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## The Courts on COVID

### With civil trials backlogged, court turns to summary judgment motion

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While Ontario courts continue to adapt to the ongoing COVID-19 pandemic, the judiciary faces a growing backlog of civil trials. Given this backlog, courts may be more open to hearing summary judgment motions or other dispositive motions in ongoing actions.

This was the approach recently taken by Justice MacLeod in [Scaffidi-Argentina v. Tega Homes Developments Inc, 2020 ONSC 3232](#) on May 25, 2020.

In 2019, Justice MacLeod had denied the request of certain defendants to bring a motion for partial summary judgment on specific insurance defences, finding that the motion would not significantly simplify the trial. However, before the trial was scheduled, the COVID-19 pandemic forced the courts to suspend in-person hearings and modify its operations. The defendants therefore asked Justice MacLeod to reconsider scheduling a summary judgment motion.

In granting the defendants leave to bring their summary judgment motion, Justice MacLeod noted that he could not realistically schedule a trial in the latter part of 2020 or the first six months of 2021. “A backlog of trials and other proceedings originally scheduled in March, April and May has already accumulated in all areas of the court’s responsibility,”<sup>1</sup> Justice MacLeod wrote in his recent procedural decision and direction. “It is impossible to predict if the trials now scheduled for September will be able to proceed...[i]t would therefore be foolhardy to add additional trials to the schedule.”<sup>2</sup>

While acknowledging that, “[w]ith each passing week, the court has obtained the experience, resources and technology to conduct more of its regular business in a digital setting,” the Ontario judge recognized that the court is “a

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<sup>1</sup> [Para 3](#)

<sup>2</sup> [Para 3](#)

long way from being able to conduct significant numbers of digital trials.”<sup>3</sup> Justice MacLeod noted, however, that motions and applications are primarily based on written materials and “can much more readily take place in writing, by teleconference or by videoconference.”<sup>4</sup>

Justice MacLeod held that in these circumstances, it was “more efficient” to hold a partial summary judgment motion based on written materials.<sup>5</sup>

It remains to be seen whether the backlog of proceedings and the challenge of digital trials will lead to an uptick in remote summary judgment motions – including motions for partial summary judgment, which prior to March 2020, the Ontario Court of Appeal repeatedly held to be a rarity.<sup>6</sup> What is clear, however, is that the courts are cognizant of the need to advance litigation despite the issues the pandemic has created and that they will move matters forward.

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<sup>3</sup> [Para 2](#)

<sup>4</sup> [Para 2](#)

<sup>5</sup> [Para 8](#)

<sup>6</sup> See e.g. [Butera v. Chown, Cairns LLP, 2017 ONCA 783](#); [Mason v. Perras Mongenais, 2018 ONCA 978](#)