

CANADA / JUDGMENT

Muir v. Loveless

2025 BCSC 1193

COURT

Supreme Court of British Columbia

DECIDED

24 June 2025

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2025 BCSC 1193 Muir v. Loveless

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Muir v. Loveless,

2025 BCSC 1193

Date: 20250624

Docket: M212092

Registry: Victoria

Between:

Michelle Muir

Plaintiff

And:

Michelle Elizabeth Loveless

Defendant

Before: The Honourable Justice A. Saunders

Reasons for Judgment re: Trial Adjournment

Counsel for the Plaintiff:

R. S. Sahota

Counsel for the Defendant:

N. Aram

Place and Date of Hearing:

Victoria, B.C.

June 18, 2025

Place and Date of Judgment:

Victoria, B.C.

June 24, 2025

- [1] This is a motor vehicle personal injury action, in which both liability and quantum are in issue. The action is set to proceed to trial by judge alone commencing July 14, 2025 for ten days. The defendant applies to adjourn the trial.
- [2] The subject collision occurred in August 2019. The Notice of Civil Claim was filed in July 2021, and the Response to Civil Claim filed in June 2022. The plaintiff filed a Notice of Trial in January 2024. Examinations for discovery of the plaintiff were conducted in April 2024 and again in April 2025. The parties attended a mediation on May 20, 2025, and defence counsel then advised plaintiff's counsel that an adjournment application would be pursued.
- [3] The basis for the adjournment, in brief, is that some of the uncertainty around the plaintiff's future earnings is said to be expected to resolve over approximately the next 12 months. The plaintiff however says that while that may be true, on the evidence that will be before the trial judge as of the scheduled trial date, the Court will be able to make appropriate determinations of the probabilities to be attached to various future contingencies -- both those that might resolve into certainties in the near future, and those that would still remain future contingencies after any adjournment.
- [4] The plaintiff holds the rank of Lieutenant Commander in the Royal Canadian Navy ("RCN"), and was in that position when the subject accident occurred. She alleges that because of her injuries she is and has been unable to meet Department of National Defence (DoD) fitness standards. To date she has only been assessed, and re-assessed, as being on a "TCat" ("temporary medical category") with medical employment limitations. Her TCat review, and potential re-categorization as "PCat" ("permanent medical category") has, she says, been repeatedly postponed due to a backlog that arose out of the COVID-19 pandemic. If assessed as PCat, her continuing employment with the RCN will be subject to administrative review and she would then expect to be medically released.
- [5] On her recent examination for discovery on April 22, 2025, the plaintiff deposed that she now expects the medical review of her status will take place in July 2025, and the administrative decision as to whether she is to be medically released would be made within another six months. She would then have the option of grieving or contesting that decision; and, if unsuccessful, would have the further option of applying for and obtaining a further temporary extension of employment for up to three years. If medically released, the plaintiff

deposed that she also intends to make an application to Veterans Affairs for a determination that the subject injuries were attributable to her service, which would entitle her to further benefits. She further deposed to her understanding that if medically released, she might be entitled to priority consideration for other jobs in the public service.

