

CANADA / JUDGMENT

Bell v. James

2020 BCSC 1506

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1506 Bell v. James

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bell v. James,

2020 BCSC 1506

Date: 20200805

Docket: S193227

Registry: Victoria

Between:

Natasha Colleen Bell, by her litigation guardian

Patricia Darlene Bell, and Patricia Darlene Bell

Plaintiffs

And:

Anna Sita James and

The Manufacturers Life Insurance Company

Defendants

Before: The Honourable Mr. Justice Gaul

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

A. Mujtabah

(by telephone)

Counsel for Defendant Anna James:

K.R. Doerksen

(by telephone)

Place and Date of Hearing:

Victoria, B.C.

July 28 - 30, 2020

Place and Date of Judgment:

Victoria, B.C.

August 5, 2020

- [1] THE COURT: By notice of application filed 7 July 2020, the defendant, Anna James, seeks an order staying the present action against her on the ground that this court ought to decline jurisdiction. The balance of the relief sought has been adjourned generally at Ms. James' request.

BACKGROUND

- [2] Colin Bell was a Master Warrant Officer with the Canadian Armed Forces (the "CAF") who died from an apparent suicide on 11 July 2019.
- [3] The plaintiff, Patricia Bell, was married to Mr. Bell; however, at the time of his death the two were living separate and apart. Mrs. Bell was residing and continues to reside in Victoria, British Columbia, and Mr. Bell was residing in Winnipeg, Manitoba.
- [4] Mr. and Mrs. Bell had one child, the plaintiff Natasha Bell, who is now 19 years old.
- [5] Mr. Bell had a \$400,000 life insurance policy with the CAF (the "Policy"). The defendant, Manufacturers Life Insurance Company ("Manulife") is the administrator of the Policy. Mrs. Bell was the sole designated beneficiary under the Policy until shortly before Mr. Bell's death.
- [6] From the evidence on this application, it appears that on 21 May 2019, Mr. Bell signed a Manulife document removing Mrs. Bell as the beneficiary of the Policy (the "Beneficiary Form"). The Beneficiary Form also identified Natasha Bell and Ms. James as the Policy's new beneficiaries, with each of them having a 50 percent interest in the insurance proceeds. There are handwritten notes on the Beneficiary Form that purport to further amend the Policy by reducing Natasha Bell's share of the proceeds to 30 percent while concurrently increasing Ms. James' share of the proceeds to 70 percent.

- [7] A day or so after Mr. Bell died, Mrs. Bell discovered that she was no longer the Policy's beneficiary. Shortly thereafter, she contacted Manulife to express her concerns about the propriety and enforceability of the purported changes to the Policy. According to Mrs. Bell's evidence, Manulife agents informed her that, because she and Natasha Bell were contesting the validity of the Beneficiary Form, Manulife would put a stop to any disbursement of insurance proceeds under the Policy until the matter has been decided in court.
- [8] On 25 July 2019 Natasha Bell began the present action against Ms. James and Manulife. The relief sought in her notice of civil claim consists of:
- a) a declaration that the Beneficiary Form "is null and void on the ground that there was suspicious circumstances surrounding its preparation";
 - b) a declaration that Mr. Bell was "unduly influenced to make the changes in the Life Insurance Plan";
 - c) a declaration that Ms. James was "unjustly enriched by the change in the beneficiary designation of the Life Insurance Plan";
 - d) a declaration that Natasha Bell is the "sole beneficiary of the Life Insurance Plan"; and
 - e) an order that Manulife pay the benefits of the policy to Natasha Bell as sole beneficiary.
- [9] On 18 October 2019 Ms. James filed a jurisdictional response disputing the Supreme Court of British Columbia's jurisdiction over her. In the alternative, and in the event the court found it had jurisdiction, Ms. James submitted that the court ought to decline to exercise that jurisdiction to hear and decide the plaintiffs' lawsuit.
- [10] On 5 December 2019 Natasha Bell obtained an order adding Mrs. Bell as a party to the present action, both in her personal capacity, as well as Natasha's litigation guardian. An amended notice of civil claim reflecting these changes was filed on 19 December 2019.
- [11] On 9 January 2020 Ms. James filed a notice of application seeking an order striking out the action against her on the ground that the claim did not allege facts that, if true, would establish that the Supreme Court of British Columbia had jurisdiction over her.
- [12] In dismissing Ms. James' application Mr. Justice Johnston concluded this Court has jurisdiction to hear the plaintiffs' action. In reasons for judgment indexed at 2020 BCSC 443, Justice Johnston explained:
- [22] As there is nothing connecting Ms. James to British Columbia, this Court's territorial competence depends on finding a real and substantial connection between British Columbia and the facts on which the proceeding against Ms. James are based.

