

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JAVIER PASCUET, Plaintiff/Responding Party

- and -

SKY SERVICE F.B.O. INC., Defendant/Moving Party

BEFORE: Associate Justice Kamal

COUNSEL: Ben Aberant and John Gray (Metzger), for the Moving Party (Defendant)
James SM Kitchen, for the Responding Party (Plaintiff)

REASONS FOR DECISION

1. It is important to recognize that while the doctrine of discoverability ensures fairness, it does not offer an indefinite deferral. Ignorance also does not permit an unreasonable deferral. Our society and the legal system need timely resolutions of legal issues, finality, and certainty.
2. The Plaintiff, Javier Pascuet (“Mr. Pascuet”), was an employee of the Defendant, Sky Service F.B.O. Inc. (“Skyservice”) until January 4, 2022.¹ Skyservice terminated Mr. Pascuet’s employment because of his non-compliance with their vaccination policies.
3. Mr. Pascuet first commenced proceedings in the Federal Court but was unsuccessful.
4. On August 26, 2024, Mr. Pascuet issued the Statement of Claim in this wrongful dismissal action, which was served on or around September 4, 2024.
5. This is a motion for summary judgment brought by Skyservice to dismiss the action because it was commenced after the limitation period expired.
6. The sole decision on this motion is whether the action is statute-barred. This decision does not determine the merits of the wrongful dismissal claim in this action.

¹ Mr. Pascuet began his employment with JPD Aviation Limited on May 1, 2006. In 2016, JPD Aviation Limited was acquired by Skyservice Ottawa Inc., another predecessor corporation of Skyservice. Following this, Pascuet voluntarily executed an employment agreement with Skyservice Ottawa Inc. Skyservice Ottawa Inc. was subsequently amalgamated with Sky Service F.B.O. Inc.

7. For the reasons that follow, I find that the plaintiff knew, or reasonably ought to have known, that his employment had been terminated by Skyservice more than two years before commencing this action. The time to commence a proceeding in the Superior Court had since run out. As a result, the claim is statute-barred and cannot proceed. The motion for summary judgment is granted, and the action is dismissed.

Analysis

General Principles Regarding Summary Judgement

8. Pursuant to [Rule 20 of the Rules of Civil Procedure](#), a court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to the claim or defence.
9. There will be no genuine issue requiring a trial when the judge can reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result. See [Hryniak v Mauldin, 2014 SCC 7](#) at [para. 49](#).
10. The rules governing summary judgment must be interpreted broadly, favouring proportionality and fair access to the affordable, timely, and just adjudication of claims.
11. When the facts surrounding a dispute over the limitation period are known and essentially undisputed, it is appropriate to pursue a summary judgment motion to address the limitations issue. This will provide a prompt and appropriate process for resolving the matter. See [Miaskowski v Persaud, 2015 ONCA 758](#) at [para. 21](#).

Limitations Act, 2002

12. Limitation periods are vital for the civil justice system and the administration of justice to function effectively. Particularly, they encourage the timely resolution of legal issues, provide finality and certainty, and ensure that pertinent evidence is preserved. Limitation periods ensure that plaintiffs do not sleep on their rights and act in a timely fashion. See [Haldenby v. Dominion of Canada General Insurance Co., 2001 CanLII 16603 \(ON CA\)](#) at [para. 18](#) citing [M.\(K.\) v. M.\(H.\), 1992 CanLII 31](#).
13. The basic limitation period is outlined in [section 4](#) of the [Limitations Act, 2002](#). It states that a claim cannot be started after two years have passed since the claim was discoverable.
14. Under [section 5\(1\)](#) of the [Limitations Act, 2002](#), a legal claim is said to have been "discovered" on the earlier of two dates:
 - (a) the day on which the person with the claim first knew,

- (i) that the injury, loss or damage had occurred,
- (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
- (iii) that the act or omission was that of the person against whom the claim is made, and
- (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

