

HRYNIAK'S EROSION: SUMMARY JUDGMENT IN ONTARIO

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Access to civil justice has long been in crisis in Ontario, and the 2010 reforms to the Rules of Civil Procedure broadened the scope of summary judgment under Rule 20 in part to tackle cost and delay. The Supreme Court of Canada also encouraged the use of summary judgment as an adjudicative alternative to trial in Hryniak v Mauldin in 2014, calling for a “culture shift” in the conduct of litigation.

The effect of Hryniak, however, has been eroded. Our empirical research of reported summary judgment decisions in Ontario from January 1, 2015 (five years pre-pandemic) to December 31, 2024 (five years after its start) shows that summary judgment decisions and hearings plummeted in 2020 and have not recovered. Our study also shows that parties are now bringing summary judgment motions that are more likely to succeed.

The reasons are procedural and doctrinal. Since July 2015, Toronto's Civil Practice Court has been screening summary judgment motions before they can be scheduled. In addition, decisions from the Court of Appeal for Ontario have restricted the availability of summary judgment.

More recently, the Civil Rules Review Working Group tasked with reforming Ontario's Rules has targeted ‘failed’ summary judgment motions. Given that numbers of such motions have already reduced drastically and there is already screening in Toronto and elsewhere, the impact of those changes may be slight. There is also the danger that, without more judicial resources, the Working Group's proposed ‘Summary Track’ may suffer the same erosion as Rule 20.

L'accès à la justice civile est en crise en Ontario depuis longtemps. Les réformes apportées en 2010 aux Règles de procédure civile ont élargi la portée du jugement sommaire prévu à la règle 20 en partie pour aborder les dépens

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et les retards. Dans l’arrêt *Hryniak c Mauldin* en 2014, la Cour suprême du Canada a également encouragé le recours aux jugements sommaires comme solution de rechange au procès, demandant un « virage culturel » dans la conduite des litiges.

Toutefois, la portée de l’arrêt *Hryniak* s’est progressivement atténuée. Notre analyse empirique des décisions publiées relatives à un jugement sommaire en Ontario entre le 1er janvier 2015, soit cinq ans avant la pandémie, et le 31 décembre 2024, soit cinq ans après son début, révèle que le nombre de décisions rendues et d’audiences tenues a chuté en 2020 et ne s’est pas rétabli depuis. Notre étude indique aussi que les parties présentent maintenant des motions en jugement sommaire dans les affaires où leurs perspectives de succès sont plus élevées. Cette évolution s’explique par des facteurs tant procéduraux que doctrinaux. Depuis juillet 2015, le tribunal de pratique civile de Toronto soumet les motions en jugement sommaire à un examen préalable avant leur mise au rôle. Parallèlement, les décisions de la Cour d’appel de l’Ontario ont circonscrit les conditions dans lesquelles ce recours peut être exercé.

Plus récemment, le groupe de travail sur l’examen des règles en matière civile, chargé de la réforme des Règles de l’Ontario, s’est penché sur les motions en jugement sommaire « infructueuses ». Or, compte tenu de la diminution déjà marquée du nombre de telles motions ainsi que de l’existence de mécanismes d’examen préalable à Toronto et ailleurs, les effets concrets des modifications envisagées pourraient demeurer limités. En outre, faute de ressources judiciaires suffisantes, la « voie des audiences sommaires » proposée par le groupe de travail risque de connaître la même érosion que la règle 20.

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I. Introduction

Access to civil justice is one of the Canadian justice system’s greatest shortcomings.² Civil cases in the Ontario Superior Court of Justice took too long before the pandemic, and they take even longer in its aftermath.³ Concerns were mounting about delays in the Superior Court when it effectively shut down in March 2020. When the Ontario Superior Court began operating at its pre-pandemic capacity once more, criminal cases were a priority due to *R v Jordan*’s requirement for trial within a reasonable time.⁴ The results have persuaded many judges and lawyers that Ontario

² See e.g. Trevor CW Farrow, “What is Access to Justice?” (2014) 51:3 Osgoode Hall LJ 957 at 960, n 1, comprehensively analyzing the literature in this area.

³ The average days to disposition for cases subject to ordinary procedure or case management (i.e., cases in which summary judgment is possible) varied considerably between judicial districts, but was frequently more than 1,000 days even in areas relatively well-served by court infrastructure, such as Toronto and the Southwest, according to data 2014–2023 provided to the Civil Rules Review Working Group by the Ministry of the Attorney General (MAG), on file with the authors and provided to them on July 21, 2025 [Working Group Data]. The data subsequently became available on a members-only page of the website of the [Ontario Trial Lawyers Association](#), online: *OTLA* <www.otla.com> [perma.cc/FGD5-JY7J]. The Co-Chairs of the Working Group later received [MAG data for 2024](#) [perma.cc/D76V-XQWZ], and this data is now publicly available on the website of the Ontario Superior Court of Justice, online: *ONSC* <tinyurl.com/2y4tdd9h> [perma.cc/5GXH-XTHE].

⁴ 2016 SCC 27 [*Jordan*]. By 2022, the complement of judges available in Ontario for civil matters had fallen to 60% of pre-pandemic levels, largely due to judges being moved over to criminal matters to address delays post-*Jordan*: Comments made by Justice Fred Myers (6 June 2022) at the Law Society of Ontario, “Our Civil Justice System: Pandemic Lessons and Forward Thinking”. The Supreme Court of Canada laid down a new framework for compliance with s 11(b) of the *Canadian Charter of Rights and Freedoms* (right to be tried within a reasonable time) in criminal cases. There is now a presumptive ceiling of 18 months between the charges and the trial in a provincial court without preliminary inquiry, or 30 months in other cases.

is facing a civil justice crisis.⁵ Two years after the start of the pandemic, parties were waiting five to seven years for their cases to be resolved, especially in Toronto.⁶

The Supreme Court of Canada's 2014 decision in *Hryniak v Mauldin* called for a "culture shift" in civil litigation⁷ and was heralded as a "clarion call for civil justice reform".⁸ Specifically, the Court called for increased use of summary judgment to facilitate access to justice. In 2017, Brooke MacKenzie demonstrated that more cases in Ontario *were* being decided by way of summary judgment in the years immediately following *Hryniak*.⁹ One might expect this trend to continue, given the increase in court delays post-pandemic.

Yet little is known about how summary judgment motions are currently being used. No recent studies ask whether parties and judges have continued their enthusiasm for bringing and granting summary judgment motions. This article shows that they have not.¹⁰ We analyze all summary judgment decisions available on Westlaw between 2015 and 2024: five years prior to the pandemic, and five years after its start. In 2020, the number of summary judgment decisions fell by more than half and has stayed down, despite modest post-pandemic recovery. We compare these decision numbers to data provided by the Ministry of the Attorney General (MAG) on summary judgment hearings between 2015 and 2024, which show an even more dramatic drop in motions heard.¹¹

To make sense of this shift, we first discuss the history of summary judgment as a response to a previous 'access to justice crisis' in Part II.

⁵ This rhetoric of crisis is hardly new. It has accompanied reform of common law civil justice systems for at least the past generation, beginning with the Woolf Reforms in England and Wales in the mid-1990s and continuing, in Ontario, with a 2007 report by Coulter Osborne, retired Associate Chief Justice of Ontario. See Lord Harry Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: Her Majesty's Stationery Office, 1995); Coulter A Osborne, *Civil Justice Reform Project: Summary of Findings and Recommendations* (Toronto: Ministry of the Attorney General, 2007) [Osborne Report].

⁶ Michael Lesage, "[Can the Ontario justice system and civil rules committee adapt?](https://www.canlii.org/en/can/doc/2022/10/20221028-clc.html)", *Canadian Lawyer* (28 October 2022), online: <tinyurl.com/3rc52dbm> [perma.cc/H7GD-M8T2].

⁷ 2014 SCC 7 at para 2 [*Hryniak*].

⁸ Shantona Chaudhary, "*Hryniak v Mauldin*: The Supreme Court issues a clarion call for civil justice reform" (Winter 2014) 33:3 Adv J 8 at 9.

⁹ Brooke MacKenzie, "Effecting a Culture Shift—An Empirical Review of Ontario's Summary Judgment Reforms" (2017) 54:4 Osgoode Hall LJ 1275 [MacKenzie].

¹⁰ At least, for the slice of summary judgment motions that we can see, i.e., those that result in a reported decision.

¹¹ Working Group Data, *supra* note 3.

In Part III, we describe our methodology. In Part IV, we analyze what the data have shown over the past decade. Notably, summary judgment's prevalence has *decreased* over the past decade, notwithstanding the backlog presenting an arguably acute need to dispose of cases. The decrease in summary judgment hearings and decisions has both doctrinal and procedural causes. Since MacKenzie's study, the Court of Appeal for Ontario has restricted the availability of summary judgment in certain circumstances, notably in cases of 'partial' summary judgment.¹²

We also consider how long judges take to issue decisions, the subject matter of the cases in which summary judgment is granted, and whether the parties were represented. These factors do not seem to have shifted much.

We conclude by discussing what this decrease means for the overhaul of summary judgment proposed by the Civil Rules Review Working Group, which was convened by Ontario's Attorney General and the Chief Justice of the Ontario Superior Court of Justice to overhaul the *Rules of Civil Procedure*.¹³ A decade post-*Hryniak*, summary judgment is now seen as an element of the excessive motions practice that the Working Group believes plagues the Superior Court.¹⁴ The Working Group has proposed to end summary judgment motions under Rule 20. There will instead be a 'Summary Track' for proceedings in which the value of the claim is \$500,000 or less, as well as all mortgage proceedings and claims for liquidated damages, regardless of the value of the claim.¹⁵ Matters on the Trial Track can be transferred to the Summary Track if appropriate.¹⁶ If a matter proceeds on the Summary Track, it will receive summary determination and cannot go to trial. In other words, there will be no more 'failed' summary judgment motions.¹⁷

¹² *Butera v Chown, Cairns LLP*, 2017 ONCA 783 at para 26 [*Butera*], applying *Corchis v KPMG Peat Marwick Thorne*, 2002 CanLII 41811 (ONCA).

¹³ *Rules of Civil Procedure*, RRO 1990 Reg 194 [*Rules*].

¹⁴ Civil Rules Review Working Group, *Civil Rules Review Final Policy Report: Submitted by the CRR Working Group* (Toronto: Ontario Superior Court of Justice and Ministry of the Attorney General, 2025) at 138–140 [Final Policy Report].

¹⁵ *Ibid* at 115–124. This track will involve a paper-based summary procedure, with the possibility of oral evidence at the hearing if the judge finds it necessary to reach a fair and just determination of the issues.

¹⁶ The other tracks are the Application Track, which is available for matters that would proceed as applications under Rule 14.05(3) of the current *Rules*, and the Trial Track, which is more process-heavy in that it has limited examinations for discovery and a conventional trial. Only matters on the Trial Track can be transferred to the Summary Track. *Ibid* at 113–114 and 124–132.

