TITLE 7
SPECIAL PROCEEDINGS

CHAPTER 3
WRITS OF MANDATE

7-301. DESIGNATION. The writ of mandamus may be denominated a writ of mandate.

[(7-301) C.C.P. 1881, sec. 737; R.S., R.C., & C.L., sec. 4976; C.S., sec. 7253; I.C.A., sec. 13-301.]

7-302. WHEN AND BY WHAT COURTS ISSUED. It may be issued by the supreme court or any district court to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and the enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

[(7-302) C.C.P. 1881, sec. 738; R.S., R.C., & C.L., sec. 4977; C.S., sec. 7254; I.C.A., sec. 13-302; am. 1996, ch. 224, sec. 1, p. 736.]

7-303. ABSENCE OF ADEQUATE REMEDY. The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

[(7-303) C.C.P. 1881, sec. 739; R.S., R.C., & C.L., sec. 4978; C.S., sec. 7255; I.C.A., sec. 13-303.]

7-304. FORM OF WRIT. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place why he has not done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not done as commanded must be omitted, and a return day inserted.

[(7-304) C.C.P. 1881, sec. 740; R.S., R.C., & C.L., sec. 4979; C.S., sec. 7256; I.C.A., sec. 13-304.]

7-305. NOTICE OF APPLICATION -- HEARING. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least fourteen (14) days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appear or not.

[(7-305) C.C.P. 1881, sec. 741; R.S., R.C., & C.L., sec. 4980; C.S., sec. 7257; I.C.A., sec. 13-305; am. 1996, ch. 224, sec. 2, p. 736.]

7-308. OBJECTIONS TO ANSWER. On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

[(7-308) C.C.P. 1881, sec. 744; R.S., R.C., & C.L., sec. 4983; C.S., sec. 7260; I.C.A., sec. 13-308.]

7-309. MOTION FOR NEW TRIAL. The motion for a new trial must be made in the court in which the issue of fact is tried.

[(7-309) C.C.P. 1881, sec. 745; R.S., R.C., & C.L., sec. 4984; C.S., sec. 7261; I.C.A., sec. 13-309.]

7-310. CERTIFICATION OF VERDICT -- ARGUMENT. If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five (5) days after the rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

[(7-310) C.C.P. 1881, sec. 746; R.S., R.C., & C.L., sec. 4985; C.S., sec. 7262; I.C.A., sec. 13-310.]

7-311. TRIAL ON PLEADINGS. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing, the argument of the case.

[(7-311) C.C.P. 1881, sec. 747; R.S., R.C., & C.L., sec. 4986; C.S., sec. 7263; I.C.A., sec. 13-311.]

7-312. DAMAGES. If judgment be given for the applicant, he may recover damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

[(7-312) C.C.P. 1881, sec. 748; R.S., R.C., & C.L., sec. 4987; C.S., sec. 7264; I.C.A., sec. 13-312.]

7-313. SERVICE OF WRIT. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

[(7-313) C.C.P. 1881, sec. 749; R.S., R.C., & C.L., sec. 4988; C.S., sec. 7265; I.C.A., sec. 13-313.]

7-314. DISOBEDIENCE OF WRIT -- PENALTY. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served,

has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

[(7-314) C.C.P. 1881, sec. 750; R.S., R.C., & C.L., sec. 4989; C.S., sec. 7266; I.C.A., sec. 13-314.]