- [23] Section 10 of the CJPTA creates a rebuttable presumption that a real and substantial connection exists between the facts on which the action is based and this province if the plaintiffs can show that this action falls within the matters set out in subsections (a) through (l) of s. 10, which are set out above.
- [36] While the facts alleged in the pleading do not make it clear whether the validity of the beneficiary change form as typed is questioned, as opposed to only the handwritten notations on the typed form, the notice of civil claim does raise an arguable case with respect for the need to interpret the beneficiary change form.
- [37] The question becomes then whether the beneficiary change form was made in relation to movable property in British Columbia.
- [38] The beneficiary change form determines who receives the insurance proceeds. If it is null and void as the plaintiffs seek in part 2 of the notice of civil claim, the pleading says that Patricia Bell is the sole beneficiary; if it is valid and operative, the question becomes whether, properly interpreted, it acts to divide the proceeds equally or unequally between Natasha Bell and Anna James. Both issues may be affected if the undue influence or coercion alleged in the pleading is proven.
- [39] Insurance proceeds are payable in money, and payable to the beneficiary named in the policy or a valid beneficiary change form. I accept that the insurance proceeds are movable property. I accept that the insurance proceeds are located where the beneficiaries are: British Columbia.
- [40] Thus, there is an arguable case raised in the pleadings that the action as presently pleaded falls within the presumption set out in s. 10(c)(i).
- [41] This satisfies the territorial competence requirement.
- [13] That was the Court's conclusion on the issue of territorial competence.

THE PRESENT APPLICATION

- [14] Having unsuccessfully challenged the territorial competence of the Supreme Court of British Columbia, Ms. James in the present application asks the Court to decline exercising its jurisdiction on the ground that Manitoba is the more appropriate forum to litigate and adjudicate the issues in the plaintiffs' action.
- [15] Manulife did not take part in the hearing before Justice Johnston, nor did they participate in the present application. This is not surprising as it accepts that insurance proceeds are owing under the Policy. From their perspective all that remains to be determined is the identity of the Policy's beneficiary or beneficiaries.

The Defendant Ms. James' Position

- [16] Ms. James maintains that Manitoba, and not British Columbia, is the proper location where the parties' legal dispute should be resolved.
- [17] In support of her position Ms. James contends that all of the alleged acts giving rise to the cause or causes of actions occurred in Manitoba and not British Columbia. She also points to what she says would be the greater expense and inconvenience for her and her anticipated witnesses if the action remains in British Columbia; as compared to the expense and inconvenience to the plaintiffs and their witness if the dispute were heard in Manitoba.
- [18] Finally, Ms. James points out that, with respect to the plaintiffs' claim for damages for the wrongful death, the applicable law is Manitoba's Fatal Accidents Act, C.C.S.M. c. F50, and not British Columbia's Family Compensation Act, R.S.B.C. 1996, c. 126, or some other provincial statute.