¹⁷ 'Failed' summary judgment motions can significantly increase cost and delay in a proceeding, as noted below. This proposed reform is inspired by Alberta's 'streamlined

Although the Summary Track seems fairly certain to become a part of the *Rules*, knowing how summary judgment currently works allows us to make predictions about how the new track may function and provides a basis for comparison in future.

II. Summary Judgment as a Response to a Previous Access 'Crisis'

Summary judgment allows parties to resolve some, or all, of the merits issues in a case without going to trial. It was originally a way to respond to claims in which the results were obvious, but which could not be dismissed through other summary processes. Some jurisdictions expanded its use, often under an access to justice rationale: parties get the ability to have a judge resolve their case, including by ruling on contested legal issues, without the time and cost of a full trial. The current incarnation of summary judgment in Ontario goes especially far: allowing courts to resolve some contested factual issues as well as legal ones. This approach emerged in the context of a broader “culture shift” in the *Rules*,¹⁸ which aimed to give the parties process proportionate to their dispute. Rather than moving parties through a process inevitably leading to trial, the *Rules* were to offer various methods of resolution short of trial, as trials might be unnecessary in most cases.¹⁹ The drafters of the current *Rules*²⁰ seem to have assumed that summary judgment would play an important part: allowing parties to have a judicial decision on the merits of their case without the need

trial’ under its *Alberta Rules of Court*, Alta Reg 124/2010, rr 8.25–8.31. In a streamlined trial, a judge decides up-front, on the pleadings, parties’ statements, outlines of evidence, and any other relevant information, whether the dispute should be determined by streamlined trial. If an application for streamlined trial is granted, then it must be dispositive: the judge must grant judgment. However, according to reported decisions at the time of writing, only one non-family application for a streamlined trial has been granted: *Moore v Turner*, 2024 ABKB 435 [*Moore*]. In other cases, parties appear to have agreed to proceed by streamlined trials, or the procedural dispute itself is not reported. *Moore* therefore remains the only contested and reported non-family case on this point where a request for streamlined trial was granted. See also *Arsenault v Big Rock Brewery Limited Partnership by its general partner Big Rock Brewery Operations Corp and Big Rock Brewery Operations Corp*, 2024 ABKB 387. In 1238900 *Alberta Ltd v Points West Living Drayton Valley Ltd*, 2025 ABKB 351, the the Court of King’s Bench of Alberta, held that it was not proper to convert a summary judgment application to a streamlined trial, because the availability of summary judgment (under which the parties were already proceeding) meant that a streamlined trial was not necessary and the extra court appearances and costs required for the switch were not proportionate (as required by rr 8.25(1)(a) and (b)).

¹⁸ *Hryniak*, *supra* note 7 at paras 2, 23–33.

¹⁹ Osborne Report, *supra* note 5. As noted below, summary judgment in its current form (albeit not with the revised test and expanded judicial powers) has been around since 1985: *Rules*, *supra* note 13.

²⁰ Osborne Report, *supra* note 5 at 32–43.

for a full trial. Several scholars agreed.²¹ After some prompting from the Supreme Court, this culture shift seemed to take hold and Ontario judges decided greater numbers of summary judgment motions.

A) Summary Judgment in Ontario

Summary judgment motions allow a court to resolve a legal dispute on the basis of written evidence, notably affidavits, cross-examination of affiants, and (if discovery has been completed) discovery transcripts.²² Summary judgment is notably distinct from motions to strike or to determine questions of law, which are decided almost exclusively on the basis of the legal tenability of pleadings.²³ In some common law jurisdictions,²⁴ such as present-day England & Wales,²⁵ summary judgment can be awarded if the results are obvious: the claim or defence against which summary judgment is sought has no realistic prospect of success.²⁶ That rule applied in Ontario before the changes to the *Rules* in 1985.²⁷

Other jurisdictions take a more liberal approach. Summary judgment under the US *Federal Rules of Civil Procedure*²⁸ was gradually broadened from its original 1938 version into the current 1985 standard, under which summary judgment is to be granted when there is “no genuine dispute as to any material fact.”²⁹ Like the *Hryniak* Court nearly 30 years later, the US Supreme Court invited parties to make greater use of this rule in

²¹ See e.g. MacKenzie, *supra* note 9; Gerard J Kennedy, “The 2010 Amendments and *Hryniak v Mauldin*: The Perspective of the Lawyers Who Have Lived Them” (2020) 37:1 Windsor YB Access Just 21 [Kennedy 2020]. This is not a unanimously held view: see e.g. Jonathan Lisus, “*Hryniak*: Requiem for the vanishing trial, or brave new world?” (Summer 2014) 33:1 Adv J 6.

²² Janet Walker *et al*, eds, *Civil Litigation Process: Cases and Materials*, 9th ed (Toronto: Emond, 2021) at 659, 679 [Walker].

²³ *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at 991, 74 DLR (4th) 321.

²⁴ Including Australia (*Federal Court Rules 2011* (Commonwealth), 2011/134, Rule 26.01 and similar provisions in state court rules), New Zealand (*High Court Rules 2016*, 2016/225, Rule 12.2), Singapore (*Rules of Court 2021*, 914/2021, Order 9, Rule 17), Hong Kong (*Rules of the High Court*, Cap 4A, Order 14), and the Republic of Ireland (*Rules of the Superior Courts*, 1986, SI 15/1986, Order 37).

²⁵ See *Civil Procedure Rules 1998* (UK), Part 24 [CPR].

²⁶ Janet Walker, “Summary Judgment Has its Day in Court” (2012) 37:2 Queen’s LJ 697.

²⁷ Rule 58(2) of the pre-1985 *Rules* permitted the court to grant judgment before trial to a plaintiff only where it was satisfied that the defendant did not have a good defence to the action or had not disclosed sufficient facts to enable him, her, or them to defend the action.

²⁸ Jonathan Remy Nash & D Daniel Sokol, “The Summary Judgment Revolution that Wasn’t” (2023) 65:2 Wm & Mary L Rev 389 at 396–397 [Nash & Sokol].

²⁹ Fed R Civ P 56.

its 1986 summary judgment trilogy.³⁰ American procedure scholars view the trilogy as an attempt to avoid trials if possible and to offer defendants a way to get rid of weak cases.³¹ Empirical studies suggest that effects on grant rates by federal trial and appellate courts were mixed.³² Even the US federal rule does not go quite as far as present-day Ontario, whereby the process is available even if the claim or defence has a reasonable prospect of success, as long as the issues in dispute can be resolved without trial.³³

Ontario last undertook a significant overhaul of the *Rules* in 2010. Then, as now, concern about a crisis in civil justice and unacceptable delay prevailed.³⁴ Former Associate Chief Justice Coulter J Osborne authored a report on possible reforms. He advocated moving away from a system that is supposed to move parties towards trial and instead to a system that moves parties towards resolution, including settlement, mediation, and dispositive motions.³⁵ Giving cases the process they are due and only what they are due through an overriding objective of ‘proportionality’ was the order of the day.³⁶ Osborne recommended to the Ontario government that summary judgment be liberalized to ensure prompt resolution of cases on their merits.³⁷ This liberalization included granting judges the authority to:

- weigh evidence, evaluate credibility, and draw any reasonable inference from the evidence and documents filed;
- to direct a ‘mini-trial’ on one or more issues, including *viva voce* evidence if necessary; and
- to eliminate the presumption of substantial indemnity costs against an unsuccessful moving party on a summary judgment motion.³⁸

³⁰ *Matsushita Electrical Industrial Co Ltd v Zenith Radio Corp*, 475 US 574 (1986); *Anderson v Liberty Lobby, Inc*, 477 US 242 (1986); *Celotex Corp v Catrett*, 477 US 317 (1986).

³¹ Nash & Sokol, *supra* note 28 at 398–399.

³² *Ibid* at 427–430.

³³ Summary judgment has also come to assume this meaning in Manitoba (*Court of King’s Bench Rules*, Man Reg 553/88, Rule 20), British Columbia (*Supreme Court Civil Rules*, BC Reg 168/2009, r 9-6), and Saskatchewan (*King’s Bench Rules*, rr 7-2 to 7-8).

³⁴ Osborne Report, *supra* note 5.

³⁵ *Ibid* at 8, 32–43.

³⁶ *Ibid* at 134–135.

³⁷ *Ibid* at 32–43.

³⁸ *Ibid* at 42. The report also recommended the adoption of a summary trial procedure similar to that employed in British Columbia (at 37). The legislature did not adopt this recommendation; however, the expanded fact-finding powers under Ontario’s summary judgment procedure are arguably more liberal than BC’s summary trial

Subsequent amendments changed the test for summary judgment from “no genuine issue for trial” to “no genuine issue *requiring* a trial”,³⁹ a change intended to make summary judgment even more widely available.⁴⁰

B) *Hryniak* and the “Culture Shift”

The Supreme Court of Canada accepted this logic four years later in *Hryniak*. Writing for a unanimous Court, Justice Karakatsanis stated that summary judgment should indeed be granted more frequently, and that trial should not be viewed as the default mode of dispute resolution.⁴¹ She acknowledged that summary judgment motions can turn into access to justice impediments when sought inappropriately, but argued that there are ways to minimize the risks of ill-advised summary judgment motions, such as a judge remaining seized of the case.⁴² More generally, Justice Karakatsanis called for a “culture shift” in the conduct of litigation: “a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial ... The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure.”⁴³

The *Hryniak* judgment includes another thread that has only become more prominent in the Working Group’s Final Policy Report.⁴⁴ That is the idea that parties should be able to have a judge decide their cases. Settlement (much less abandonment, which is often indistinguishable in statistical measures of case resolution) is not always optimal,⁴⁵ given that courts have a duty to develop the common law,⁴⁶ see to it that wrongdoing is subject to public accountability,⁴⁷ ensure that the purported benefits

procedure (under which, for example, oral evidence cannot be heard): see Walker, *supra* note 22 at 660, 679–680.

³⁹ Rules, *supra* note 13, r 20: Summary Judgment.

⁴⁰ *Hryniak*, *supra* note 7 at para 43.

⁴¹ *Ibid.*

⁴² *Ibid* at paras 6, 71, 78. Manitoba has excelled in introducing a ‘One-Judge Model’, but the Working Group deemed it unworkable in Ontario. Final Policy Report, *supra* note 14 at 26.

⁴³ *Hryniak*, *supra* note 7 at paras 27–28; see also paras 23–33.

⁴⁴ See e.g. Final Policy Report, *supra* note 14 at, 9–11. See also Civil Rules Review Working Group, *Civil Rules Review Phase Two Consultation Paper* (Toronto: Ontario Superior Court of Justice and Ministry of the Attorney General, 2025) at 9.

