

CANADA / JUDGMENT

Krytskyy v. Canil

2025 BCSC 2080

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2080 Krytskyy v. Canil

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Krytskyy v. Canil,

2025 BCSC 2080

Date: 20251015

Docket: S2011117

Registry: Vancouver

Between:

Kyryl Krytskyy

Plaintiff

And

Dr. Roberto Canil, Strive Health and Performance, Dr. Ali Abdalvand, Dr. Vishal Anand, Dr. Peter MacDonald, Dr. J. Doe, Dr. J. Doe II, Nurse J. Doe I, Nurse J. Doe II, and Fraser Health Authority of a Eagle Ridge Hospital

Defendants

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

J. Shields

Counsel for the Defendant Dr. Ali Abdalvand:

M. Cho

Place and Date of Hearing:

Vancouver, B.C.

September 29, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 15, 2025

Introduction

- [1] THE COURT: In this action, the plaintiff claims for damages and loss arising from medical treatments he received in response to complaints of back pain. The treatments occurred over the course of roughly a week in November 2018. The treatments included attendances with Dr. Abdalvand at Eagle Ridge Hospital ER on November 7, 2018, and second with Dr. MacDonald on November 11, 2018. He alleges that the treatment he received was negligent and resulted in him suffering various injuries including permanent paralysis of his right leg and foot, permanent nerve damage, chronic back pain and adhesive arachnoiditis.
- [2] The action was commenced on October 29, 2020. One of the named defendants, Dr. Abdalvand, was not served with the notice of civil claim ("NOCC"), and it subsequently expired. The plaintiff belatedly seeks an order:
- a) Renewing the NOCC, so it can be served on Dr. Abdalvand or
 - b) Alternatively, adding Dr. Abdalvand as a new defendant to the action.
- [3] Dr. Abdalvand opposes the relief sought. The other remaining defendants, Dr. MacDonald and Fraser Health Authority, operating as Eagle Ridge Hospital ("Fraser Health") take no position.
- [4] [I have made minor editorial changes to these reasons to improve readability. The reasoning and outcome have not changed.]

Background

- [5] As noted, on October 29, 2020, the NOCC was filed. There were originally four plaintiffs named, including the current plaintiff, his mother, father and sister. At the time, the law firm Leone Murray LLP, with offices in Toronto, Ontario, was assisting them by drafting the NOCC, but initially the plaintiffs did not have any counsel of record.
- [6] Four separate responses to civil claim were filed in November 2021. These included:

- a) November 3, 2021 - Dr. Anand and Dr. MacDonald;
 - b) November 9, 2021 - Fraser Health;
 - c) November 10, 2021 - BC Emergency Health Services, operating as BC Ambulance Service; and
 - d) November 17, 2021 - Dr. Canil and Strive Health and Performance.
- [7] Between October 21 and 29, 2021, a process server made several attempts to serve Dr. Abdalvand at two hospitals, namely Royal Columbian Hospital ER Department and Eagle Ridge Hospital ER Department. On each occasion, a nurse informed the process server that he was not working at the time and was not scheduled to work that day. There is no indication the process server left a calling card requesting that he contact her. Leone Murray retained the process server to serve the physician defendants, meaning that firm continued to be involved behind the scenes for the plaintiffs, despite the fact it was not counsel of record.
- [8] On June 9, 2022, Mr. Murray of Leone Murray filed a notice of appointment or change of lawyer, formally assuming conduct of the action for the plaintiffs. The responsible lawyers were Mr. Murray and Mr. Edwards. That same day, Mr. Murray wrote to counsel for Dr. MacDonald, advising the process server had not been successful in serving the NOCC on Dr. Abdalvand and asking whether they would accept service for him. On June 16, 2022, counsel for Dr. MacDonald advised that they did not act for Dr. Abdalvand and as such could not accept service.
- [9] Mr. Edwards states that he anticipated bringing on an application for alternative service, but this was never done due to inadvertence. He says that a senior law clerk with his firm was instructed to bring that application, but she did not do so because, she advises him, that she simply forgot to do so. For his part, he says he was distracted by other work and simply forgot about this step. I note that he does not mention being aware of the need to make an application to renew the NOCC, which would have expired by this point in time.
- [10] On December 22, 2022, a consent order was filed, dismissing the plaintiff's claims against original defendants BC Emergency Health Services operating as BC Ambulance Services, Paramedic J. Doe I, and Paramedic J. Doe II.
- [11] On June 28, 2023, plaintiff's counsel performed a search of the College of Physicians and Surgeons of BC website and confirmed that Dr. Abdalvand's listed hospital work addresses had not changed.

