SUPREME COURT OF YUKON

Citation: *Joe v Connective Support Society*, 2026 YKSC 100

Date: 20261106
S.C. No. 25-A0141
Registry: Whitehorse

BETWEEN

DALE JOE

PLAINTIFF

AND

CONNECTIVE SUPPORT SOCIETY, EMPLOYEE #1, EMPLOYEE #2, EMPLOYEE #3, EMPLOYEE #4, and EMPLOYEE #5

DEFENDANTS

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff	Mark Wallace
Counsel for Connective Support Society	Nigel R. Beckman

REASONS FOR DECISION

OVERVIEW

[1] This application raises the issue of the interpretation of the one-year limitation provision in the *Fatal Accidents Act,* RSY 2002, c 86 (the *Act*). The underlying action arises out of the tragic death of the plaintiff's daughter at the Whitehorse Emergency Shelter in February 2023.

[2] The defendant Connective Support Society (Connective) brings an application for summary judgment or in the alternative an application for summary trial for a dismissal

of the action because the plaintiff failed to bring this action within the one-year time limitation.

[3] The plaintiff says the applicability of the discoverability doctrine to the *Act*'s limitation provision is a triable issue that should not be decided by summary judgment or summary trial. The plaintiff did not know the facts forming the basis of the action until after the inquest held in April 2024 into the death of his daughter and three others at the Whitehorse Emergency Shelter. Due to his grief over his daughter's death, as well as over the death of his mother in June 2024 and brother in January 2025, and the Northern Tutchone tradition of taking time to grieve before addressing other matters related to the deceased, the plaintiff says he was unable to commence the action until October 2025. The plaintiff relies on authority to support the consideration of the personal circumstances of the plaintiff in the applicability of the discoverability principle.

[4] The defendant says the *Act* is clear – the provision states the limitation period of one year starts from the date of death, an objective fact independent of the plaintiff's state of knowledge. Even if discoverability were found to apply, the date the action was commenced is well beyond any logical or reasonable extension from the time the plaintiff knew or ought to have known the circumstances surrounding the death. There are no authorities providing that Indigenous customs or traditions can operate to extend or eliminate limitation periods. The rationales underlying limitation periods of certainty, evidentiary, and diligence must be upheld. Connective says a dismissal by way of summary judgment or summary trial is appropriate.

[5] Following the findings of this Court in the *Estate of Malik et al v Estate of Sidat* and *Malik et al. v. Security National Insurance Company*, 2009 YKSC 43 (*Estate of*

Malik) and *Carlick v Canada (Attorney General)*, 2012 YKSC 92 (*Carlick*), the applicability of the discovery rule to the *Act* is a triable issue. The plaintiff's provision of evidence that he did not know the facts surrounding his daughter's death until after the inquest supports the consideration of this issue at trial. However, a further extension of time beyond the one year after he knew or ought to have known the potential wrongful nature of the death requires a consideration of his personal circumstances and interests, namely his grief, as well as the applicability of Northern Tutchone traditions surrounding the death of a loved one. The *Act* contains no wording to allow for this consideration in a determination of the discoverability rule's applicability in this case. As a result, the application for summary judgment is granted. There is no need to consider whether a summary trial is appropriate or its test.

Issues

i. Is the determination of whether discoverability applies to s. 8(4) of the *Act* a triable issue?

ii. Is the determination of the factual matters surrounding discoverability in this case a triable issue or do those factual matters support a dismissal of the action through summary judgment or summary trial?

Background

[6] Josephine Hager was a resident of the Housing First Program on the third floor of the Whitehorse Emergency Shelter, operated by Connective.

[7] On February 1, 2023, between 3:00 a.m. and 4:30 a.m. Ms. Hager was highly intoxicated and eventually fell unconscious and died in the hallway at the Whitehorse Emergency Shelter.

[8] The plaintiff Dale Joe lives in Pelly Crossing, Yukon. He learned of his daughter's death on the morning of February 1, 2023, from his brother-in-law but says he was given no details of the circumstances surrounding the death.

[9] The first time the plaintiff says he learned of the details of her death was after an inquest held between April 8 and 25, 2024 into four deaths, one of them his daughter's, at the Whitehorse Emergency Shelter. The plaintiff did not attend the inquest because he believed it would be too heartbreaking. After its conclusion, the plaintiff attended a briefing about the inquest and the jury's recommendations by counsel to his First Nation, Selkirk First Nation, along with the Chief of Selkirk First Nation and other members of the family.

[10] In June 2024, the plaintiff's mother died. In January 2025, the plaintiff's younger brother died unexpectedly.

[11] The Statement of Claim was filed on October 6, 2025. In it the plaintiff alleges among other things the failure of Whitehorse Emergency Shelter staff to assist his daughter and the failure of Connective to have appropriate policies in place, thereby causing or contributing to his daughter's death.

[12] Connective filed a brief affidavit in this application from its Chief Administrative Officer attaching the Statement of Claim as an exhibit. The affidavit states the claim has no merit in whole or in part because the matter was brought so long after the death and after the applicable limitation period.

[13] The plaintiff filed two affidavits. His own affidavit sets out the chronology of his learning about the death of his daughter and later, the circumstances; the deaths of his mother and brother; his grief; and the fact that the headstone potlatch was held for his

mother in November 2025 but no headstone potlatches have yet been held for his daughter or his brother.

[14] The plaintiff's other filed affidavit was from Elder Lucy McGuinty, former Chief of Selkirk First Nation who was born and raised in the traditional ways of the Northern Tutchone people. She explained the headstone potlatch tradition and the traditions around the loss of a loved one. She deposed that when a loved one passes on, time is given to surviving loved ones to grieve and make peace with their loss. It is against traditional laws to interfere with the matters of the deceased or the family during that time, which is not specific but can last between one and two years. Once the time is right, a headstone potlatch is held, which is an event to replace the tent covering the grave with the placement of a headstone, and a gathering of the community for a feast and give-away. After the headstone potlatch the matters of the deceased may be dealt with. The plaintiff follows these traditions. Those closest to him determine when he is ready for the potlatch depending on the family's state of grieving.

Issue #1 – Is the determination of whether discoverability applies to s. 8(4) of the Act a triable issue?

[15] The applicability of the discoverability rule to s. 8(4) of the *Act* is a triable issue.

[16] The sole basis of the summary judgment or summary trial application in this case is that the one-year limitation period in the *Act* which requires an action for wrongful death to be brought within one year after the death of the deceased, has long expired in this case.

[17] The relevant statutory provisions are as follows.

[18] The cause of action arising from the *Act* is set out in ss. 2(1) and (2):

> 2(1) if the death of a person is caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the deceased to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, is liable for damages, despite the death of the deceased, even if the death was caused in circumstances amounting in law to culpable homicide.
>
> (2) Subject to subsection (5), the liability for damages under this section arises on the death of the deceased.

(Subsection (5) is not relevant to this case).

[19] Section 1 of the *Act* defines deceased as "a person whose death has been caused as mentioned in subsection 2(1)."

[20] The limitation provision is in subsection 8(4):

> Except if it is expressly declared in another Act that it operates despite this Act, an action…may be brought under this Act within one year after the death of the deceased, but, subject to subsection 5(4), no such action shall be brought thereafter.

(It is agreed that no other Act applies and subsection 5(4) is not relevant to this case).

[21] Discoverability is a general rule applied to avoid the injustice of precluding an action before the person is able to raise it (*Peixeiro v Haberman*, [1997] 3 SRC 549 at 563 (*Peixeiro*), *Kamloops (City of) v Nielsen*, [1984] 2 SCR 2 (*Kamloops*) and *Central Trust Co v Rafuse*, [1986] 2 SCR 147 (*Central Trust Co*) at 223). The legitimate interests of a defendant in having certainty that they will not be held to account for ancient obligations; in avoiding the defence of claims with stale evidence; and in having the assurance that plaintiffs will act with diligence to discover the facts and initiate their claim, must be balanced against the concerns of fairness to a plaintiff who is unaware

that the event in question may give rise to a cause of action (*Malcolm v Kushniruk*, 2005 YKSC 51 at para. 30; *Peixeiro* at 562-563).

[22] When applied to a limitation period, the discoverability rule has the effect of delaying the date it starts to run to the time when the material facts necessary to found the cause of action are known. While a certain event such as a death of an individual, may trigger the potential for an action, it is not possible to commence an action until the facts on which a cause of action may be based are known.

[23] In other words, as noted by this Court in *Estate of Malik,* the jurisprudence does not unequivocally support the defendant's position that the objective fact of the event of the death starts the running of the one-year limitation period. It is true that the *Act* does not say that the time runs from the accrual of the cause of action, or from an event which can only be construed to occur when the injured party has knowledge of the injury sustained. In support of this, the Court of Appeal of Manitoba stated in *Fehr v Jacob and Bethel Hospital* (1993), 85 Man R (2d) 63 (MBCA), quoted with approval by the Supreme Court of Canada in *Peixeiro*, "when time runs from an event which clearly occurs without regard to the injured party's knowledge, the judge-made discoverability rule may not extend the period the legislature has prescribed" (at 564). However, this Court has said this statement must be read in the context of the Supreme Court of Canada's treatment of *Burt v LeLacheur,* 2000 NSCA 90 in *Ryan v Moore*, 2005 SCC 38. At para. 30, the Supreme Court of Canada says:

> In *Burt,* the death of a person for which an action can be brought under the *Fatal Injuries Act* does not merely refer to the time of death…but to a "wrongful" death. It is not an event totally unrelated to the accrual of the cause of action. Hence, the death of the person there is in fact a "constituent elemen[t] of the cause of action"… (emphasis in original)

[24] The possibility that discoverability may be read into the *Act* on this basis was noted by this Court in the *Estate of Malik* and *Carlick*, in the context of actions brought beyond the one-year limitation period under the *Act*. In both cases the Court found the applicability of the discoverability principle was a triable issue that could not be decided on the basis of a summary judgment application. In *Estate of Malik* the Court held this was a complex legal issue that could be decided in a summary trial or at trial. In both cases the Court decided that the rule of discoverability was a *bona fide* issue for trial, as long as there were some facts in support of its application, or some case to be put forward (*Estate of Malik* at paras. 22 and 23; *Carlick* at paras. 30 and 42).

[25] The basis for the reading in of the discoverability rule in s. 8(4) of the *Act* is the language in the definition of deceased, and s. 2(1) in the *Act*. The incorporation of the elements of a cause of action in s. 2(1) into the definition of deceased, and the use of the word deceased in s. 8(4), provides an arguable case that the limitation period does not start to run until the plaintiff has knowledge of facts about the potential wrongful death.

[26] A successful application of the summary judgment rule requires that it be plain and obvious there is no merit to the cause of action. The argument that discoverability may apply to extend the one-year limitation period is a triable issue and means that a summary judgment application to dismiss may be unsuccessful.

Issue #2 - Is the determination of the factual matters surrounding discoverability in this case a triable issue or do those factual matters support a dismissal of the action through summary judgment or summary trial?

[27] The facts provided in the plaintiff's affidavit support a triable issue on the extension of time to one year beyond the end of the inquest, when the plaintiff said he had the first opportunity to learn of the potential wrongful nature of the death. However, the extension of time beyond April 2025, one year after the end of the inquest, can onlyl be based on the plaintiff's personal circumstances and interests. Unfortunately for the plaintiff, there is nothing in the *Act* that can support a consideration of these facts and circumstances in the application of the discoverability rule to s. 8(4). Despite the plaintiff's compelling and sympathetic circumstances, and the respected Northern Tutchone traditions described, there is no ability to interpret the legislative provisions in a way that could allow an extension of the limitation period on these facts.

[28] The test for summary judgment is whether there is a *bona fide* issue to be determined. In considering whether there is a *bona fide* issue, the Court must assume that uncontested material facts as pleaded by the plaintiff are true; matters of fact cannot be weighed and inferences from the facts must be viewed in a light most favourable to the plaintiff: *Skybridge Investments Ltd. v Metro Motors Ltd.*, 2006 BCCA 500; *Leger v Metro Vancouver YWCA*, 2013 BCSC 2021 at paras. 16-17; *Foote v Canada (Attorney General)*, 2012 BCSC 177, aff'd 2013 BCCA 135.

[29] Generally, where a claim is statute barred, there can be no genuine issue to be tried (see, for example, *Andersen v Howes*, 2012 BCSC 1229; *Sime v Jupp*, 2009 BCSC 1154).

[30] More specifically, summary judgment applications for dismissal of claims on the basis of limitations statutes require that each side put its best foot forward with respect to the existence or non-existence of material issues to be tried. If the defendant proves there is no genuine issue of material fact requiring trial, the plaintiff must refute or counter the defendant's evidence or risk summary dismissal. The Chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts.

[31] The Supreme Court of Canada in *Kamloops* and *Central Trust Co* at. 224 described a cause of action arising when the material facts on which it is based have been discovered, or ought to have been discovered through the exercise of reasonable diligence.