⁴⁵ Owen Fiss, “Against Settlement” (1984) 93 Yale LJ 1073; Trevor CW Farrow, *Civil Justice, Privatization, and Democracy* (Toronto: University of Toronto Press, 2014) at 219 [Farrow Book].

⁴⁶ Farrow Book, *supra* note 45 at 224–232; *Hryniak*, *supra* note 7 at paras 1, 26.

⁴⁷ Farrow Book, *supra* note 45 at 259–268.

of alternatives like mediation and arbitration are actually present,⁴⁸ and provide a forum for all persons to adjudicate their claims with basic procedural fairness.⁴⁹ Justice Karakatsanis expressed concern that cost and delay in the public court system were driving parties away, either to settle or to pay privately for adjudication through arbitration.⁵⁰ She wanted parties to have access to a judicial resolution for their cases and wanted the public to benefit from the common law development that could result.⁵¹ Summary judgment can also give rise to reported decisions, especially if it is granted in whole or in part.⁵² The 2010 version of summary judgment, which allows judges to engage in a live fact-finding hearing and weigh significant amounts of evidence, offers that public, on-the-record resolution in a condensed format.

Brooke MacKenzie has demonstrated that, in the immediate aftermath of *Hryniak*, more cases in Ontario ended up resolved by summary judgment.⁵³ She documented particularly large increases in the absolute number of summary judgment motions heard and granted in whole or in part after the initial rule change and then again after the Supreme Court of Canada's decision in *Hryniak*, with a downturn between those two events following the Court of Appeal for Ontario's decision in *Combined Air Mechanical Services Inc v Flesch*,⁵⁴ which stressed the importance of trial if issues are in dispute (*Combined Air* being ultimately varied by *Hryniak*).⁵⁵ The proportion of summary judgment motions granted also increased, but the increase was not as large as the absolute number of summary judgment motions heard and granted in whole or in part.⁵⁶ Initially, the culture shift seemed to have had a modest effect.

⁴⁸ *Ibid* at 219–223.

⁴⁹ *Ibid* at 232–251.

⁵⁰ *Hryniak*, *supra* note 7 at paras 25–26.

⁵¹ *Ibid* at paras 23–33. Those in other jurisdictions have raised similar concerns. Miriam E Gilles, “The Day Doctrine Died: Private Arbitration and the End of Law” (2016) 2016:2 Ill L Rev 371 at 413; Judith Resnik, “Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights” (2015) 124:8 Yale LJ 2804 at 2847–2848, citing EU, *Directive 2013/11 of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer Disputes*, [2013] OJ L 165/63 at para 45.

⁵² In our experience, if summary judgment is not granted, it is more likely to be recorded as an endorsement on the back of the motion record, with no reported decision.

⁵³ MacKenzie, *supra* note 9.

⁵⁴ 2011 ONCA 764 [*Combined Air*] (of which *Hryniak* was the appeal).

⁵⁵ *Hryniak*, *supra* note 7; MacKenzie, *supra* note 9 at 1295–96, 1298.

⁵⁶ From 60% in the five years preceding the rule change to 68% in the five years after the change. MacKenzie did not use any tests for statistical significance. MacKenzie, *supra* note 9 at 1299.

MacKenzie's study suggested that the effect might not last. In particular, parties appear to have been sensitive to the Court of Appeal for Ontario's attempt to rein in summary judgment in *Combined Air*. Court of Appeal decisions after *Hryniak* have reflected a similar ambivalence on the part of the Court about deciding cases without trial. When Gerard Kennedy surveyed Ontario lawyers several years after the *Hryniak* decision, he reported anecdotal evidence that the judgment's effect had already been blunted.⁵⁷

Ontario continues to restrict summary judgment in some ways. Leave is required to bring summary judgment under certain statutes,⁵⁸ and summary judgment is not available either for applications⁵⁹ or, absent exceptional circumstances, simplified procedure actions under Rule 76.⁶⁰ The Court of Appeal has also stated that the expanded fact-finding powers under Rule 20.04(4) cannot be exercised by an associate judge.⁶¹ In addition, since 2015 in Toronto,⁶² and later elsewhere, judges have begun screening motions for summary judgment before they allow parties to schedule them⁶³—and even requiring all motion materials, including

⁵⁷ Kennedy 2020, *supra* note 21. Kennedy's work focused on lawyers volunteering to offer *pro bono* help. It is possible that lawyers outside this population had a different experience.

⁵⁸ For example, the *Construction Act: Procedures for Actions Under Part VIII*, O Reg 302/18, s 13, enacted pursuant to the *Construction Act*, RSO 1990, c C.30 [*Construction Act*]; *R&V Construction Management Inc v Baradaran*, 2020 ONSC 3111 at para 39 (Div Ct).

⁵⁹ In order for a court to determine an application on a motion for summary judgment, it must first be converted into an action: *Maurice v Alles*, 2016 ONCA 287.

⁶⁰ *Manthadi v ASCO Manufacturing*, 2020 ONCA 485. Usually a summary trial under Rule 76.12 will be more efficient.

⁶¹ *Abrams Estate v Air Canada #1*, 2010 ONSC 1280 at para 2.

⁶² The Civil Practice Court (CPC) in Toronto, which deals with scheduling, was created in October 2014 and began screening summary judgment motions in July 2015: Ontario Superior Court of Justice, *Consolidated Practice Direction for Civil Actions, Applications, Motions and Procedural Matters in the Toronto Region*, effective 1 July 2015 (on file with the authors) [2015 PD]. The practice began in Toronto and spread elsewhere (see *below* note 64).

⁶³ Ontario Superior Court of Justice, [Consolidated Practice Direction—Toronto Region](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-toronto-region/), effective 30 June 2025, online: <[tinyurl.com/bdfw6b6w](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-toronto-region/)> [perma.cc/A4SN-W4DT] [Toronto Practice Direction]; Ontario Superior Court of Justice, [Consolidated Practice Direction for the Central East Region](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-central-east-region/), effective 30 June 2025, online: <[tinyurl.com/3yxmphds](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-central-east-region/)> [perma.cc/9FAL-QMLM] [Central East Practice Direction]; Ontario Superior Court of Justice, [Consolidated Practice Direction for the East Region](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-east-region/), effective 30 June 2025, online: <[tinyurl.com/yhmcm4jx](https://www.courtsofjusticetoronto.ca/en/consolidated-practice-direction-east-region/)> [perma.cc/5GTL-2J5E]; Letter from The Honourable Justice Graeme Mew (31 August 2022) [Notice to the Profession \(Kingston and Napanee\) re: New Civil Trial Management/Long Motion and Long Application Process](https://www.courtsofjusticetoronto.ca/en/notice-to-the-profession-kingston-and-napanee-re-new-civil-trial-management-long-motion-and-long-application-process/), online: <[tinyurl.com/3ejutwfn](https://www.courtsofjusticetoronto.ca/en/notice-to-the-profession-kingston-and-napanee-re-new-civil-trial-management-long-motion-and-long-application-process/)>.

factums, to be filed before the motion will be scheduled.⁶⁴ The Court may decline the party's request for a summary judgment motion if such a motion would be premature, the case requires a trial to determine the issues in dispute, or for any other reason. The Court may order the parties to attend a case conference and may also direct long motions to the trial list.⁶⁵ However, summary judgment motions are available in proceedings where a jury notice has been filed.⁶⁶

Resolving a case by summary judgment does not necessarily mean it is resolved in favour of the moving party. 'Boomerang' summary judgments are possible, whereby one party asks the court to grant summary judgment and the court grants judgment in favour of the other party, even if the other party has not requested summary judgment by bringing a cross-motion.⁶⁷ A judge may also grant partial summary judgment on only some issues or in relation to only some parties (parties may move for either partial or full summary judgment).

Liberalized summary judgment was one of the reforms offered by the 2010 amendments to the *Rules*, with the Supreme Court of Canada endorsing the approach in *Hryniak* and lower courts reacting with an increased number of summary judgment decisions. However, our research demonstrates that this initial liberalization has not continued.

III. Methodology

The civil justice delays that preoccupied the *Hryniak* court have only grown more severe in the ensuing decade, accelerated by the growth in backlogs since the pandemic. We initially predicted that parties and lawyers might be more interested in dispositive motions in light of these developments, especially given that a motion should in theory be easier to schedule than a trial. However, one can find an equal number of reasons to think summary judgment would be less attractive in the wake of the pandemic. First, scheduling difficulties affect long motions (including summary judgment) as well as trials. Second, the Court of Appeal for Ontario became less friendly to summary judgment and especially to partial summary judgment, giving parties good reason to hesitate. A failed or partial summary judgment motion costs time and resources. Third, Toronto judges (and judges elsewhere) began screening proposed summary judgment motions so that court time could be used more

⁶⁴ Toronto Practice Direction, *supra* note 63; Central East Practice Direction, *supra* note 63.

⁶⁵ Toronto Practice Direction, *supra* note 63.

⁶⁶ *Cooke v Toivonen*, 2011 ONSC 1315, rev'd on other grounds 2011 ONCA 499.

⁶⁷ *Meridian Credit Union Ltd v Baig*, 2016 ONCA 150, leave to appeal to SCC refused, 36974 (2 March 2017).

efficiently. The question, then, is whether the difficulties and expense of bringing the motion itself came to outweigh any time-saving benefits the Supreme Court of Canada imagined in 2014.

Our study focuses on judicial responses to motions for summary judgment. Between October 2024 and July 2025, our team searched Westlaw for every Ontario decision rendered between January 1, 2015 and December 31, 2024 in which the term “summary judgment” appeared.⁶⁸ We compared our data with the Working Group Data on the number of summary judgment motions heard. This information comes from FRANK, the Ontario Court Services’ case tracking system for various courts, including the Superior Court of Justice (now replaced by the Ontario Courts Public Portal). Having frequency statistics for both decisions and hearings allowed us to gauge the reliability of these numbers—more decisions than hearings in a given year would likely indicate a problem in our data—and to determine whether the drop in decisions was simply due to judges writing reasons in fewer instances. We did not have access to docket information either in individual cases or in the aggregate; therefore, our work offers limited insight into the behaviour of parties. We expect that less demand from parties would result in fewer hearings being scheduled, but this result is indistinguishable from judges refusing to schedule hearings or courthouses not having long motion days available.

If a judge chose not to provide reasons later forwarded to reporting services like Thomson Reuters, which owns Westlaw, the motion would not be included in our census of decisions. We expect that decisions not to grant summary judgment might be reported less frequently⁶⁹ as they do not dispose of a case and are not typically appealable to the Court of Appeal for Ontario as final orders.⁷⁰ Hearing data helps correct for this issue, although hearing data does not show how many summary judgment motions are waiting to be scheduled, another number that we expect will have increased as a result of court delays.