The Plaintiffs' Position

- [19] The plaintiffs contend that the scales of justice tip in favour of having their claims against the defendants heard and resolved in British Columbia. In other words British Columbia and not Manitoba is the more appropriate forum to adjudicate the dispute.
- [20] In support of this position the plaintiffs point to what they say have been the significant efforts and costs they have expended and incurred using counsel in British Columbia to get their case prepared. Much of this work, and a significant portion of the expenses, will be for nought say the plaintiffs, if their action in British Columbia is stayed and they are compelled to commence an action in Manitoba
- [21] The plaintiffs also point to the fact that they have scheduled a 10-day trial in Victoria, British Columbia, starting on 22 February 2021. Having to move the litigation to Manitoba will, say the plaintiffs, inevitably result in delays in getting their claims adjudicated.
- [22] Finally, the plaintiffs insist they did not choose British Columbia as the forum to adjudicate their action out of any desire to gain a tactical advantage over the defendants, but instead because it is where they live. They submit they will suffer significant inconvenience, especially Mrs. Bell, if she must take a leave from her work and Natasha must do likewise from her post-secondary studies in order to attend a trial in Manitoba.

THE LAW

- [23] The Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c.28 (the "CJPTA") governs the present application. More particularly, s. 11 provides:
- (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

- (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,
 - (e) the enforcement of an eventual judgment, and
 - (f) the fair and efficient working of the Canadian legal system as a whole.
- [24] This statutory provision codifies the legal principles and doctrine of forum non conveniens. In *Teck Cominco Metals Ltd. v. Lloyd's Underwriters*, [2009] 1 S.C.R. 321, Chief Justice McLachlin explained:
- [21] The CJPTA creates a comprehensive regime that applies to all cases where a stay of proceedings is sought on the ground that the action should be pursued in a different jurisdiction (forum non conveniens). It requires that in every case, including cases where a foreign judge has asserted jurisdiction in parallel proceedings, all the relevant factors listed in s. 11 be considered in order to determine if a stay of proceedings is warranted. This includes the desirability of avoiding multiplicity of legal proceedings. But the prior assertion of jurisdiction by a foreign court does not oust the s. 11 inquiry.
- [22] Section 11 of the CJPTA was intended to codify the forum non conveniens test, not to supplement it. The CJPTA is the product of the Uniform Law Conference of Canada. In its introductory comments, the Conference identified the main purposes of the proposed Act, which included bringing "Canadian jurisdictional rules into line with the principles laid down by the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 and *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897" (Uniform Law Conference of Canada - Commercial Law Strategy (loose leaf), at p. 3). Further, the drafters of the model Act confirmed that s. 11 of the CJPTA was intended to codify the common law forum non conveniens principles in "comments to section 11":

11.1 Section 11 is meant to codify the doctrine of forum non conveniens, which was most recently confirmed by the Supreme Court of Canada in *Amchem Products Inc. v. British Columbia* (1993). The language of subsection 11(1) is taken from *Amchem* and the earlier cases on which it was based. The factors listed in subsection 11(2) as relevant to the court's discretion are all factors that have been expressly or implicitly considered by courts in the past.

Section 11 of the CJPTA thus constitutes a complete codification of the common law test for forum non conveniens. It admits of no exceptions.

- [25] Although s. 11 of the CJPTA is a complete code of the common law test for forum non conveniens, the legal principles articulated in the jurisprudence that predates the Act continue to serve as a source of guidance (see: *Coulson Aircrane Ltd. v. Pacific Helicopter Tours Inc. et al*, 2006 BCSC 961). Moreover, in addressing the provisions of what was then the recently proclaimed CJPTA, Madam Justice Newbury in *Lloyd's Underwriters v. Cominco Limited*, 2007 BCCA 249 [Lloyd's], explained:
- [55] It is apparent, then, that the CJPTA is not intended simply as a restatement or codification of existing law but does effect some substantive (albeit not dramatic) changes in the previous law. ... With respect to forum conveniens, on the other hand, the Act seems intended to codify, rather than effect substantive changes to, the previous law. The court is still required to consider "the circumstances relevant to the proceeding" and the list of six factors in s. 11(2) is obviously not exhaustive. The factors are broadly phrased and, as the Chambers judge has shown in this instance, can be generally equated to various factors considered at common law, as described in *Stern*, supra.
- [26] The parties in the present matter agree that the burden lies with Ms. James to persuade me that Manitoba is clearly the more appropriate forum to resolve the parties' dispute. In *Club Resorts Ltd. v. Van Breda*, [2012] 1 S.C.R. 572, Mr. Justice LeBel explained the nature of this burden as follows:
- [108] Regarding the burden imposed on a party asking for a stay on the basis of forum non conveniens, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established. It was used in *Spiliada* and *Amchem*. On the other hand, it has not always been used consistently and does not appear in the CJPTA or any of the statutes based on the CJPTA, which simply require that the party moving for a stay establish that there is a "more appropriate forum" elsewhere. Nor is this expression found in art. 3135 of the Civil Code of Québec, which refers instead to the exceptional nature of the power conferred on a Quebec authority to decline jurisdiction:"...
- [109] The use of the words "clearly" and "exceptionally" should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and

