
Court of Appeal for Saskatchewan
Docket: CACV4296

Citation: *Cook v Water Security Agency,*
2025 SKCA 66

Date: 2025-06-25

Between:

Darren Cook

Appellant
(Applicant)

And

Water Security Agency

Respondent
(Respondent)

Before: Jackson, McCreary and Bardai JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Naheed Bardai
In concurrence: The Honourable Justice Georgina R. Jackson
The Honourable Justice Meghan R. McCreary

On appeal from: 2023 SKKB 268, Saskatoon
Appeal heard: October 3, 2024

Counsel: Glenn A. Wright for the Appellant
Robert G. Kennedy, K.C., for the Respondent

Bardai J.A.

[1] Darren Cook appeals from a decision of a Court of King’s Bench Chambers judge in which the Chambers judge dismissed his application for mandamus against the Water Security Agency [WSA]: *Cook v Water Security Agency*, 2023 SKKB 268 [*Chambers Decision*].

[2] Mandamus is an order to compel a public authority to perform a legal duty. It is a discretionary remedy available only in specific circumstances. In order for the remedy to be granted, the applicant must establish that:

- (a) they have a clear legal right to have what is sought done – both in the manner sought and by the public authority whom they seek to compel;
- (b) the duty is owed to them by the public authority at the time when relief is sought;
- (c) the duty is ministerial in nature and not subject to the exercise of discretionary power; and
- (d) a demand has been made for the relief sought and such demand has been refused.

See *Karavos v Toronto and Gillies*, [1948] 3 DLR 294 (Ont CA) at 297; *R v Johnson*, [1979] 2 WWR 571 (Sask CA) at para 14; *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848 at 876–877; *Dolan v Moose Jaw (City)*, 2008 SKCA 170 at paras 19–20, 306 DLR (4th) 115; and *Alie-Kirkpatrick v Saskatoon (City)*, 2019 SKCA 92 at para 59, [2020] 3 WWR 629.

[3] In addition to the four criteria set out above, a claim for mandamus must be brought within the applicable limitation period in order for any relief to be granted.

[4] Mr. Cook initially brought an action against Lost River Water Co. Ltd. [Lost River] and Robert Risling, the principal of Lost River, in March of 2019, alleging that Lost River owed him a duty in contract and tort to provide a sufficient supply of water to his home in Mission Ridge, Saskatchewan [Home]. The claim alleges that Lost River failed to provide water of an adequate pressure to service the Home.

[5] In September of 2020, Mr. Cook’s statement of claim was amended to add WSA as a party, and to include a claim against WSA in negligence. In that regard, the amended statement of claim

alleged that WSA had an obligation to regulate Lost River and to ensure that the water provided by Lost River to the Home was safe and delivered at an adequate level of pressure.

[6] Mr. Cook discontinued the claim as against WSA on February 24, 2021. Two days later, on February 26, 2021, he filed an originating application seeking various orders by way of mandamus. All the requested orders were aimed at addressing Mr. Cook's complaint that the water distribution system operated by Lost River was delivering water at a pressure that was too low, such that it created health risks. WSA's position in the Court of King's Bench was that there were no pressure requirements imposed by WSA, that Mr. Cook's application amounted to an abuse of process, and that, in any event, the application was out of time as it was filed after the limitation period had expired.

[7] WSA applied in the Court of King's Bench for an order striking Mr. Cook's application for mandamus pursuant to Rules 3-56(3) and 7-9 of *The Queen's Bench Rules* (now *The King's Bench Rules*) because the claim was statute-barred by *The Limitations Act*, SS 2004, c L-16.1, and therefore amounted to an abuse of process.