[32] To oppose this summary judgment application successfully, the plaintiff must provide some evidence to support the application of the discoverability rule in this case (*Estate of Malik* at para. 23; *Carlick* at para. 30).

[33] Although the Statement of Claim does not contain any facts on the discoverability issue, the filing of affidavit evidence in an application under Rule 18 of the Supreme Court of Yukon *Rules of Court* is permitted. The plaintiff submitted two affidavits. In his affidavit, he said he did not know of the circumstances surrounding the death and thus its potential wrongful nature until after the inquest concluded and he attended the briefing with others from his First Nation. Further he said that due to his grief over this death, as well as the deaths of his mother (June 2024) and brother (July 2025) and the Northern Tutchone traditions, explained by Elder Lucy McGuinty in the second affidavit,

of not dealing with the deceased's affairs until after the headstone potlatch has occurred, was the reason for the action's delay until October 2025.

[34] The evidence that he did not learn of the potential wrongful nature of the death until April 2024, after the inquest, is a material fact in support of the application of the discoverability rule. There is no evidence from the defendant to show that the plaintiff could have been aware of the actions or inactions of the defendant and its employees before the inquest. He was not a party to the inquest, making the end of the inquest a reasonable time period for him to have become aware of the circumstances surrounding his daughter's death and its potential wrongful nature.

[35] The plaintiff requests that the additional personal circumstances be considered as part of the discoverability rule. That is, the plaintiff's grief due to the other immediate family deaths, and the Northern Tutchone tradition of delaying dealing with the deceased's affairs for one to two years, after the headstone potlatch was held, should be taken into account in applying the discoverability rule in this case.

[36] The defendant argues that even applying Elder McGuinty's suggestion of one to two years of grieving time, the October 2025 date of the claim is two years and eight months after the death. The defendant also notes that the headstone potlatch has not yet been held, yet the claim was filed, contrary to Elder McGuinty's statement that the tradition requires the headstone potlatch to have been held before the deceased's affairs may be addressed. The decision to hold the headstone potlatch, made by others, signifies their view of the loved one's ability to move forward in their grieving journey. These factors contributed to the defendant's argument that the plaintiff's rationale for the extension of time results in an uncertain or vague date by which the claim can be

brought, as well as an incursion into the certainty, evidentiary and diligence rationales for limitation provisions.

[37] The plaintiff relies on *Novak v Bond*, [1999] 1 SCR 808 (*Novak*) a decision of the Supreme Court of Canada which provided guidance on how to consider a plaintiff's personal circumstances in the context of statutory bars to actions. The analysis was based on the *Limitation Act*, RSBC 1996, c 266, which contains a specific reference to personal circumstances of the plaintiff:

> 6(4) Time does not begin to run against a plaintiff with respect to an action … until the identity of the defendant is known to the plaintiff … and those facts within the plaintiff's means of knowledge are such that a reasonable person, knowing those facts and having taken the appropriate advice a reasonable person would seek on those facts, would regard those facts as showing that…
>
> > (b) the person whose means of knowledge is in question ought, **in the person's own interests and taking the person's circumstances into account, to be able to bring an action** [emphasis added].

[38] The Supreme Court of Canada described the analytical approach to determining the appropriate extension of time as a "restrictive subjective/objective approach" that takes into account the plaintiff's "important and substantial interests" (*Novak* at para. 38). Time begins to run when "in light of the plaintiff's particular situation, the bringing of a suit is reasonably possible, not when it would be ideal from the plaintiff's perspective to do so" (*Novak* at para 84).

[39] The plaintiff does not rely specifically on *Novak*, recognizing the marked difference in wording between the British Columbia and Yukon statutes. He does, however, rely on two cases from Alberta and Saskatchewan, which apply the analysis from *Novak* to their limitations statutes. Those statutes do not have the same wording of

the British Columbia limitations statute and so the plaintiff argues based on these authorities that the analysis in *Novak* could form part of the application of the discoverability rule to the *Act*, making it a triable issue.

[40] However, the wording in both the Alberta and Saskatchewan limitations statutes allows for a consideration of a plaintiff's personal circumstances in the application of the discoverability rule.

[41] In Alberta, s. 3(1)(a)(iii) of the *Limitations Act*, RSA 2000, c L-12 states the action must be brought within two years after the date on which the claimant first knew or in the circumstances ought to have known that the injury, assuming liability on the part of the defendant, **warrants bringing a proceeding** (emphasis added).

