

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Young v. Gore Mutual Insurance  
Company,*  
2026 BCSC 262

Date: 20260218  
Docket: S10694  
Registry: Courtenay

Between:

**Frank Hillard Young and Tammy Elizabeth Young**

Plaintiffs

And:

**Gore Mutual Insurance Company**

Defendant

- and -

Docket: S10695  
Registry: Courtenay

Between:

**Frank Hillard Young and Tammy Elizabeth Young**

Plaintiffs

And:

**Ryan Pyne and Karriann Pyne**

Defendants

Before: Associate Judge Harper

**Reasons for Judgment**

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Insurance Company:

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Karriann Pyne:

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Place and Date of Hearing:

Victoria, B.C.  
December 18, 2025

Place and Date of Judgment:

Victoria, B.C.  
February 18, 2026

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**INTRODUCTION**

[1] The plaintiffs own and reside in a single-family home in Campbell River (the “Young property”) next to property owned by the defendants Ryan Pyne and Karriann Pyne (the “Pyne property”). Both actions relate to claims arising from water leaks that allegedly originated from the Pyne property and entered the Young property causing damage to the Young property (the “Damage”).

[2] The action against Gore Mutual Insurance Company (“Gore Mutual”) relates to Gore Mutual’s refusal to cover the repairs to the Young property.

[3] Steve Allardice was retained by the Youngs in January, 2023 to represent them in their claims against the Pynes and against Gore Mutual. The notices of civil claim were filed in each action in March, 2023.

[4] The actions were ordered to be heard at the same time by consent order made May 9, 2025. The implied undertakings are waived and evidence is shared between the two actions.

[5] Mr. Allardice filed notices of application in both actions on September 16, 2025 seeking leave to add new claims. Outside counsel for the Youngs was then appointed to bring the application which eventually came on for hearing before me.

[6] In both actions, the plaintiffs seek to add claims of psychological injury sustained by Mr. Young. Additionally, in the Pyne action, the plaintiffs seek to add a claim in trespass.

[7] The actions have been set for trial, but since the filing of the application responses, the trial has now been adjourned. The new trial date is February 22, 2027 for 15 days.

**LEGAL PRINCIPLES**

[8] A party may amend the whole or any part of a pleading after the notice of trial is served only with leave of the court or written consent of the parties: Rule 6-1(1)(b).

[9] The factors the court considers on an application to amend are not set out in the rule itself, but have been developed through case law. On this application, the parties collectively tendered myriad case authorities that state the factors the court should consider on an application to amend. Examples are: *Thomas v. Rio Tinto Alcan Inc.*, 2019 BCSC 107; *Dawe v. B.C. Children’s Hospital*, 2003 BCSC 443; *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd. (1996)*, 19 B.C.L.R. (3d) 282 (C.A.). The factors are non-exhaustive and include the following:

- (a) amendments should be permitted as are necessary to determine the real issue between the parties;
- (b) the proposed pleading must disclose a reasonable claim;
- (c) whether there has been delay in applying for the amendments;
- (d) if there has been delay, the reasons for the delay;
- (e) whether the new cause of action is proposed to be added after the expiry of the limitation period;
- (f) the degree of prejudice caused by the delay;
- (g) the party resisting amendment must prove real, and not just potential, prejudice;
- (h) the extent of the connection between the existing claims and the new cause of action.
- (i) the overriding consideration is what is just and convenient.

For the reasons that follow, I have determined that it is just and convenient to allow all of the amendments sought in both notices of civil claim.

**THE CLAIM IN TRESPASS IN THE PYNE ACTION**

[10] The Youngs seek to amend their notice of civil claim to claim trespass pleaded as follows:

4. The defendants are liable for trespass to the Young Property as they:
  - a. Entered upon the lands through the discharge of water onto the Young Property during both the First Water Leak and Second Water Leak;
  - b. Allowed the water to remain on the Young Property; and
  - c. did so wrongfully and without lawful justification (the “Trespass”)
5. As a result of the “Trespass” the Plaintiffs have suffered and continue to suffer loss, personal injury, damage, and expense.

[11] Mr. Allardice’s evidence is that he did not realize until early October, 2025 that he should include a claim of trespass. The Pynes argue that the facts as pleaded do not disclose a reasonable claim in trespass. They say that the existing pleading asserts claims in negligence and nuisance which are acceptable claims, but that a claim in trespass is bound to fail.

[12] The Pynes say that water from a neighbouring property constitutes a trespass only if it is discharged directly onto the lands of a complainant. Water that is indirectly discharged onto the lands of a complainant, such as water seeping from a leaking watermain, is not “sufficiently direct” to constitute trespass: *Ming Sun Benevolent Society v. Philippine Women Centre of B.C.*, 2025 BCSC 1073 at paras. 198–200; *Allison v. Radke*, 2014 BCSC 1832 at paras. 170–175. The Pynes say that the claim as pleaded concerns water that indirectly came to rest upon the Young property as a result of a leaking watermain which is an insufficiently direct manner so as to constitute trespass.