⁶⁸ For a full discussion of our methodology, see Appendix A. Westlaw captures the vast majority, but not every instance, of written reasons. See e.g. Craig E Jones & Micah B Rankin, “Justice as a Rounding Error? Evidence of Subconscious Bias in Second Degree Murder Sentences in Canada” (2014) 52:1 Osgoode Hall LJ 109 at 121, n 58; Gerard J Kennedy, “Jurisdiction Motions and Access to Justice: An Ontario Tale” (2018) 55:1 Osgoode Hall LJ 79.

⁶⁹ In addition, and as noted *supra* note 52, if summary judgment is not granted, it is more likely to be recorded as an endorsement on the back of the motion record, with no reported decision.

⁷⁰ Appeals of interlocutory orders in Ontario are made to the Divisional Court, with leave: *Courts of Justice Act*, RSO 1990, c C.43, s 19(1).

We also wanted to understand the extent to which there are regional differences in the use of summary judgment. Toronto immediately stood out both for the volume of hearings per year and for the volume of decisions. We compared Toronto to the rest of the province in order to capture a more complete picture. Finally, we tracked the subject matter of the litigation and whether the parties were represented.

IV. Ten Years of Summary Judgment in Ontario

The statistics we present in this section offer a picture of how frequently summary judgment motions come before the Superior Court, and how the Superior Court responds. We analyzed the number of summary judgment motions heard and the number of summary judgment motions decided. We further analyzed whether cases were disposed of through summary judgment at first instance and on appeal. We found a clear break between the number of summary judgment motions decided or heard in 2020 and afterwards, and those decided or heard in the preceding five years. Numbers went down in 2020 and only modestly rebounded. There are now proportionately more summary judgment decisions in comparison to hearings, indicating that a hearing is more likely to result in a decision. This suggests that the decrease in decisions cannot be attributed to judges writing reasons in fewer cases.⁷¹ We assume that number of hearings correlates to number of motions filed, but without docket information, we do not know if *party* demand for summary judgment has dropped.

Trial judges have not changed their attitudes towards summary judgment. They grant it in whole or in part in a larger percentage of decisions now than before 2020.⁷² This fact suggests that courts are not only hearing fewer motions, but ones that are ‘safer’, i.e., more likely to succeed. One reason they may be doing so is because the Court of Appeal for Ontario’s rulings against grants of summary judgment have had an effect. Another potential cause is that judges in Toronto and elsewhere instituted a screening mechanism for parties wishing to bring a summary judgment motion: they must attend CPC and possibly also a case conference in order to schedule the motion. Presumably, this caused some triaging out of motions that are clearly inappropriate. However, key decisions by the Court of Appeal for Ontario were handed down closer to the time that the number of summary judgment motions plummeted (and the two in fact seem to coincide). Therefore, the Court of Appeal’s guidance (in turn causing more rigorous pre-screening both by lawyers

⁷¹ See below Table 1.

⁷² Figure D below. We include situations in which a summary judgment motion resulted in successful dismissal of claims as well as grants of summary judgment in favour of the non-moving party in this count.

themselves and by the CPC) as well as the screening requirement itself appear to have both contributed to the decrease in summary judgment.⁷³

Other factors have less influence. Fear of delay from unsuccessful motions, which might lead parties to file fewer motions, does not seem to have played an obvious role in the shift. The subject-matter of the case also has little influence over both the number of reported decisions and the success rate of parties filing the motion, with the exception of personal injury cases, for which summary judgment is less likely to be granted.⁷⁴ Summary judgment's complexity might create an additional barrier to its use, especially for self-represented parties. Parties bringing these motions are mostly represented, but these numbers are consistent with rates of representation in Superior Court generally.

The years after *Hryniak* and before the pandemic could be considered an aberration: lawyers have historically been reluctant to bring summary judgment motions and they may have returned to old habits. This conclusion accords with *Hryniak*'s treatment of 'culture' as a significant impediment in the use of procedure to achieve access to justice⁷⁵ and Gerard Kennedy's view that clear rule changes are likelier to achieve outcomes when compared to broad pronouncements regarding culture or principles.⁷⁶ Summary judgment is supposed to offer parties a final determination by a judge without the expense of trial, which might make the motions more attractive in a time and resource crunch. Instead, however, the resource crunch has swallowed up summary judgment.

A) Trends at the Trial Level

Both the number of summary judgment hearings and the number of summary judgment decisions dropped precipitously in 2020, suggesting a drop in motions filed or in motions accepted for scheduling. Although the number of decisions recovered somewhat after 2020, the number of

⁷³ George L Priest & Benjamin Klein, "The Selection of Disputes for Litigation" (1984) 13:1 Journal Leg Stud 1 (cautioning that litigated and reported cases are not likely to be representative of cases that are not litigated or reported; the same would apply to motions).

⁷⁴ The data concerning the intersection of area of law and the (non-)granting of summary judgment ended up not showing much of interest—with this notable exception.

⁷⁵ *Hryniak*, *supra* note 7 at paras 23–33.

⁷⁶ Gerard J Kennedy, "The Rules-Standards Debate and Ontario Civil Procedure Reform: A Case for More Rules?" (2022) 47:1 J Leg Phil 24 [Kennedy Rules]; Gerard J Kennedy, "*Nevsun*, *Atlantic Lottery*, and the Implications of 2020 Supreme Court of Canada Motion to Strike Decisions on Access to Justice and the Rule of Law" (2021) 72 UNBLJ 82.

hearings did not; the slight increase in decisions is attributable to more ‘on the record’ decisions, not to more motions being heard.⁷⁷

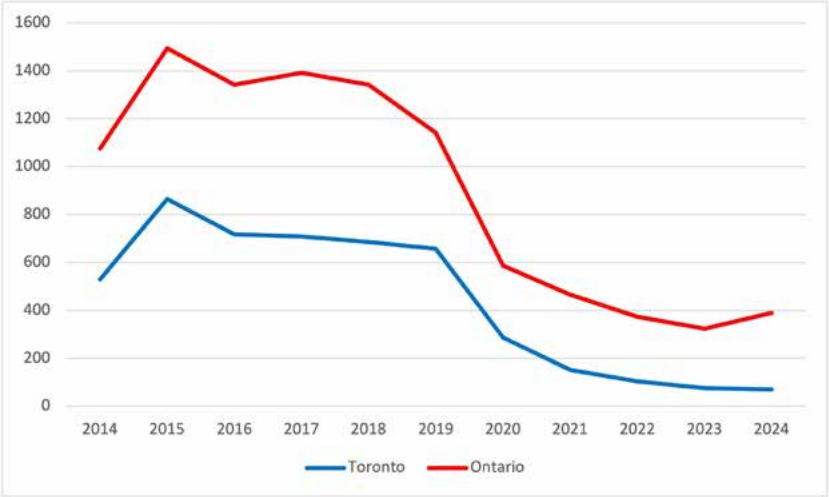
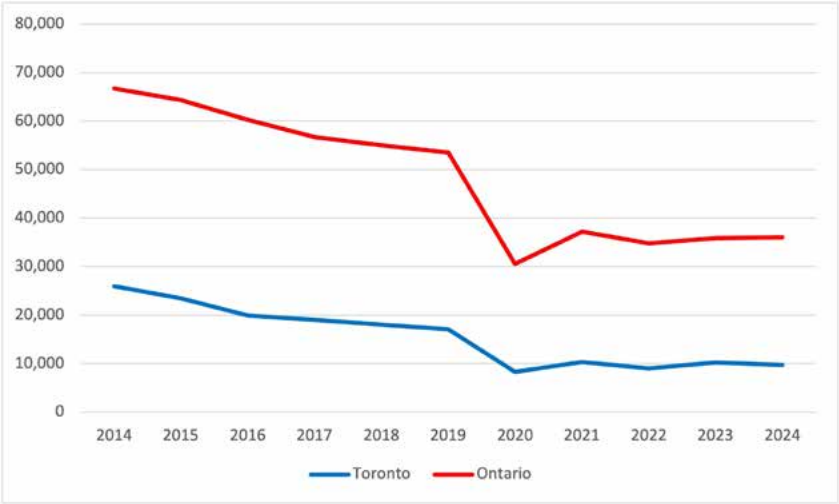


Figure A: Total number of summary judgment motions heard in Ontario Superior Court of Justice 2014–2024 (Working Group Data)

The number of summary judgment hearings in Ontario dropped sharply in 2020 and has largely stayed down since, even as the number of other motions heard has somewhat recovered.

⁷⁷ Working Group Data suggests that judges grant summary judgment at the hearing in a small number of cases, varying from a high of 110 in 2013 to a low of eight in 2021 and 2023.

Figure B: Total number of motions heard in Ontario Superior Court of Justice 2014–2024 (Working Group Data)



The number of reported summary judgment decisions largely reflects the decline in summary judgment motions heard. But the proportion of motions prompting a written decision is now greater: about half of motions heard in 2021–2024, as opposed to less than a quarter in 2015–2018.⁷⁸

Table 1: Summary judgment hearing numbers to decisions compared 2015–2024

	Decisions (Westlaw Data)			Hearings (Working Group Data)		
	Total	Toronto	Other	Total	Toronto	Other
2015	332	196	136	1495	865	630
2016	321	150	171	1341	718	623
2017	318	146	172	1392	709	683
2018	349	174	175	1341	685	656
2019	327	166	161	1142	658	484
2020	168	86	82	587	286	301
2021	237	124	113	465	152	313
2022	198	72	126	374	104	270
2023	139	57	82	324	76	248
2024	176	69	107	390	70	320

⁷⁸ Our data on numbers of hearings and decisions do not correspond entirely. The Working Group had data from 2014–2024, whereas we collected data from 2015–2024.

The five years prior to 2020 have roughly stable numbers of summary judgment motions decided each year: never varying by more than 5.25% from 2015's median of 332 motions. The number of motions decided drops dramatically in 2020 to half of 2019's. The same dramatic drop is also true for motions heard, although 2015 to 2016 and 2018 to 2019 represent more gradual declines. The initial dramatic decrease in decisions and hearings is easily explicable in 2020 itself. The impact of the COVID-19 pandemic on Ontario's civil justice system, the transition costs of pivoting to an online system,⁷⁹ and the need to prioritize criminal and family cases, which are urgent for different reasons,⁸⁰ all likely affected judges' ability to hear summary judgment motions and to issue decisions.