[42] The Alberta decision *JN v Kozens*, 2004 ABCA 394 interpreted s. 3(1)(a)(iii) to extend the limitation period for the plaintiff on the basis that her individual circumstances of her violent relationship with the defendant, the manipulative behaviour of the defendant, and his domineering position in the relationship which prevented her from reporting the abuse earlier were significant. Applying the objective-subjective analysis mandated in *Novak*, the Court of Appeal did not disturb the Chambers' judge's finding that the plaintiff was not in a position to bring the action earlier because she did not have the understanding, courage or emotional strength. The Court of Appeal wrote at para 11:

> …We do not construe s. 3(1)(a)(iii) in a narrow economic sense confined to monetary considerations. Rather, in this case, the relevant inquiry is whether in 1994 the claimant was sufficiently cognizant of who bore responsibility for the abuse she suffered. Appreciation of the nature of the wrong done to her requires an understanding of the Appellant's [defendant's] blameworthiness for the act or acts in question: *M(K) v M(H)*, [1992] 3 SCR 6. Absent that understanding,

> the Respondent [plaintiff] can hardly be expected to appreciate that a proceeding against the Appellants was warranted.

[43] In Saskatchewan, s. 6(1)(d) of the *Limitations Act,* SS, 2004, c L-16.1 entitled "discovery of claim," provides that a claim is discovered on the day on which the claimant first knew or in the circumstances ought to have known that, having regard to the nature of the injury, loss or damage, **a proceeding would be an appropriate means to seek to remedy it** (emphasis added).

[44] Ther Saskatchewan decision of *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc.*, 2020 SKCA 39 (*Saskatchewan* (*Highways and Infrastructure*) considered the extension of the limitation period under s. 6(1)(d) based on the possibility that the claim could be resolved outside of litigation. The Court of Appeal for Saskatchewan wrote at para. 63:

> The effect of s. 6(1)(d) of the *Act* is that the start date of a limitation period may be delayed beyond when the plaintiff is aware it has suffered loss from a wrongful act or omission on the part of the defendant. It is a legislative recognition that, in some cases, there may be compelling and appropriate reasons for a plaintiff to hold off on bringing an action, even when all other elements of discoverability are fulfilled: see, for example, *Novak v Bond,* [1999] 1 SCR 808.

The encouragement of parties "to discuss and negotiate claims rather than rush into needless litigation" was considered to be one of the underlying purposes of s. 6(1)(d), relying on *Novak* at para. 40 as well as other cases (at para. 64). The Court of Appeal for Saskatchewan further noted that "appropriate" has been interpreted to mean the reason for delaying the bringing of a claim must be one that is "legally appropriate" (*Saskatchewan (Highways and Infrastructure)* at para. 63) and does not include an evaluation of whether a civil proceeding will succeed (*Saskatchewan (Highways and*

Infrastructure) at para. 65). In that case, the plaintiff's argument to extend the limitation period was unsuccessful as there was no evidentiary basis to conclude an alternative dispute mechanism was available to resolve the claim.

[45] If the *Act* in the Yukon contained wording like the Alberta and Saskatchewan statutes, then the plaintiff may have an arguable case for trial or summary trial. There is however nothing in the *Act* that could be interpreted as showing the Yukon legislature's intention to import a consideration of the plaintiff's personal circumstances or interests into s. 8(4). *Novak* and subsequent cases do not apply.

Conclusion

[46] While the applicability of the discoverability rule to s. 8(4) of the *Act* is a triable issue, the argument has limits, based on the wording in the *Act* and the facts in the case. The October 2025 date of commencing this action is approximately six months later than a maximum extension of time that may be appropriate based on the plaintiff's knowledge of the facts supporting a wrongful death, if the discoverability rule were found to apply. To extend the time beyond April 2025, the plaintiff's personal circumstances and interests would have to be considered. The legislature has chosen not to permit this consideration. As a result, the application for summary judgment is granted.

[47] Given this finding, it is not necessary for me to consider whether a summary trial is appropriate or the test for summary trial.

[48] This conclusion is a result of my role to interpret the applicable statute and jurisprudence. In no way should this conclusion be taken as a dismissal or ignoring of the plaintiff's grief over the loss of his daughter in tragic circumstances, or his

subsequent difficult losses of his mother and brother. Nor should it be understood as a failure or refusal to acknowledge and honour the important Northern Tutchone traditions surrounding the loss of loved ones.

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DUNCAN C.J.