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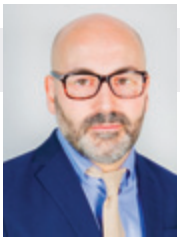

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Culture Shift on Summary Judgment

IN *HRYNIAK V. MAULDIN*, 2014 SCC 7, THE SUPREME COURT OF CANADA HAS INTRODUCED A "CULTURE SHIFT" IN THE WAY PARTIES AND CANADIAN COURTS APPROACH SUMMARY PROCEEDINGS. RECOGNIZING THAT THE NEW SUMMARY JUDGMENT RULE, RULE 20 OF THE *RULES OF CIVIL PROCEDURE*, WAS MEANT TO IMPROVE ACCESS TO JUSTICE, THE SUPREME COURT HELD THAT CANADIAN JUDGES HAVE NEW TOOLS TO AVOID THE COSTS AND DELAY OF A TRIAL.

Summary judgment will be granted where there is no genuine issue requiring a trial. The Court applied a two-part test to determine if there is a genuine issue requiring a trial. First, the judge should determine if there is a genuine issue requiring a trial based on the evidence before her, without using the new fact-finding powers set out in Rule 20. There will be no genuine issue requiring a trial if the summary judgment process provides the judge with the evidence required to fairly and justly adjudicate the dispute in a timely, affordable and proportionate way. Second, 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 under Rule 20 to weigh evidence, evaluate credibility, and draw reasonable inferences.

Critically, the Supreme Court held that where a motions judge dismisses a motion for summary judgment, in the "absence of compelling reasons to the contrary", the motion judge should seize herself of the dispute as the trial judge.

The *Hyrniak* decision clearly represents a significant milestone in Canadian civil litigation and the resolution of disputes. The Supreme Court's culture shift recognizes the importance of summary proceedings as an alternative to the mechanism of a trial, where it is in the interests of justice, proportionality and efficiency to do so.

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