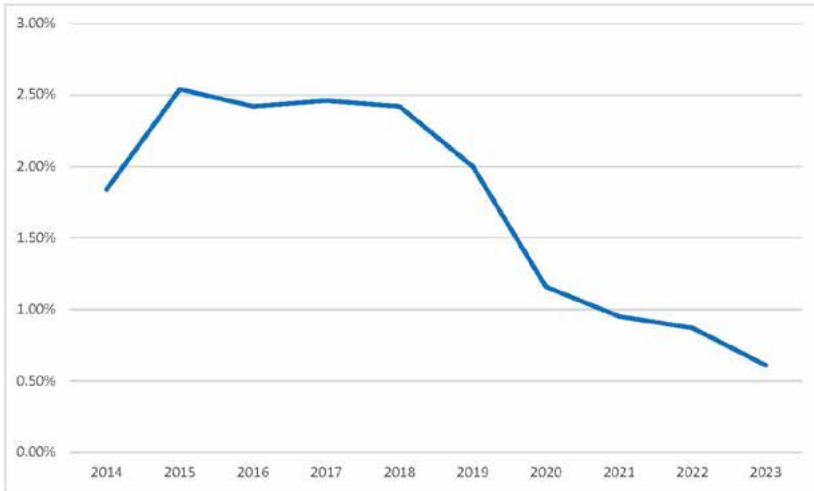
More surprisingly, the decrease in both decisions and hearings appears to be permanent. Numbers of decisions rebounded somewhat in 2021, but the 237 number is still well below the average of 2015 through 2019 (329). But the number of motions being heard has continued to steadily decline. Fewer summary judgment motions were in the courts' pipeline, as lawyers' (and clients') operations were also disrupted in 2020 and 2021 (for instance, Ontario public schools were closed for long stretches). The numbers of reported decisions begin to stabilize in 2022–2024—but remain markedly lower than in 2015–2019. The average of 171 decisions in 2022–2024 is 48% lower than the average of 2015–2019, despite the backlog of cases that might lead us to believe that the opposite would occur. With the Working Group Data, which indicates the number of summary judgment motions heard (not simply reported), the difference is even more pronounced: the average of 363 motions in 2022–2024 is 73% lower than the average of 2015–2019 (which is 1,342 motions).

Working Group Data also indicate that the number of summary judgment motions as a percentage of all civil actions commenced annually has also fallen since 2020, and not recovered (available 2024 data does not differentiate between actions and applications, and has therefore been excluded from this figure).

⁷⁹ See Suzanne E Chiodo, "Ontario Civil Justice Reform in the Wake of COVID-19: Inspired or Institutionalized?" (2020) 57:3 Osgoode Hall LJ 801 [Inspired or Institutionalized].

⁸⁰ In family law, the stakes often require immediate action. Criminal law's issues are caused by *Jordan*, *supra* note 4.

Figure C: Percentage of summary judgment motions heard as a percentage of number of civil actions commenced, Ontario Superior Court of Justice, 2014–2023 (Working Group Data)



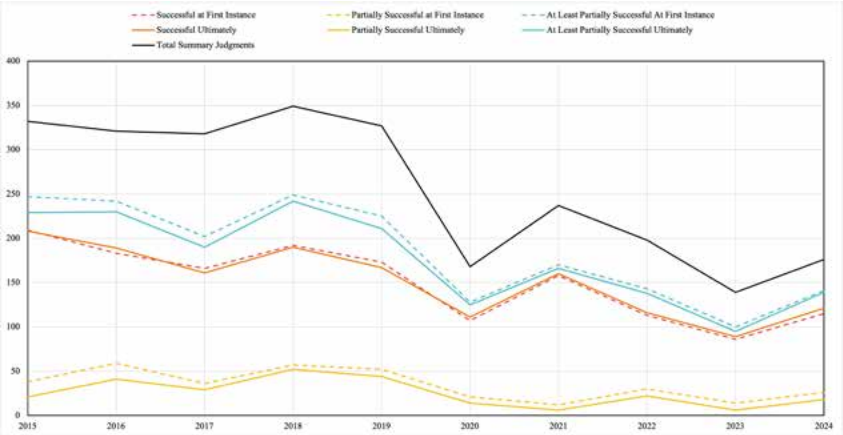
This decrease likely reflects some combination of party choices and logistical hurdles. In addition to the Toronto screening mechanism described below, simply scheduling a date for a long motion, such as summary judgment, is difficult in many courthouses.⁸¹

The shift in number of motions heard does not seem to reflect renewed hostility towards granting summary judgment on the part of trial judges. The percentage of cases where the motion is successful at disposing of the action increases from (in 2015–2019) an average of 56% at first instance, and 55.6% ultimately, to (in 2020–2024) 62.9% at first instance and 65% ultimately. This grant rate suggests an access to justice success: to the extent that summary judgment motions are being brought post-2020, they are more likely to resolve the action. However, an increase in the proportion of written decisions may also reflect trial judges' fears of being reversed on appeal.⁸²

⁸¹ Long motions are presumptively heard in person, but this practice can vary. Ontario Superior Court of Justice, *Consolidated Civil Provincial Practice Direction*, amended 1 February 2024, effective 15 June 2023, Part V(C) [Ontario Civil Practice Direction]. See also *Dufault v Ignace (Township)*, 2024 ONSC 1029, aff'd 2024 ONCA 915, leave to appeal to SCC refused, 2025 CanLII 51603 (SCC).

⁸² See David A Hoffman, Alan J Izenman & Jeffrey R Lidicker, "Docketology, District Courts, and Doctrine" (2007) 85:4 Wash U L Rev 681 at 719–720.

Figure D: Summary judgment decisions by year 2015–2024 (Westlaw data)⁸³

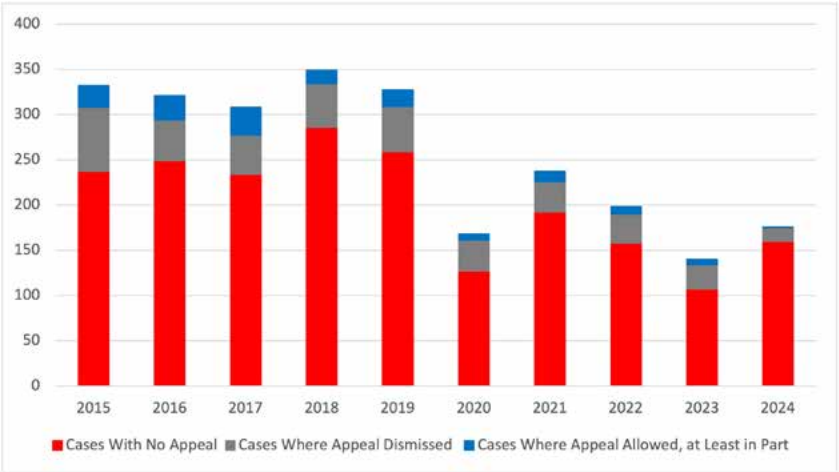


B) Appeals

The Court of Appeal for Ontario seems to be more skeptical of summary judgment than trial judges are. The ultimate success of summary judgment motions decreased because of the appellate process in every year except 2024. Figure E illustrates the frequency and success of appeals, and the rate at which the Court of Appeal varied cases where appeals were at least partially allowed.

⁸³ For a discussion of terminology and methodology in this figure, see Appendix A.

Figure E: Motions appealed and success rates by year of Superior Court of Justice decision 2015–2024 (Westlaw data)⁸⁴

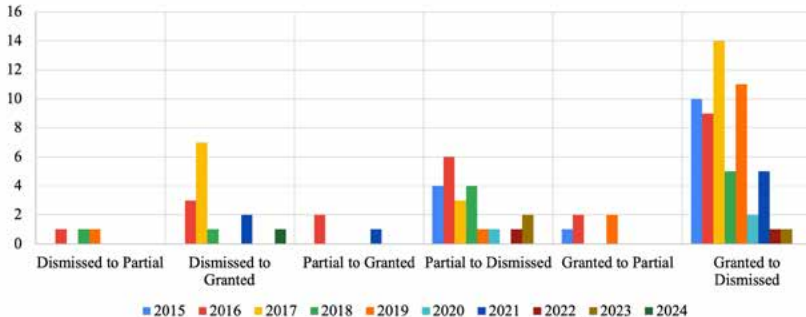


Two trends are immediately apparent. First, a slightly smaller percentage of motions is being appealed (with the exception of 2020). That result is consistent both with parties being more selective in the summary judgment motions that they commence and with the parties being denied permission to schedule after screening at the Superior Court. Second, a greater percentage of appeals is being dismissed, although the numbers of appeals dismissed and allowed are too small for us to be confident in any trends.

The Court of Appeal’s jurisprudence has made summary judgment less attractive. It has been overwhelmingly likely to restrict the granting of summary judgment rather than expand it, as illustrated in Figure F.

⁸⁴ We used the year of the Superior Court decision in order to maintain consistency and allow the reader to compare figures. Our 2024 numbers must be treated with caution; they capture all appeals from Superior Court motion judgments filed in 2024, but these appeals were not necessarily adjudicated by the time of our data collection in Summer 2025.

Figure F: Decisions on Appeals from Summary Judgment Decisions (Westlaw data)



Rather than a solution to cost and delay, the Court of Appeal views summary judgment as a potential contributor, especially with motions that may not ultimately be dispositive.⁸⁵ The Court has strongly discouraged partial summary judgment unless there exists “an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost effective manner.”⁸⁶ In *Hryniak*, Justice Karakatsanis suggested that even a ‘failed’ summary judgment motion could be “salvag[ed]” ultimately, still saving everyone time by reducing the number of issues for trial.⁸⁷ The Court of Appeal has been less enthusiastic about the idea that partial summary judgment is even possible, let alone worth the time and expense. In her 2017 reasons for the panel in *Butera v Chown, Cairns LLP*, which overturned a decision awarding partial summary judgment, Justice Pepall stated that motions for partial summary judgment should rarely be brought.⁸⁸ In 2020 in *Malik v Attia*, Justice David Brown articulated a very restrictive test for allowing a partial summary judgment motion to be scheduled.⁸⁹ Motion judges continue to grant partial summary judgment, but the case for doing so must be especially clear. For instance, in *Burley v City of Ottawa et al.*,⁹⁰ the plaintiff brought a claim against a building’s owners and a municipality related to the maintenance of a municipal sidewalk. Each of

⁸⁵ *Leitch v Novac*, 2020 ONCA 257, leave to appeal to SCC refused, 39217 (12 November 2020); *Service Mold + Aerospace Inc v Khalaf*, 2019 ONCA 369; *Mason v Perrais Mongenais*, 2018 ONCA 978; *Butera*, *supra* note 12; *Canadian Imperial Bank of Commerce v Deloitte & Touche*, 2016 ONCA 922; *Hamilton (City) v Thier + Curran Architects Inc*, 2015 ONCA 64; *Baywood Homes Partnership v Haditaghi*, 2014 ONCA 450. But see *Malik v Attia*, 2020 ONCA 787 [*Malik*], in which Justice David Brown granted partial summary judgment and articulated the requirements for partial summary judgment.

⁸⁶ *Butera*, *supra* note 12 at para 34; *Malik*, *supra* note 85 at paras 61–62.