- [12] On August 14, 2023, the senior law clerk with plaintiff's counsel sent an email to an address which she apparently believed belong to Dr. Abdalvand, advising that their process servers had not been successful in serving him and attaching a copy of the NOCC. There was no response to this email. I note that Dr. Abdalvand filed an affidavit in opposition to the application. He did not address whether the email address used was one which he actively used at the time. His evidence does necessarily imply that he never received it.
- [13] On August 23, 2023, the plaintiff's mother, father and sister filed a notice of discontinuance, formally discontinuing all of their claims.
- [14] On August 25, 2023, the plaintiff filed an Amended NOCC. On that same date, Mr. Edwards sent an email to counsel for Dr. MacDonald, advising that he would be applying to serve Dr. Abdalvand substitutionally. He then says that, "By inadvertence, no further efforts were made then to serve Dr. Abdalvand."
- [15] On November 20, 2023, a consent order was filed, dismissing the plaintiff's claims against Dr. Canil and Strive Health and Performance.
- [16] On May 21, 2024, a consent order was filed, dismissing the plaintiff's claims against Dr. Anand.
- [17] Mr. Edwards then says that on March 2025, as he and Mr. Murray were preparing for various examinations for discovery, Mr. Murray realized that Dr. Abdalvand had not been served with the NOCC and that no defence had been filed on his behalf. They reported the matter to LawPRO in Ontario, their professional liability insurer, who in turn retained BC counsel to address this issue.
- [18] Mr. Edwards states that the issues with service on Dr. Abdalvand are the result of inadvertence by the firm and not the fault of the plaintiff. He says this is a complicated file with a number of potential defendants, that they were dealing with pleadings, removing parties, gathering documents and investigating the plaintiff's claims. The service issue was missed in that process. The inadvertence is that of himself and Mr. Murray, for which they apologize to the remaining defendants and defence counsel.
- [19] On June 4, 2025, the plaintiff filed the present application.
- [20] For his part, Dr. Abdalvand's evidence is that he first became aware of being involved in the action on June 4, 2025, when a staff member at Royal Columbian Hospital notified him that the Administration Office had received papers from a law office.

Renewal of Notice of Civil Claim

- [21] The plaintiff relies on Rule 3-2(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR]:

Renewal of original notice of civil claim

- (1) An original notice of civil claim does not remain in force for more than 12 months, but if a defendant named in a notice of civil claim has not been served, the court, on the application of the plaintiff made before or after the expiration of the 12 months, may order that the original notice of civil claim be renewed for a period of not more than 12 months.
- [22] The leading case interpreting this rule is *Bearhead v. Moorhouse*, 1977 CanLII 346 (BC SC), 3 B.C.L.R. 81 (S.C.) affirmed 1978 CanLII 360 (BC CA), 5 B.C.L.R. 380, and 87 D.L.R. (3d) 52, Court of Appeal. The court set out five factors that should be considered in a renewal application:
- a) Was the application brought promptly?
 - b) Did the defendant have notice of the claim from sources other than the writ, which is now notice of civil claim?
 - c) Has the defendant suffered prejudice?
 - d) Was the failure to serve the writ and notice of civil claim attributable to the actions of the defendant?
 - e) Was the plaintiff or his solicitor at fault?
- [23] In *Seeliger v. Eagle Ridge Hospital*, 2007 BCCA 582 at paras. 32-34, the Court of Appeal confirmed that if the defendant is able to prove unequivocally that it is plain and obvious that the action has no merit and is bound to fail, an application to renew should be refused.
- [24] Both parties referred to *Ebco Industries Ltd. v. Rebrovsky*, 2020 BCSC 1058 at paras. 9-12:
- [9] An application for renewal of a NoCC is required to correct an irregularity: *Stuart v. Patterson*, 2010 BCSC 1236. The decision to renew a NoCC requires an exercise of discretion by the Court. There are five factors which govern the discretion of the court to renew a NoCC, listed in *Imperial Oil Ltd. v. Michelin North America (Canada) Inc.*, 2008 BCCA 216 at para. 9 and *Mountain-West Resources Ltd. v. Fitzgerald*, 2005 BCCA 48 at para. 7, leave to appeal ref'd 2005 S.C.C.A. No. 134:
- [sets out the five *Bearhead* factors noted above]
- [10] *Imperial Oil Ltd.* also states at para. 16 that the relevant time to determine whether a plaintiff has acted promptly is the time elapsed from the date that the plaintiff learned that the NoCC had not been served to the date of the application to renew the NoCC. There is not "carte blanche" renewal for those who neglect or decide not to serve the NoCC: *Mountain-West Resources Ltd.* at para. 7, citing *Reid v. Mutual Life Assurance Co.*, [1999] B.C.J. No. 388 (S.C.).

