

SJC-185-2024

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

B E T W E E N:

HALLIE WEDGE,

Plaintiff,

-and-

DAWN JOUDREY,

Defendant.

BEFORE: Justice Arthur T. Doyle

HEARING HELD: Saint John

DATE OF MOTION: May 26, 2026

DATE OF DECISION: May 26, 2026

SUBJECT MATTER: Motion for Summary Judgment

COUNSEL:

Christopher Isnor, for Hallie Wedge

Erika Hachey, for Dawn Joudrey

DECISION

DOYLE, J. (Orally)

I. BACKGROUND

[1] This is a decision in connection with a motion for summary judgment brought by Dawn Joudrey, the Defendant, to dismiss a portion of the claim by Hallie Wedge, the Plaintiff, against the Defendant, relating to Manufacturer's Life Insurance Company life insurance policy proceeds (as set out in paragraphs 10 to 19 of the Plaintiff's Notice of Action with Statement of Claim attached, filed on April 23, 2024).

[2] The Defendant maintains, among other things, that:

- (a) on the Plaintiff's 18th birthday, the Plaintiff knew she was to receive 30% of the life insurance proceeds, however she did not receive the entire payment;
- (b) on the Plaintiff's 19th birthday, May 31, 2021, the limitation of actions commenced under the *Limitation of Actions Act*, SNB 2009, c L-8.5 and the *Age of Majority Act*, RSNB 2011, c 103;
- (c) the Plaintiff and the Defendant had a conversation on May 28, 2023 about the 'payment' not being made on the Plaintiff's 21st birthday;
- (d) the Plaintiff admitted that she was aware of the payment plan for multiple years and that she had attended a financial planner with the Defendant; the Plaintiff had also asked the Defendant not to retain counsel to assist previously; and
- (e) on the Plaintiff's 21st birthday, May 31, 2023, the limitation period under the *Limitation of Actions Act* expired.

[3] The Defendant submits as follows:

- (a) the Plaintiff states that it was after she received legal advice that she learned she was to receive the life insurance proceeds from the Manufacturer's Life Insurance Company life insurance policy on May 31, 2020;
- (b) the Plaintiff was fully aware of the life insurance proceeds from Manufacturer's Life Insurance Company prior to her 19th birthday; she was also aware that she could correspond with Manufacturer's Life Insurance Company directly, as they sent her a letter following her 18th birthday;
- (c) the Plaintiff has not explained why she did not contact Manufacturer's Life Insurance Company directly regarding the life insurance proceeds between her 18th birthday and 21st birthday, or prior to that date; there is no explanation in her affidavit as to why Manufacturer's Life Insurance Company was not contacted, and it appears Manufacturer's Life Insurance Company could have been contacted directly by the Plaintiff anytime after her 18th birthday, possibly before;
- (d) there is no evidence that Manufacturer's Life Insurance Company hid any documentation from the Plaintiff about the Manufacturer's Life Insurance Company life insurance policy or the life insurance proceeds, just that the Plaintiff failed to contact them directly until March or April, 2024;
- (e) the Plaintiff's excuse for not filing the action appears to be that she had not received legal advice regarding the Manufacturer's Life Insurance Company life insurance proceeds, specifically the policy. The Defendant argues that as is stated in ***Nicholas v. Tétrault***, 2008 CanLII 54974 (ON SC), the fact the Plaintiff did not contact Manufacturer's Life Insurance Company, or mistakenly believed that she was to receive payment in accordance with

the last will and testament of the Plaintiff's father does not extend the limitation period;

- (f) the Plaintiff also had a legally mistaken belief that she was to receive a payment on her 21st birthday and that this came as a surprise; and
- (g) the Defendant's actions or lack of actions also had no effect on the Plaintiff's ability to contact Manufacturer's Life Insurance Company directly or to retain legal counsel. She in fact had the ability to retain legal counsel in a separate province and did so months before she filed the within action.

[4] The Defendant maintains that this has not been a simple proceeding. The Defendant notes that the Plaintiff chose to file a motion for a preservation order on the Defendant's personal home, to which her solicitor was given less than 24 hours notice regarding motion attendance.

