

SUPREME COURT OF NOVA SCOTIA

Citation: *Isaah v. Snair*, 2026 NSSC 93

Date: 20260331

Docket: Hfx No. 510504

Registry: Halifax

Between:

Lydia Isaah

v.

Allen Charles Snair and Municipal Enterprises Limited

DECISION ON RENEWAL

Judge:	The Honourable Justice Joshua M. Arnold
Heard:	January 5, 2026, in Halifax, Nova Scotia
Final Written Submissions:	March 11, 2026
Written Decision:	March 31, 2026
Counsel:	Robert Carter, K.C., for the Plaintiff Cory Withrow, for the Defendants

Overview

[1] The plaintiff's motor vehicle accident claim arose on December 12, 2019. Her Notice of Action and Statement of Claim were issued on November 10, 2021, and were served on Municipal Enterprises on September 29, 2022. However, the defendant Allen Charles Snair was not served within the required one-year time limit. On March 14, 2023, the plaintiff applied for an order for renewal, which was granted, expiring on November 10, 2023. The plaintiff simultaneously applied for an order for substituted service for Mr. Snair, which was denied. Due to the plaintiff's change of counsel, combined with a series of mistakes on the part of plaintiff's various counsel, Mr. Snair still has not been served and the plaintiff has now applied for another renewal. Cory Withrow, counsel for both Mr. Snair and Municipal, opposes a further renewal and says the *Civil Procedure Rules* no longer allow for anything more than a single renewal. During submissions, both experienced counsel erroneously suggested that there are no reported decisions addressing the issues raised on this motion. There are reported decisions that support the ability to the plaintiff to renew the claim in these circumstances. For the reasons that follow, the plaintiff's motion for renewal is granted.

Facts

[2] In support of this motion the plaintiff filed the affidavit of her lawyer, Theresa Jbeili, which sets out the facts and procedural history. The defence did not submit any evidence. Therefore, I accept the facts on the present motion as summarized in the plaintiff's brief:

1. The Plaintiff, Lydia Isaah, was injured in a motor vehicle collision that occurred on December 12, 2019 when her motor vehicle was struck from behind by a snow plow vehicle operated by the Defendant, Allen Snair. The collision occurred on Highway 102 in Lower Sackville. At the time of the accident, the defendant vehicle was owned by the Defendant, Municipal Enterprises Limited, who was also the employer of Allen Snair. Mr. Snair was in the course of his employment when the collision occurred.
2. A Notice of Action and Statement of Claim was issued on November 10, 2021 by MDW Law, who represented the Plaintiff at that time. The Plaintiff was initially represented by BOYNE CLARKE LLP and was subsequently represented by MDW Law. Theresa Jbeili of Nova Injury Law subsequently took over handling of the claim for the Plaintiff

3. At the time of the accident, the defendant's vehicle was insured by Royal & Sun Alliance (RSA), a part of Intact Financial Group. RSA was aware of the Plaintiff's personal injury claim since at least February 19, 2020, when adjuster Bruce Olie of AMG Claims Inc. advised BOYNE CLARKE LLP that Municipal Enterprises was insured by RSA and that the driver was Allen Snair...
4. The Notice of Action and Statement of Claim was served on Municipal Enterprises on September 29, 2022 by Christopher Lewis, as per his Affidavit of Service dated September 29, 2022...
5. Service of the Notice of Action and Statement of Claim on the Defendant Allen Snair was attempted by Mr. Lewis on July 28, 2022 and again on September 29, 2022, as per his Affidavit of Attempted Service dated September 29, 2022...
6. Kelly Dion of MDW Law contacted RSA adjuster Penny Flewwelling on September 27, 2022 requesting information on an address for Allen Snair but was unable to obtain any information, and personal service was requested by the insurer. Further communications with Ms. Flewwelling were conducted on October 3, 2022 and October 26, 2022 in an attempt to obtain information on Allen Snair's address. Inquiries with Keltic Collections for a skip trace report were made requesting the Defendant Snair be located, but Keltic Collections was unable locate him, as per the correspondence from Vince Neary of Keltic Collections dated November 4, 2022...
7. An *Ex Parte* motion was brought by MDW Law on March 14, 2023, requesting an Order to renew the Notice of Action and Statement of Claim and an Order for Substituted Service. An Order for Renewal was granted on March 14, 2023 by the Honourable Justice Jamie S. Campbell, which Order indicated the Notice of Action was renewed and would expire on November 10, 2023...
8. It is not clear what steps MDW Law took following the Order. MDW Law did submit a settlement proposal on June 16, 2023, and sent it to Penny Flewwelling of RSA, including updated medical and claim information.
9. Nova Injury Law was then retained and the file was transferred on October 16, 2023. Ms. Jbeili has had primary responsibility for handling of the file. Unfortunately, when the file was transferred, no information was provided as to what occurred on the motion to renew and for substituted service and Ms. Jbeili was unaware of the outstanding need for substituted service on the Defendant Snair.
10. Ms. Jbeili arranged for the preparation and service of multiple Affidavits Disclosing Documents between December 21, 2023 and December 5, 2024. Ms. Jbeili was in communication with Defence Counsel and she became aware that the claim had not been served on the Defendant Snair. She then made inquiries with Alix Digout of MDW Law and learned that Justice Jamie S. Campbell had refused to grant a