efficiently of the litigation. But the court must be mindful that jurisdiction may sometimes be established on a rather low threshold under the conflicts rules. Forum non conveniens may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.

DISCUSSION

[27] Justice Johnston answered the question of territorial competence when he accepted there was a real and substantial connection between British Columbia and some of the facts upon which the plaintiffs' action against Ms. James is founded. In reaching this conclusion, Justice Johnston accepted that the presumption in s. 10(c)(i) of the CJPTA applied. That provision reads:

Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

- (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
- (i) property in British Columbia that is immovable or movable property

[28] Having concluded that this Court has jurisdiction to decide the plaintiffs' action, the question is whether the court should exercise that jurisdiction?

[29] In deciding this application, I must examine the six factors listed in s. 11(2) of the CJPTA. However, as noted in Lloyd's, this is a non-exhaustive list and I can also consider factors that are relevant to the circumstances of this case. This is where the jurisprudence that existed before the existence of the CJPTA can provide additional guidance (see: *Stern v. Dove Audio Inc.*, [1994] B.C.J. No. 863 (S.C.); leave to appeal refused [1994] B.C.J. No. 2608 (C.A.), *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, [2002] 4 S.C.R. 205.)

The comparative convenience and expense for the parties to the proceeding and for their witnesses [s. 11(2)(a)].

[30] While the plaintiffs contend this case is principally about the proceeds from Mr. Bell's life insurance policy and the alleged role Ms. James played in improperly having the named beneficiary changed, they also seek damages against Ms. James for what they say was Mr. Bell's wrongful death. In their amended notice of civil claim they plead:

[82] Knowing that the deceased was suffering from PTSD, Anna had a basic duty of care to at least seek help for the Deceased. Anna works in the health sector and had access to the resources necessary to assist the Deceased in immediately addressing his frail mental state.

- [83] By leaving the Deceased alone without making any further inquiries into his mental state, Anna breached the duty of care that she owed to the deceased in the circumstances. Anna's negligence therefore caused or materially contributed to the Deceased's death.
- [88] The Deceased's unfortunate and abrupt suicide had a direct connection to the overbearing nature of Anna's relationship with the Deceased.
- [31] During his submissions, counsel for the plaintiffs also expressed that there was, or could be, a criminal investigation into what role Ms. James played in Mr. Bell's death.
- [32] The plaintiffs' amended notice of civil claim added the claim for damages for wrongful death. The plaintiffs must have given thought to what this claim entails before including it as part of their lawsuit. It is, in my view, a significant portion of their action. It will require the plaintiffs to lead evidence proving Ms. James was somehow involved in the death of Mr. Bell. The allegations are very serious. In my opinion, it will be no small feat for either side to marshal the evidence necessary to address the claim.
- [33] In her Affidavit Number 1, sworn 9 July 2020, Mrs. Bell says:
- [37] So far I have spent over \$20,000 in legal fees to pursue this action. The fees relate to various legal services, including correspondence, investigations, drafting documents required for disclosure, and attendance at three different application hearings.
- [34] Both plaintiffs claim that they will lose the benefit of the work they have paid for if they are compelled to abandon their action in British Columbia and commence one in Manitoba. I am not convinced that that is the case and if it is, then I am not satisfied that the loss is as significant or critical as they claim.
- [35] While the locating and collection of documents and information by the plaintiffs and their counsel may have entailed a significant amount of time and effort, the results of that work should be easily transferrable to a new lawyer in Manitoba. There is no suggestion that the documents are particularly complex and cannot be reviewed and understood by new counsel. The claims being made by the plaintiffs are not complicated. On the contrary, they seem to be reasonably straightforward. Ms. James is said to have improperly influenced Mr. Bell to amend the Policy for her benefit. She is also said to have acted negligently in the manner in which she treated Mr. Bell, and thereby caused or contributed to his death.
- [36] There is no suggestion that new counsel would have to redo the work that the plaintiffs' present counsel has done. The submission that the plaintiffs' current counsel has developed a unique and "organic" understanding of the present case is, in my respectful view, unconvincing.
- [37] The plaintiffs claim they have reached a special retainer agreement with their present counsel that will permit them to pursue their action in British Columbia. They say further that they will not be able to reach such an agreement with counsel in Manitoba. I do not know the specifics of the arrangements in question. However, I can say that I am not

