



# What does it mean for Employment Law? Supreme Court of Canada rewrites test for Summary Judgment

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On January 23, 2014 the Supreme Court of Canada released its decision in [Hryniak v. Mauldin](#), overturning the Ontario Court of Appeal's test for the appropriateness of summary judgments and replacing it with a broader test aimed at increasing access to justice for ordinary Canadians.

The decision speaks to how access to justice can be achieved by simplifying pre-trial procedures and moving away from the conventional trial model in appropriate cases. In reaching this conclusion, the decision emphasizes that a "cultural shift" is required in order to promote fair, timely and affordable access to the civil justice system. This may result in the increased use of summary judgment motions in certain types of employment law cases, particularly wrongful dismissal actions where cause is not an issue.

## Background

Ontario's summary judgment rules allow litigants to obtain disposition by a judge without proceeding to trial. Summary judgment motions normally involve placing a written record of evidence before a judge, seeking a judicial determination on the basis that there is no genuine issue requiring a trial. In making this determination, a judge must still consider evidence submitted by the parties although that evidence is not provided through oral testimony nor is it as exhaustive as would be adduced through trial. Importantly, a judge hearing a summary judgment motion may weigh evidence, draw inferences, evaluate credibility and require the provision of oral evidence. While these powers are discretionary, their availability provides an alternative to the trial model as a means of adjudicating claims.

In interpreting the summary judgment rules, the Supreme Court found that the Court of Appeal had previously placed too high a premium on the "full appreciation" of evidence that can be gained at a conventional trial. It substituted a more lenient test which makes clear that while a motion judge must have an appreciation of the evidence necessary to make a dispositive finding, such an appreciation is not only available following a trial. As a result, the motion judge hearing a summary judgment motion should not be focused on "how much" and "what kind" of evidence is available, but rather whether the dispute can be resolved fairly on the evidence before the court. The essential elements of the new test are as follows:

## Our Views

The Supreme Court's endorsement of an expanded approach to summary judgment will certainly impact all areas of civil litigation. However, the decision's emphasis on access to justice and proportionality make

it of particular interest in areas such as employment law, where litigation typically involves individuals (and at times organizations or companies), who may not be able to afford the costs and delays associated with the traditional trial process. In the circumstances, *Hryniak* may open the door to an increase in summary judgment motions in employment law cases and, in particular wrongful dismissal actions where there are no allegations of cause. As any such developments remain to be seen, the manner in which litigants apply the new summary judgment test should be monitored closely by employers and employment law practitioners.

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