substituted service Order, stating that he would not issue an order for substituted service until additional details of the efforts of the skip trace company Keltic Collections had made to locate the Defendant and until an ad was taken out in the Chronicle Herald. Those steps were not taken and the Notice of Action and Statement of Claim expired on November 10, 2023.

11. As a result of the inadvertence of Ms. Jbeili in failing to identify the need for substituted service, it was not renewed in the required time period.
12. The Defendant has now been located by a different skip trace company. The Plaintiff, as represented by Ms. Jbeili, has undertaken to take appropriate steps to arrange for service of the Notice of Action as soon as possible once it has been renewed.
13. The Defendants are both represented by Cory Withrow from Intact Legal Department. Municipal has been served but they are waiting for Mr. Snair to be served before they will file a joint Defence.

[As appears in original.]

Civil Procedure Rule 4.04

[3] Civil Procedure Rule 4.04 states:

4.04 Expiry and renewal of a notice of action

- (1) A notice of action, including a notice of action for debt, expires one year after the day it is filed, unless a defendant is notified of the action in accordance with Rule 31 - Notice.
- (2) A plaintiff may make a motion to renew a notice of action for a second year by filing a notice of motion no more than fourteen months after the day the notice of action is filed.
- (3) The motion may be made *ex parte*, unless a judge orders otherwise.
- (4) A notice of action that is renewed for a second year expires two years after the day it is filed.
- (5) When a proceeding expires, the prothonotary must deliver a notice advising of the expiry to a party who designated an address for delivery by ordinary mail to that address.
- (6) A judge may renew an expired notice of action more than fourteen months after the day the notice of action is filed only if the plaintiff satisfies the judge on either of the following:
 - (a) reasonable efforts were made to notify the defendant of the action by effecting personal service, service could not be

effected personally, and the plaintiff will make a motion for a substituted method of giving notice as soon as possible;

- (b) inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

Positions of the Parties

[4] The plaintiff says that there is no rule prohibiting the renewal of an expired notice of action more than once, as long as the moving party meets the criteria set out in Rule 4.04(6). In relation to Rule 4.04(6)(a), regarding “reasonable efforts” to serve the defendant, counsel for the plaintiff on the present motion, Robert Carter, K.C., says the plaintiff has met the test:

- 17. ...In this case Counsel attempted service in 2022 but was unable to locate Mr. Snair. A skip trace was performed but was unsuccessful in locating him. His insurance company, the same company for Municipal, was advised of all this and had a copy of the Notice of Action and Statement of Claim after it was served on Municipal. A further skip trace recently came back with an address for Mr. Snair and it will be served immediately if it is renewed.

[5] The plaintiff submits that she has also met the requirements of Rule 4.04(6)(b). Regarding “inadvertence”, the plaintiff submits:

- 18. In the alternative, it is respectfully submitted that it was inadvertence on the part of Ms. Jbeili to ensure the Notice of Action and Statement of Claim was either renewed or served through substituted service. She was not made aware of the requirements stipulated by Justice Campbell for substituted service and had simply assumed the Notice of Action and Statement of Claim had already been served on both Defendants. The inadvertence involved a failure to make sure appropriate follow-up and monitoring occurred, and the failure to renew and obtain an Order for substituted service were not identified until after the expiry of the Notice of Action. These were not intentional decisions made by Ms. Jbeili, but rather inadvertent mistakes that sometimes occur in busy legal practices especially when files are transferred between Counsel.

[6] Regarding the requirement for “serious prejudice” to the plaintiff in Rule 4.04(6)(b), the plaintiff submits that she would face extreme prejudice, given that the limitations period has passed, and she cannot simply commence a new action. As to the lack of serious, non-compensable, prejudice to any defendant, she submits:

23. As documented in the Affidavit of Ms. Jbeili, there will be minimal or no prejudice to the Defendant. The Defendants' adjuster was advised of the claim being advanced on February 19, 2020, and the Insurer RSA has been kept updated on Ms. Isaah's condition and treatment throughout. The Defendant, Municipal was served. Counsel was retained and he has indicated he is representing both Defendants. The Insurer has had ample opportunity to investigate and it has yet to file a Defence for Municipal as they await service on Mr. Snair.

24. A detailed Settlement Proposal with all supporting medical documentation was provided to the Adjuster on June 16, 2023. All relevant medical evidence remains available and in fact has been provided to Counsel for the Defendants. The collision itself involved a rear-end collision and there is no liability issue. All relevant witnesses remain available to testify and to be cross-examined. While the delay may give rise to an inference of prejudice, proof that all relevant evidence remains available mitigates against such an inference. The Defendant representatives have had a full ability to investigate the collision, interview witness, investigate the Plaintiff's injuries and claims for damages, and request any independent medical examinations required during the past 5 years. It is respectfully submitted there is no possible prejudice to the Defendants in these circumstances.

...

29. In the present case, the Plaintiff has provided evidence that there has not been any loss of evidence or inability to find or obtain evidence of witnesses. This is not a disability benefit claim where the claimant's health and ability to work from the date of injury to present are at issue. Here, the Notice of Action expired on November 10, 2023 (1 year after it was renewed). The issue is what if any prejudice has been experienced by the Defendant in the 18-month period between November 10, 2023 and present. It is respectfully submitted that any possible prejudice is minimal or non-existent. All medical evidence remains available and has in fact been exchanged with Counsel for the Defendants.

[7] The plaintiff says it would be inequitable for her to lose her cause of action as the result of inadvertence by counsel where there is no prejudice to the defendants that cannot be compensated in costs.

[8] The defendants say the Rules simply do not provide or allow for more than one renewal. They further point out that notwithstanding the first renewal, Mr. Snair was not served before its expiry. They say there is no evidence of any efforts by the plaintiffs to appeal, vary, or set aside the renewal order, and state that it is "not clear" whether the Prothonotary notified the parties of the expiry pursuant to Rule 4.04(5). The defendants continue:

18. The onus on a motion to renew pursuant to Rule 4.04(6) is upon the Plaintiff. The Court in *Grosse v. White*, 2010 NSSC 10 noted the burden on a motion under Rule 4.04(6) is heavier than a renewal motion made within the fourteen-month period after filing the notice of action.
- ...
19. The Defendants oppose the Plaintiff's motion to renew the Action for a second time, which would in fact renew the Action for a period of over four years since its filing (originally filed on November 10, 2021).
20. *Civil Procedure Rule 4.04* is clear. The Rule permits a Plaintiff, within 14 months of the filing of the action, to seek a renewal of a notice of action for a "second year" only and states that a notice of action that is renewed "for a second year expires two years after the day it is filed."
21. The plain and clear language of *Civil Procedure Rule 4.04* does not permit more than one renewal of a notice of action. A plaintiff cannot, therefore, renew a notice of action for a third year, a fourth year, a fifth year, etc.
22. If a renewal is granted, *Civil Procedure Rule 4.04(4)* clearly states the renewal can only extend the time permitted to serve the notice of action for up to "two years after the day it [the notice of action] is filed"
23. This is exactly what occurred in this matter. The Plaintiff filed a motion within 14 months of the Action being filed and was granted the Renewal Order. In our submission, a further renewal based on the terms of both *Civil Procedure Rule 4.04* and the Renewal Order is not permitted.
24. In our submission, *Civil Procedure Rule 4.04(6)(a)* and (b) and the relevant caselaw relating to these provisions are inapplicable to the within motion.

[9] As noted, both parties advised that they could find no relevant case law from Nova Scotia addressing multiple renewals under the current *Civil Procedure Rules*.