[5] The Defendant notes that she entered into a consent order with the Plaintiff for the release of additional documentation and completed an inventory. The Defendant notes that the Plaintiff then brought a contempt order stating that the Defendant had not produced receipts. The Defendant submits that the receipts, as stated and maintained by the Defendant, were sent to the Plaintiff's original Ontario counsel. The Defendant maintains that the Plaintiff had not reached out to or inquired with her Ontario counsel regarding the whereabouts of these original receipts. The Defendant submits that the Plaintiff's Ontario counsel appears not to have even informed the Plaintiff that the Defendant was attempting to contact them about the receipts or transferred their file to the Plaintiff.

[6] The Defendant submits that the Defendant has incurred significant legal fees in connection with this matter. The Defendant maintains that the Plaintiff should not have even commenced the original protection order given the risk of the limitation period. The

Defendant is seeking solicitor and client costs in the event that she is successful on this motion for summary judgment.

[7] The Plaintiff, on the other hand, submits that:

- (a) the Plaintiff was a minor at the time the relevant alleged trusts were created in this case;
- (b) the Plaintiff's father died when she was still a minor (she was 17 years old); and
- (c) the Plaintiff was not aware of any wrongdoing by the Defendant while she was still a minor.

[8] The Plaintiff contends that the evidence demonstrates that the Plaintiff:

- (a) was in the care of the Defendant in accordance with her father's wishes;
- (b) was not given a copy of her father's last will and testament or any life insurance policy documents;
- (c) was advised that she was entitled to certain funds on her 18th birthday, which she was provided on time and without issue;
- (d) was advised by the Defendant, sitting in her position of trust, that the Plaintiff would receive no further benefits from her father's affairs until her 21st birthday; and
- (e) was provided with only limited provisions in the meantime to cover immediate expenses.

[9] The Plaintiff maintains that, based on the forgoing, the Plaintiff was completely unaware of any wrongdoings by the Defendant until, at the earliest, May 28, 2023, which was just prior to the Plaintiff's 21st birthday. The Plaintiff contends that for the prior three years, the Plaintiff had been told by the Defendant that the next distribution she should

expect would be at that time. The Plaintiff submits that the Plaintiff and the Defendant sat down to discuss the 21st birthday distribution in anticipation of the Plaintiff's birthday, and instead of good birthday wishes, the Plaintiff received a confession from the Defendant that there was no money to be distributed to the Plaintiff.

[10] The Plaintiff maintains that she did not, and could not, have discovered the loss until her 21st birthday was approaching.

[11] This case involves an action brought by the Plaintiff in connection with the distribution of (a) inheritance funds related to the last will and testament of the Plaintiff's father and (b) insurance proceeds pursuant to a life insurance policy with Manufacturer's Life Insurance Company held by the Plaintiff's father. The Plaintiff's claim relates to a number of matters, including the distribution of the inheritance funds; the distribution of the life insurance proceeds under the life insurance policy; misapplication, misappropriation and conversion of the funds under the life insurance policy; negligence; breach of trust; and breach of fiduciary duty and bad faith. The Plaintiff is seeking the following relief in her Notice of Action with Statement of Claim Attached:

- (a) special damages in an amount representing the life insurance policy funds;
- (b) general damages for the Plaintiff's anxiety, mental distress, and abuse suffered as a minor;
- (c) general damages for the Defendant's misappropriate, misapplication, and conversion of the life insurance policy funds;
- (d) general damages for the Defendant's negligence and breach of fiduciary duties;
- (e) aggravated damages for bad faith;
- (f) an order for equitable tracing of the life insurance policy funds;
- (g) an order for disgorgement of the life insurance policy funds from the mortgage registered against the Defendant's property;

- (h) an order to sell the Defendant's property with the proceeds to be paid to the Plaintiff in priority in an amount representing the life insurance policy funds;
- (i) post-judgment interest pursuant to section 46 of the *Judicature Act*, RSNB 1973, c J-2 and Rule 60.08 of the *Rules of Court*, NB Reg 82-73;
- (j) costs, on a solicitor and client basis; and
- (k) such further and other relief that the Court may deem just.