15. Pursuant to section 5(2), there is a presumption that a plaintiff had known the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. A plaintiff must rebut this presumption to defeat a defendant's limitations defence.
16. Section 5(1)(b) codifies the longstanding discoverability doctrine, which holds that a limitation period will begin running from the date that it should reasonably have been discovered. The principle of discoverability provides that a claim arises for the purposes of a limitation period when the material facts on which it is based have been discovered, or ought to have been discovered, by the plaintiff by the exercise of reasonable diligence.
17. Determining whether a person has discovered a claim is a fact-based analysis. The question to be posed is whether the prospective plaintiff knows enough facts. If the plaintiff does, then the claim has been "discovered", and the limitation begins to run. See also *Lawless v Anderson*, 2011 ONCA 102 at paras 23; *Soper v. Southcott* (1998), 1998 CanLII 5359 (ON CA); *McSween v. Louis*, 2000 CanLII 5744 (ON CA).
18. Generally, the failure to appreciate the legal significance of discoverable facts does not stop a limitation period from running. *Clarke v Ontario (Attorney General)*, 2017 ONSC 43, at para. 19.
19. The Court of Appeal summarized the law with respect to actual knowledge and discoverability in *Har Jo Management Services Canada Ltd. v. York (Regional Municipality)*, 2018 ONCA 469 at para. 42:

A claim is discovered on the earlier of two dates: when the plaintiff actually knew of its claim, or when a reasonable person, with the plaintiff's abilities and in its circumstances, would have discovered the claim. If a plaintiff fails to exercise the diligence a reasonable person would, the claim is potentially discoverable earlier than the date the plaintiff had actual knowledge of the claim. Due diligence is therefore only relevant to the period of time preceding a plaintiff's actual knowledge of its claim, not the period after. Once a claim has been discovered, there is no ongoing duty on a plaintiff to further investigate the claim. Once the plaintiff has knowledge of its claim, then the limitation clock has begun running,

and all the plaintiff is required to do is commence an action before the limitation period expires.

Mr. Pascuet's claim is statute-barred under the Limitations Act, 2002

Skyservice's Position

20. In support of their position that the entirety of the claim is statute-barred, Skyservice relies on specific admissions by Mr. Pascuet in the Statement of Claim made and the evidence adduced by Mr. Pascuet in his Affidavit. Amongst other admissions, Skyservice relies significantly on the fact that Mr. Pascuet pleads that he received a letter from Skyservice on January 4, 2022, stating that he had been terminated with just cause.
21. Skyservice also submits that Mr. Pascuet's misapprehension about the legal significance of the termination of his employment does not postpone the commencement of the limitation period. It is well established that a lack of appreciation of the legal significance of the facts grounding a claim does not stop the limitation period from running. Skyservice relies on the following cases: [Unegbu v. WFG Securities of Canada Inc., 2016 ONCA 501](#) at para. 4; [Nicholas v. McCarthy Tétrault, 2008 CanLII 54974 \(ON SC\)](#) at paras. 26-29, aff'd [2009 ONCA 692](#), leave to appeal denied [2010 CanLII 12967 \(SCC\)](#).

Mr. Pascuet's Position

22. Mr. Pascuet submits that it is not plain and obvious that the limitation issue will be decided against him if his claim proceeds to trial.
23. Mr. Pascuet submits that he knew on the day he was fired that a loss had occurred and that it was caused by an act – in other words, the requirements under subsection 5(1)(a)(i) and (ii).
24. However, Mr. Pascuet submits that he did not know that the act was committed by SkyService, or that a proceeding in the superior court claiming wrongful dismissal against SkyService would be an appropriate means to seek a remedy for his loss. In other words, Mr. Pascuet submits that he did not have the requisite knowledge to satisfy subsections 5(1)(a)(iii) and (iv).
25. Specifically, Mr. Pascuet says that he previously thought he was terminated by the federal government, and the appropriate remedy was in the Federal Court. He did not subjectively become aware of, or discover, his claim against Skyservice until the release of the Federal Court's decision in June of 2024 that said Mr. Pascuet may bring his claim in a provincial superior court. He says that he did not subjectively believe he had any legal recourse against Skyservice at the time of termination and that he believed that the only recourse he had was against the Government of Canada.
26. Mr. Pascuet's evidence was that he reached out to Samfiru Tumarkin LLP, which he submits is a law firm serving people who lost their jobs. He spoke to a lawyer from the firm who told him that there was nothing he could do because of the Government's vaccine mandate regarding airport workers.