convinced that the plaintiffs will be unable to reach an agreement with counsel in Manitoba that will allow them to prosecute their claims there. In my view, to say otherwise would be speculative at best.

- [38] The plaintiffs say they will be testifying in the event their case goes to trial. If their action in British Columbia is stayed, thus forcing them to start an action in Manitoba, the plaintiffs claim this will mean heavy travel and accommodation costs for them. There would be similar costs for the psychologist from British Columbia who they plan on calling as a witness.
- [39] In addition to these witnesses the plaintiffs contend that they will have at least three other witnesses all of whom reside in Manitoba, but who are willing and able to travel to British Columbia for the trial.
- [40] In summary, the plaintiffs' case at present consists of six witnesses, half of whom reside in Manitoba and will have to travel to British Columbia to testify. If this matter is heard in Manitoba, then half of the plaintiffs' witnesses will have to travel to Manitoba.
- [41] The defendant says she anticipates calling nine witnesses at trial including herself. All of Ms. James' witnesses reside in Manitoba. The plaintiffs take issue with the list of witnesses being proposed by Ms. James asserting that some of them have no relevant evidence to offer. In my opinion, it is not for the plaintiffs to dictate what witnesses are necessary for the defendant to defend herself. I accept at this point that Ms. James' witness list includes individuals who she and her counsel believe are necessary in order for her to marshal the appropriate evidence to defend herself.
- [42] While the evidence is slim, I find the financial costs associated with the plaintiffs and their expert witness travelling to Manitoba for a trial will likely be less than those associated with Ms. James and her witnesses traveling to British Columbia for a trial.
- [43] The plaintiffs are also concerned that Mrs. Bell will need to take a leave from her employment with the CAF and Natasha Bell may need to take time away from her post-secondary studies, if they are compelled to prosecute their claim in Manitoba. I am not persuaded that this is a major consideration because the plaintiffs will have to take time away from their employment and studies no matter where the trial takes place.
- [44] As for the risk of delay in getting the plaintiffs' action to trial if it must take place in Manitoba, I find this is not a significant issue in this case. Although the plaintiffs have a block of time for a trial in Victoria in February of next year, that trial date was unilaterally chosen without input from counsel for Ms. James. That is, the trial date was set without finding out if Ms. James, her counsel, and her witnesses were available. Surprisingly in my view, it was not until this hearing was underway that counsel for plaintiffs served counsel for Ms. James with the notice of trial thereby making him aware of the trial date.

