Goodmans LLP Update

Litigation

November 20, 2014

No Right to a Trial in Civil Litigation in Ontario

The Ontario Superior Court of Justice has provided guidance on the significant implications of the Supreme Court of Canada's (SCC) decision in *Hryniak v. Mauldin*, in which the SCC held that the new summary judgment rules fundamentally change litigants' procedural rights. In *Baghbanbashi v. Hassle Free Clinic*, the Honourable Justice F. L. Myers held that there is no longer a right to a trial in civil litigation in Ontario as a result of *Hryniak*. While the outcome of the particular case is not significant for litigants generally, the Court's comments regarding the "cultural shift" of litigation and the effect on parties' procedural rights post-*Hryniak* is worth considering when assessing whether or not to pursue litigation.

Background

Baghbanbashi involves an ongoing claim for medical negligence. The plaintiff alleges that she contracted a debilitating disease from hepatitis B vaccinations she received at the Hassle Free Clinic. She argues that the medical care she received was negligent because she was not informed of the risks associated with the vaccinations. The defendant Dr. Mirza R. Virani is also accused of negligently failing to diagnose the plaintiff's symptoms before her second vaccination.

The defendants argue that the hepatitis B vaccination could not have caused the plaintiff's debilitating disease. Dr. Virani brought a motion for summary judgment on the issue of causation, claiming there is "no genuine issue requiring a trial" on the basis that there is no scientific evidence to support causation. At a case conference before the summary judgment motion, the parties disagreed on the scope of the issue to be resolved and the extent of the evidence required.

Court's Decision

In his decision, Justice Myers provided the following guidance on the state of litigants' procedural rights in Ontario post-*Hryniak*:

- "The traditional notion that only a trial can provide civil justice led to a crisis whereby most Canadians could not afford civil trials and hence were being denied access to justice. Moreover, delays were so acute that even when trials were affordable, few litigants obtained speedy justice" (para. 19)
- "There is no right to a trial in civil litigation in Ontario. If the fair and just resolution of the action requires a trial, then a trial will be held. However, it is not more in the plaintiffs' interests than it is in the defendants' interests to endure the cost, delay and distress of a full trial if it turns out that the case could have been resolved years earlier and hundreds of thousands of dollars cheaper on a single issue." (para. 20)
- "Summary judgment is not limited to cases where facts are not in dispute or to the clearest of cases or to self-evident issues of law." (para. 22)
- "Under *Hryniak*, courts and all users of the civil justice system have been required to undergo a cultural shift. The goal remains the same - ensuring a fair and just process that permits the judge to find the facts necessary to apply the law so as to resolve civil disputes. But as Karakatsanis J. noted [in *Hryniak*], "… that process is illusory unless it is also accessible - proportionate, timely and affordable." (para. 21)

After reviewing the "roadmap" the SCC provided in *ThyssenKrupp Elevator (Canada) Limited v. Amos*, Justice Myers held that judges deciding a summary judgment motion may now exercise discretion to weigh evidence, evaluate credibility of witnesses and draw reasonable inferences from the evidence without a trial. If this is not sufficient, judges may exercise discretion to order

the presentation of some limited oral evidence, a process known as a "mini-trial". It is only when these powers are not sufficient to reach a just result that a full traditional trial will be held.

Key Points for Canadian Companies

The Court's ruling in *Baghbanbashi* further demonstrates that the cultural shift the SCC envisioned in *Hryniak* is continuing.

This cultural shift has important implications for businesses considering litigation in Ontario. It is much more likely that the contemplated dispute can be resolved more quickly and less expensively than in the past for two reasons: first, the cultural shift means that a court is more likely to determine the case on its merits without a full-fledged trial; and, second, the parties' "day in court" should now occur more quickly, meaning the prospect of an earlier settlement is more likely. In addition, defendants must be cognizant that tactics for delaying the process will be less effective. In the end, the cultural shift should make litigation more economically viable for resolving many corporate and commercial disputes.

For further information on summary judgment or the *Baghbanbashi* and *Hryniak* decisions, please contact any member of our Litigation Law Group.

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