27. Mr. Pascuet further submits that the unique circumstances of this case demand careful consideration. He submits that this case is unprecedented because, outside of the health care field, it is novel for workers to be told there is a government mandate that they receive a vaccine in order to keep their private-sector jobs.
28. Mr. Pascuet asked me to consider what a reasonable person in such circumstances would conclude. Mr. Pascuet submits that a reasonable airport worker told he is being fired because he did not comply with the new government rule to take a vaccine would think and do precisely what Mr. Pascuet would do. Mr. Pascuet articulated that such a reasonable person would say to himself, “well, what my employer is telling me seems fair. It’s not my employer’s fault they fired me, it’s the government’s. But the government is not my employer. I can’t sue my employer for wrongful termination, because it’s not their fault, but I also can’t sue the government because they are not my employer. My only option is to sue the government for imposing a rule that violates my civil rights.” Then, being diligent, he would consult a law firm practicing employment law to verify if he had concluded correctly, which is exactly what Mr. Pascuet did.

Analysis

29. The general principle in Ontario is that the limitation period for a wrongful dismissal claim begins to run on the date that an employer dismisses an employee without reasonable notice. See *Jones v. Friedman*, 2006 CanLII 580 (ON CA) at paras. 4 and 11; *Bailey v. Milo-Food & Agricultural Infrastructure & Services Inc.*, 2017 ONCA 1004 at paras. 5-6, leave to appeal denied 2018 CanLII 87180 (SCC); *Badawy v. TD Bank Group*, 2022 ONSC 5445 at para. 33 and 38; *Diarez v. David Murphy et al.*, 2025 ONSC 4486 at para. 42.
30. Both Skyservice and Mr. Pascuet agree that Mr. Pascuet was provided with notice of his termination on January 4, 2022, and that his employment was indeed terminated for cause on that date. As a result, there is no question about whether Mr. Pascuet knew he was terminated on January 4, 2022. Accordingly, both parties concede that on January 4, 2022, Mr. Pascuet knew the injury, loss or damage had occurred and that the injury, loss or damage was caused by or contributed to by an act.
31. The remaining issues, therefore, are whether Mr. Pascuet knew the act was of Skyservice; whether Mr. Pascuet knew a proceeding would be an appropriate means to seek to remedy it; and when a reasonable person with the abilities and in the circumstances of Mr. Pascuet first ought to have known of these matters.

The termination was an act of Skyservice

32. In this case, there is no dispute that Mr. Pascuet had subjective knowledge of the material facts underlying his claim of wrongful dismissal. Namely, Mr. Pascuet was aware that he had been terminated, effective immediately, without notice, on January 4, 2022. He then took steps to seek legal advice and commenced legal proceedings in the Federal Court.

33. Aside from the notice Mr. Pascuet received on January 4, 2022, he received his accrued vacation payout from Skyservice following termination (but no other amounts), and he stopped working. A Record of Employment for Mr. Pascuet's employment was filed with Service Canada. Following the termination of Mr. Pascuet's employment, a final pay stub was issued with a payment date of January 14, 2022.
34. I do not agree with Mr. Pascuet's argument that the claim was not discoverable when he was terminated on January 4, 2022 because he did not know who terminated him. I also do not agree that a reasonable person would be confused as to who their employer was, or who terminated them, or that he reasonably thought the federal government terminated him because of their policies. At best, Mr. Pascuet failed to appreciate the legal significance of discoverable facts; however, that does not stop a limitation period from running. Employers have had to abide by the government's policies for a long time. For example, employers are required to abide by human rights policies and workplace safety policies. The requirement to follow any governmental policies (whether federal, provincial, or otherwise) does not create an employment relationship with the government, and I do not agree with Mr. Pascuet that a reasonable person would think it does.
35. In my view, a reasonable person would know, or ought to have known, that a wrongful termination suit would be against their employer. The evidence before me does not support Mr. Pascuet's submission that it was reasonable for him to think he was terminated by the federal government, nor do I agree that a reasonable person would come to that conclusion.
36. The evidence further establishes that Mr. Pascuet sought legal advice regarding any recourse he may have. Skyservice argued that I should make an inference regarding the legal advice Mr. Pascuet was given in the weeks after his termination because Mr. Pascuet did not commence this action immediately after that contact. The issue of drawing an inference would only be critical if I find there is a genuine issue requiring a trial. However, as outlined in these reasons, I find that there is no genuine issue for trial based on the record before me without the need for any enhanced powers, including drawing an inference.
37. Mr. Pascuet's evidence simply says that he was told "there was nothing I could do". Based on Mr. Pascuet's evidence before me, it is clear that he received advice regarding next steps and whether he had any recourse. Based on that advice, Mr. Pascuet chose his next steps. The evidence does not provide me with a reasonable explanation that Mr. Pascuet did not have the requisite knowledge about the injury, the cause, who caused the injury, and whether a proceeding would be appropriate. The evidence provided by Mr. Pascuet offers a vague account of a possible misunderstanding of the legal consequences, but does not establish that he did not have the facts or that a reasonable person in his circumstances would have conducted themselves the way he did. The evidence does not sufficiently displace the presumption or general principle that the limitation period for a claim of wrongful dismissal begins to run on the date that an employer dismisses the employee.