II. THE RECORD

[12] For purposes of the record before this Court, I have listened to oral submissions by counsel to the Defendant and counsel to the Plaintiff at the hearing of this motion for summary judgment (and also at a number of case management calls) and have reviewed and taken into consideration the following:

- (a) Notice of Action with Statement of Claim Attached, filed on April 23, 2024;
- (b) Statement of Defence, filed on May 22, 2024;
- (c) Notice of Motion filed on behalf of Plaintiff, dated July 8, 2024 and filed on July 9, 2024;
- (d) Notice of Motion filed on behalf of Plaintiff, dated June 26, 2025 and filed on June 27, 2025;
- (e) Notice of Motion filed on behalf of Defendant, dated August 21, 2025 and filed on August 26, 2025;
- (f) Procedural Order, dated November 3, 2025 and filed on November 4, 2025;
- (g) Affidavit of Hallie Wedge, sworn to on July 4, 2024 and filed on July 11, 2024;
- (h) Affidavit of Dawn Joudrey, sworn to on October 21, 2024 and filed on November 14, 2024;

- (i) Affidavit of Hallie Wedge, sworn to on June 18, 2025 and filed on June 27, 2025;
- (j) Affidavit of Dawn Joudrey, sworn to on August 21, 2025 and filed on August 26, 2025;
- (k) Affidavit of Dawn Joudrey, sworn September 3, 2025 and filed on September 3, 2025;
- (l) Affidavit of Hamza Bukhari, sworn to on May 13, 2026 and filed on May 14, 2026;
- (m) Motion brief of the Defendant, dated May 14, 2026;
- (n) Motion brief of the Plaintiff, dated May 15, 2026;
- (o) Motion brief of the Defendant, dated May 20, 2026; and
- (p) Motion brief of the Plaintiff, dated May 21, 2026.

III. **LAW AND ANALYSIS**

[13] The law in New Brunswick regarding summary judgments is clear.

[14] Justice Morrison, at paragraphs 18 and 19 in ***Alphataho Inc., et al v. Maaco Canada Partnership LP, et al***, 2022 NBQB 25 (CanLII), aptly described the law for summary judgment as follows:

[18] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, directed a "cultural shift" in the use of summary judgment. Courts are encouraged to use this summary adjudication tool as an alternative to conventional trials as a means to enhance access to justice. As Justice Gregory recently pointed out in *Edmondson v. Edmondson et al*, 2021 NBQB 53, courts are directed "to be open and bold when managing a case through its trajectory in the legal system". In *O'Toole v. Peterson*, 2018 NBCA 8, the Court of Appeal commented on the significance of the amendments to Rule 22 which came into force in 2017. No longer is summary judgment restricted to only those cases where there is "no merit" to the defence. The test is simply whether there is a genuine issue requiring a trial (para. 68).

[19] In *Russell et al v. Northumberland Co-Operative Ltd.*, 2019 NBCA 70, the Court of Appeal expanded on the import of the 2017 amendments. The key points from *O'Toole* and *Russell* can be summarized as follows:

1. The only test for summary judgment is whether there is a genuine issue requiring a trial;
2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;
3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;
4. The Rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;
5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge must grant summary judgment;
6. If the judge cannot adjudicate the dispute on the filed evidence, he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there may be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the "mini-trial");
7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

[Emphasis mine.]

[15] The issue before this Court must therefore be viewed through the lens of this two-step process. Step one is mandatory; while step two is discretionary.

[16] Our Court of Appeal has made it clear in ***Northumberland Co-Operative Ltd.*** that when a judge is considering whether to proceed with step two “it will always be in the interest of justice for the judge to make use of these fact-finding powers if, applying the principles of timeliness, affordability and proportionality, the judge believes a trial can be avoided and a fair and just result can be obtained. The discretion vested in the judge under this second step will provide the flexibility required to fashion the appropriate course to follow.”

[17] Justice Karakatsanis in ***Hryniak*** offers the following comment whereby summary judgment motions can not only save time and resources, they sometimes can slow down proceedings if used inappropriately:

[32] This culture shift requires judges to actively manage the legal process in line with the principle of proportionality. While summary judgment motions can save time and resources, like most pre-trial procedures, they can also slow down the proceedings if used inappropriately. While judges can and should play a role in controlling such risks, counsel must, in accordance with the traditions of their profession, act in a way that facilitates rather than frustrates access to justice. Lawyers should consider their client’s limited means and the nature of their case and fashion proportionate means to achieve a fair and just result.

