

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240611**

**Docket: A-260-22**

**Citation: 2024 FCA 109**

**CORAM: LASKIN J.A.  
GOYETTE J.A.  
DAWSON D.J.C.A.**

**BETWEEN:**

**MANSOOR KHAWAJA**

**Appellant**

**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA**

**Respondent**

Heard at Calgary, Alberta, on June 11, 2024.  
Judgment delivered from the Bench at Calgary, Alberta, on June 11, 2024.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GOYETTE J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Calgary, Alberta, on June 11, 2024).**

**GOYETTE J.A.**

[1] The appellant, Mr. Khawaja, is a flight instructor residing in Alberta. In 2017, he completed an exam and flight test, and Transport Canada awarded him a Class 4 Flight Instructor Rating. Mr. Khawaja believed he was entitled to a Class 3 Rating. In 2018, he submitted an application to upgrade to a Class 3 Rating, and Transport Canada granted him that upgrade.

[2] In 2022, Mr. Khawaja filed a statement of claim with the Federal Court concerning Transport Canada's 2017 decision not to immediately grant him the Class 3. He sought various administrative remedies along with damages of \$390,000 for loss of income and \$600,000 for pain and suffering. The Federal Court granted an order for summary judgment dismissing Mr. Khawaja's claim because it was filed after the expiry of the two-year period set out in Alberta's *Limitations Act*, RSA 2000, c L-12: *Khawaja v. Canada*, 2022 FC 1592. Mr. Khawaja appeals this order, asking our Court to reverse the Federal Court's decision and allow his claim against Transport Canada to proceed.

[3] The sole issue in this appeal is whether the Federal Court erred in concluding that Mr. Khawaja filed his claim after the two-year limitation period.

[4] Subsection 3(1) of Alberta's *Limitations Act* provides that a defendant is immune from liability if the claimant did not file a claim within two years of the date on which the claimant knew or ought to have known three things: (i) the injury at issue occurred, (ii) the injury was attributable to the defendant's conduct, and (iii) the injury warrants bringing a proceeding: *Canada (Attorney General) v. Utah*, 2020 FCA 224 at para. 11. The word "injury" refers, among other things, to an economic loss, the non-performance of an obligation, or the breach of a duty.

[5] The Federal Court found as a fact that Mr. Khawaja was aware of these three elements as of April 20, 2017. On that date, he knew Transport Canada was not granting him a Class 3 Rating and that his income would be affected; he even lodged an objection with his Flight Instructor the same day: Federal Court decision at paras. 36–41. As Mr. Khawaja acknowledges,

our Court can only interfere with this factual finding if the Federal Court committed a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33.

[6] Mr. Khawaja says the Federal Court committed a palpable and overriding error because the injury in this case was not discoverable until February 3, 2021, when he commenced a proceeding before the Transportation Appeal Tribunal of Canada. Mr. Khawaja argues that, before that date, he remained active by communicating with Transport Canada to ascertain the seriousness of the injury and determine whether his situation warranted bringing a proceeding.

[7] We must reject Mr. Khawaja's argument. As determined by the Federal Court, the fact that Mr. Khawaja continued to communicate with Transport Canada does not extend the two-year limitation period. We see no palpable and overriding error in the Federal Court's reasons.

[8] Accordingly, we will dismiss the appeal with costs.

"Nathalie Goyette"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-260-22

**STYLE OF CAUSE:** MANSOOR KHAWAJA v. HIS  
MAJESTY THE KING IN RIGHT  
OF CANADA

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JUNE 11, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** LASKIN J.A.  
GOYETTE J.A.  
DAWSON D.J.C.A.

**DELIVERED FROM THE BENCH BY:** GOYETTE J.A.

**APPEARANCES:**

Mansoor Khawaja FOR THE APPELLANT  
SELF REPRESENTED

Alexander Brooker FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada