

# INSURANCE LAW BULLETIN

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***Butera et al. v. Chown, Cairns LLP et al.***

**2017 ONCA 783**

## **WHAT'S A “PARTIAL SUMMARY JUDGMENT” AND HOW DO I GET ONE?**

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The newly released case of *Butera* provides some useful insight into partial summary judgment motions, and when they may be awarded. However, before we delve into partial summary judgment, it is useful to provide a brief refresher on summary judgment motions, generally.

Summary judgment is governed by Rule 20 of the *Rules of Civil Procedure*, and provides a mechanism in cases where there is “no genuine issue for trial” for all or part of a claim to be disposed of without the necessity of a full trial. The main issue when deciding whether or not summary judgment is appropriate is whether there is a dispute over a material fact that requires a trial. The party seeking the summary judgment has the onus to establish that there is no genuine issue for trial. Generally, there is no genuine issue for trial if the judge is able to make the necessary findings of fact, is able to apply the law to the facts, and if summary judgment is the more proportionate and expeditious means to achieve a just result. For example, a good case for a summary judgment motion is usually one that is document driven with few factual issues in dispute, and with limited witnesses. If the motion is granted, it results in the disposal of the entire action.

The leading case on summary judgment is the 2014 Supreme Court of Canada case of *Hryniak v. Mauldin*, which called for a culture shift, including moving the emphasis away from a conventional trial. The main themes of the case included increasing access to justice, as well as promoting proportionality, expediency and affordability in civil litigation. The goal was to reduce protracted and costly litigation undermining access to justice, while ensuring the fair adjudication of disputes.

Partial summary judgment may also be a possibility, where a claim against a single defendant is resolved summarily, letting the other claims continue to a trial. The resolution of an important claim against a key party could be significant in reducing costs and moving the matter forward in a time effective matter. It could also advance access to justice. However, despite these advantages, partial summary judgment may not be appropriate in many cases. In *Butera*, Justice Pepall expressed caution against partial summary judgment. It was noted that these

types of motions may not be in the interest of justice if the claims of the other parties in the action are going to proceed to a trial anyways. Such partial summary judgment runs the risk of duplicative proceedings, and inconsistent findings of fact.

Further, Justice Pepall noted that partial summary judgment motions may actually cause the resolution of the main action to be delayed, since typically, an action does not progress in the face of a pending summary judgment motion. It may also be used as a delay tactic by counsel, to cause the opposing party to expend time and legal fees on a motion that will not finally determine of the action. Further, a motion for partial summary judgment may be very expensive. Pepall J. also commented that judges, who are already hearing summary judgment motions, are required to spend time hearing partial summary judgment motions, and writing comprehensive decisions for an issue that does not dispose of the action in its entirety. Justice Pepall noted that a motion for partial summary judgment should occur in rare cases, where the issues may be readily separated from those in the main action, and that may be dealt with expeditiously.

When deciding to bring a motion for partial summary judgment, one must consider the above factors and decide whether the motion is advisable in the context of the litigation as a whole. Although it may appear to be a more expeditious way of dealing with a specific case, it may in the end cause undue delay and increased costs and fees to parties on both sides of the claim. However, partial summary judgment is certainly a possibility where a claim against a defendant can be easily separated from the other issues. This allows the partial summary judgment to speed up the litigation process as a whole, and shorten the trial of the main action.