[13] The Youngs argue that the claim in trespass is not doomed to fail. The Youngs’ argument is that the tort of trespass to land is committed by entry upon, remaining upon, or projecting any object upon land, including beneath or above the surface of the land, in the possession of the plaintiff without lawful justification: *Ward v. Cariboo Regional District*, 2021 BCSC 1495 at paras. 49 and 54.

[14] In my view, the claim in trespass is not doomed to fail. Put another way, if the claim in trespass had been included in the original notice of civil claim, it would not have been struck. As was the case in *Ming Sun*, and based on the evidence

tendered at trial and the findings of fact made by the trial judge, nuisance might provide the more natural framing of the Youngs' claim and the claim in trespass might be dismissed (paras. 197 and 201), but at the pleadings stage, the claim in trespass based on the facts pleaded discloses a reasonable cause of action. Similarly, in *Ward*, the trial judge instructed himself on the legal test for trespass to be applied to the facts of the case (para. 60) and then applied the test to the facts as he found them (paras. 61 to 65). Whether the claim in trespass succeeds or fails in the present case will be a matter for trial.

[15] The addition of the claim in trespass will cause no prejudice to the Pynes as the claim is based on the legal characterization of the facts as found by the trial judge. There is ample time before trial for the Pynes to prepare their defence to the claim of trespass. It is just and convenient to permit the amendment.

### **THE PERSONAL INJURY CLAIMS**

[16] Because the applications in each action overlap in terms of evidence and legal principles, I will deal with the personal injury claims in both actions together.

[17] The proposed new claim in the Pyne action is that the Pynes were negligent in causing the Damage, and that the Damage caused psychological and psychiatric injuries to Frank Young including anxiety, depression, substance use disorder, and aggravation of PTSD. Mr. Young claims general damages including non-pecuniary damages, special damages, and cost of future care.

[18] In the Gore Mutual action, the new claim alleges that as a result of the denial of insurance coverage and the breach of duty of good faith under the policy, Mr. Young suffered the same injuries as particularized in the preceding paragraph.

[19] The personal injury claim amendments in both actions relate to the existing claims. The amendments are not doomed to fail.

[20] The real issue here is about delay. In order to assess how delay might influence the decision on whether it would be just and convenient to allow the

amendments, a review of the timeline of relevant events is necessary. For the purposes of the application, the dates set out in each of the notices of civil claim are assumed to be correct.

**The Extent of the Delay and Reasons for the Delay**

[21] The first leak occurred in August, 2019, and the second leak occurred in October, 2020.

[22] Mr. Young reported to a psychiatrist on July 20, 2021 that he was experiencing an increase in his substance use due to Gore Mutual’s denial of coverage. The psychiatrist recommended that Mr. Young seek legal advice.

[23] Mr. Young should have concluded that he had a claim against Gore Mutual for personal injury, but he had no basis to conclude that he had a claim against the Pynes for personal injury arising from the Damage until February 17, 2022 when he reported to a psychiatrist being afraid of losing his home.

[24] Mr. Young provided two identical affidavits in both actions as follows: “I experienced emotional and psychological injuries as a result of the damage to our Property and the subsequent denial of insurance coverage. However, I did not realize that I needed to discuss these injuries with my counsel, or its importance to this action, until I met with him to prepare for my examination for discovery on August 14, 2025. Throughout this action, I have relied on my counsel to pursue my herein action arising out of the Incident [i.e. the water leaks] as appropriate.”

[25] Mr. Allardice’s evidence concerning the reasons for failing to plead the new causes of action is identical in both actions and is as follows: “On or about August 14, 2025, during a meeting with Mr. Young to prepare him for his examination for discovery, it came to my attention that Mr. Young had been experiencing psychological injuries arising out of the damage to his property and the defendant’s denial of his insurance claim for same.” (In referring to the “defendant’s denial”, Mr. Allardice obviously means Gore Mutual and not the Pynes.)

[26] Mr. Allardice avers: “Solely due to my own oversight, I failed to discover Mr. Young’s mental health injuries and make the proposed amendments sooner. None of the delay is due to the plaintiffs.”

[27] On August 14, 2025, Mr. Allardice informed counsel for Gore Mutual that he had recently been made aware of Mr. Young’s psychological injuries and the need to amend the NOCC. Mr. Allardice was contacted by counsel for the Pynes a few days later regarding this new development.

[28] Evidence of Mr. Young’s mental health and substance use issues, which he attributed to the denial of insurance coverage, came out at his examination for discovery on September 9, 2025.

[29] The explanation for the delay in making the claims for psychological injury could be Mr. Young’s failure to appreciate that he should bring his mental health struggles to Mr. Allardice’s attention, or it could be Mr. Allardice’s failure to elicit the relevant history from Mr. Young in the client interview process. Counsel for the plaintiff who appeared on this application confirmed that Mr. Young does not waive solicitor-client privilege. Accordingly, there is no way of knowing whether Mr. Young told Mr. Allardice enough about his mental health troubles and substance use for Mr. Allardice to have concluded that he should include claims for personal injury in both notices of civil claim.