[8] Rule 3-56(3) allows the Court to refuse an application for mandamus where there has been undue delay in making the application and where the delay is likely to cause substantial hardship or prejudice to the rights of any person or be detrimental to good administration (see *Henry v Saskatchewan (Workers' Compensation Board)* (1999), 172 DLR (4th) 73 (Sask CA) at paras 69–71; *Risseeuw v Saskatchewan College of Psychologists*, 2019 SKCA 9 at para 57, 437 DLR (4th) 681; and *Saskatchewan (Workers' Compensation Board) v Gjerde*, 2016 SKCA 30 at para 29, 395 DLR (4th) 331). Rule 7-9(2)(e), by contrast, can be used to strike a pleading in circumstances where it is plain and obvious that the claim asserted has been brought after the expiry of the applicable limitation period (see *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2022 SKCA 38 at paras 24–25, 29 CLR (5th) 294 [*GHC*]).

[9] The Chambers judge held that the applicable limitation period had expired and that Mr. Cook's originating application amounted to an abuse of process. Ultimately, the Chambers judge concluded that the application was destined to fail such that it should be struck. The Chambers judge did not specifically identify whether the claim was being struck pursuant to Rule 3-56(3) or Rule 7-9(2)(e). That said, the Chambers judge clearly found the limitation period to have expired such that Mr. Cook's claim had to be dismissed.

[10] After finding that the limitation period had expired, the Chambers judge reproduced Rule 7-9 in its entirety, considered the balance of the application, and concluded that even in the absence of the expired limitation period, the originating notice ought to be struck on the basis that the mandamus application was “preordained to failure” (*Chambers Decision* at para 31).

[11] Mr. Cook’s notice of appeal contends that the Chambers judge erred in:

- (a) determining the application for mandamus was out of time;
- (b) finding that it was plain and obvious that the application was devoid of merit and ought to be struck;
- (c) accepting the untested opinion of an expert; and
- (d) making a number of findings of fact.

[12] This appeal can be determined on the basis of the missed limitation period. For the reasons that follow, it is evident that the application for mandamus was brought after the expiration of the limitation period. Accordingly, I would dismiss the appeal, making it unnecessary to deal with the balance of the issues advanced by Mr. Cook.

[13] In *GHC*, this Court set out the basis pursuant to which a pleading may be struck for failure to comply with a limitation period pursuant to Rule 7-9(2)(e), as well as the standard to be met by an applicant in such an application:

[24] ...Where it is clear that a plaintiff has commenced a claim knowing that it is statute-barred, the claim may properly be struck under Rule 7-9(2)(e) as an abuse of process (*Walker* at paras 18–23; *Campbell v Cooper*, 2017 SKCA 55 at para 11).

2. The “plain and obvious” standard applies

[25] Striking a claim under Rule 7-9(2)(e) is not a remedy to be lightly granted. A claim should be struck under that subrule only “where it is ‘plain and obvious’ that allowing an action to proceed would amount to an abuse of process” (*Nelson v Teva Canada Limited*, 2021 SKCA 171 at para 4 [*Nelson*]; see also *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959), or where “it is obvious the claim is devoid of all merit or cannot possibly succeed” (*Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 at para 18 (CA) [*Sagon*]; *Mann Family Trust (Trustee of) v Hawkins*, 2011 SKCA 146 at para 20, 385 Sask R 59 [*Mann*]). *In a case where the expiry of a limitation period is at issue, this standard will be met where, at the time of issuing the claim, “the plaintiff had knowledge of all the facts that would cause the plaintiff’s claim to be statute barred” (Walker at para 25). Conversely, where there is an arguable issue as to whether the claim is statute barred, it is an error in principle for a Chambers judge to strike the claim under Rule 7-9(2)(e) (Nelson at*

paras 17–18; see also *CPC Networks Corp. v McDougall Gauley LLP*, 2021 SKCA 127 at para 92).

(Emphasis added)

[14] As an initial matter, I observe that there is some debate among the parties as to whether the application for mandamus brought by Mr. Cook is subject to the two-year limitation period found in s. 5 of *The Limitations Act* or a shorter six-month limitation period. WSA relies on this Court’s decision in *Bassett v Canada* (1987), 35 DLR (4th) 537 (Sask CA), to suggest that the application is subject to a six-month limitation period. I conclude that it is not necessary for me to determine this issue because, like the Chambers judge, I find that, even if Mr. Cook’s application is subject to a two-year limitation period, it is out of time.

