SUMMARY JUDGMENT UPDATE: SUPREME COURT SIGNALS CULTURE SHIFT TO GREATER ACCESS TO JUSTICE

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The Supreme Court of Canada today released a much-anticipated decision in *Hryniak v Mauldin*, 2014 SCC 7 ("Hryniak"), that calls for greater access to affordable, timely and just adjudication of claims. The Hryniak case addresses amendments to Ontario's summary judgment Rule made in 2010, and the subsequent interpretation of that amended Rule by the Ontario Court of Appeal in *Combined Air Mechanical Services Inc v Flesch*, 2011 ONCA 764 ("Combined Air").

The Court signalled that, in light of the increasing complexity and expense associated with trials, a shift in culture was necessary to allow more cases to be determined by motion for summary judgment. This shift is intended to reflect the "modern reality" of civil litigation and entails "simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case."[1]

As is apparent from the stated "culture shift", the Supreme Court's decision is guided by policy considerations and the view that summary judgment is intended to alleviate a system that is besieged by undue process, protracted trials and unnecessary expense and delay, all of which "can prevent the fair and just resolution of disputes." The Court expresses a concern that litigants participating in a system that is overburdened with expense and delay will "look for alternatives or simply give up on justice."[2]

To avoid this result, the Court signalled the need to increase the use of summary judgment motions to provide affordable and timely access to adjudication. Rather than requiring a "full appreciation" in order to grant summary judgment, as set out by the Court of Appeal in *Combined Air*, according to the Supreme Court, "summary judgment motions must be granted whenever there is no genuine issue requiring a trial."

The Court set out a relatively straightforward test for determining whether a genuine issue exists: There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the 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.[3]

The Court's overarching concern was whether summary judgment will provide "fair and just adjudication." The standard of fairness is to be assessed based on whether it "gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute."[4]

Practical and Process-Oriented Guidance

In terms of process and procedure for hearing a summary judgment motion, the Court established a roadmap and approach that lower courts are to follow when adjudicating such motions. First, a judge should determine if there is a genuine issue requiring trial based only on the evidence before them, without using the new powers to weigh evidence, evaluate credibility, draw reasonable inferences from the evidence or call oral evidence if necessary under Rules 20.04(2.1) and (2.2).

Second, if there appears to be a genuine issue requiring trial, the judge should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). The judge can use these powers if it is not against the interests of justice to do so. In other words, as long as it 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, the judge may engage in new fact-finding.

As a practical matter, the Court addressed how cases are to move through the justice system toward effective and efficient summary judgment motions. The Court referred to the ability for counsel to seek a motion for directions to help manage the time and cost of summary judgment motions. Interestingly, while not all cases require a motion for directions, the Court directed that "the judge hearing the motion for directions should generally be seized of the summary judgment motion itself, ensuring the knowledge she has developed of the case does not go to waste."[5]

Even more interesting is the Court's determination that, where a motion judge dismisses a motion for summary judgment, that judge should remain seized of the matter as the trial judge unless there are compelling reasons to the contrary. That judge then has the power under Rule 20.05 to control the trial management process, using "the insight gained from hearing the summary judgment motion to craft a trial procedure in a way that is sensitive to the complexity and importance of the issue, the amount involved in the case, and the effort expended on the failed motion."[6]
Finally, the Court made clear that the powers exercised under the new summary judgment rule attracts deference, including the question of whether it is in the "interests of justice" for the motion judge to exercise fact-finding powers under Rule 20.04(2.1). This limit on the ability to successfully appeal a decision on summary judgment is a further signal from the Court that under this new regime cases can, and should, receive a final determination on the merits on summary judgment.

Conclusion

The Hryniak decision signals what will likely be a substantial shift in the adjudication and resolution of claims in Ontario. Court are likely to see an increase in the number of summary judgment motions, and we can only hope that litigants will see a corresponding increase in the number of judgments from summary judgment motions.

For further information regarding this matter, please contact **Jason Beitchman** at Rueter Scargall Bennett LLP.

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[1] *Hryniak v Mauldin,* 2014 SCC 7 at para. 2.
[2] *Ibid* at para. 25.
[3] *Ibid* at para. 49.
[4] *Ibid* at para. 50.
[5] *Ibid* at para. 71.
[6] *Ibid* at para. 77.