- [11] While the plaintiffs in the case at bar have not applied to renew the NoCC, the foregoing review of Rule 3-2 demonstrates that a plaintiff cannot continue with an action after the NoCC has expired without successfully applying to have a renewal granted. A feature of that review, which is conclusive in this matter, is that the Court has a discretion to refuse to renew the NoCC, in which case the action would come to an end.
- [12] In the recent case of *Aulakh v. McBoyle*, 2020 BCSC 849, Riley J. helpfully noted at para. 4 that "Renewal of a notice of civil claim is a discretionary matter. The objective of the court is to see that "justice is done", having regard to the particular facts of the case." These comments apply in the case at bar. Without an application to renew the NoCC, the court cannot see that justice is done, and there can be no further steps taken in this action by the plaintiffs against the defendants based on an expired NoCC which does not remain in force because of the effluxion of time.

Analysis

A. Was the application to renew brought promptly?

- [25] The NOCC was filed October 29, 2020. Normally, it would remain in force for a period of one year, during which it could be served (absent possible renewal) meaning it expired on October 29, 2021.
- [26] In this case, the NOCC was filed during the COVID-19 pandemic. Normal running of time was suspended for a period of one year between March 26, 2020 and March 25, 2021, by virtue of two ministerial orders and a regulation issued under the Emergency Program Act, R.S.B.C. 1996, c 111. See M086, the Limitation Periods (COVID-19) Order, M098, the Limitation Periods (COVID-19) Order No. 2, and COVID-19 (Limitation Periods in Court Proceedings) Regulation, B.C. Reg. 199/2020, on December 20, 2020. OIC 655/2020 was issued, repealing the relevant provisions, effective March 25, 2021.
- [27] Accordingly, it appears the one-year period for the plaintiff to serve the NOCC on Dr. Abdalvand ran from March 25, 2021 to March 24, 2022. During this time, the plaintiffs did not technically have counsel of record, but Mr. Edwards acknowledged that his firm was actively assisting them with the claim behind the scenes, including by retaining the process server who attempted to serve the NOCC on Dr. Abdalvand. Plaintiff's counsel was aware he had not been successfully served. Mr. Edwards does not address whether he was also aware that the NOCC had expired and that it would be necessary to apply to renew it. His evidence focuses on counsel's intention to seek an order for alternative service. In that sense, the evidence which the plaintiff has tendered does not squarely address when he or his counsel first became aware that an application to renew the NOCC would be necessary. They appear to conflate the issues of substituted service and renewal. That makes this analysis somewhat more challenging.

