



BROWNLEE LLP
Barristers & Solicitors

DEBATE CONCLUDED OVER CORRECT TEST FOR SUMMARY JUDGMENT IN ALBERTA

By Nabeel Peermohamed and Drew Wilson

In *Hannam v MHSD #76*, 2020 ABCA 343, where we were successful with our client's appeal, the Alberta Court of Appeal provides clarity on the test for summary judgment. In *Hannam*, the plaintiff was walking immediately behind the custodian and still managed to slip and fall. The ABCA held nothing more could have reasonably been done by the school and the matter has been dismissed.

The majority (led by Justice Wakeling) took the opportunity to provide a history of the debate over the test for summary judgment since before 2010 and the test from other jurisdictions (including England, Wales, the US Federal Court, California, and New York). The ABCA also goes through an extensive review of the purpose for summary judgment procedures and the competition between the courts and private mediators as forums for dispute resolution. The ABCA then provides a comprehensive history of the test for summary judgment both before and after *Hyriniak*, the evolution of Rule 7.3, and the culmination of the new test for summary judgment in Alberta recited in *Weir-Jones*. Justice Wakeling, who wrote a concurring decision in *Weir-Jones*, was opposed to that four-part test recited by Justice Slatter who led the majority in the five-justice panel. However, in the *Hannam* decision, Justice Wakeling emphasizes the four-part test as the law and goes through the practical implications of the *Weir-Jones* test, which he refers to as the "New Way". After the ABCA reviewed the hundreds of summary judgment decisions in Alberta since *Weir-Jones*, there are a few observations made by the court including:

- Defendants are more likely to apply for summary judgment;
- The courts will not grant summary disposition when there are disputed facts;
- The courts still need to resolve disputes summarily to achieve a fair and just result;
- The courts will grant summary judgment only when there is no doubt about the correct disposition;
- The result would be same regardless of which test for summary judgment is applied;
- The *Weir-Jones* test is more conducive to granting summary judgment; and
- The *Weir-Jones* test resembles the summary trial process (which is what *Hyriniak* represented for Alberta six years ago).

Effectively, according to *Hannam*, before granting summary disposition, the court needs to be satisfied:

- It is possible to fairly resolve the dispute on a summary basis;
- The facts and the law are incontrovertible;
- A trial will not produce a more complete factual record than the one that exists; and
- The respondent's position has no merit.

To conclude, *Hannam* supports the *Weir-Jones* test, which effectively puts an end to the debate that emerged on February 6, 2019 about the correct test for summary judgment between Justice Slatter and Justice Wakeling.



BROWNLEE LLP

Barristers & Solicitors



NABEEL PEERMOHAMED

☎ 403-260-5301
✉ npeermohamed@brownleelaw.com
in [nabeelpeermohamed](https://www.linkedin.com/in/nabeelpeermohamed)

Nabeel Peermohamed is a partner with Brownlee LLP and was recently named as one of the Lawyers to

Watch in Alberta by Lexpert. He focusses on insurance defence litigation. Nabeel has achieved successful results for his clients in Alberta's Court of Appeal, Court of Queen's Bench, and Provincial Court.



DREW WILSON

☎ 403.260.5317
✉ dwilson@brownleelaw.com

Drew Wilson is in his second year of practice with Brownlee LLP. He has a general commercial litigation

practice with an emphasis on construction, personal injury, municipal liability and insurance law. Drew Wilson has represented clients in mediations, appeared before the Alberta Provincial Court and the Alberta Court of Queen's Bench and has assisted with matters before the Alberta Court of Appeal.

If you have any questions with respect to this bulletin, please contact the writers,
Nabeel Peermohamed at npeermohamed@brownleelaw.com or at 403.260.5301 &
Drew Wilson at dwilson@brownleelaw.com or at 403.260.5317.

Contact our specialists
to stay **ahead of the crowd.**

EDMONTON OFFICE

2200 Commerce Place
10155 - 102 Street
Edmonton, AB T5J 4G8

T: 780.497.4800
F: 780.424.3254
1.800.661.9069

CALGARY OFFICE

Watermark Tower
#1500, 530 - 8 Ave. SW
Calgary, AB T2P 3S8

T: 403.232.8300
F: 403.232.8408
1.800.661.9069