Related Case Law

[10] The previous rule governing renewal of an originating notice was Rule 9.07(1), of the *Civil Procedure Rules* (1972):

Duration and renewal of originating notice, etc.

9.07. (1) An originating notice is valid for a period of six (6) months beginning with the date of issue of the originating notice, and, when a party has not been served within the period, the court may, for just cause, at any time before or after its expiration, order the originating notice, to be renewed for a period of six (6) months from the date when it would otherwise expire or from such later date as the court may order.

[11] Prior to the current Rules coming into effect in 2009, there were many cases that addressed the ability of a plaintiff to obtain multiple renewals. For example, in *Minkoff v. Poole*, [1991] N.S.J. No. 86, 101 NSR (2d) 143 (NSCA), Chipman J.A. stated, for the court:

21 In *Schmidt et al v. MacIntyre et al.* (1984), 39 C.P.C. 300, Nathanson, J. of the Trial Division refused to grant an application by defendants to set aside service of an originating notice which had previously been renewed under Rule 9.07(1). In so doing he referred to *Moffat v. Rawding* and other cases dealing with renewal of a writ of summons or originating notice and considered whether or not the defendants were prejudiced by the passage of some four and one-half years since the commencement of the action and six and one-half years since the date of the motor vehicle accident. After examining the circumstances, he considered that such long delay did not result in prejudice.

22 It will be seen therefore that the overriding consideration on an application to renew an originating notice should be that justice be done and that in determining this, the injustice to the plaintiff in terminating the proceedings will be balanced against the prejudice to the defendant that may result from permitting them to continue. In stating the test to be applied in the broad term "for just cause", the rule has conferred upon the court a wide and largely unfettered discretion.

23 In all cases, the particular circumstances will govern. It is recognized that long delay of itself gives rise to an inference of prejudice. The strength of the inference depends, again, on all the circumstances. The intervention of a limitation period is another circumstance to be considered in exercising discretion and renewal may well be granted after the expiry of limitation: *Moffat v. Rawding, supra*, at p. 898. The significance of the expiration of the limitation period is to alert the court that the case is likely to be one in which the delay may have resulted in prejudice to the defendant: *Simpson, supra*, p. 332. The issue of prejudice in reviving a matter after the expiry of a limitation period was addressed in the context of an application to disallow a limitation defence in *Greene v. Hines* (1985), 67 N.S.R. (2d) 296 at 298. See also *Deaville v. Boegeman* (1984), 47 C.P.C. 285, *Aliferis v. Parfenuik* (1985), 1 C.P.C. (2d) 41, decisions of the Ontario Court of Appeal.

24 A word should be said about on whom the onus lies in an application of this sort. Mr. Justice Boudreau considered it lay on the applicant to show just cause and I agree. Clearly, the plaintiff has in the first instance, the burden of showing the court circumstances which warrant the discretion to be exercised in the plaintiff's favour including, to the extent that it is within the plaintiff's power to do so, circumstances negating the conclusion that the defendant was prejudiced. The defendant is also in a position to offer evidence on this issue and if, at the end of the day, the scales are evenly balanced when both the injustice to the plaintiff and the prejudice to the defendant are weighed, then the plaintiff should fail.

25 I do not accept the appellant's submission that Mr. Justice Boudreau, in resolving the issue before him, applied the twostep test in *Martell, supra*. Mr. Justice Boudreau referred to *Martell* as support for the proposition that long delay gives rise to an inference of prejudice, and in so doing he considered as he was required to do, the question of whether the respondents would be prejudiced if he granted the application.

[12] Both parties referenced *Grosse v. White*, 2010 NSSC 10, wherein McDougall J., considered whether to allow a renewal of a motor vehicle accident claim where three previous renewals under the 1972 Rules had been granted. Another renewal was requested, this time after CPR 4.04 had come into force. Because the action was started in 2004, and because three renewals had already been granted under the 1972 Rules, McDougall J. compared the 1972 Rule with the new Rule 4.04:

[6] Under the *Civil Procedure Rules (1972)* the plaintiff had six months from the date of filing to personally serve the defendants with the Notice and Statement of Claim. Failure to effect service within the six-month period would require an application for renewal.