[28] At several points in time, plaintiff's counsel was actively aware that Dr. Abdalvand had not been served and that it was necessary to make an application to address that. This includes:

- a) On June 9, 2022, Mr. Edwards inquired whether counsel for Dr. MacDonald would accept service for Dr. Abdalvand. Several days later, they were told he would not;
- b) Mr. Edwards says at some point around this time, a senior law clerk was instructed to bring on an application for alternative service. He does not indicate the date on which those instructions were given;
- c) On June 28, 2023, someone with plaintiff's counsel searched for Dr. Abdalvand's current work addresses. I presume this was in aid of trying to serve him;
- d) On August 14, 2023, the senior law clerk with plaintiff's counsel attempted to communicate with Dr. Abdalvand via email, without success;
- e) On August 25, 2023, Mr. Edwards advised opposing counsel that he intended to apply for substituted service on Dr. Abdalvand, but inexplicably there was no follow-up;
- f) On March 20, 2025, Mr. Edwards and Mr. Murray realized that Dr. Abdalvand had not been served and reported the situation to their insurer, LawPRO.

[29] This application was filed on June 4, 2025. At each of the times set out above, it should have occurred to plaintiff's counsel that an application to renew the NOCC was necessary. Counsel was aware of the need to apply for substituted service. Even if they were not actively aware that the NOCC had expired and needed to be renewed first, they inevitably would have discovered that had they followed through with the intended application for substituted service. Had they made that application, they would inevitably would have learned from the presider that renewal of the NOCC was necessary before substituted service would be possible.

[30] I conclude that the plaintiff's application to renew the NOCC was not made promptly.

B. Did the defendant have notice of the claim before the NOCC expired?

[31] Dr. Abdalvand's unchallenged evidence was that he was not aware of his involvement in this action until June 4, 2025, which is more than three years after the NOCC had expired.

C. Has the defendant suffered prejudice?

[32] Dr. Abdalvand relies on *Mountain-West Resources Ltd. v. Fitzgerald*, 2005 BCCA 48 at para. 7, for the proposition that there is no onus on him to prove actual prejudice. Prejudice is presumed from the passage of time.

[7] Counsel referred us to the judgment of Master Bolton in *Johnson v. Cook* (2000), 47 C.P.C. (4th) 67 that provides a useful summary of the factors to be considered on an application to renew a writ found in *Bearhead v. Moorhouse* (1977), 3 B.C.L.R. 81 and other authorities. Master Bolton wrote:

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19 A more recent review of the applicable principles is found in the decision of D. Smith, J. in *Reid v. Mutual Life Assurance Co.*, [1999] B.C.J. No. 388; *Vernon Registry No. 12719*, February 16, 1999. There, the court set out the factors reviewed in *Bearhead v. Moorhouse* more or less in the terms I have summarized above. The court went on to conclude:

[28] There is no onus on the defendant to show particular prejudice: *Kovic v. Waechter* (1982), 36 B.C.L.R. 396 (B.C.S.C.). Prejudice is to be presumed from the mere passage of time: *Minter v. Reeves* (1979), 9 B.C.L.R. 275 (B.C.C.A.); *Dudas (Guardian ad litem of) v. Munro*, [1993] B.C.J. No. 300 (B.C.S.C.).

[29] The cases also suggest the Court should examine the merits of the action in deciding whether to permit a Writ of Summons to be renewed: *Minter, supra*; *Dudas, supra*.

[30] Although Rule 9(1) has broadened the Court's discretion in allowing renewal of a Writ of Summons, it is clear from the authorities that this should not be interpreted as a *carte blanche* for those who neglect and or decide not to serve a Writ of Summons for whatever reason. In determining whether to permit a Writ of Summons to be renewed, the Court must exercise its discretion judicially. This requires a careful examination of the circumstances of each case in order to determine if any substantial injustice to the plaintiff or prejudice to the defendant will occur by granting an order for its renewal.

[underling added]

[33] In this case, plaintiff's counsel was aware that Dr. Abdalvand had not been served and that steps would have to be taken to address this, by no later than June 16, 2022.

[34] In *Dhaliwal v. Nuff*, 2013 BCSC 1637 [Dhaliwal], at paras. 32-33, Justice G. Weatherill described presumption of prejudice:

[32] There is no evidence that the defendant will be prejudiced if the writ is renewed. However, ICBC submits that there is no onus on the defendant to show particular prejudice and that prejudice is to be presumed from the mere passage of time: *Grant v. G&A Developments Ltd.* [1992] B.C.J. 1612 (S.C.) at 2; *Hutton v. Haberlin*, (25 August 2009), *Vancouver M064680* (B.C.S.C.); *Reid v. Mutual Life Assurance Co.* [1999] B.C.J. No. 388, at para. 28; *Mountain-West Resources Ltd. v. Fitzgerald* 2005 BCCA 48 at para. 7; *Hudon v. Johnson*, 2006 BCSC 1750 at para. 6.

