

RULE 24

DISMISSAL OF ACTION FOR DELAY

WHERE AVAILABLE

24.01 A defendant who is not in default under these rules or an order of the court may move to have an action dismissed for delay where the plaintiff has failed,

- (a) to serve the statement of claim on all the defendants within the prescribed time;
- (b) to have noted in default any defendant who has failed to deliver a statement of defence, within thirty days after the default;
- (c) to set the action down for trial within six months after the close of pleadings;
- (d) to move for leave to restore to a trial list an action that has been struck off the trial list, within thirty days after the action was struck off.

NOTICE WHERE PLAINTIFF UNDER DISABILITY

24.02 Where the plaintiff is under disability, notice of a motion to dismiss the action for delay shall be served on,

- (a) ~~the~~ litigation guardian or committee of the estate of the plaintiff;
and
- (b) on the Official Guardian, unless
 - (i) ~~the~~ Public Trustee is committee of the estate or litigation guardian of the plaintiff, or
 - (ii) a judge orders otherwise.

EFFECT OF DISMISSAL ON COUNTERCLAIM

24.03 Where an action against a defendant who has counterclaimed is dismissed for delay, the defendant may within thirty days after the dismissal deliver a notice of election to proceed with the counterclaim (Form 23B), and if the defendant fails to do so, the counterclaim shall be deemed to be discontinued without costs.

R. 24.03

EFFECT OF DISMISSAL ON CROSSCLAIM OR THIRD PARTY CLAIM

- 24.04** (1) Where an action against a defendant who has crossclaimed or made a third party claim is dismissed for delay,
- (a) the crossclaim or third party claim shall be deemed to be dismissed with costs; and
 - (b) the defendant may recover those costs and his or her own costs of the crossclaim or third party claim from the plaintiff,
- unless the court orders otherwise.

EFFECT OF DEEMED DISMISSAL ON SUBSEQUENT ACTION

- (2) The deemed dismissal is not a defence to a subsequent action unless the order dismissing the action provides otherwise.

EFFECT ON SUBSEQUENT ACTION

- 24.05** (1) The dismissal of an action for delay is not a defence to a subsequent action unless the order dismissing the action provides otherwise.
- (2) Where a plaintiff's action has been dismissed for delay with costs, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest before payment of the costs of the dismissed action, the court may order a stay of the subsequent action until the costs of the dismissed action have been paid.

APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND THIRD PARTY CLAIMS

- 24.06** Rules 24.01 to 24.05 apply, with necessary modifications, to counterclaims, crossclaims and third party claims.