[7] Counsel for the plaintiff has already applied to have the action renewed on three separate occasions. The last renewal was granted on June 19, 2007 for a period of six months. It would have expired on December 19, 2007. Neither defendant was served within that time period. In the meantime, the rules of procedure have been completely over-hauled. Effective January 1, 2009 the rule pertaining to renewal of a Notice of Action – the new term for an Originating Notice (Action) is governed by Rule 4.04.

[13] McDougall J. quoted the new Rule 4.04, and said:

[9] When compared with the 1972 rule pertaining to renewals the intent of the new rule is clear. A plaintiff who is required to renew for failure to have the defendant properly served (in accordance with Rule 31 – Notice) within one year of first filing can apply to renew for a further one year period provided the motion is brought no more than fourteen months after the day the notice of action is filed. Sub-section (4) states that the renewed Notice of Action expires two years after the day it is filed.

[10] If you start an action it should not take more than two years to serve the defendant or defendants, as the case may be. Problems with service due to a defendant's whereabouts being unknown or if a defendant is evading service can be addressed by way of an order for substituted service.

[11] If a Notice of Action has to be renewed but more than 14 months have elapsed since it was originally filed sub-section (5) of Rule 4.04 comes into play.

[12] There is a heavier burden placed on the plaintiff to satisfy the judge on either of the following:

- (a) reasonable efforts were made to notify the defendant of the action by effecting personal service, service could not be effected personally, and the plaintiff will make a motion for a substituted method of giving notice as soon as possible;
- (b) inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

[14] In allowing the fourth renewal, being the first renewal in accordance with CPR 4.04, McDougall J. stated:

[28] His oral argument however suggested that inadvertence had led to the expiry of the Originating Notice (Action) and Statement of Claim. Based on my review of his firm's time records this appears to have been the case. There can be no denying that there was inadvertence. According to *Black's Law Dictionary*, Eighth Edition "inadvertence" is defined as:

An accidental oversight; a result of carelessness.

[29] The Random House Dictionary of the English Language defines it as:

1. the quality or condition of being inadvertent; heedlessness.
2. act or effect of inattention; an oversight.

[30] Counsel's lack of attention led to this apparent oversight. If the motion is denied there would be severe repercussions for the plaintiff. His claim for damages for injuries alleged to have been caused by the negligence of the two defendants would come to an end. He would have no further recourse against them.

[31] However, according to Rule 4.04(5)(b) the Court must not only consider the serious prejudice that the plaintiff would suffer if the proceeding is terminated but it must also be satisfied that no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

[32] Although the rule pertaining to expiry and renewal of a notice of action has changed, the test if inadvertence is being relied upon has not changed appreciably. As such the decision of the Nova Scotia Court of Appeal in **Minkoff v. Poole** (1991), 101 N.S.R. (2d) 143 remains applicable...

[15] Justice McDougall referred to paras. 22-24 of *Minkoff* (cited above), and continued:

[33] Counsel for the defendant “Johnston” has filed an affidavit providing a complete chronology of events from the time the claim was first brought to the attention of Mr. Johnston’s insurers. She has argued that the 18-month delay in making the initial contact coupled with the significant delays in moving this claim forward has resulted in prejudice to her client which cannot be compensated in costs.

[34] When weighing the prejudice that might be suffered by the defendants because of the delays in moving this matter forward against the serious prejudice that the plaintiff would suffer as a result of the termination of the proceeding, I am satisfied that the motion to renew should be granted. This would allow justice to be done.

[35] There may be some problems tracking down some witnesses and in the case of Mr. Andrews an impossibility since he has passed away but I do not see that as being as serious a problem for the defendants as the serious prejudice the plaintiff would suffer if his action is terminated.

[36] Efforts to track down potential witnesses who are still living and have some recollection of the accident have not yet been fully exhausted. Hopefully they can still be found. Even though the defendants have not been properly served their insurers have known of the Plaintiff’s intended action since at least November of 2003. They have had time to investigate the claim and to prepare to defend against it.

[16] McDougall J. granted a renewal for one year, noting that given the number of renewals, “there should be no need for any further renewals” (para. 37).