[33] The presumption of prejudice is not a presumption of law. It is a rebuttable presumption of fact: *Tundra Helicopters v. Allison Gas Turbine* 2002 BCCA 145 at paras. 35 - 37. The question remains whether, on a balance of probabilities, prejudice or the absence thereof, has been established.

[35] The plaintiff argues Dr. Abdalvand has tendered no evidence suggesting he has suffered actual prejudice in terms of his ability to defend the claim against him.

- [36] Dr. Abdalvand relies primarily on the prejudice due to passage of time. He also suggests he has been prejudiced by the fact that numerous significant steps in the action have already taken place, depriving him of the opportunity to participate. Examples include the first examinations for discovery of the plaintiff and the representative of Fraser Health and dismissals / discontinuances as against several of the original defendants.
- [37] In this case, it would normally be reasonable to expect the passage of time between when the cause of action arose and when Dr. Abdalvand became aware of his involvement in the action had resulted in degradation of his memory and that of the relevant events and those of other key witnesses. Oddly, he does not address this in any detail in his affidavit or his application response. He also does not suggest that any relevant records had been lost or destroyed. Presumably, any relevant treatment records which were generated at the time of treatment have been produced. He would lose the benefit of a limitation defence which would become available to him in the event the NOCC is not renewed.
- [38] I agree it would have been preferable if Dr. Abdalvand had been able to participate in the first examination for discovery of the plaintiff, but there is no evidence indicating specific prejudice has occurred because he did not do so. I do not agree he was prejudiced by not being able to participate in the discovery of Fraser Health's representative. His counsel would have attended as an observer only at such an examination. Much the same information is readily available by obtaining a copy of the transcript.
- [39] Overall, despite the foregoing, I conclude that the plaintiff has not rebutted the presumption of prejudice.

D. Whether the failure to serve the NOCC is attributable to the defendant?

- [40] There is no suggestion that Dr. Abdalvand was in any way responsible for the plaintiff's failure to effect service on him.

E. Was the plaintiff, as opposed to his solicitor, at fault?

- [41] Mr. Edwards and Mr. Murray acknowledge that they bear full responsibility for the failure to apply to renew the NOCC in a timely manner. I accept that the plaintiff does not bear any fault for this. In *Dhaliwal* at para. 46, it states:
- [46] Where the fault is attributable to the plaintiff's solicitor and there is no prejudice to the defendant, the renewal is usually granted: *Lowe v. Christensen*, (1984), 54 B.C.L.R. 88 (C.A.) at para. 93; *Johnson v. Cooke*, 2000 BCSC 1681 at para. 71; *Sutherland v. McLeod*, 2004 BCCA 653 at para. 43.
- [42] See also *Shinatani v. Tang*, 2017 BCSC 1938 at para. 33:

- [33] Even where real prejudice is shown, such as the expiry of a limitation period, the claim may be renewed where the cause of the delay is attributable to the litigant's solicitors, rather than the litigant herself. As Mackenzie J.A. stated in *Seeliger*, "the writ should be renewed to avoid injustice to the plaintiff even if the solicitor's fault was the only reason for failure to serve and a limitation defence has accrued" (at para. 40).
- [43] It is a concern that in this case the solicitors' failures were not merely a single incident of fault, but rather an ongoing series of failures over a period of roughly three years. Several opportunities to address these failures presented themselves, but counsel repeatedly failed to take them up. That is a feature which does not appear in the other cases to which I have been referred. At some point, one cannot overlook the collective impact of serial errors.

F. Merits of the claim

- [44] I am not persuaded that the plaintiff's claim against Dr. Abdalvand is one which is bound to fail.