[18] The Supreme Court of Canada in ***Hryniak*** also offered the following guidance when a Court is considering whether it is against the interest of Justice to use the new fact-finding powers:

[48] The Court of Appeal did not explicitly focus upon when there is a genuine issue requiring a trial. However, in considering whether it is against the interest of justice to use the new fact-finding powers, the court suggested that summary judgment would most often be appropriate when cases were document driven, with few witnesses and limited contentious factual issues, or when the record could be supplemented by oral evidence on discrete points. These are helpful observations but, as the court itself recognized, should not be taken as delineating firm categories of cases

where summary judgment is and is not appropriate. For example, while this case is complex, with a voluminous record, the Court of Appeal ultimately agreed that there was no genuine issue requiring a trial.

[49] There will be no genuine issue requiring a trial when the judge is able to 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.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[51] Often, concerns about credibility or clarification of the evidence can be addressed by calling oral evidence on the motion itself. However, there may be cases where, given the nature of the issues and the evidence required, the judge cannot make the necessary findings of fact, or apply the legal principles to reach a just and fair determination.

(2) The Interest of Justice

[52] The enhanced fact-finding powers granted to motion judges in *Rule* 20.04(2.1) may be employed on a motion for summary judgment unless it is in the “interest of justice” for them to be exercised only at trial. The “interest of justice” is not defined in the *Rules*.

[...]

[57] On a summary judgment motion, the evidence need not be equivalent to that at trial, but must be such that the judge is confident that she can fairly resolve the dispute. A documentary record, particularly when supplemented by the new fact-finding tools, including ordering oral testimony, is often sufficient to resolve material issues fairly and justly. The powers provided in *Rules* 20.04(2.1) and (2.2) can provide an equally valid, if less extensive, manner of fact finding.

[58] This inquiry into the interest of justice is, by its nature, comparative. Proportionality is assessed in relation to the full trial. It may require the motion judge to assess the relative efficiencies of proceeding by way of summary judgment, as opposed to trial. This would involve a comparison of, among other things, the cost and speed of both procedures. (Although summary judgment may be expensive and time consuming, as in this case, a trial may be even more expensive and slower.) It may also involve a comparison of the evidence that will be available at trial and on the motion as well as the opportunity to fairly evaluate it. (Even if the evidence available on the motion is limited, there may be no reason to think better evidence would be available at trial.)

[Emphasis mine.]

[19] The parties have filed affidavit evidence that outline competing versions of the expiration of the limitation period under the *Limitation of Actions Act* relating to the Plaintiff's claim against the Defendant for the Manufacturer's Life Insurance Company life insurance policy funds.

[20] In my view, based upon the submissions of the parties, the affidavit evidence before this Court, and the unique and fact-specific circumstances of this case, I am satisfied that there is a genuine issue requiring a trial with respect to the expiration of the limitation period under the *Limitation of Actions Act* of the Plaintiff's claim against the Defendant for the Manufacturer's Life Insurance Company life insurance policy funds. Further, I am not satisfied that I can fairly and justly adjudicate the limitation period issue based on the filed affidavit evidence alone. In my view, this simply cannot be done.

[21] In my judgment, the limitation period issue is a complex matter that cannot be readily presented to this Court "on paper". The affidavit evidence before this Court:

- (a) does not allow this Court to reach a fair and just determination of the limitation period issue at play on the merits; and

- (b) does not allow this Court to determine the limitation period issue because the different perspectives dividing the parties are heavily fact-driven and their determination will rely on fulsome oral testimony and cross-examination.

[22] In my view, the *viva voce* evidence required to resolve the issue before this Court on this summary judgment motion is similar to the *viva voce* evidence which would be required at trial. The parties have submitted their positions regarding the expiration of the limitation period under the *Limitation of Actions Act* of the Plaintiff's claim against the Defendant for the Manufacturer's Life Insurance Company life insurance policy funds and there remains disagreement. In my view, this Court will have to assess the credibility of various affiants, based upon their testimony and in the context of the documentary evidence submitted.