[17] In *Creswell v. Murphy*, 2010 NSSC 190, another decision relied on by the parties, similar to the situation dealt with by McDougall J. in *Grosse v. White*, Kennedy C.J. dealt with a renewal of a claim respecting a motor vehicle accident after several previous renewals had been granted in accordance with the 1972 Rules, and was being applied for in that case after CPR 4.04 came into effect. Kennedy C.J. relied on *Minkoff v. Poole* as the source of the test and the burden (paras. 15-17, citing *Minkoff* at paras. 23-25). Kennedy C.J. went on to consider *Grosse v. White*. In allowing another renewal, this time under Rule 4.04, Kennedy C.J. stated:

[31] I am going to permit one more renewal of this matter. A prejudice to the Defendant Murphy is presumed given the significant delay in bringing this matter to trial. However, when I balance the prejudice to the Defendant against the dramatic prejudice to the Plaintiffs should the action be ended, I conclude that the Plaintiffs will be given one further opportunity to move the matter forward.

[32] I so conclude mindful that the insurer for Murphy has been aware of the suit from the filing of the Originating Notice and has been in a position to react accordingly.

[33] I adopt the position taken by Justice McDougall in *Grosse* that service is to be accomplished on the Defendant Murphy within the six month period set out in the order and that given the history of this Action, no further renewal can be anticipated.

[18] In *O'Connell v. Farr*, 2015 NSSC 85, Smith A.C.J. (as she then was) dealt with a motion by a plaintiff to both set aside a dismissal of an action and allow a renewal of an Originating Notice and Statement of Claim. The action arose following a four-vehicle collision on June 20, 2005. An Originating Notice (Action) and Statement of Claim naming multiple defendants, namely Constance Farr, Chelsea Farr, and Anton Lorde, was filed on June 19, 2008. None of the defendants were personally served with the pleadings, nor were a copy of the documents or any notice given to Mr. Lorde's insurers. The plaintiff's action subsequently expired without being served. The first renewal occurred as described by Smith A.C.J.:

[5] The Plaintiff's action expired without being served. On July 28th, 2009, the Plaintiff's solicitor brought an *ex parte* motion pursuant to Civil Procedure Rule 4.04 to renew the Originating Notice (Action) and Statement of Claim. An Order was issued the following day, renewing the Originating Notice until June 20th, 2010. No attempts were made to serve either of the Defendants after this Order was issued.

[19] Between the first renewal, and the motion before the court which resulted in the second renewal, the following events transpired resulting in a lengthy delay, as paraphrased from paragraphs 6-19:

- On June 25, 2013, the Prothonotary forwarded an Appearance Day notice to Plaintiff's counsel to have the action dismissed pursuant to Civil Procedure Rule 4.22. The matter was returnable for August 16, 2013 Appearance Day.
- On August 16, 2013 Appearance Day, Plaintiff's counsel was directed to file a motion to renew the Originating Notice (Action) and Statement of Claim by September 30, 2013. He failed to bring a motion to renew.
- On January 17, 2014 the matter was docketed for a status report, however Plaintiff's counsel on January 16, 2014 wrote to the court asking for an adjournment, which was granted and set down for February 14, 2014.
- On February 14, 2014, the matter was heard in Appearance Day. Plaintiff's counsel appeared and Defence counsel appeared for the Farr Defendants.

- There was some confusion at the February 14, 2014 appearance day as Robertson J. presiding initially thought Plaintiff's counsel was appearing on his own motion, however the Farr Defendants' counsel clarified that the matter was before the court on a Motion to Dismiss. Robertson J. was concerned about proceeding with a motion to dismiss at appearance day and was not prepared to argue the merits of whether it be dismissed or not.
- Following this February 14, 2014 Appearance Day, the learned judge issued an order that a motion to renew the Statement of Claim be filed by counsel for the Plaintiff within 90 days from February 14, 2014, or the action would be dismissed.
- Plaintiff's counsel waited until the 90th day, being June 26, 2014, to attempt to file his motion to renew. He arrived at the Prothonotary's office shortly after it had closed for the day. It was still stamped by a Law Courts Commissionaire, but the Prothonotary refused to date the documents as being filed that day due to their late arrival. The documents were delivered to the Farr Defendants' counsel the next day, but not to Defendant Lorde or his insurer.
- On October 1, 2014, a new Plaintiff's Counsel applied to set aside Robertson J.'s Order and renew the Notice of Action and Statement of Claim.
- Neither Defendant Lorde, nor his insurer, were involved in any of this and did not know they had been sued in relation to an accident now 9 years earlier.

