

In the Court of Appeal of the Northwest Territories

Citation: *Ellingson v. Summit Air Charters*, 2007 NWTCA 1

Date: 2007 01 31

Docket: A-1-AP-2005000005

Registry: Yellowknife, N.W.T.

Between:

**John Earl Ellingson and Janice Louise Ellingson as Administrators of the Estate
of Mary Katherine Tilson (nee Ellingson), Deceased**

Appellant

- and -

**Summit Air Charters Ltd. and Joanne Frances MacKinnon as Administratrix of
the Estate of John Ernest Bidwell, Deceased**

Respondent

AND:

Docket: A-1-AP-2005000007

**Larry Henry Pontus, Public Trustee for the Northwest Territories,
Administrator for the Estate of Effie Elizabeth Blake, Deceased**

Appellant (Plaintiffs)

- and -

**Inuvik Regional Hospital, Inuvik Hospital Board of Management, the
Commissioner of the Northwest Territories, Doctor Jason Waechter, Jane Doe
and John Doe**

Respondents (Defendants)

The Court:

**The Honourable Madam Justice Virginia Schuler
The Honourable Mr. Justice Peter Costigan
The Honourable Madam Justice Marina Paperny**

**Memorandum of Judgment
Delivered from the Bench**

Appeal of the Decisions by
The Honourable Mr. Justice J.E. Richard
Dated the 21st day of January, 2005

**Memorandum of Judgment
Delivered from the Bench**

Costigan J.A. (for the Court):

[1] The issue of law in both of these appeals is whether s. 31(1) of the *Trustee Act*, R.S.N.W.T. 1988, c. T-8 permits the appellant estates to claim damages for loss of expectation of life and loss of future wages (collectively the “lost years claims”). Subsection 31(1) provides:

The executors or administrators of a deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased, except in case of libel and slander, in the same manner and with the same rights and remedies as the deceased would if living have been entitled to do.

[2] Blake died from a tuberculosis infection. Tilson died in an airplane crash. The statement of claim in the Tilson action alleges that Tilson died instantly.

[3] The chambers judge held the appellants’ lost years claims were not recoverable under s. 31(1): *Tilson Estate v. Summit Air Charters Ltd.*, 2005 NWTSC 12 at para. 27; *Blake Estate (Public Trustee of) v. Inuvik Regional Hospital*, 2005 NWTSC 13 at paras. 2 and 6. Since the chambers judge’s decisions, the Nunavut Court of Appeal has held that lost years claims are recoverable under Nunavut legislation that is identical in wording to s. 31(1): *Paneak Estate v. Caron Estate*, 2006 NUCA 4 [*Paneak*].

[4] We agree with and adopt the analysis and conclusions of the Nunavut Court of Appeal in *Paneak*.

[5] In *Paneak* and in the Blake appeal, the deceased lived for some time after the occurrence of the injury or illness that ultimately caused their deaths. It is possible that Tilson died instantly. There are some comments in earlier authorities which might suggest that lost years claims are only recoverable if the deceased lived for some time after the onset of the injury or illness: *Rose v. Ford*, [1937] 3 All E.R. 359 at 362-363, 365-366 and 370.

[6] We see no principled reason to adopt a distinction based on the time of death. Why should it matter whether the deceased lived for a second, a minute, an hour or a week after the injury? The remedies available to victims of tortious conduct should not depend on artificial parsing.

[7] We conclude that s. 31(1) permits the appellant estates to claim damages for lost years claims. The appeals are allowed.

Appeal heard on January 23, 2007

Memorandum filed at Yellowknife, N.W.T.

this day of , 2007

Costigan J.A.

Appearances:

A-0001-AP2005000005

Kevin P. Feehan, Q.C. and Shannon R.W. Gullberg

For the Appellants John Earl Ellingson and Janice Louise Ellingson as Administrators of the Estate of Mary Katherine Tilson (nee Ellingson), deceased

D. Bruce Garrow

for the Respondents Summit Air Charters Ltd. And Joanne Frances MacKinnon as Administratrix of the Estate of John Ernest Bidwell, Deceased

A-0001-AP2005000007

Teri Lynn Bougie

for the Appellant Larry Henry Pontus

Jonathan Rossall

for the Respondent Dr. Jason Waechter

Terri Nguyen

for the Respondents Inuvik Regional Hospital, Inuvik Hospital Board of Management and the Commissioner of the Northwest Territories

A-1-AP 2005000005 and A-1-AP 2005000007

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