38. In my view, Mr. Pascuet knew (or ought to have known) that the termination was done *by his employer*, Skyservice, on January 4, 2022.

Mr. Pascuet knew, or ought to have known, that a proceeding was appropriate

39. The next question is whether Mr. Pascuet knew (or ought to have known) that a proceeding would be an appropriate means to seek to remedy the damage. A plaintiff need not know all the facts that support the claim for the claim to be discovered; once a plaintiff knows that some damage has occurred, the claim has been discovered. It is not required that the plaintiff know the extent or the exact type of damage. See *Sampson v. Empire (Binbrook Estates)*, 2016 ONSC 5730, at paras. 37-38; *Kennedy v. RBC*, 2018 ONSC 2894 at para. 10.
40. Mr. Pascuet’s misunderstanding regarding the legal significance of the termination of his employment does not postpone the commencement of the limitation period. The question is whether Mr. Pascuet had the knowledge, or means of acquiring the knowledge, of the existence of the facts that would support a claim for relief. See *Nicholas v. McCarthy Tétrault*, 2008 CanLII 54974 (ON SC) at para. 26.
41. Mr. Pascuet pursued an action in the Federal court. That in itself satisfies the fourth element of the test – Mr. Pascuet pursued a proceeding. The fact that he pursued a proceeding in a different venue or under a different cause of action does not postpone the limitation period. See *Beniuk v. Leamington (Municipality)*, 2019 ONSC 1830 at paras. 25 and 26 and *Novak v. St. Demetrius (Ukrainian Catholic Development Corporation)*, 2017 ONSC 3503, at para. 27, *aff’d* 2017 ONCA 693.
42. In *Har Jo Management Services Canada Ltd. v. York (Regional Municipality)*, 2018 ONCA 469, the plaintiff made both a claim for injurious affection before the Ontario Municipal Board (OMB) and later started proceedings in the Superior Court “out of an abundance of caution”. The Court of Appeal noted in *obiter* at para. 44 that:
- Case law suggests that in circumstances similar to those in this case, plaintiffs have often commenced two proceedings, one before the OMB and one in the Superior Court. Defendants may then seek a stay of the court proceeding pending a determination of jurisdiction by the OMB, or even dismissal of the court claim if it is clearly a claim for injurious affection. [Citations omitted.]
43. Mr. Pascuet says that he did not discover his claim against Skyservice until the release of the Federal Court’s decision in June of 2024, which said he may bring his claim in a provincial superior court. I do not agree. Commencing a claim in the wrong forum does not suspend the running of a limitation period. While that may have been when Mr. Pascuet *decided* to pursue an action for wrongful dismissal in the superior court, that is not when Mr. Pascuet (or a reasonable person in Mr. Pascuet’s circumstances) knew or ought to have known that he may have had a claim in a provincial superior court. Furthermore, while knowledge of the appropriate forum or venue is not a material

consideration, in my view, Mr. Pascuet knew (or ought to have known) that a proceeding in superior court would be an appropriate means to seek to remedy the wrongful dismissal allegation on January 4, 2022.

