

CIVIL JUSTICE REVIEW PROJECT FALL OUT: CHANGES IN LEGISLATION, THE RULES AND THE IMPACT ON PRACTITIONERS AND THEIR CLIENTS IN ONTARIO

SUMMARY JUDGMENT

The Summary Judgment Rule has received a substantial overhaul intended to make the Rule more useful. It should also mean the granting of Summary Judgments more often.

Basic Summary Judgment Test Revision

The test of "no genuine issue for trial" is replaced by the words, "no genuine issue **requiring** a trial": Rule 20.04(2)(a).

Under current case law, the existence of any issue as to material fact required the Motions Judge to dismiss the Motion for Summary Judgment. This amended wording suggests that not all issues of material fact require a trial so that in appropriate cases, the Judge may properly determine that a genuine issue of fact does not "require" a trial for its resolution.

New Powers for Judges under Rule 20

Completely contrary to the existing case law, a Judge may now exercise the power to weigh the evidence, evaluate the credibility of a party and draw any reasonable inference from the evidence. Note that only Judges have this power, not Masters.

In order to help a Judge in exercising these powers, a mini trial may be ordered: Rule 20.01 (2.2).

Cost Sanction Revision

Generally, if a party was unsuccessful on a Summary Judgment Motion, substantial indemnity costs were awarded against the party. Where the Court was satisfied that the making of the Motion was reasonable, partial indemnity was the usual award. The new Rule reverses the onus and makes partial indemnity costs the usual Rule. Substantial indemnity costs may be fixed and ordered if the party acted unreasonably by making or responding to the Motion or acted in bad faith for the purpose of delay: Rule 20.06.

Impact on Practitioners and their Clients

Certainly, the Summary Judgment Rules have been completely revamped which hopefully signal far more broadly based attempts to use the Rule. This may have the effect of reducing overall costs of litigation for parties if lengthy trials are shortened and if Judgments are obtained much earlier than would otherwise be the case. Certainly issues will arise about oral evidence on such motions – including Court staff availability, notification to the other side of an intention to call witnesses and even a Judge's own desire to hear from witnesses when the lawyers were content to proceed without oral evidence.

