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Faster Lawsuits – Summary Judgment Motion Changes

The rules governing the way civil lawsuits are conducted in Ontario have changed – see **January 25, 2010 blog** and **March 11, 2009 blog**.

For lawsuits which seek more than $25,000, one of the most significant changes is to the rule governing summary judgment motions.

A "**summary judgment motion**" is an early Court attendance where one party tries to end the lawsuit very early, before Trial, on the basis that the case is so strong in their favour that they can show that they should and almost certainly will succeed at Trial.

This means that a summary judgment motion has always been a very big step, when pursued, in a lawsuit. All parties have to deal with such a motion seriously and essentially, put out their best evidence to support their claim in the lawsuit – if you choose to "hide" some evidence, then you may lose the summary judgment lawsuit (and the entire case), so all parties end up presenting all their evidence.

Traditionally, it has been difficult to win a summary judgment motion. Presenting this motion is expensive and losing the motion is quite expensive – to discourage parties from trying to end the lawsuit early when they should know that they do not have a realistic chance of winning a summary judgment motion.

The rule changes continue to force parties to present their best evidence at summary judgment. Importantly, Judges can now have witnesses testify at the summary judgment motion, in a mini-trial. Previously, the summary judgment motion has only been on paper evidence, with documents filed by the parties and reviewed by the Court. Hearing oral evidence from witnesses at summary judgment is an important new tool. Other jurisdictions, such as **British Columbia (Rules 18 and 18A)** have this rule in effect.

In the recent case of **Shankowsky-Day v. Estate of Isaac et al** (2010 Ontario Superior Court of Justice), a summary judgment was brought by one of the defendants in a serious car accident which claimed the lives of three people at the accident scene and left the plaintiff with serious injuries.

The accident happened when one car, travelling on a highway in northern Ontario, left it's lane and went into the opposing lane of traffic. It grazed / broadswiped one car first and then continued in the wrong lane until it hit, head-on, with the plaintiff's vehicle.

The first car hit did not have a horn operational at the time. The offending vehicle (who caused these accidents) said that there was negligence on that vehicle for failing to have an operational horn, as it was in breach of **s.75 of the Highway Traffic Act**. The offending vehicle alleged that the first car hit could have sounded an alarm, to warn of impending danger, but did not due to the absence of a horn.

Given the first car's reaction to the impending danger – immediately moving to the right side of the road to try to avoid being hit, driving almost entirely on the gravel shoulder and trying to move over more (onto the grass which dipped down into a gully) prior to being hit, trying to flash high beams at the offending car while maintaining control of the steering wheel – it was held that there was no genuine issue for Trial and therefore the crossclaim was dismissed.

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