[20] Smith A.C.J. determined that the action had not yet been dismissed, therefore she interpreted the motion as one to set aside Robertson J.'s order, which specifically stated that if a motion to renew within 90 days from February 14, 2014, did not occur, then the plaintiff's action would be dismissed. In doing so, Smith A.C.J. assessed both: 1) the motion to set aside Justice Robertson's Order; and 2) the motion for renewal of the Originating Notice (Action) and Statement of Claim, considering each application separately between the Farr defendants and the defendant Lorde.

[21] As it pertained to the defendant Lorde, Smith A.C.J. did not set aside Robertson J.'s order and also denied the motion to renew the Notice of Action. The accident had happened almost a decade before, and Lorde had only recently become aware of the action. Smith A.C.J. denied the motion to renew on the basis that the delay in notifying Mr. Lorde or his insurer was inordinate and the prejudice great. However, in relation to the Farr defendants, Smith A.C.J. issued a renewal of the Notice of Action and Statement of Claim pursuant to what was then Rule 4.04(5)(b) (later Rule 4.04(6)(b)):

[68] For the reasons that I indicated previously, I am not satisfied that the Farr Defendants will suffer serious prejudice if the action is renewed. As a result, Ms.

O'Connell's Originating Notice (Action) and Statement of Claim will be renewed as it relates to the Farr Defendants.

[22] In renewing the Notice of Action and Statement of Claim, which was the second renewal under Civil Procedure Rule 4.04, Smith A.C.J. determined that inadvertence on the part of the plaintiff's counsel led to the expiry, that the plaintiff would suffer serious prejudice if the proceeding was terminated, and that the Farr defendants would not suffer serious prejudice if the renewal was granted. Smith A.C.J. stated:

[66] Mr. Richey has filed an affidavit in support of the Plaintiff's motion. In that affidavit, he acknowledges that he did not pay adequate attention to the deadlines for service and renewal of the originating documents, that he overlooked the deadlines in the Plaintiff's claim and failed to set proper reminders for himself, he accidentally failed to arrive at the court administration office in time to file his Motion to Renew and that missing the deadline set by Justice Robertson was an oversight on his part. In these circumstances, I have no difficulty finding that inadvertence lead to the expiry of the Plaintiff's Originating Notice (Action) and Statement of Claim.

[67] I am also satisfied that the Plaintiff will suffer serious prejudice if the proceeding is terminated.

[68] For the reasons that I indicated previously, I am not satisfied that the Farr Defendants will suffer serious prejudice if the action is renewed. As a result, Ms. O'Connell's Originating Notice (Action) and Statement of Claim will be renewed as it relates to the Farr Defendants.

[23] Neither party referenced *O'Connell v. Farr*, and on February 19, 2026, I gave the parties the opportunity to make further submissions regarding that case.

Analysis

[24] *O'Connell v. Farr*, *Creswell v. Murphy*, and *Grosse v. White* were all decided pursuant to CPR 4.04. However, the judges in all those cases applied the same test for a renewal set out by Chipman J.A. in *Minkoff* under 1972 Rule 9.07. *O'Connell v. Farr* allowed multiple renewals under Rule 4.04. I am bound by those decisions and am not sure why the parties in the present case both stated that the application of Rule 4.04 to multiple renewals is novel. This is not a novel issue. I also note that limiting a plaintiff's ability to obtain more than one renewal, as suggested by the defendants, would mean that a plaintiff who let time pass beyond 14 months would be better situated than one who brought a renewal motion within 14 months. This is because Rule 4.04(6) places no time limit on when the

motion can be brought after the expiry of 14 months. A plaintiff could theoretically wait for years before bringing a motion under Rule 4.04(6).

[25] Applying Rule 4.04 to the present case, I am required to consider:

1) Were reasonable efforts made to notify the defendant of the action by effecting personal service, service could not be effected personally, and will the plaintiff make a motion for a substituted method of giving notice as soon as possible?

[26] According to the affidavit of Ms. Jbeili, MDW Law attempted service in 2022 but was unable to locate the defendant Snair. A skip trace was performed but was unsuccessful in locating him. His insurance company, the same company as for the corporate defendant Municipal, was advised of all this and had a copy of the Notice of Action and Statement of Claim after it was served on Municipal. A different skip trace company recently came back with an address for Mr. Snair. The plaintiff has undertaken to take appropriate steps to arrange for service of the Notice of Action as soon as possible once it has been renewed.

2) Did inadvertence lead to the expiry?

