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Ontario Summary Judgment: Applies Hryniak re Scheduling of Motion Issues

As we recently blogged on February 24, 2014, the new Hryniak decision by the Supreme Court of Canada is now the standard for how Ontario summary judgment motions are to be conducted and their role in the litigation process.

We now have an early case which has put into practice some of the greater powers confirmed by Hryniak - in this case, the issue is what role the summary judgment Judge has in the management of motion materials and the necessity of calling witnesses for oral testimony, in order to have a proper record available by which to consider the summary judgment motion: ***The Bank of Nova Scotia v. David Allin, 2014 ONSC 899 (CanLII)***

Here, Justice Brown applies a practical interpretation of Hryniak, with a pro-active emphasis, and set a timetable for the delivery of summary judgment materials and the cross-examinations - with transcripts to be filed with the Court. The deadline to file all these materials was one month before the summary judgment motion.

Pro-active Scheduling - Justice Brown then ordered a case conference with counsel approximately 2 weeks before the motion, by which time Justice Brown would have read the file motion materials, at which point it could be determined whether witnesses were required at the summary judgment motion to provide oral evidence.

For [personal injury lawsuits in Ontario](#), this has particular application for difficult liability cases and also discoverability issues regarding limitation periods.

Two thoughts jump out:

1. This is simply a lot of work for summary judgment motion Judges, but is in keeping with the direction in Hryniak that the Judge who hears the summary judgment motion should, with only limited exceptions, be the Trial Judge of the action; and

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2. This is yet another step which shows how pro-active the Court is allowed (and now expected) to be in managing the litigation process, particularly since Hryniak has characterized the summary judgment motion as an important tool, regardless of the motion result, in allowing the Court to streamline and move forward the litigation.

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