Conclusion

- [45] As noted, I am troubled by the serial nature of the errors committed by plaintiff's counsel which played out over several years. I have also concluded the plaintiff failed to rebut the presumption that Dr. Abdalvand has suffered prejudice. I conclude that, in all the circumstances, it is appropriate to exercise my discretion to dismiss the plaintiff's application to renew the NOCC.

Alternatively, addition of Dr. Abdalvand as a defendant

- [46] The plaintiff alternatively applies to add Dr. Abdalvand as a new defendant, relying on Rule 6-2(7) of the SCCR:
- (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
- (a)
- (b) order that a person be added or substituted as a party if
- (i) that person ought to have been joined as a party, or
- (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
- (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
- (i) any relief claimed in the proceeding, or
- (ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

- [47] In *Madadi v. Nichols*, 2021 BCCA 10 at paras. 21-25, the Court of Appeal summarized the approach taken to subrules (b) and (c), as follows:
- [21] Rule 6-2(7)(b) has been interpreted narrowly, as being concerned with remedying defects in the proceedings. A plaintiff applicant must establish either that the proposed defendant "ought to have been joined as a party" or that their "participation in the proceeding is necessary": *Letvad v. Fenwick*, 2000 BCCA 630 at paras. 16-17; *Alexis v. Duncan*, 2015 BCCA 135 at para. 15; and *Byrd v. Cariboo (Regional District)*, 2016 BCCA 69 at para. 36.
- [22] Rule 6-2(7)(c) is broader and therefore more commonly relied upon. A plaintiff applicant must establish that there is a question or issue between the plaintiff and the proposed defendant that relates to or is connected with the relief, remedy, or subject matter of the proceeding. This threshold is low. It is generally expressed as establishing a real issue between the parties that is not frivolous, or that the plaintiff has a possible cause of action against the proposed defendant: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at para. 45 [Neilson Architects]; *Strata Plan LMS 1816 v. Acastina Investments Ltd.*, 2004 BCCA 578 [Acastina]; and *MacMillan Bloedel Ltd. v. Binstead et al.* (1981), 58 B.C.L.R. 173 (C.A.) [Binstead]. I would define a frivolous issue as an issue that does not go to establishing the cause of action, does not advance a claim known to law, or serves no useful purpose and would be a waste of the court's time and public resources. This is similar to the considerations for determining whether a claim should be struck as "unnecessary, scandalous, frivolous or vexatious" under Rule 9-5(1)(b): see, for example, *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 65, citing in *Willow v. Chong*, 2013 BCSC 1083 at para. 20.
- [23] This threshold requirement is usually met solely on the basis of the proposed pleadings, but the parties may provide affidavit evidence addressing it. If evidence is provided, the court is limited to examining it only to the extent necessary to determine if the required issue between the parties exists; it is not to weigh the evidence and assess whether the plaintiff could prove the allegations: *Neilson Architects* at para. 45, citing *Acastina* and *Binstead*. Whether or not evidence is provided, it is necessary for the court to examine the pleadings in order to determine whether the plaintiff has a possible cause of action against the proposed defendants. The pleadings must set out material facts sufficient to establish a real and not frivolous issue between the plaintiff and the proposed defendants: *Neilson Architects* at paras. 60, 62, and 75.
- [24] If this requirement is met, the court must next determine whether it would be just and convenient to decide the issue between the parties in the proceeding. It is in relation to this issue that evidence is more commonly provided. This is a discretionary decision, which discretion must be exercised judicially, and in accordance with the evidence adduced and the guidelines established in the authorities. In *Letvad*, this court adopted a list of factors to

be considered from *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd. (1996)*, 19 B.C.L.R. (3d) 282 (C.A.), a decision that addressed the amendment of pleadings after the expiry of a limitation period. These factors include the extent of the delay, the reasons and any explanation for the delay, the expiry of a limitation period, the degree of prejudice caused by the delay, and the extent of the connection, if any, between the existing claims and the proposed new cause of action: *Teal Cedar* at para. 67; *Letvad* at para. 29; see also *Chouinard v. O'Connor*, 2011 BCCA 161 at para. 21. In the context of adding parties, the last *Letvad* factor may be more accurately described as the extent of the connection, if any, between the existing claim and the parties to be added.