[15] In reaching the conclusion that the limitation period has expired, I have relied on the evidence of Mr. Cook and assumed the two-year limitation period to be applicable. Accepting Mr. Cook’s evidence on the timeline of events in situations where it conflicts with that of WSA places the relevant facts in the best light for him. Nonetheless, based on the evidence before the Court, it is plain and obvious that this claim was brought more than two years after Mr. Cook had knowledge of all the pertinent facts upon which his application was premised.

[16] When, as here, an application alleges a failure to address complaints made in 2017 but is filed in February of 2021, it is evident that, unless the limitation period was somehow extended, or the evidence demonstrates that the claim was not discovered, the two-year limitation period will have expired.

[17] The originating application before the Chambers judge sought as follows:

An Order in the nature of *mandamus* directing and/or requiring [the WSA] to determine the outstanding complaints filed by the Applicant, Darren Cook, on or about *March 17, 2017*[.]

(Emphasis added)

[18] Among the grounds listed in the originating application are the following:

- On *March 17, 2017* Darren Cook met with Lee Reinhart (“Lee”) of the WSA to discuss the low water pressure being delivered to the Mission Ridge Neighborhood [*sic*]. Lee stated that the pressure data I [*sic*] shared with him is considered a public health risk and that it contradicts pressure data he has been provided by the Utility owner and operator [Lost River].
- On *March 27, 2017* Darren requested in writing that the WSA investigate the matter of Lost River Water providing false data and information to the WSA and the community by obtaining their own data. The WSA declined this request.

- *Additional requests* to the WSA in 2018 and 2020 to use their authority to address the submission of false data by Lost River and to ensure the waterworks meets their operational and reporting requirements were also declined.

(Emphasis added)

[19] The originating application is dated February 25, 2021, and was filed February 26, 2021.

[20] Mr. Cook's contention is that he was a self-represented litigant for much of the process and did not believe a civil action as against WSA would be necessary. His position is that any delay on his part is not detrimental to the legal system and there was nothing nefarious about not bringing this application sooner. This may all be true, but it does not change the limitation period or how it is calculated.

[21] Mr. Cook says that he has been investigating the circumstances of his water situation for years and was in discussions with WSA well after February of 2019, such that he only "discovered" his claim as against WSA within two years of February 26, 2021. Mr. Cook points to his affidavit, which describes discussions that were ongoing between him and WSA after February of 2019, and, in particular, the following:

32. On February 4, 2020 I encountered Lee at the home of another Mission Ridge Resident. This was during Lee's annual inspection of the Waterworks. In a recorded conversation we discussed the pressure requirements. Lee restated that he was unaware of any minimum pressure requirements but would investigate the WSA documents I mentioned to him. Lee stated that Lost River has still not submitted the pressures that he requested in 2017. Lee did not believe that pressures as low as the certified pressures shared with him could occur and stated that the WSA only regulates pressure underground where it is not possible to observe pressure. Lee did not contact me regarding the documents he said he would investigate.

33. On Feb 27, 2020 a documented depressurization due to a line break that affected the Mission Ridge Waterworks did not result in a PDWA [precautionary drinking water advisory] for the community. Advisories were issued to other surrounding communities affected by the same depressurization event. Attached as "Exhibit P" is a true copy of the PDWA's issued on that day.

[22] It is clear that Mr. Cook's discussions with WSA continued into 2020. However, as of March of 2017, Mr. Cook was aware of the water problem in the Home and had asked WSA to conduct an investigation. In other words, Mr. Cook had sufficient information as of March of 2017 to demand an investigation.

[23] Mr. Cook's position respecting the commencement of the limitation period fails to appreciate the principles of discovery and the way they are to be applied. Section 5 of

The Limitations Act creates a basic two-year limitation period and s. 6(2) presumes that discovery of the claim occurred on the day that the act or omission on which the claim or originating application is based took place. The relevant sections of the legislation provide as follows:

Application of Act

3(1) Subject to subsections (2) to (5), this Act applies to claims pursued in court proceedings that:

- (a) are commenced by statement of claim; or
- (b) are commenced by originating notice and are not proceedings in the nature of an application.