⁸⁷ *Hryniak*, *supra* note 7 at para 74.

⁸⁸ *Butera*, *supra* note 12 at paras 29–35.

⁸⁹ *Malik*, *supra* note 85 at para 62.

⁹⁰ 2024 ONSC 5018. This decision was not appealed.

these claims rested on different legal theories that did not overlap. Justice Rees held that this eliminated the risk of inconsistent findings and that the building owners had a legitimate interest in extricating themselves from the litigation as soon as was practical.⁹¹

Moreover, the Court of Appeal for Ontario has cautioned that summary judgment motions should not be used to unfairly rush or pressure self-represented litigants who are otherwise in compliance with the *Rules*.⁹² In light of these trends, including the greater predictability created by more appellate case law, lawyers are likely advising their clients against appeals in many cases. These factors all help explain the reduced numbers of appeals.

The Supreme Court of Canada has seldom weighed in on these matters.⁹³ While an opportunity to review the jurisprudence on summary judgment recently presented itself when the Court granted leave to appeal in *Arcamm Electrical Services Ltd v Avison Young Real Estate Management Services LP*,⁹⁴ that appeal was subsequently discontinued.

C) The Toronto Effect

Adding to the evidence that recent decisions reflect 'safer' motions is what we call the 'Toronto effect'. Confirming conventional wisdom among lawyers about Toronto 'motions culture', we observed that summary judgment hearings and decisions occurred in Toronto much more frequently than in the rest of the province, a trend that remains consistent throughout the entire ten-year period. In every year we studied, a plurality of hearings and decisions originated in Toronto, as seen above in Table 1. Because summary judgment motions in Toronto are so much more numerous, a change in Toronto practice will show up in province-wide statistics.

⁹¹ *Ibid* at para 4.

⁹² *Sanzone v Schechter*, 2016 ONCA 566, leave to appeal to SCC refused, 37245 (23 February 2017).

⁹³ The Court granted leave to appeal in *Keatley Surveying Ltd v Teranet Inc*, 2019 SCC 43. However, by the time it reached a hearing before the Court, the parties did not dispute the appropriateness of summary judgment.

⁹⁴ 2024 ONCA 925, leave to appeal to SCC granted, 41673 (17 July 2025). In that case, the Court of Appeal for Ontario overturned a motion judge's granting of summary judgment, because there was a subrogated action arising from the same events and involving some of the same parties, and this raised the spectre of inconsistent findings. In addition, the motion judge failed to consider the issue of contributory fault, which arguably raised genuine issues requiring a trial.

Toronto seems to account for a large portion of the drop in summary judgment decisions and hearings. Absolute numbers have decreased slightly in other cities (with a slight uptick for 2024), but they have dropped significantly in Toronto: from between 146 and 196 decisions in 2015–2019 to between 57 and 86 in 2020 and 2022–2024 (124 in 2021 likely explained by the backlog of the pandemic year that was 2020). By comparison, the Working Group Data show that the Toronto district went from between 865 and 658 summary judgment motions heard in 2015–2019 to between 104 and 70 summary judgment motions heard in 2022–2024.

Toronto parties may want to keep filing the same number of summary judgment motions, but may be prevented from doing so either because judges are screening them out or because they have to wait to appear in CPC (and/or attend at a case conference) as part of the screening process. Under the current Toronto practice directions, all motions for summary judgment must be scheduled by the CPC.⁹⁵ Parties must therefore make a court appearance to ask to schedule their motion, and the CPC judge can refuse that request.⁹⁶ This judge also approves a timetable for the delivery of materials, and the court double checks that the motion is ready one week before the hearing.⁹⁷ Essentially, the Toronto court has added extra steps before the motion is scheduled. These steps make it likely that some motions may not be filed that would otherwise have been filed or the case may be resolved before the motion is heard. Moreover, the practice directions say CPC is necessary to “curtail the motions culture in Toronto”.⁹⁸ The court is there in part to actively discourage motions. The drop in the number of decisions in Toronto has also coincided with a higher rate of favourable decisions for the moving party, suggesting that the CPC appearance also acts as a triaging step.

In addition to weeding out ‘weaker’ motions, Toronto’s process might also reflect less time even for meritorious motions. As the Superior Court typically requires oral argument on summary judgment,⁹⁹ the resulting scheduling difficulties would also result in fewer motions being heard.

⁹⁵ Toronto Practice Direction, *supra* note 63, D.2.

⁹⁶ Scheduling appearances are now presumptively virtual: Ontario Civil Practice Direction, *supra* note 81, Part V(C).

⁹⁷ *Ibid.*

⁹⁸ Toronto Practice Direction, *supra* note 63, D.2. This language is also in the 2015 Toronto Practice Direction which introduced the CPC screening requirement for summary judgment motions: 2015 PD, *supra* note 62.

⁹⁹ Contested long motions are presumptively heard in person. Ontario Civil Practice Direction, *supra* note 81, Part V(C).

D) Time to Decision: 'Delay' Caused by Unsuccessful Motions

Without dockets, we cannot measure how long it takes for a motion to be heard once filed, but we are able to measure any delay added by the courts. Long times to decision would indicate a backlog of undecided motions, suggesting that our drop in reported decisions might not indicate a drop in motions being filed, or even heard. The data shows that certain judges are outliers in the time that it takes to deliver decisions following summary judgment hearings. The average time to a decision at the court of first instance is 69 days, although the median is 40 days. As discussed below, some judges who regularly hear summary judgment motions take much less than the average time. Moreover, in cases where summary judgment is sought but not granted, summary judgment process is not clearing court dockets, but is adding time before final disposition of the issues. Lost time on unsuccessful or partial motions lends credibility to the Court of Appeal and the Working Group's commentary that 'failed' summary judgment motions delay the final disposition of the matter and impede access to timely dispute resolution.

1) Variance Among Judges

Some individual judges took significantly more or less time to decide. Any given motion might be an outlier in terms of complexity, so we focus here on the judges who write reasons most frequently. As measured by reported decisions, five Toronto judges were the most common decision-makers on the topic of summary judgment in at least three of ten years: Justice Paul Perell (among the top five in eight years, possibly due to his extensive assignments in high-stakes and motions-heavy class proceedings);¹⁰⁰ Justice Edward Morgan (in six, also a judge assigned to class proceedings);¹⁰¹ Justice Mario Faieta (in four); Justice Fred Myers (in three); and Justice Sean Dunphy (in three).

¹⁰⁰ Justice Perell was an assigned judge to class proceedings in Toronto for nearly 20 years, from *2038724 Ontario Ltd v Quizno's Canada Restaurant Corporation*, 2008 CanLII 5978 (ONSC), until His Honour's retirement in 2024.

¹⁰¹ See e.g. *Kirsch v Bristol Myers Squibb*, 2024 ONSC 7191; *Haddad v The Kaitlin Group Ltd*, 2017 ONSC 7321. These are not summary judgment motions but are part of a general motions culture.

Figure G(i): Common summary judgment judges: time from date of hearing to decision (Westlaw data)¹⁰²

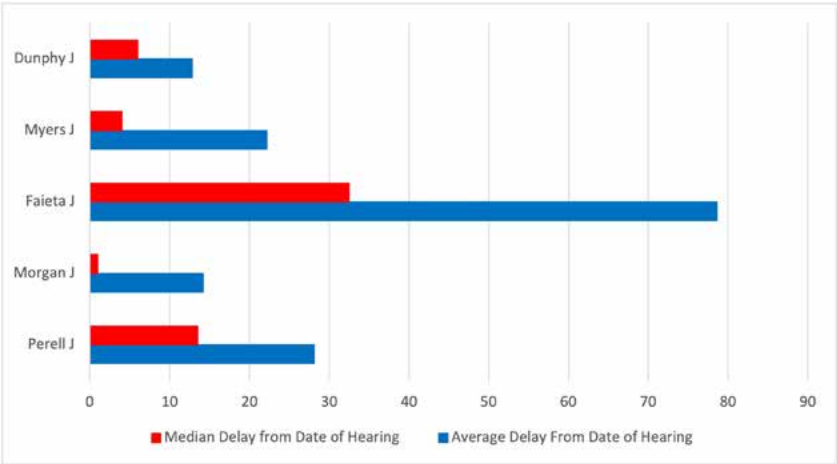
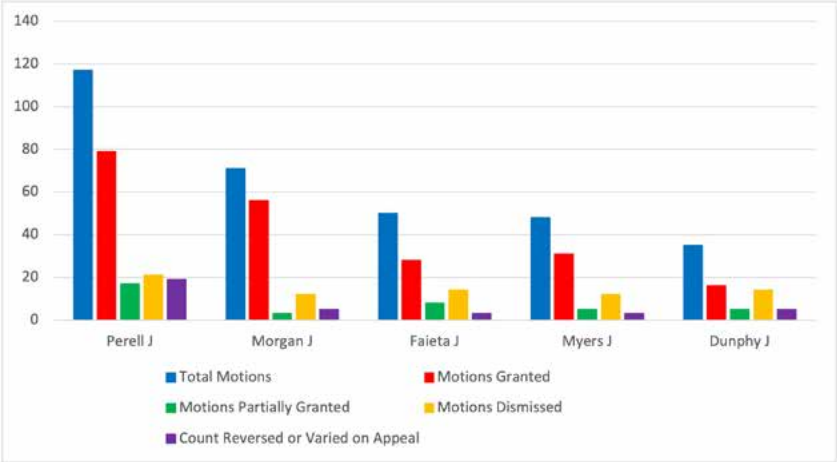


Figure G(ii): Common summary judgment judges: motions heard (Westlaw data)



Three of these five judges (Justices Perell, Morgan, and Myers) are comparatively likely to grant summary judgment compared to the provincial average. However, Justice Faieta and especially Justice Dunphy granted summary judgment less frequently than the provincial average. The average time it took this group of judges to release their reasons

¹⁰² Median numbers are likely more representative. For instance, time between hearing and decision in 2024 ranged between zero and 377 days, making an average misleading.

was markedly below the provincial average for all judges except Justice Faieta. This result suggests that judicial familiarity with an area of law may be some evidence that a swift decision will follow¹⁰³ and offers some evidence in favour of the idea that specialized judging can facilitate access to justice.¹⁰⁴ Justice Morgan decided 16 cases *the day of the hearing*, his median delay was one day, and the delay between hearing and decision was seven days or less in 55 of his 71 decisions. Prompt decision-making is not necessarily a proxy for quality decision-making, and we did not examine the quality of the reasons. Still, this result suggests that familiarity with summary judgment results in prompt decision-making, which is, all else being equal, a boon for access to justice.

