

Supreme Court Of Canada Broadens The Scope Of Summary Judgment Proceedings – Will This Be A Game Changer In Wrongful Dismissal Actions

written by Rory Lodge | February 19, 2014



A summary judgment is a procedure used during civil litigation to promptly and expeditiously dispose of a case without a trial or the pre-trial processes such as examinations for discovery and production of documents. Essentially, a summary judgment is appropriate when there is no genuine issue requiring a trial.

Despite changes to summary judgment laws in 2010 meant to increase their efficiency and frequency, courts have underutilized the process. This is due in part to a Court of Appeal decision that applied an overly restrictive test for their use.

However, in an effort to increase their application, the Supreme Court of Canada in [*Hryniak v. Mauldin*](#) has finally provided guidance on how courts should interpret and apply the law with regards to summary judgments.

In its decision, the Supreme Court first sets out why summary judgments are critical to providing access to justice:

[1] Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.

Next, the Court describes the instances when the summary judgment route may be exercised:

[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.

Finally, the Court sets out a “roadmap,” for how summary judgments should be applied by the courts:

[66] On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial... There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she 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). She may, at her discretion, use those powers, provided that 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.

For employers, the summary judgment procedure has always been available for the resolution of employment law cases. However, this Supreme Court decision will likely reinforce the position that the summary disposition of such cases is the preferred route, especially for most wrongful dismissal cases.

Moreover, this decision will assist employers who are dragged into frivolous lawsuits by reducing both the cost and length of needless litigation.



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