44. More importantly, discoverability is not solely based on Mr. Pascuet's subjective knowledge but also on what a reasonable person ought to have known in the circumstances. In my view, a reasonable person in Mr. Pascuet's position would have known the material facts underlying his claim.
45. Based on the evidence before me, I find that Mr. Pascuet's claim of wrongful dismissal was discoverable and the limitation period began to run on January 4, 2022, because that is the date Mr. Pascuet knew (and ought to have known) he was terminated and any recourse would need to be sought from that date. Flowing from that, the limitation period expired on January 4, 2024.
46. Mr. Pascuet has not rebutted the presumption set out in section 5(2).
47. Mr. Pascuet's Statement of Claim was not issued until August 26, 2024, and was not served until September 4, 2024. Therefore, the action was commenced after the limitation period expired and is, therefore, statute-barred.

Mr. Pascuet's argument with respect to *Clarke v Ontario (Attorney General)*

48. Mr. Pascuet submitted that, in the alternative, the "Clarke exception" should apply and his Claim be permitted to proceed to trial. In [*Clarke v Ontario \(Attorney General\)*, 2017 ONSC 43](#), at [paras 19-21](#), Justice Stinson applied an exception in circumstances where the Plaintiff failed to appreciate the legal significance of discoverable facts. Justice Stinson applied an exception for novel claims. This was upheld by the Court of Appeal in [*Clark v Ontario \(Attorney General\)*, 2019 ONCA 311](#) at [para 37](#).
49. Mr. Pascuet says that the *Clarke* fact scenario is similar to the present case because Mr. Pascuet did not, until weeks before he filed his Claim, receive the legal advice (from both the Courts and newly hired counsel) necessary to conclude who was responsible for his firing and that a wrongful dismissal action in this court was an appropriate proceeding to seek a remedy.
50. Mr. Pascuet argues that the present case is plainly novel and the unique circumstances of this case demand careful consideration. Mr. Pascuet says it is unprecedented, outside of the health care field, for workers to be told there is a government mandate they receive a vaccine in order to keep their private-sector jobs.
51. He says that this case is not only novel because of the facts, but because of the legal claim Mr. Pascuet will advance, which Mr. Pascuet says is that SkyService is legally liable for the damages flowing from having terminated Mr. Pascuet for cause when it did not have cause, notwithstanding the government's directive that airport workers receive the COVID vaccine in order to keep working.

52. In my view, the exception outlined in *Clarke* is intended to be used in rare circumstances. In creating such an exception, the Court in *Clarke* relied on *Boyce v. Toronto (City) Police Services*, 2011 ONSC 53, at [para. 23](#), where Justice Low stated that it is possible to envisage that a new kind of right might arise that has not been hitherto protected, thus making it arguable that a civil proceeding might not be seen objectively as an appropriate means to seek to remedy.
53. However, even in *Boyce*, where the court was considering an action regarding battery, Justice Low said, “a battery causing personal injury is a classic example of the kind of wrong that is appropriate for redress by court action. A citizen is presumed to know the law of the land.”
54. Similarly, wrongful termination is a common example of the kind of wrong that is appropriate for redress by court action. The evidence before me does not establish novel facts or considerations. Employers regularly implement policies to comply with applicable law. This is not novel or unprecedented.
55. In *Clarke*, the specific exception found by Justice Stinson was based on a potential new kind of right regarding the duty owed (if any) by Crown attorneys to police officers who are engaged as participants and witnesses in the criminal justice process.
56. In the present case, no new right, cause of action, or any novel circumstances are apparent to me. Accordingly, I decline to engage an exceptional approach to a limitation period in this case.

Conclusion

57. For the reasons outlined above, Skyservice’s motion is granted.
58. The Plaintiff’s action is dismissed in its entirety.
59. Counsel are encouraged to agree to costs. If the parties are not able to agree on costs, the Defendant may file costs submissions of no more than 3 pages plus a costs outline and any offers to settle within 10 days of the release of this decision, and the Plaintiff may file responding costs submissions on the same terms within a further 10 days. The Defendant’s Reply, if any, is limited to one page, to be filed within a further 5 days.

Associate Justice Kamal

DATE: October 31, 2025