

Nova Scotia Court of Appeal on Substance-Procedure Distinction

In *Vogler v. Szendroi* (available [here](#)) the plaintiff, resident in Nova Scotia, was injured in a car accident in Wyoming. Three years later he issued legal process in Nova Scotia. This was inside the four-year Wyoming limitation period, which applied as part of the substantive law applicable to the claim (under the place of the tort rule in *Tolofson v. Jensen*). However, he did not serve the defendant for another three years.

Under Wyoming law, an action is commenced by filing process with the court (the same is true in Nova Scotia), but if service is not made within 60 days of filing, the action is not considered to have been commenced until the date of service (Nova Scotia has no similar provision).

The issue therefore was whether the specific rule of Wyoming law focusing on the date of service was substantive, and so applied in the Nova Scotia litigation, or procedural, and so did not apply. The lower court held that the rule was “integral” to the Wyoming limitations rule and was therefore substantive. But the Court of Appeal reversed and characterized it as procedural.

The court’s analysis is quite lengthy – longer than necessary for this issue. But it does contain some useful comments about the substance-procedure distinction (at paras. 17-22 and 26). It also relies on a useful academic source on this specific issue by Professor Janet Walker (at paras. 37-39). Ultimately the court concludes the Wyoming rule is not bound up in its limitations rule, and is rather a separate procedural rule.