...

Basic limitation period

5 Unless otherwise provided in this Act, no proceedings shall be commenced with respect to a claim after two years from the day on which the claim is discovered.

Discovery of claim

6(1) Unless otherwise provided in this Act and subject to subsection (2), a claim is discovered on the day on which the claimant first knew or in the circumstances ought to have known:

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage appeared to have been caused by or contributed to by an act or omission that is the subject of the claim;
- (c) that the act or omission that is the subject of the claim appeared to be that of the person against whom the claim is made; and
- (d) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

(2) A claimant is presumed to have known of the matters mentioned in clauses (1)(a) to (d) on the day on which the act or omission on which the claim is based took place, unless the contrary is proved.

[24] The commencement of a limitation period is dependent on the nature of the claim being advanced in the pleading. Therefore, where a statement of claim or an originating application advances different causes of action based on different acts or omissions, the action may be subject to multiple limitation periods depending on the cause of action and underlying conduct alleged (see *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc.*, 2020 SKCA 39 at para 41, 447 DLR (4th) 316 [*Venture Construction*]). In this case, the alleged underlying conduct is the refusal by WSA to conduct the investigation Mr. Cook asked for in March of 2017.

[25] Section 6 of *The Limitations Act* creates a rebuttable presumption concerning the date of discovery. In order to rebut that presumption, Mr. Cook must show that he exercised reasonable diligence in the investigation of any claim against WSA such that he did not “discover the claim”

within the meaning of s. 6 until after February 26, 2019: see *Langenburg (Town) v Gamey*, 2010 SKCA 11 at paras 28–29, 34, [2010] 8 WWR 273; *Olkowski v Nano-Green Biorefineries Inc.*, 2024 SKCA 11 at para 27; and *Fibabanka A.Ş. v Arslan*, 2023 SKCA 13 at paras 26–27, [2023] 6 WWR 624. Alternatively, Mr. Cook must establish that the limitation period was tolled or otherwise extended.

[26] A limitation period may be extended in a number of situations, including, for example:

- (a) where the parties agree to extend the limitation period;
- (b) where a defendant with superior knowledge or expertise is taking ameliorative efforts that may render the commencement of an action unnecessary; or
- (c) where the person against whom the claim is made wilfully misleads the claimant as to the appropriateness of a proceeding or wilfully conceals that a loss has occurred or that it was caused by them.

See *Venture Construction* at paras 65–66; *Sosnowski v MacEwen Petroleum Inc.*, 2019 ONCA 1005 at para 17, 441 DLR (4th) 393 [*Sosnowski*]; *Chelli-Greco v Rizk*, 2016 ONCA 489 at para 4; *Zeppa v Woodbridge Heating & Air Conditioning Ltd.*, 2019 ONCA 47 at para 48, 144 OR (3d) 385; *Nasr Hospitality Services Inc. v Intact Insurance*, 2018 ONCA 725 at para 50, 142 OR (3d) 561; and *The Limitations Act*, s. 17.

[27] The amended statement of claim filed September 22, 2020, to which WSA was added as a defendant and subsequently removed, alleged as follows:

10. Since *December 1, 2014* and continuing at all material times since, the plaintiff has received sporadic and inadequate supply of water to his residence.

...

15. *Between March 2017 and February 2020*, the plaintiff made several requests of the WSA to check the pressure in the waterworks to confirm it did not equal Lost River's reports or meet WSA requirements and guidelines for human consumptive use. The WSA advised that they do not have the equipment to check the water pressure.

...

18. *Following the Meeting [with Mr. Risling and other representatives of Lost River] on or about March 6, 2017*, Risling accused the plaintiff of stealing water from Lost River and demanded the plaintiff to pay \$5,000 to Lost River under the threat that if the plaintiff did not comply with his demand, Risling would cause Lost River to cease all water delivery to the plaintiffs [*sic*] residence.

...

21. Since having his water discontinued the plaintiff has made several document requests of the WSA. While the WSA has provided some documentation, they [*sic*] claim to have “misplaced” or “lost” several of the documents the Plaintiff has requested.

