

Partial Summary Judgment in Family Law Proceedings: What to Consider

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Ending part of a claim within a case can be done by way of partial summary judgment. While this avenue is available, the Ontario Court of Appeal has indicated that it is a “rare procedure” ([Service Mold + Aerospace Inc. v. Khalaf](#), 2019 ONCA 369, para. 14).

When considering this approach, there are several factors to analyze, which the Court of Appeal has boiled down to the following three questions (see [Malik v. Attia](#), 2020 ONCA 787, para. 62):

- (i) Demonstrate that dividing the determination of this case into several parts will prove cheaper for the parties;
- (ii) Show how partial summary judgment will get the parties' case in and out of the court system more quickly;
- (iii) Establish how partial summary judgment will not result in inconsistent findings by the multiple judges who will touch the divided case.

In terms of inconsistent findings, while this is one factor, the Court of Appeal noted, in a family law case, that a motions judge “erred in law by failing to consider the substantial risk of inconsistent outcomes before bifurcating the proceeding”: ([Leitch v. Novac](#), 2020 ONCA 257, para. 40, leave to appeal dismissed [2020 CanLII 87108](#)).

At the core, the hearing judge is tasked, “before embarking on hearing a motion for partial summary judgment”, “whether, in the circumstances, partial summary judgment will achieve the objectives of proportionate, timely, and affordable justice or, instead, cause delay and increase expense” ([Malik v. Attia](#), 2020 ONCA 787, para. 61).

The above approach, developed in the civil context, has been held to apply in the family law context ([Nemetz v. Reiter-Nemetz](#), 2022 ONSC 2825, paras. 33-35). Some issues in family law, where partial summary judgment has been considered include:

1. the sale of a property prior to trial ([Chateauvert v. Chateauvert](#), 2019 ONSC 81, paras. 118, 121; [Lindsay v. Lindsay](#), 2021 ONSC 4674, paras. 53-55 - affirmed [Lindsay v.](#)

[*Lindsay*](#), 2021 ONSC 7085 (Div. Ct.) – however the Divisional Court said the motions judge did not need to employ a summary judgment analysis (para. 56)); and

2. determining a specific debt in a case ([*Trefler v. Elias*](#), 2020 ONSC 582, paras. 82-85).

Overall, partial summary judgment factors are important to consider when analyzing whether an issue can/will be dealt with in isolation from other issues in the case.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.