

Case In Point

Supreme Court Weighs in on Summary Judgment

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Yesterday, the Supreme Court of Canada rendered two companion decisions in which it clarified the scope and process of summary judgment motions. In the unanimous decision, the Supreme Court provides some much needed guidance to the legal profession on the proper use of summary judgment motions in what the Supreme Court recognizes is a changing legal culture where access to an expedient and proportionate justice system is of paramount importance.

By way of background, the summary judgment Rule 20 in the Ontario *Rules of Civil Procedure* was revamped in 2010. For summary judgment to be granted, the new rule provides that the court should be satisfied that there is no genuine issue requiring a trial. The new rule also provides judges with additional powers to weigh evidence, evaluate credibility and draw reasonable inferences. However, there was no guidance on determining what “no genuine issue requiring a trial” actually meant and so the use of the new powers had been applied inconsistently, creating unpredictable results and no clear test.

In 2011, the Court of Appeal, in *Combined Air Mechanical Services Inc. v. Flesch*, set out a new test at para. 50: “[C]an the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of a trial?” Unfortunately, this new test did not provide a methodology that courts could use in determining whether a genuine issue requiring a trial existed.

The Supreme Court of Canada has now provided courts with that much needed methodology and has moved away from the “full appreciation” test. In *Hryniak v. Mauldin*, the Supreme Court states at para. 49: “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.”

The Supreme Court then provides a roadmap at para. 66:

1. Based on the evidence before the court, is there a genuine issue requiring a trial without using the new powers under Rule 20? If not, then the motion must be granted.
2. If there appears to be a genuine issue, can a trial be avoided by using the new powers under Rule 20 (i.e. weigh evidence, evaluate credibility, and draw reasonable inferences)? These powers should be used, at the court’s discretion, so long as it is not against the interest of justice to do so: “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.”

The Supreme Court gives much deference to the motion judge and emphasizes that the process must give the judge confidence in his or her conclusions: “the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge the confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.”

The Supreme Court also makes a point to note that the summary judgment tool, which can be useful and expedient, can also be abused as a tactic to increase time and expense in litigation. In such circumstances, the Supreme Court gives motion judges the guidance to control the summary judgment process and suggests to lawyers that they can seek the assistance of judges to limit the scope of the process if needed. Some examples of this include the court providing directions, setting limits on procedural aspects of the motion, limiting the scope of a trial if the motion was only partially successful, and dismissing the motion without engaging in the process set out above if clearly unmeritorious.

In summary, the Supreme Court has provided some much needed guidance to assist the judiciary and lawyers alike in clarifying the muddy waters of Rule 20 so that we can properly use summary judgment motions to resolve disputes in a more expeditious and cost-effective manner.