(Emphasis added)

[28] In his affidavit sworn February 24, 2021, Mr. Cook attests:

4. *On or about March 17, 2017, I had a meeting with Lee Reinhart (“Lee”), Environmental Project Office for the WSA, to discuss the water pressure to my residence and the recently issued PDWA. I provided Lee with pictures of a water gauge showing the water pressure to my residence. Attached to this my Affidavit as Exhibit “B” are true copies of these pictures.*

...

10. *On March 27, 2017, I emailed Lee requesting that the WSA conduct an official investigation into false data and information provided by Lost River to the WSA. The WSA declined this request citing that they do not have tools to obtain pressure data; the WSA only uses the data provided to them by the utility; and that he concluded it may not be possible for this waterworks to maintain the 20psi regulatory minimum and is required to have backflow equipment.*

...

15. *Lee responded by phone on January 11, 2018. He stated that the WSA does not collect pressure data and that a request by Lee to Lost River to provide the WSA with pressure data from the spring of 2017 had not been accomplished. I revised my request in an email.*

16. Lee responded on January 12, 2018 to this request by providing minimal information, which did not include any pressure data. The documents received included:

- a) Lost River’s permit to operate;
- b) Sale of Lost River documents 2010[;]
- c) boil water advisories issued;
- d) a map of the neighbourhood; and
- e) incomplete map of the pipelines.

(Emphasis added)

[29] Mr. Cook’s contention is that the limitation period did not start until after discussions between himself and WSA had run their course, because it was not until that point that he could be said to have been aware that initiating an action against WSA was appropriate. In making that submission, he relies on s. 6(1)(d) of *The Limitations Act*, which provides that a limitation period will not begin to run until the claimant, “having regard to the nature of the injury, loss or damage, [knew or in the circumstances ought to have known] a proceeding would be an appropriate means to seek to remedy it”. This provision, however, does not mean that a cause of action only accrues after all settlement discussions have concluded.

[30] In *Sosnowski*, the Ontario Court of Appeal considered language in the Ontario *Limitations Act, 2002*, SO 2002, c 24, Schedule B, which is mirrored in s. 6(1)(d) of the Saskatchewan legislation and noted:

[15] This court’s jurisprudence has developed certain principles for the interpretation and application of s. 5(1)(a)(iv).

[16] First, the determination of whether a proceeding is an appropriate means to seek to remedy an injury, loss, or damage depends upon the specific factual and/or statutory setting of each case: *Nasr Hospitality Services Inc. v. Intact Insurance*, 2018 ONCA 725, 142 O.R. (3d) 561, at para. 46.

[17] Second, this court has observed that two circumstances most often delay the date on which a claim is discovered under this subsection. The first is when the plaintiff relied on the defendant’s superior knowledge and expertise, especially where the defendant took steps to ameliorate the loss. The other situation is where an alternative dispute resolution process offers an adequate remedy, and it has not been completed: *Nasr*, at para. 50.

[18] Third, Sharpe J.A. in *Markel Insurance Company of Canada v. ING Insurance Company of Canada*, 2012 ONCA 218, 109 O.R. (3d) 652, at para. 34, provided the following guidance concerning the meaning of the term “appropriate”:

This brings me to the question of when it would be “appropriate” to bring a proceeding within the meaning of s. 5 (1)(a)(iv) of the *Limitations Act*. Here as well, I fully accept that parties should be discouraged from rushing to litigation or arbitration and encouraged to discuss and negotiate claims. In my view, when s. 5 (1) (a)(iv) states that a claim is “discovered” only when “having a regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it,” the word “appropriate” must mean *legally appropriate*. To give “appropriate” an evaluative gloss allowing a party to delay the commencement of proceedings for some tactical or other reason beyond two years from the date the claim is fully ripened and requiring the court to assess the tone and tenor of communications in search of a clear denial would, in my opinion, inject an unacceptable element of uncertainty into the law of limitation of actions. [Emphasis in original.]

