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## CASE SUMMARY: SUMMARY TRIAL NOT SUITABLE WHERE PLAINTIFF'S CREDIBILITY IN QUESTION DUE TO CONFLICTING EVIDENCE FROM HIS DIVORCE

Insured's application for declaration of coverage under homeowner's policy not suitable for determination under summary trial rule.

### **Insurance law – Homeowner's insurance – Coverage – Exclusions – Water damage – Practice – Summary judgment vs. trial**

*Cotter v. Dominion of Canada General Insurance Co.*, [2018] B.C.J. No. 3136, 2018 BCSC 1527, British Columbia Supreme Court, September 5, 2018, D.C. MacDonald J.

The insured brought an application for a declaration that he was covered under a homeowner's insurance policy.

The loss related to an escape of water which caused a slippage of land, which resulted in damage to the insured's home, including the attached patio, which shifted and cracked, as well as cracking in the garage and sub-basement wall.

The insurance policy contained exclusions for damage caused by continuous or repeated leakage of water as well as settling and cracking. There was an exception to the water exclusion when there is a sudden and accidental escape of water from a sprinkler system.

The insured brought a summary trial application seeking a declaration of coverage. The insurer submitted the matter was not suitable for disposition under the summary trial rules because there was conflicting evidence and credibility was an issue because there was a dispute whether the insured was aware of historical cracking or settlement issues, which would suggest the damage was caused by a continuous or repeated leakage of water.

The court ultimately concluded the issue was not suitable for determination under the summary trial rules and that a trial would provide the parties and the court with the benefit of *viva voce* evidence, cross examination and other procedural safeguards.

This case was digested by [Cameron B. Elder](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at [celder@harpergrey.com](mailto:celder@harpergrey.com).