- [6] The defendant submits that if medically released, the plaintiff would or may become entitled to benefits in addition to those administered by Veterans Affairs, including a medical annuity, and long-term disability benefits. All of these benefits, the defendant submits, would go to reduce the defendant's potential liability in damages.
- [7] The defendant cites *Moor v. Moor* (1985), 61 B.C.L.R. 73, 1985 CanLII 381 (C.A.), in which the chambers judge had dismissed the defence application that the trial be adjourned for one year in consideration of uncertainty around the plaintiff's prognosis. In a unanimous decision pronounced by Justice Carrothers, the appeal was allowed, on the basis that the chambers judge had failed to give appropriate weight to the affidavit evidence and had erred "in not acceding the defendants' position that the assessment of costs of future care will probably be more accurately determined in January of 1986" (para. 18).
- [8] Both parties cite the leading decision of Madam Justice Dillon in *Navarro v. Doig River First Nation*, 2015 BCSC 2173, which sets out the following considerations:
- [18] A judge exercises discretion when an adjournment is sought and has wide powers in relation to the order that is made. The discretion must, of course, be exercised judicially in accordance with appropriate principles. The exercise of discretion is a delicate and difficult matter that addresses the interests of justice by balancing the interests of the plaintiff and of the defendant. This balancing requires a careful consideration of all of the elements of the case including the nature of the proceedings and the parties. The Court of Appeal will be extremely reluctant to interfere with a decision of a trial judge on an adjournment matter which is integral to exercise of judicial discretion.
- [19] There are numerous factors to be considered on an adjournment application. However, the paramount consideration is the interest of justice in ensuring that there will remain a fair trial on the merits of the action. Because the overall interests of justice must prevail at the end of the day, courts are generous rather than overly strict in granting adjournments, particularly where granting the request will promote a decision on the merits. The natural frustration of judicial officials and opposing parties over delays in processing civil cases must give way to the interests of justice, which favours a claimant having his day in court and a fair chance to make out his case.
- [20] Other factors or considerations include (in no particular order of priority):
- the expeditious and speedy resolution of matters on their merits;
 - the reasonableness of the request;
 - the grounds or explanation for the adjournment;

- the timeliness of the request;
- the potential prejudice to each party;
- the right to a fair trial;
- the proper administration of justice;
- the history of the matter, including deliberate delay or misuse of the court process; and
- the fact of a self-represented litigant.

[Citations omitted; emphasis added.]

- [9] The plaintiff submits that adjourning the trial would frustrate the expeditious and speedy resolution of the plaintiff's claim. It is already six years since the accident; adjournment could extend resolution of the claim by up to a further two years, when one considers the availability of trial dates and the time that might be taken for a reserved judgment to be pronounced. However, as I have noted, this action was not set for trial until January 2024, near four-and-a-half years after the accident. Accepting that prudence dictates an injured plaintiff not rush into trial, to give their injuries an opportunity to resolve, it is not at all clear to me why such a long delay was necessary. We are well past the point of "speedy and expeditious" resolution in any event.
- [10] The plaintiff submits that the application is not timely. However, the record does not disclose when it became known to the plaintiff that the medical review would not take place until July 2025, and I cannot conclude that the defendant could have had knowledge of this circumstance much earlier than April 2025, when the continuation of the plaintiff's examination for discovery took place. In any event, the key determinant as to the weight to be given to delay is that of prejudice. An earlier hearing of this adjournment application would not have expedited matters, as the timing of resolving the future contingencies around the plaintiff's earning capacity is largely in the hands of her employer.
- [11] The plaintiff invites me to find that this application is a transparent attempt by the defendant to avoid the defendant's expert opinion report, which was served on May 30, 2025 as a responding report, under Supreme Court Civil Rules [SCCR] R. 11-6(4), being ruled inadmissible by reason that it is not a true responding report, and ought to have been served 84 days before trial under R. 11-6(3). I make no such finding. It is not plain and obvious that the defendant's report would be so characterized. That is a decision for the trial judge, and I refrain from any further comment.