[19] In other words, appropriate means whether it is legally appropriate to bring an action. Appropriate does not include an evaluation of whether a civil proceeding will succeed.

[31] I do not accept Mr. Cook’s suggestion that the limitation period in his case began to run only when he felt his negotiations with WSA were at an end. The mere fact that settlement discussions may be ongoing and that one party wishes to continue them does not automatically delay the start of a limitation period. This point was made in *Normar Drywall v 4241258 Canada Inc. o/a Laurin General Contractor and Dennis Laurin*, 2023 ONSC 3106, where the Ontario Superior Court of Justice noted:

[49] This Court has held that communication between the parties, including a request for documentary back-up for the invoice, settlement discussions, and acknowledgement that part of the amount claimed was owing, cannot be taken to extend the limitation period.

If these communications did extend the limitation period, no one would be able to safely discuss their dealings: see *Delmar*, at paras. 5-6.

I agree with this reasoning (see also *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49 at paras 59–62, 442 DLR (4th) 9; and *Delmar Construction Inc. v Toronto (City)*, 2008 CanLII 19223 (Ont Sup Ct) at paras 4–6).

[32] In fact, even an admission of liability, made in the context of settlement discussions, will not on its own extend the limitation period, as noted by the Supreme Court in *Maracle v Travellers Indemnity Co. of Canada*, [1991] 2 SCR 50 at 58:

An admission of liability is frequently made in the course of settlement negotiations. This is often a preliminary step in order to clear the way to enter into a discussion as to quantum. Indeed, when an offer to pay a stated amount is made by one party to the other, an admission of liability is usually implicit. In this type of situation, the admission of liability is simply an acknowledgment that, for the purpose of settlement discussions, the admitting party is taking no issue that he or she was negligent, liable for breach of contract, etc. There must be something more for an admission of liability to extend to a limitation period. ...

[33] In this case, the evidence does not establish an admission. Rather, it demonstrates that WSA continued to talk with Mr. Cook, nothing more. Parties will often engage in discussions in the hopes of trying to resolve a claim, but that alone is not enough to extend the limitation period.

[34] Simply put, parties cannot engage in never-ending talks and use such ongoing discussions as a basis to say that the limitation period did not begin to run. That is not what is intended by s. 6(1)(d) of *The Limitations Act*. The language “a proceeding would be an appropriate...” in s. 6(1)(d) means legally appropriate. When WSA refused Mr. Cook’s request for an investigation, it became “legally appropriate” to commence a proceeding to challenge that decision. Two years afforded plenty of time for discussions. If parties want to engage in lengthy settlement communications that extend beyond two years from the date of the act or omission complained of, they should enter into an agreement to toll the limitation period as provided for by s. 21(1) of *The Limitations Act*:

Agreement

21(1) Subject to subsection (2), if an agreement expressly provides for the extension of a limitation period, the limitation period is altered in accordance with the agreement.

[35] In the absence of some form of actionable misrepresentation, concealment, or some other legal basis for extending the limitation period, such as a tolling agreement, a claimant who delays bringing their court proceeding does so at their own peril.

[36] Based on Mr. Cook’s own evidence, he had the knowledge contemplated by s. 6 of *The Limitations Act* long before February 26, 2019. Mr. Cook’s concerns over water pressure at the Home date back to 2014. He raised the concern and met with WSA in March of 2017 after a precautionary drinking water advisory was issued and he asked that WSA conduct an investigation, but WSA refused to do so. Mr. Cook’s application for mandamus is premised on the failure of WSA to conduct that investigation. Given Mr. Cook’s own evidence, the Chambers judge made no error in concluding that the mandamus application was statute-barred. This ground of appeal must be dismissed.

[37] Having determined that the mandamus application is statute-barred, it is unnecessary to address the remaining issues advanced.

[38] For the foregoing reasons, I would dismiss the appeal, with costs to WSA, which I would fix at \$1,500.

“Bardai J.A.”

Bardai J.A.

I concur.

“Jackson J.A.”

Jackson J.A.

I concur.

“McCreary J.A.”

McCreary J.A.