- [45] There is no evidence, one way or the other, as to how quickly this matter can get to trial in Manitoba. Again, I do not find that to be a critical issue. The fact of the matter is this litigation is only in the preliminary stages. Lists of documents have not been exchanged, although the plaintiffs' list is apparently ready. No examination for discoveries have been conducted. All of the court appearances prior to the hearing before Justice Johnston were interlocutory in nature and, as best I can determine, were unopposed by Ms. James. I do not find this case is so far along that it must continue in British Columbia.
- [46] Finally, there is a real issue with respect to the state of the plaintiffs' pleadings. The plaintiffs have acknowledged they need to file a further amended notice of civil claim. The proposed amended pleading is attached to Mrs. Bell's affidavit. While I will not opine on the ultimate issue, I can say that the proposed amendments are significant and clearly indicate that the plaintiffs' claims against Ms. James have not yet been finalized.
- [47] In my opinion, the balance of convenience and expense tips in favour of Ms. James and prosecuting the action against her in Manitoba, as opposed to British Columbia.

The law to be applied to issues in the proceedings [s. 11(2)(b)]

- [48] In addition to applying British Columbia law to the issues in dispute about the Policy and the Beneficiary Form, the plaintiffs argue their wrongful death claim can and should be determined using the applicable British Columbia statute. While not conclusive of the issue before me, Justice Johnston remarked, when considering s. 10(g) of the CJPTA and whether the plaintiffs pleadings raised an arguable case that a tort had been committed in British Columbia:
- [43] In written argument, the plaintiffs add that s. 10(g) of the CJPTA applies because they allege in their notice of civil claim that they "suffered a tort (i.e., an economic loss) in British Columbia as a result of Ms. James' Conduct." This conduct presumably relates to the alleged suspicious circumstances, undue influence, unjust enrichment, and wrongful death, all of which occurred in Manitoba. The plaintiffs say that a cause of action in tort arises in British Columbia if a person suffers a loss in British Columbia. They rely on *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755 [Original Cakerie] for the proposition that, according to the plaintiffs, "a cause of action in tort arises in British Columbia if a person suffers a loss in British Columbia."
- [44] The plaintiffs have not shown that economic loss is a tort recognized by law. Economic loss is a type of damage that may be awarded on proof of a tort, as in *Rivtow Marine Ltd. v. Washington Iron Works*, [1974] S.C.R. 1189, where the tort was a breach of a duty to warn of a known defect, and economic loss directly attributable to that breach was held recoverable.
- [45] Facts capable of establishing essential elements of the tort of unlawful interference with economic interests have not been pleaded, nor have facts that would support a finding that the tort of intimidation has been committed by Ms. James.

- [46] Section 10(g) does not assist the plaintiffs in this case.
- [49] On the present application, the plaintiffs maintain that the applicable law to determine their claim of wrongful death is British Columbia's Family Compensation Act, and that this fact militates in favour of British Columbia retaining jurisdiction over the case. As they did before Justice Johnston, they again rely upon *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755, to support their position.
- [50] I do not agree with the plaintiffs' position on this issue. In my opinion, claims of tort are to be determined by the law of the jurisdiction where the tort is said to have occurred, the *lex loci delicti*, and not the law of the jurisdiction where the action might have been commenced, the *lex fori* (see: *Tolofson v. Jensen*, [1994] 3 S.C.R. 1022).
- [51] I agree with Ms. James that, if she committed the tort of wrongful death, then she did so in Manitoba and not in British Columbia. Consequently, the laws of Manitoba should be applied to adjudicate and determine the issue.
- [52] In my opinion, this factor weighs in favour of the plaintiffs' action being prosecuted in Manitoba.

The desirability of avoiding multiplicity of legal proceedings [s. 11(2)(c)]

- [53] There is at present only the British Columbia action. No action has been commenced in Manitoba. The parties agree, and I accept, that this factor is a neutral one when deciding the issue of *forum non conveniens* and whether Ms. James ought to be granted the relief she seeks.

The desirability of avoiding conflicting decisions in different courts [s. 11(2)(d)]

- [54] Like the preceding factor, this one is a neutral one.
- [55] In the event the plaintiffs start an action in the Court of Queen's Bench of Manitoba, I see no risk that a decision of that court could conflict with any decision this Court has already made or might make in the present action.

The enforcement of the eventual judgment [s. 11(2)(e)]

- [56] Both British Columbia and Manitoba have legislation dealing with the reciprocal enforcement of judgments. In my view, this too is a neutral factor and favours neither the plaintiffs nor Ms. James on this application.

