The default method for resolving disputes is a trial with witness testimony. A summary judgment application permits a party to dispose of a civil case without the need for a full trial. It is available when a claim or defence to a claim has no merit. Instead of a trial, a judge or master determines the outcome of an action through the use of the available record. Traditionally, applications of this nature which denied any party its “day in court” were strictly interpreted. Summary judgment procedures were originally considered appropriate only when it was “plain and obvious” that there was no issue that should or could be put to trial.

Hryniak v Mauldin, a recent decision of the Supreme Court, urges a substantial cultural shift in regard to the application of summary judgment throughout Canada. Justice Karakatsanis concluded that summary judgment rules must be “interpreted broadly, favoring proportionality and fair access to the affordable, timely and just adjudication of claims.” He stated: “the full trial has become largely illusory because, except where government funding is available, ordinary Canadians cannot afford to access the adjudication of civil disputes.” With these new principles in place, ordinary Canadians can more easily obtain finality for their legal matters without having to go through the time and expense of a full-fledged trial.

The Court in Hryniak v Mauldin was interpreting Rule 20.04 of the Ontario Rules of Court, a relatively new rule giving Ontario judges hearing summary judgment applications the power to weigh evidence, evaluate the credibility of a deponent, draw reasonable inferences from the evidence, and hear oral evidence. By contrast to the Ontario Rule 20.04, Rule 7.3 of the Alberta Rules of Court does not include such wide-ranging powers of evidence gathering and fact finding when conducting a summary judgment proceeding. The question in Alberta remains whether Rule 7.3 will be amended to provide Alberta judges hearing summary judgment applications the same powers as available to Ontario judges.

Since the Hryniak decision, the Alberta Court of Appeal has encouraged courts in Alberta to apply the summary judgment principles set out by Justice Karakatsanis. In
Windsor v Canadian Pacific Railway Ltd., one of the first Alberta cases on the issue of summary judgment following Hryniak, the Court of Appeal has stated that the test is whether there is a “reasonable prospect that the claim will succeed”, as compared to the previous test that it was “plain and obvious” that no claim was disclosed. To determine whether the summary judgment provides a fair and just adjudication of the dispute, the test in Alberta is:

1) Is the record sufficient for the Court to make the necessary findings of fact? Are the facts underlying the dispute seriously in issue?
2) Can the Court apply the facts to the law?
3) Is there any issue of merit that requires a trial to resolve?
4) Is summary judgment a proportionate, more expeditious, and less expensive means to achieve a just result than going to trial in this particular case?

This modern test for summary judgment requires a judge to examine the available record to determine if a summary disposition can be made using only the existing record. “The standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.” The Supreme Courts’ decision in Hryniak v Mauldin and its subsequent application by Alberta Courts demonstrates that there is a cultural shift to create an environment promoting timely and affordable access to the civil justice system.