

A “Shift in Culture” – SCC on Ontario’s Summary Judgment Rule

Motions for summary judgment enhance access to justice. They can provide litigants their “day in court” without the time and expense of a full trial. In 2010, Ontario’s summary judgment rule was changed to make the motions easier to bring and win. The rule provided that summary judgment motions should only be dismissed if there was a genuine issue requiring a trial. But, the caselaw since that amendment effectively discouraged parties from bringing summary judgment motions, especially in negligence cases. The judge had to have a “full appreciation” of the facts before granting summary judgment.

On January 23, 2014, the Supreme Court of Canada released its decisions in *Hryniak v Mauldin* and *Bruno Appliance and Furniture, Inc. v Hryniak* and instituted a new framework for summary judgment motions in Ontario. The Court was clear that summary judgment needs to be more available. This should mean litigants can use it more and courts should grant summary judgment more often.

In these two decisions, the Supreme Court of Canada set out a new methodology to be employed by motion judges when deciding motions for summary judgment.

- The motion judge should first determine whether there is a genuine issue requiring a trial *without* using his or her fact-finding powers. There will be no genuine issue for trial when the summary judgment process (1) allows the judge to make necessary findings of fact, (2) allows the judge to apply the law and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
- If there appears to be a genuine issue requiring a trial, the motion judge should consider whether a trial can be avoided using his or her *discretionary* fact-finding powers, as long as it is not against the interest of justice to do so. The interest of justice will be satisfied if a fair and just result can be obtained in a timely, affordable and proportionate manner. The “full appreciation” test is no longer applicable.
- If a trial is required, the motion judge may nonetheless exercise certain case management powers to streamline the trial procedure. The motion judge should further seize him or herself of the matter as the trial judge.

Practical Consequences

While the Supreme Court has outlined a new approach to summary judgment motions, it remains to be seen whether this will provide greater opportunities to resolve negligence cases summarily. At least the parties now have some certainty about how the test is to be applied. Lawyers and clients should revisit whether summary judgment is appropriate in their cases and we expect to see many more of these motions in our practice.

Dutton Brock LLP

438 University Avenue, Suite 1700

Toronto, Canada M5G 2L9

Telephone: (416) 593-4411 Fax: (416) 593-5922

www.duttonbrock.com