The fair and efficient working of the Canadian legal system [s. 11(2)(f)]

- [57] This final and all-encompassing factor is, in my view, the most important one for the Court to consider.

- [58] Before becoming a justice of the Supreme Court of Canada and eventually Chief Justice of Canada, Madam Justice McLachlin, in *Avenue Properties Ltd. v. First City Development Corp. Ltd.*, [1986] 7 B.C.L.R. (2d) 45 (C.A.), explained:
- [18] ... a plaintiff's choice of forum should not be lightly denied. It is his right to have ready access to the courts of his jurisdiction and not to be required to travel outside his jurisdiction to present his case. This is particularly the case where the plaintiff resides in the jurisdiction where he seeks to bring his action or where there is some other bona fide connection between the action and the jurisdiction in which it is sought to be brought. Accordingly, the court's jurisdiction to stay proceedings should be used sparingly...
- [59] I do not find the plaintiffs' choice of British Columbia as opposed to Manitoba as the venue for their lawsuit was purposefully designed to give them a tactical advantage or to place the defendants, especially Ms. James, in a prejudicial position. However, I do find that as a result of that decision, there will be an unacceptable unfairness to Ms. James and her ability to defend herself.
- [60] If the trial of the plaintiffs' action is held in Victoria, as the plaintiffs wish it to be, then not only does this mean Ms. James and her witnesses will need to incur the significant expense and inconvenience of having to travel to British Columbia, it will also importantly mean this Court will be called upon to apply Manitoba law to a claim for wrongful death, a critical portion of the plaintiffs' case.
- [61] In my opinion, the allegations being made against Ms. James are more connected to Manitoba than British Columbia. This fact, as well as the expenses involved in moving so many witnesses from Manitoba to British Columbia and the unnecessary complexity of having to interpret and apply Manitoba law all support Ms. James' position on this application. Some of the witnesses may well be able to provide their evidence by way of live video conferencing or perhaps video depositions. However, in my respectful view, given the significant allegations of improper conduct being levelled at Ms. James, it is quite possible, if not likely, that her witnesses will be required to attend the trial in person.

CONCLUSION

- [62] To be successful in this application, Ms. James had the burden of convincing me that the plaintiffs should be denied their choice of where to prosecute their action because it would be fairer and more efficient to have the issues in dispute adjudicated elsewhere. In my opinion, she has done so. More specifically, I find after having considered all of the factors articulated in s. 11(2) of the CJPTA, and the legal principles articulated in the jurisprudence, that Manitoba and not British Columbia, is the clearly more appropriate forum to adjudicate the parties' dispute.

- [63] I reject the plaintiffs' submission that the costs and effort they have expended so far in getting their claims into court will be lost. In my view, there is no reason why the work product that has been prepared cannot be shared with new counsel in Manitoba. As for the suggestion that it will be time-consuming and expensive for new counsel to acquaint themselves with the plaintiffs' case, I am not convinced that this is an insurmountable problem or one that creates an injustice in this case.
- [64] The plaintiffs' allegations are serious, but reasonably straightforward. I will not speculate on how long new counsel in Manitoba will require to get up to speed, nor can I say what the costs will be, but I accept counsel for Ms. James' submission that it should not be as lengthy or as expensive as the plaintiffs' submit it will be. As I have noted, much of the work has been done. This work can be transferred to and used by new counsel.
- [65] Overall, I do not see significant prejudice to the plaintiffs if their action in British Columbia is stayed in favour of them proceeding to Manitoba. Moreover, I am firmly convinced that Manitoba is the proper jurisdiction where the plaintiffs' dispute with the defendants can and should be adjudicated.
- [66] For all of the foregoing reasons, Ms. James' application is granted.

[Submissions on Costs]

THE COURT: Counsel, I think you need additional time to discuss this issue. If you cannot resolve it then you should advise me through trial scheduling of that fact. If that occurs, I will let you know via memorandum how I wish to receive your submissions.

"G.R.J. Gaul, J."

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