[23] If the Defendant is successful in her motion for summary judgment that will not be dispositive of all the Plaintiff's claims outlined in her Notice of Action with Statement of Claim Attached; it will only be dispositive of the Plaintiff's claims against the Defendant relating to the Manufacturer's Life Insurance Company life insurance policy funds. In the event that this Court were to proceed with stage two and conduct a mini-trial and conclude that the limitation period under the *Limitation of Actions Act* for the Plaintiff's claim against the Defendant for the Manufacturer's Life Insurance Company life insurance policy funds had not expired, this Court would then be required to conduct a trial proper to determine whether there is:

- (a) special damages in the amount representing the life insurance policy funds;
- (b) general damages for the Plaintiff's anxiety, mental distress, and abuse suffered as a minor;
- (c) general damages for the Defendant's inappropriate misapplication, and conversion of the life insurance policy funds;

- (d) general damages for the Defendant's negligence and breach of fiduciary duties;
- (e) aggravated damages for bad faith;
- (f) an order for equitable tracing of the life insurance policy funds;
- (g) an order for disgorgement of the life insurance policy funds from the mortgage registered against the Defendant's property;
- (h) an order to sell the Defendant's property with the proceeds to be paid to the Plaintiff in priority in an amount representing the life insurance policy funds;
- (i) post-judgment interest pursuant to section 46 of the *Judicature Act*, and Rule 60.08 of the *Rules of Court*;
- (j) costs, on a solicitor and client basis; and
- (k) such further and other relief that the Court may deem just.

[24] The parties concluded their submissions on whether there is a genuine issue for trial with respect to the expiration of the limitation period under the *Limitation of Actions Act* of the Plaintiff's claim against the Defendant for the Manufacturer's Life Insurance Company life insurance policy funds at approximately 3:12 p.m. this afternoon. There are currently no further dates reserved on the Court docket to hear this matter for a mini-trial or a trial proper. The Court docket is busy and Court time is precious. New dates will have to be identified and reserved for this Court to conduct a mini-trial, and if need be, a trial proper.

[25] I am obliged to actively manage the legal process in line with the principle of proportionality.

[26] In my view, the factual findings required to decide the limitation period issue *will not only* be critical to the determination of whether or not the limitation period has in fact expired, *but* if I ultimately conclude that the limitation period has not yet expired and

that the Plaintiff's claim should proceed to a trial proper, these factual findings on the limitation period issue *will also be critical* to the determination of the other claims outlined in the Plaintiff's Notice of Action with Statement of Claim Attached.

[27] In my view, based on the submissions of the parties, the whole of the evidence before this Court, and the unique and fact-specific circumstances of this case, the summary judgment motion of the Defendant is not proportionally better than would be a trial. In my view, it cannot be said that the summary process is a proportionate, more expeditious, and least expensive means to achieve a just result.

[28] Accordingly, this Court is declining to exercise its discretion and resort to the enhanced fact-finding measures set out in sub-Rules 22.04(2) and (3). In my view, it is in the "interest of justice" for this Court to exercise its fact-finding powers at trial.

IV. CONCLUSION AND DISPOSITION

[29] Accordingly, for these reasons, I hereby order that the summary judgment motion by Dawn Joudrey to dismiss a portion of the claim by Hallie Wedge against Dawn Joudrey relating to the Manufacturer's Life Insurance Company life insurance policy proceeds (as set out in paragraphs 10 to 19 of Hallie Wedge's Notice of Action and Statement of Claim Attached) be dismissed.

[30] Although the Plaintiff filed her own motion for summary judgment on June 27, 2025 (which has not been heard yet), seeking an order that her action be determined by way of summary judgment, the Plaintiff has enjoyed some success today: the Defendant's motion for summary judgment has been dismissed.

[31] Costs shall be payable by the Defendant, Dawn Joudrey, to the Plaintiff, Hallie Wedge, in the amount of \$3,000.00 (including disbursements and taxes), to be payable forthwith.

Arthur T. Doyle
Judge of the Court of King's Bench
of New Brunswick