2) Time 'Lost' to Unsuccessful or Partially Successful Motions

If judges are taking a long time to decide motions that are ultimately unsuccessful, then summary judgment becomes an even more costly gamble. Under the current *Rules*, parties are required to put their “best foot forward” on a summary judgment motion,¹⁰⁵ which entails a significant amount of work (almost as much work as would be required at trial, depending on the stage of the action and its complexity). If summary judgment is then not granted and the matter proceeds to trial, much of that work may be wasted or duplicated. This delay adds to that caused by the summary judgment motion itself, as parties will not be able to proceed to trial or realistically engage in settlement talks until the motion is decided. Longer times to decide would help explain both the drop in motions and the way that parties seem to only be filing in the ‘safer’ cases. However, we did not find that judges are taking longer to decide these motions than they did before 2020.

¹⁰³ This is particularly discussed with respect to family law (see Freda Steel, “The Unified Family Court—Ten Years Later” (1996) 24:2 Man LJ 381; Nicholas Bala, Rachel Birnbaum & Donna Martinson, “One Judge for One Family: Differentiated Case Management for Families in Continuing Conflict” (2010) 26:2 Can J Fam L 395 at 399) and commercial litigation (see The Honourable Chief Justice Warren K Winkler, “The Vanishing Trial” (2008) 27:2 Adv J 3 at 4).

¹⁰⁴ This is explored in, e.g., Gerard J Kennedy, “The Federal Courts’ Advantage in Civil Procedure” (2024) 102:1 Can Bar Rev 75 at 121. Lists of specialized judges have also been recommended by the Civil Rules Review Working Group: Final Policy Report, *supra* note 14 at 228–229.

¹⁰⁵ *Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral v Aga*, 2021 SCC 22 at para 25.

Figure H(i): Time to Decision in Days If Summary Judgment Motion Unsuccessful (Westlaw data)

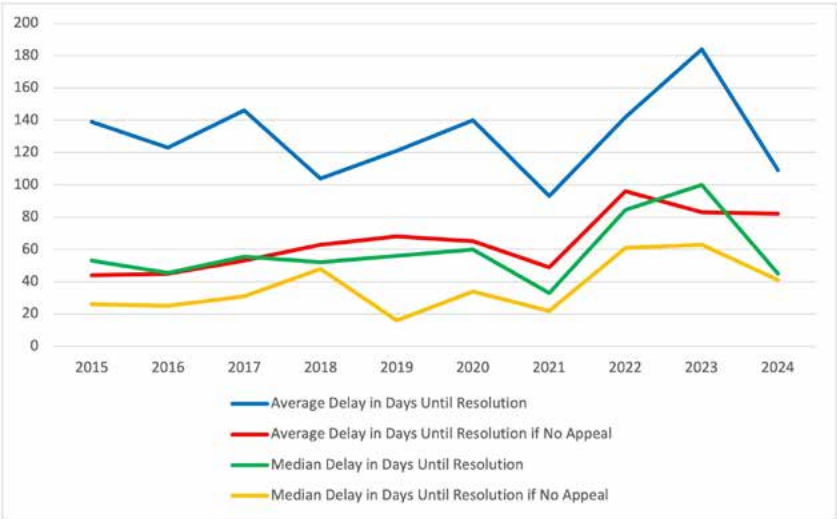
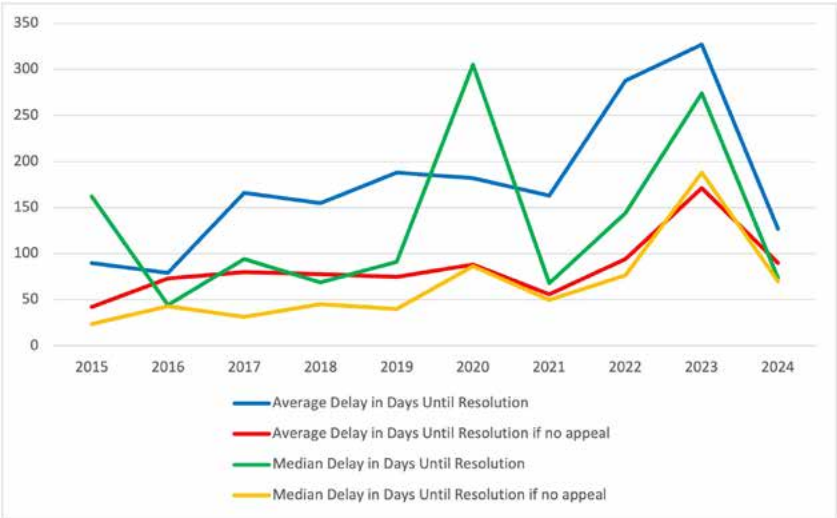


Figure H(ii): Time to Decision in Days if Summary Judgment Motion Partially Successful (Westlaw data)



As the figures above suggest, an unsuccessful or partially successful motion for summary judgment can be a time-consuming detour. Waiting for the outcome of an appeal typically takes months. In the absence of an appeal, however, the average time to a final decision tended to be less than two months from the hearing date. Time waiting for a decision, in other words, does not appear to be a particularly significant source of delay. Similar numbers were evident if summary judgment was only partially granted.

In a substantial minority of cases, decisions took quite a bit longer, which would go against the idea that filing for summary judgment might be a quicker route to dispute resolution. However, partially successful motions do not necessarily represent 'lost' time for litigants to the same degree; they can narrow issues and can remove entire parties from the case. To the extent summary judgment is causing delay in resolution of cases, most of the delay is likely to come from waiting for the hearing (or, if there is an appeal, waiting for the appeal to be heard and decided). While quantifying time waiting for a hearing was not possible, we have no doubt that it is a significant source of delay.

E) Representation

We expected that most parties filing summary judgment motions that result in decisions would be represented, as those parties would be best placed to navigate the doctrinal and procedural hurdles associated with such motions. That was indeed the case, but these rates were in line with rates in the Superior Court generally, in which self-representation remains relatively uncommon.¹⁰⁶ Some scholars have noted that summary judgment motions can be procedurally unfair for self-represented litigants, because such litigants generally require more in-court time to explain their cases.¹⁰⁷ Still, the percentage of self-represented litigants seems to have grown in recent years. Although the scheduling of a summary judgment motion has become more difficult generally, judges may be comparatively more sympathetic to the prospect of such a motion involving a self-represented litigant and more likely to schedule it for hearing. Alternatively, if only the most meritorious summary judgment motions are being scheduled, a greater percentage of those may involve a case with a self-represented litigant.

Justice Vermette was faced with such a situation in the 2024 decision of *Whitehead v Ontario Shores Centre for Mental Health Sciences*.¹⁰⁸ The defendant had brought a summary judgment motion against a self-represented plaintiff. It was scheduled more than a year before the motion was heard and the plaintiff did not serve an expert report. Justice Vermette held that there was little choice but to dismiss the claim on summary judgment, despite the plaintiff's self-represented status: "While fairness requires a judge to accommodate a self-represented party's unfamiliarity with the litigation process to enable them to present their case to the best

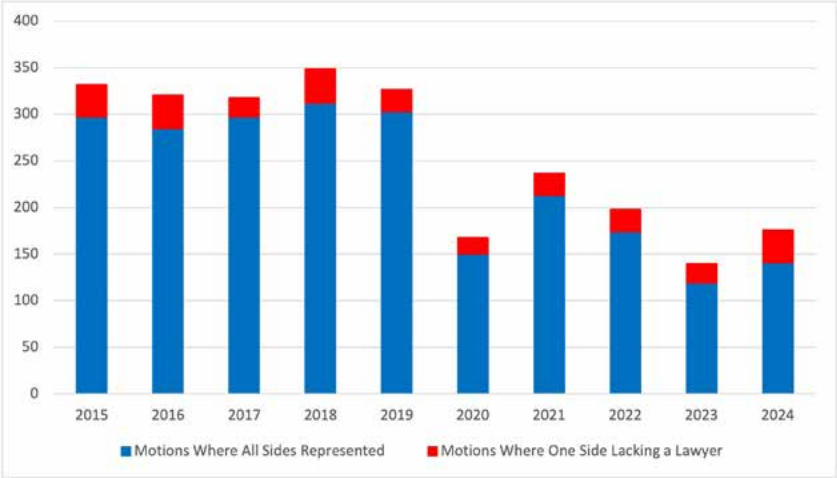
¹⁰⁶ Working Group Data shows rates of cases filed by self-represented litigants fluctuating between a high of nearly 14% in 2014 to a low of 7.4% in 2020.

¹⁰⁷ Jena McGill, Suzanne Bouclin & Amy Salyzyn, "Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps" (2017) 15:2 CJLT 229.

¹⁰⁸ 2024 ONSC 2566.

of their ability, any accommodation made by a judge to a self-represented party must respect the rights of the other party.”¹⁰⁹ Importantly, Justice Vermette further noted that represented parties should not use the *Rules* to take unfair advantage of self-represented litigants.¹¹⁰

Figure I: Rates of Representation on Summary Judgment Motions (Westlaw data)



F) The Data in Sum

The number of summary judgment hearings and decisions in Ontario has plummeted in a relatively short span of time. Numbers went down in 2020 and largely stayed down thereafter. The most likely reason is that parties are filing fewer motions, first because of filing problems in 2020 and then because of doctrinal and procedural changes. However, we cannot rule out the possibility that motions are being filed and not heard. On the doctrinal side, the Court of Appeal for Ontario has shown much less enthusiasm for summary judgment than the Supreme Court did in 2014. Procedurally, the screening requirement before Toronto’s CPC (and regional equivalents) seems to have had a significant effect. Summary judgment has in some ways returned to its roots as a way to dispose of especially clear-cut cases. We do not see evidence of the widespread use of summary judgment and partial summary judgment to dispose of cases quickly and narrow issues for trial that the *Hryniak* court hoped for.

¹⁰⁹ *Ibid* at para 63.

¹¹⁰ *Ibid*.

V. Conclusion

A little over a decade ago, the drafters of the 2010 Ontario *Rules* and the Supreme Court of Canada viewed summary judgment as a potential, albeit partial, solution to the access to justice crisis plaguing Ontario's court system. Consistent with MacKenzie's analysis, the latter half of the 2010s showed significant use of the procedural tool to resolve particular cases on their merits. However, summary judgment decisions became markedly less prevalent after 2020—exactly the opposite of what we would have expected, which would have been an *increase* in the use of summary procedures when trial dates were pushed further off.

The causes of this change are doctrinal and procedural in nature. The Court of Appeal favours a more restrictive use of summary judgment, with panels being comparatively likely to overturn decisions to grant summary judgment. On the procedural side, many motions are being heard in a judicial district, Toronto, which restricts the ability to even schedule a summary judgment motion (as is also the case elsewhere). At the same time, success rates at first instance have not gone down, suggesting that parties are reacting to the restrictions by filing 'safer' motions that are more likely to succeed. We find some evidence that judicial familiarity with summary judgment can reduce delay and that unsuccessful or partially unsuccessful motions add a modest amount of time to a case's ultimate resolution. Parties at summary judgment hearings are self-represented at roughly the same rate as in Superior Court as a whole.

