written Submission, may, within seven days after service of the Written Submission, respond and:
 - i) file with the Court a Written Reply of no more than 10 pages in length to the AVL's Written Submission, and

ii) serve that Written Reply on the AVL and every other party to the proceeding.

(e) The Court shall, after receipt of the AVL's Written Submission and any Written Replies, apply R 3.68 to the AVAP.

Copy of Order

4. If an order is made by the Court to stay or dismiss an AVAP under these summary procedures, the Clerk shall serve a copy of the order on the AVL and every other party to the proceeding as soon as possible after the order is made.

Notification of Court by Court Personnel

5. If a Clerk of the Court, Complex Litigant Management Counsel, Case Management Counsel or Case Resolution Counsel becomes aware that an application or proceeding appears to be an AVAP, then the Clerk of the Court, Complex Litigant Management Counsel, Case Management Counsel or Case Resolution Counsel shall notify the Court.

Request for Order

6. Any party to a proceeding may, under these summary procedures, file with the Court a written request for an order to stay or dismiss that proceeding as an AVAP.

Prohibition on Further Applications

7. (a) Upon making an order to stay or dismiss an AVAP under these summary procedures, the Court may also make an order prohibiting the AVL from making any further applications in any proceeding, except with leave of the Court.

(b) An order made under paragraph 7(a) does not limit the Court from additional steps under the Court's inherent jurisdiction to respond to abuse of the Court's processes by an AVL.

Alberta Rules of Court R. 3.68 Court Options to Deal with Significant Deficiencies:

3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:

- (a) that all or any part of a claim or defence be struck out;
- (b) that a commencement document or pleading be amended or set aside;
- (c) that judgment or an order be entered;
- (d) that an action, an application or a proceeding be stayed.

(2) The conditions for the order are one or more of the following:

- (a) the Court has no jurisdiction;
- (b) a commencement document or pleading discloses no reasonable claim or defence to a claim;
- (c) a commencement document or pleading is frivolous, irrelevant or improper;
- (d) a commencement document or pleading constitutes an abuse of process;
- (e) an irregularity in a commencement document or pleading is so prejudicial to the claim that it is sufficient to defeat the claim.

...

(4) The Court may

(a) strike out all or part of an affidavit that contains frivolous, irrelevant or improper information; ...