[30] Any explanation put forward for delay in seeking an amendment need not necessarily exculpate the party seeking the amendment from all fault: *Swiss Reinsurance Company v. Camarin Limited*, 2018 BCCA 122 at para. 37. In the present case, it could be that both Mr. Young and Mr. Allardice are at fault for the delay. It is not necessary to determine who is at fault for the delay given my determination that it is in the interests of justice to allow the amendments regardless of who is at fault.

**Expiry of Limitation Period**

[31] Gore Mutual agrees with the Youngs that the limitation period for adding the new claim of personal injury for denial of insurance coverage began to run from no later than February 17, 2022 which is the date Mr. Young reported feeling increasingly stressed and anxious about the denial of the insurance claim.

[32] The Pynes argue that the limitation period for psychiatric injury due to the Damage started to run as early as July 20, 2021 when Mr. Young sought treatment for increasing mental health and substance use concerns. At the latest, however, the limitation period started to run February 17, 2022. In the psychiatrist’s note of that date, Mr. Young reports feeling fearful of the loss of his home.

[33] The limitation period therefore expired no later than February 17, 2024. Using the “two year limitation period plus one year for service” rule, the calculation of delay starts to run as of February 17, 2025. Mr. Allardice brought the new claims to the attention of counsel for Gore Mutual in August, 2025 who passed on the message to counsel for the Pynes. This delay is not significant in my view. However, the limitation period for the addition of both claims has expired.

**Prejudice**

[34] Gore Mutual argues that it is prejudiced in two respects: first, as to the loss of an accrued limitation defence; and second, the impairment of its ability to defend itself in the action.

[35] The Pynes take a similar position to Gore Mutual.

[36] Whenever an amendment that raises a new cause of action is permitted past the limitation period, the defendant has, by definition, lost the limitation defence. However, if the interests of justice weigh in favour of the amendment being permitted, then the loss of the limitation defence is a fair outcome.

[37] Gore Mutual’s application response was filed before the trial was adjourned. Therefore, the impending trial date is no longer a factor to consider in weighing

prejudice to Gore Mutual in its ability to defend itself. The new claim is closely related to facts underlying the existing claims. The existing claim includes a claim for aggravated and punitive damages arising from the denial of the claim. The Youngs both claim emotional stress. Although the claim for personal injury is a different claim than a claim for aggravated and punitive damages, the underlying facts are closely related. Even if the claim were restricted to emotional stress related to the denial of the claim, it is reasonably likely that Mr. Young would tender expert evidence regarding his mental health and substance use issues.

[38] The new claims can be investigated in plenty of time for trial and will not add any more time to the trial. There is time to conduct further examinations for discovery of Mr. Young and to obtain independent medical examinations if Gore Mutual or the Pynes wish. If there are claims for contribution and indemnity as between Gore Mutual and the Pynes, there is time to advance them. There is no actual prejudice to Gore Mutual or to the Pynes if the amendments are permitted.

**Should the Limitation Defence be preserved to Trial?**

[39] Both Gore Mutual and the Pynes seek an order that if the amendments are granted, the limitation defence will be preserved to trial.

[40] In support of this position, counsel for the Pynes submitted that given the inability of the court at this stage to determine the reasons for the delay given that solicitor-client privilege has not been waived, it is not possible to determine whether the delay has been reasonable.

[41] Leaving the limitation defence to trial is not in keeping with the object of the *Supreme Court Civil Rules* which is to secure the just, speedy and inexpensive determination of every proceeding on its merits: Rule 1-3.

[42] If left to trial, the limitation defence will require the trial judge (assuming the trial judge accepts the defendants' argument) to rule on whether solicitor-client privilege ought to be waived by court order. I am not sure how such an order could be made given plaintiff counsel's submission to the court that Mr. Young does not

waive solicitor-client privilege. If Mr. Young changed his position and decided to waive solicitor-client privilege at trial, Mr. Allardice, being counsel of record and presumably trial counsel, would then be put in an impossible position. He may have to seek leave to withdraw and retain his own counsel. The Youngs would then be at trial without counsel. A mistrial is a possible outcome which would not serve any party's interests.

[43] I return to the overriding consideration: do the interests of justice in this case require permitting the amendments so that all issues can be determined at trial without preserving any limitation defence? The answer is "yes". However, the Youngs should pay Gore Mutual's and the Pynes' costs of the application given the admitted errors.

**ORDERS**

[44] The plaintiff has leave to file an amended notice of civil claim in each action in the form attached to each of the notices of civil claim.

[45] Gore Mutual and the Pynes are each entitled to a further examination for discovery of Mr. Young for up to two hours each.

[46] The Youngs will pay Gore Mutual and the Pynes their costs of the application in any event of the cause, but not payable forthwith.

"Associate Judge Harper"