The causes of the current court delays are manifold, and so must be the solutions.¹¹¹ However, all of this is premised on the need to understand what is actually happening on the ground in our court system. The data in the period of 2015–2024 suggests that summary judgment is being used less frequently to combat delay in the court system, despite the incentives for its use seemingly increasing. As Ontario's Civil Rules Review Working Group considers further reforms to the *Rules*,¹¹² understanding practice to date should inform what is realistic and where sources of resistance to reform have been. And insofar as the resistance to summary judgment is cultural, we can query how much culture will be changed by amendments to procedural rules.

Given the way summary judgment is currently used, we do not expect the Working Group's proposed Summary Track to have as significant an effect as one might expect. First, in the case of summary judgment, judges in Toronto and elsewhere have already taken steps to filter motions. Second,

¹¹¹ Kennedy Rules, *supra* note 76 at 52.

¹¹² Final Policy Report, *supra* note 14.

and more importantly, the erosion of summary judgment in Ontario means that ‘failed’ summary judgment motions, or indeed such motions whether failed or not, are simply not the issue that the Working Group perceives them to be. While *Hryniak* called for the use of partial summary judgment to narrow issues for trial, the data discussed throughout this article shows that litigants have responded to guidance from the Court of Appeal for Ontario and have drastically reduced the bringing of such motions.

The Working Group *has* responded to *Hryniak*’s call in its proposal that summary judgment (or a process akin to it) be the default procedure for all proceedings valued at \$500,000 or less. This may provide “a process [that] can be fair and just, without the expense and delay of a trial.”¹¹³ The danger is that the Summary Track may suffer the same fate as summary judgment under the current Rule 20: stymied by a lack of judicial resources and a skeptical attitude from the Court of Appeal for Ontario.¹¹⁴ If parties can have their matters heard in the Trial Track, that track may become more attractive. In that case, the Summary Track may end up suffering the same erosion as *Hryniak*.

¹¹³ *Hryniak*, *supra* note 7 at paras 27–28; see also paras 23–33.

¹¹⁴ The current Working Group proposal is that there be no right of appeal from a Directions Conference judge’s decision regarding the track on which a matter proceeds. However, this may entail an amendment to the *Courts of Justice Act*, which is outside the Working Group’s mandate; this proposal may not therefore ultimately be accepted. If it is not, the Court of Appeal for Ontario would have the same influence over the Summary Track as it has had over Rule 20.

Appendix A

This appendix explains in greater detail how we coded and sorted reported cases addressing summary judgment between 2015 and 2024 in Ontario.¹¹⁵ Our decision data has been deposited with the University of Alberta Library.¹¹⁶

1) Process for Assembling Data

We searched for the following in Westlaw:¹¹⁷ “Rule 20!” OR “R! 20!” OR “summary judgement” OR “summary judgment”. Because we had three different research assistants, this took place between September 2024 and July 2025. Different research assistants did the first compilation of data for each year: Chiara Concini did 2015, 2017, 2019, 2021, and 2023; Andrei Manta did 2016 and 2020; and Odunayo Olowookere did 2018, 2022, and 2024. We then “spot-checked” the entries for each year: Odunayo Olowookere did 2015, 2016, 2017, 2019, 2020, 2021, and 2023; Suzanne Chiodo did 2022 and 2024; and Alyssa King did 2018.

2) Sorting Judgments

As noted in the body, the terms “summary judgment” and “summary judgement” were over-inclusive. This turned up the following number of cases per year:

- 2015: 1,051
- 2016: 1,063
- 2017: 1,055
- 2018: 1,091
- 2019: 1,056
- 2020: 716
- 2021: 944

¹¹⁵ This appendix is inspired by Part II.B of MacKenzie, *supra* note 9.

¹¹⁶ Suzanne Chiodo, Gerard Kennedy & Alyssa King, [Ontario Superior Court of Justice Summary Judgement Decisions 2015–2024](https://doi.org/10.5683/SP3/PHKUQO) (Borealis, 2026), online: <doi.org/10.5683/SP3/PHKUQO> [perma.cc/4LV5-6Z6A].

¹¹⁷ We chose Westlaw because it had slightly more decisions available than CanLII or Lexis.

- 2022: 672
- 2023: 622
- 2024: 626
- TOTAL: 8,896

Our search turned up false positives, where summary judgment was referred to by way of contrast, in a costs order, or recounting the history of the litigation or related litigation. We then removed these items from our data set, leaving only decisions to grant or not to grant summary judgment and appeals from these decisions. Unlike MacKenzie, we included summary judgment decisions made under the *Construction Act*.¹¹⁸ Although not made pursuant to Rule 20, these motions nonetheless are indicative of a trend to (not) use summary judgment as a prompt resolution of the case. However, we removed summary judgment decisions made under the *Family Law Rules*¹¹⁹ in order to enable comparisons with the data from the Ministry of the Attorney General and the Civil Rules Review Working Group (which do not include family decisions).¹²⁰

We then reviewed all of these cases to determine if they fell within the parameters of our analysis.

To analyze the access to justice implications of summary judgment practice, we kept track of:

- the absolute number of summary judgment motions brought, and the percentage of those that are brought that are successful or partially successful in resolving the case (including ‘boomerang’ summary judgment where summary judgment was granted against the party seeking it). Doing so allows us to illustrate how many cases are being resolved on their merits via summary judgment, as well as what percentage of civil cases as a whole are being resolved by summary judgment;¹²¹
- the extent to which there was appellate intervention with Superior Court decisions, given that this is relevant to why

¹¹⁸ *Construction Act*, *supra* note 58.

¹¹⁹ O Reg 114/99.

¹²⁰ Interestingly, in removing these decisions, we found that the number of summary judgment decisions under the *Family Law Rules* is much higher in non-Toronto locations, whereas in Toronto they are fairly minimal. This could be a fruitful area for further research.

¹²¹ MacKenzie, *supra* note 9.

summary judgment may or may not be pursued frequently, appellate intervention adds to delay (but also corrects errors¹²²), and to determine whether Justice Karakatsanis's instructions from *Hryniak* that appellate courts are to be relatively deferential regarding motions judges' determinations on summary judgment's appropriateness¹²³ are being followed;

- days between when the motion was heard and when reasons were issued, in order to determine whether waiting for written reasons was a cause of significant delay;
- the location in which cases were commenced—we analyzed Toronto, Hamilton, Kingston, and Cobourg, as representatives of a very busy location, a reasonably busy location, a relatively quiet location, and a location that seldom hears civil cases, to see whether local practices vis-à-vis the number of cases in the district were affecting how summary judgment motions were being decided;
- the area of law in the underlying action, to determine the types of cases that might be particularly amenable (or not) to summary judgment;¹²⁴ and
- the name of the judge. We wanted to determine whether any particular judges are particularly likely (or not) to grant summary judgment motions, to determine the extent to which one's fate depends on the “luck of the draw” that one has regarding an assigned judge.¹²⁵

We tracked appellate decisions resulting from these motion decisions. Doing so enabled us to demonstrate the likelihood that the Court of Appeal as opposed to the Superior Court would grant summary judgment, or uphold the granting of summary judgment.

¹²² See a discussion of the purposes of appeals in Robert J Sharpe, *Good Judgment: Making Judicial Decisions* (Toronto: University of Toronto Press, 2018) at 95–96.

¹²³ *Hryniak*, *supra* note 7 at para 80.

¹²⁴ For example, many successful summary judgment motions involved alleged breaches of contract for Agreements of Purchase and Sale in the real estate context.

¹²⁵ To some extent, this is understandable and even healthy. But excessive variation between judges is deeply problematic. For a discussion in a different context, see Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw?” (2012) 38:1 *Queen's LJ* 1.

3) Limitations

Westlaw does not capture every decision on a summary judgment motion, but only those in which the judge offers written reasons. Notwithstanding this, quantitative analysis of case law frequently proceeds using Westlaw given that retrieving all court records in Ontario is not feasible. But as noted above, we anticipate that unreported decisions would be even more likely to decline to grant summary judgment, meaning that the overall trends observed in this analysis are likely to be amplified even more given unreported decisions.

We also note that there was an inevitable element of subjectivity in the characterization of cases.¹²⁶ During spot checks, we noted instances where research assistants disagreed about the characterization of a case: for instance, whether to characterize a case as a tort or contract case when both issues were raised. Research assistants also disagreed on what counted as motion success. We ultimately imposed the rule that a motion was “successful” if it succeeded in disposing of the case. We counted motions as “partially successful” if the judge determined some issues and not others. Parties that won a motion for partial summary judgment “partially” disposed of their case.

Similarly, there was some dispute about whether to count the day a summary judgment motion was heard as ‘Day One’ or ‘Day Zero’ in terms of calculating delay. We consider this to be such a small issue that it amounts to statistical noise. The same can be said when there were two sets of substantive reasons for a summary judgment motion, making the timeline for calculating delay (e.g., from the end of the first or the second) a matter of reasonable debate.

We compared our decision data against Civil Rules Review Working Group Data on Superior Court activity from 2014 to 2024, which was made available to the authors and is also publicly available. This data comes from the FRANK system, which has certain well-known limitations. As Suzanne Chiodo has noted,¹²⁷ the unreliability of the FRANK system has been

¹²⁶ This is inevitable when humans need to characterize: see Paul A Warchuk, “Simplification or Semantics? Evaluating Vavilov’s Impact on Standard of Review” (2025) 63:1 *Alta L Rev* 1.

¹²⁷ Inspired or Institutionalized, *supra* note 79 at 816–817.

confirmed by the Auditor General of Ontario,¹²⁸ the Law Commission of Ontario,¹²⁹ and judges who have attempted to use the system.¹³⁰

Finally, we note that there are some appellate decisions addressing summary judgment where the first instance decision is not reported. We did not include them in our analysis because we would not be able to compare them against first instance decisions, which is what we were interested in doing.

¹²⁸ Office of the Auditor General of Ontario, *Annual Report 2019: Reports on Correctional Services and Court Operations*, vol 3 (Toronto: Office of the Auditor General of Ontario, 2019) at 98.

¹²⁹ Law Commission of Ontario, *Class Actions, Objectives, Experiences and Reforms* (Toronto: Law Commission of Ontario, 2019) at 104.

¹³⁰ *Bon Hillier v Milojevic*, 2010 ONSC 435 at para 37; *Charles Estate (Re)*, 2009 CanLII 57448 (ONSC) at paras 12–13; *Pershad Singh v Thompson*, 2010 ONSC 4943 at paras 55–60; and Justice David M Brown, “Sacred Cows and Stumbling Blocks: Whither Civil Procedure Reform?” (Paper delivered at the Law Society of Upper Canada, Toronto, 31 May 2011) [unpublished, on file with one of the authors] at para 66.