[25] The existence of a limitation defence is an important factor, as such a defence is extinguished if the proposed defendant is added: *Limitation Act*, R.S.B.C. 1996, c. 266, s. 4(1)(d), repealed and replaced with *Limitation Act*, S.B.C. 2012, c. 13, s. 22(1)(d); and *Anonson v. North Vancouver (City)*, 2017 BCCA 205 at para. 13. However, this is not determinative. In *Neilson Architects*, this court adopted the following approach to considering a limitation defence (at para. 47):

If it is clear there is an accrued limitation defence, the question is whether it will nevertheless be just and convenient to add the party, notwithstanding it will lose that defence. The answer to that question will emerge from consideration of the factors set out in *Letvad*.

[48] In *Meade v. Armstrong (City)*, 2011 BCSC 1591 at para. 16, the court summarized the general principles for interpretation of Rule 6-2(7)(b) and (c):

- 1) A party should be added where that party's participation is necessary for the proper determination of the case;
- 2) The discretion to add parties should be generously exercised so as to enable effective adjudication upon all matters;
- 3) In exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful other than to be satisfied that there may exist an issue or question between the applicant and the party being joined;
- 4) Evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties;
- 5) Where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action; and
- 6) Unless there is prejudice, amendments should be granted liberally to enable the issues to be tried.

[49] Section 22(1)(d) of the *Limitation Act*, S.B.C. 2012, c 13, contemplates that new parties can be added or substituted after expiry of the relevant limitation period:

Counterclaim or other claim or proceeding

22 (1) If a court proceeding has been commenced in relation to a claim within the basic limitation period and ultimate limitation period applicable to the claim and there is another claim (the "related claim") relating to or connected with the first mentioned claim, the following may, in the court proceeding, be done with respect to the related claim even though a limitation period applicable to either or both of the claims has expired:

(d) new parties may be added or substituted as plaintiffs or defendants.

[50] Factors the court considers when deciding whether to add a party after expiry of the limitation period are summarized in *Letvad v. Fenwick*, 2000 BCCA 630, at para. 29:

- a) the extent of the delay;
- b) the reasons for the delay;
- c) any explanation put forward to account for the delay;
- d) the degree of prejudice caused by delay; and
- e) the extent of the connection, if any, between the existing claims and the proposed new cause of action.

[51] In *Chouinard v. O'Connor*, 2011 BCCA 161 at para. 21, the Court of Appeal noted this list is not exhaustive, and that the overriding concern is whether the proposed amendment would be just and convenient. The decision is ultimately discretionary.

[52] When assessing passage of time after expiry of a limitation period, it is time after expiry plus one year for serving the notice of civil claim that is relevant. See *Amezcuca v. Taylor*, 2010 BCCA 128 at para. 42 and *McIntosh v. Nilsson Bros. Inc.*, 2005 BCCA 297 at para. 8.

[53] In this case, Dr. Abdalvand was named as one of the original defendants in the action. He is one of several treatment providers involved in treating the plaintiff at the times material to the claim. Had he not already been named as a defendant, I would not hesitate to agree that as between Dr. Abdalvand and the plaintiff, there are questions or issues relating to or connected with relief which is claimed in this action and the subject matter of this action.

[54] With the NOCC not having been renewed, Dr. Abdalvand clearly has an accrued limitation defence. Several of the *Letvad* factors mirror considerations addressed in the previous section addressing renewal of the NOCC. The include the extent of the delay in applying to add Dr. Abdalvand as a defendant is excessive. The reasons for the delay are due to serial errors of counsel. The presumption that Dr. Abdalvand has suffered prejudice has not been rebutted. In my view, it is also relevant that the preceding application to renew the NOCC was dismissed on its merits. In all of these circumstances, I conclude it would not be just to add Dr. Abdalvand as a new defendant and I exercise my discretion to dismiss the alternative application.

Orders Made

[55] The plaintiff's applications are dismissed.

[56] Dr. Abdalvand is entitled to costs of the application from the plaintiff. As he is no longer a party to the action, those costs are assessable and payable forthwith.

"Associate Judge Bilawich"

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