- [12] The plaintiff says that further delay will add to her anxiety, stress, and mental health burden. There is undoubtedly some truth to that; but her employer's delays in assessing her medical condition and determining her future employment are undoubtedly a burden as well. It cannot be in the plaintiff's interest to proceed now to trial if uncertainty as to future events, which uncertainty might be resolved in the near future, could lead to her claim being substantially undervalued.
- [13] The key question on this application is whether the interests of justice require an adjournment to put the Court in a better position to determine the extent of the loss of future earning capacity. The plaintiff submits that uncertainty around future contingencies is inherent in assessing future earning capacity claims. Furthermore, in any event, even if some contingencies were to resolve into certainties over the course of an 18-month adjournment, there will still be many relevant contingencies for the Court to weigh: e.g., if the plaintiff is medically released, the Court will still have to assess the plaintiff's residual earning capacity and long-term prospects for future retraining and employment. Further, if the plaintiff ultimately pursues a claim before Veterans Affairs for benefits due to an in-service injury, it is far from certain that claim could be heard and resolved even in the space of an 18-month adjournment.
- [14] On this application, the plaintiff submitted that she is ready -- that she could not be more ready -- to adduce evidence of the likelihood of the various contingencies that will impact the plaintiff's career path. The plaintiff intends to testify as to her interactions with persons responsible for assessing her status and as to her understanding of DoD policies and procedures that apply; and, to tender the report of an economist expert witness. The plaintiff will also be calling five lay witnesses, including a Rear Admiral, Lieutenant-Commanders, and retired Commanders, all of whom will testify as to the process for determining the plaintiff's separation from the RCN: how long the process takes; what sorts of extensions are generally provided; and, their assessment of the plaintiff herself -- of whom they have a very high opinion -- and what they expect would occur in her circumstances, given their experience with other officers' cases.
- [15] Unfortunately, this application was the first the defendant has heard of the plaintiff's intention to call these witnesses. The plaintiff filed and served her Trial Brief under R. 12-1.1 of the SCCR on May 13, 2025, 63 days before trial -- well within the 56-day requirement prescribed in R. 12-1.1(1) -- but the Trial Brief's list of witnesses to be called did not disclose those naval officer witnesses' names and addresses, and instead only made provision for "2-3 Lay Witnesses TBD (Personal)" and another "2-3 Lay Witnesses TBD (Professional)". Plaintiff's counsel advised that the list of those witnesses had been finalized earlier the week of this hearing, but had not gone out.

[16] Rule 12-5(28) provides that unless the court otherwise orders, a party must not lead evidence at trial from a witness who has not been listed in the witness list set out in the party's trial brief. As I observed in *Kirilenko v. Bowie*, 2017 BCSC 2047, at para. 33, the phrase "must not" is emphatic, and suggests that allowing an exception to the deadlines provided in the SCCR requires application of:

... something akin to the test formulated by Savage J. (as he then was) in *Perry v. Vargas*, 2012 BCSC 1537, at para. 22, for the exercise of the court's residual discretion to admit expert reports served late under R. 11-7(6)(c): there must be, in order not to undermine the purpose of the Rule:

... some compelling analysis of why the interests of justice require in [this] particular case the extraordinary step of abrogating the other requirements of the Supreme Court Civil Rules.

[17] The plaintiff submits that she could have recourse to the Rule that allows for prompt amendment of a witness list. Rule 12-1.1(6) provides for the prompt filing and service of an amendment witness list "[i]f a party of record who had provided a witness list in a trial brief later learns that the witness list is inaccurate or incomplete". Here, the plaintiff did not "later learn" of the deficiency in her witness list; the "TBD" witness list was deficient by its very nature. The Rule does not assist.

[18] The record before me does not disclose any compelling reason for the Court allowing for an exception to be made and the proposed witnesses to be called.

[19] I observe that a further complication may arise, in that from the plaintiff's description, the nature of the proposed testimony of these lay witnesses -- their opinions as to how the plaintiff's case will be treated by DoD, based on inferences they draw from their own experience with similar matters, and their knowledge of the plaintiff -- raises at least the potential for their lay testimony being considered to stray over into expert opinion evidence. If categorized as such, their evidence would have required compliance with the provisions of SCCR Part 11, including the 84-day notice requirement under R. 11-6(3).

[20] All of these difficulties suggest there is a real possibility that were this trial to proceed, the evidence of the five RCN officers will not be admissible, and there will only be slight evidence available to the Court on which to assess the relative probabilities of various outcomes in respect of the plaintiff's future employment. Further, even if those lay witnesses were allowed to testify, the resolution of the plaintiff's medical status and her potential release seems central to the uncertainties around quantifying the plaintiff's loss. I find it is in the interest of justice to adjourn the trial for a sufficient period of time to allow further resolution of the plaintiff's employment status.

[21] Accordingly, the application is allowed and the trial currently set for July 14, 2025 is adjourned. The trial is to be reset to proceed at a mutually convenient date no earlier than commencing in September 2026, or such earlier date as the parties may agree to.

"A. Saunders, J."

The Honourable Justice A. Saunders

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