[27] According to the affidavit of Ms. Jbeili, when the file was transferred to her from MDW Law, no information was provided as to what occurred on the motion to renew and for substituted service heard by Campbell J. in March 2023. Ms. Jbeili was thus unaware of the outstanding need for substituted service on the defendant Snair. Ms. Jbeili arranged for the preparation and service of multiple Affidavits Disclosing Documents between December 21, 2023, and December 5, 2024. She was in communication with defence counsel, and she became aware that the claim had not been served on the defendant Snair. She then made inquiries with MDW Law and only then learned that Campbell J. had refused to grant an order for substituted service until he was provided with additional details on the efforts the skip trace company Keltic Collections had made to locate the defendant, and until an ad was taken out in the *Chronicle Herald*. Those steps were not taken and the Notice of Action and Statement of Claim expired on November 10, 2023. As a result of the inadvertence of MDW Law to follow up subsequent to Campbell J.'s decision, and Ms. Jbeili in failing to identify the need for substituted service, it was not renewed in the required time period. There is no doubt that inadvertence on the part of both MDW Law and Nova Injury Law led to the expiry.

3) Will the plaintiff suffer serious prejudice if the proceeding is terminated?

[28] In the present case, the Notice of Action was issued prior to the expiry of the applicable limitation period, but the renewal would be beyond the limitation period, as well as the extended period pursuant to Section 12 of the *Limitation of Actions Act*. That extended period expired on December 12, 2023. The plaintiff cannot simply issue a new Action. I agree with the plaintiff that if the request for another renewal is denied the prejudice to her would be extreme, as failure to renew ends her ability to advance her cause of action and to claim damages. The serious prejudice test is met in the present case.

4) Will the defendant suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification?

[29] The defendants are both represented by Cory Withrow. Municipal has been served but they are waiting for Mr. Snair to be served before they file a joint defence. Of course, a long delay gives rise to an inference of prejudice. The strength of the inference depends, again, on all the circumstances. The plaintiff has the burden of establishing circumstances which warrant the discretion being exercised in the plaintiff's favour including, to the extent that it is within the plaintiff's power to do so, circumstances negating the conclusion that the defendant was prejudiced. The defendant was in a position to offer evidence on this issue in the present case and offered none. If, at the end of the day, the scales are evenly balanced when both the injustice to the plaintiff and the prejudice to the defendant are weighed, then the plaintiff should fail.

[30] In the present case the defendants' adjuster was advised of the claim being advanced on February 19, 2020, and the insurer has been kept updated on the plaintiff's condition and treatment throughout. The defendant Municipal was served. Again, Mr. Withrow represents both defendants.

[31] A detailed settlement proposal with all supporting medical documentation was provided to the adjuster on June 16, 2023. All relevant medical evidence remains available and in fact has been provided to Mr. Withrow. The accident itself involved a rear-end collision and there is no liability issue. All relevant witnesses remain available for discoveries, and to testify, including being cross-examined. RSA and defendant Municipal have had a full ability to investigate the collision, interview witnesses, investigate the plaintiff's injuries and claimed damages, and request any independent medical examinations required during the past five years.

[32] The plaintiff has provided evidence that there has been no loss of evidence or inability to find or obtain evidence of witnesses. This is not a disability benefit claim where the claimant's health and ability to work from the date of injury to present are at issue. Here, the Notice of Action expired on November 10, 2023 (one year after it was renewed). The issue is what, if any, prejudice has been experienced by the defendant in the 18-month period between November 10, 2023, and present. I agree with the plaintiff that any possible prejudice is minimal or non-existent. All medical evidence remains available and has in fact been provided to Mr. Withrow, who represents both defendants. The defendant will not suffer any prejudice that cannot be compensated in costs. The defendant will not suffer serious prejudice if the renewal is granted.

Conclusion

[33] The plaintiff's motion for a further renewal of seven (7) months from the date of this decision is granted. It should not take longer than seven (7) months to accomplish service based on the plaintiff's representations.

[34] In relation to costs, this issue arose due to inadvertence on the part of various counsel for the plaintiff. However, the motion was complicated by the defendants ignoring the relevant caselaw, and then failing to acknowledge the relevance of the *O'Connell v. Farr* decision when the court provided it to both counsel. But for the position of the defendants, costs would be higher. That said, the plaintiff will forthwith pay costs of \$500.

Arnold, J.