

## Litigation

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### The Supreme Court of Canada Breathes New Life into Summary Judgment

The Supreme Court of Canada released its anticipated decision in *Hryniak v. Mauldin*, breathing new life into summary procedures. Calling for a “shift in culture” toward increased access to justice, the Supreme Court held that “summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.”

#### Background

The case involved the interpretation of Ontario civil procedure rules governing summary judgment. Summary judgment allows for the resolution of litigation by way of a motion and is intended to provide a cheaper, faster alternative to a full trial.

On January 1, 2010, a series of amendments to the summary judgment rules came into force, which significantly expanded a judge’s power on a summary judgment motion. The rule changes were intended to make summary judgment more accessible. They allow a judge to weigh the evidence, assess credibility and draw inferences. The 2010 amendments effectively overruled a previous line of cases preventing the motion judge from exercising these powers on summary judgment, limiting the use of the summary judgment process.

Following the amendments, there was uncertainty about when and how a motion judge should use the expanded powers to grant summary judgment. In 2011, the Ontario Court of Appeal released its decision in *Combined Air Mechanical Services Inc. v. Flesch*, which established the principles for determining when a case should be decided by way of summary judgment. The Court of Appeal held that summary judgment should be granted in narrow circumstances, and only where the judge can achieve a “full appreciation” of the evidence

without the need for trial-like attributes, such as to hear and experience the fact-finding process first-hand.

#### Supreme Court of Canada Decision

In *Hryniak*, the Supreme Court of Canada rejected the “full appreciation” test as placing “too high a premium on the evidence gained at a conventional trial.” The Supreme Court concluded that “summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.” Central to the Supreme Court’s decision is the principle that the rules should facilitate timely and affordable access to justice where trials have become increasingly expensive and protracted. Moreover, the Supreme Court held that summary judgment decisions of lower court judges should be granted deference on appeal.

Under the new rules, summary judgment must be granted where there is “no genuine issue requiring a trial.” The Supreme Court held that there will be no genuine issue requiring a trial when the summary judgment process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

It is not necessary that the evidence on a summary judgment motion be equivalent to that at trial, but the motion judge must be confident that he or she can fairly resolve the dispute using the summary judgment procedure. The Supreme Court emphasized that “proportionality” is a key factor when determining whether summary judgment should be granted. Proportionality involves a comparative analysis and may require the motion judge to assess the relative efficiencies of proceeding by summary judgment and not full trial. Whether summary judgment proceedings are appropriate will depend on the circumstances of the case.

# Goodmans<sup>LLP</sup> Update

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The Supreme Court established a roadmap to a motion for summary judgment that requires the judge to first determine if there is a genuine issue requiring trial before him or her, *without* using the new fact-finding powers. If there appears to be a genuine issue requiring a trial, the judge should then determine if the need for a trial can be avoided by using the new powers. The judge may use those new powers, provided their use is not against the interest of justice. Their use will not be against the interest of justice “if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.”

Overall, in furtherance of improving access to justice, the Supreme Court has granted a wide berth for summary judgment determinations with limited ability to appeal.

For further information on this decision, please contact any member of our Litigation Group.