

Court of King’s Bench of Alberta

Citation: Nebozuk v Northbridge General Insurance Company, 2025 ABKB 197

Date: 20250331
Docket: 1803 25197
Registry: Edmonton

Between:

Orest Andrew Nebozuk

Plaintiff/Respondent

- and -

Northbridge General Insurance Company

Defendant/Appellant

**Reasons for Decision
of the
Honourable Justice M. Kraus**

I. Introduction

[1] On December 20, 2018, the Respondent, Orest Andrew Nebozuk (“Mr. Nebozuk” or the “Respondent”), filed a Statement of Claim against his own insurer, Northbridge General Insurance Corporation (“Northbridge” or the “Appellant”), under the SEF 44 Family Protection Endorsement (“SEF 44 Endorsement”), contained in his standard automobile policy seeking indemnification for amounts exceeding the minimum limits for motor vehicle liability insurance in Alberta (the “SEF 44 Action”).

[2] Northbridge applied for summary dismissal of the SEF 44 Action on the basis that it was commenced by Mr. Nebozuk outside the limitation period.

[3] That application was dismissed by the Applications Judge in a written decision dated March 17, 2022: *Nebozuk v Northbridge General Insurance Corporation*, 2022 ABQB 212.

[4] Northbridge now appeals that decision.

[5] For the reasons that follow, the appeal is dismissed.

II. Background Facts

[6] Mr. Nebozuk was involved in a motor vehicle accident on July 31, 1998 (the “Motor Vehicle Accident”).

[7] At the time of the Accident, Mr. Nebozuk was covered under a standard automobile policy, which included the SEF 44 Endorsement.

[8] Mr. Nebozuk filed a Statement of Claim on July 5, 2000, for damages against Peter McGilvery and Beatrice Harper (the “Tort Defendants”) with respect to the Motor Vehicle Accident (the “Underlying Tort Action”).

[9] In the Statement of Claim, Mr. Nebozuk claimed \$51,000 in damages. The Tort Defendants admitted liability. The issue in the Tort Action was quantum of damages.

[10] The Statement of Claim was amended on September 9, 2003, to claim \$251,000 in damages (the “Amended Statement of Claim”).

[11] The Amended Statement of Claim was allowed to be amended in a contested application on May 19, 2009. An Amended Amended Statement of Claim was filed November 19, 2009, claiming \$634,500 for various heads of damages (the “Amended Amended Statement of Claim”).

[12] On December 22, 2016, Mr. Nebozuk’s counsel at the time, Helmut Berndt, was advised by counsel for the Tort Defendants that under the Tort Defendants’ policy the available coverage was \$200,000 (“Policy Limit”).

[13] On October 31, 2017, Mr. Nebozuk filed a Discontinuance of Claim in the Underlying Tort Action. On November 6, 2017, Mr. Nebozuk signed a release, settling the claim for \$250,000, consisting of the Policy Limit plus interest, costs, and disbursements.

[14] On December 20, 2018, the Plaintiff filed a Statement of Claim against the Appellant, the SEF 44 insurer.

[15] At all material times, the minimum limits for motor vehicle liability in Alberta was \$200,000.

III. Decision of the Applications Judge

[16] The Applications Judge found that the limitation period for commencing a claim against the SEF 44 insurer, Northbridge, began when the Discontinuance of Action in the Underlying Tort Action was filed October 31, 2017. The Discontinuance of Action reflected that the Underlying Tort Action was finally settled. He found the date of settlement is the date that the Mr. Nebozuk knew or ought to have known that the quantum of his claim was more than \$200,000, the minimum limits for motor vehicle liability insurance in Alberta.

[17] The Applications Judge further found that Mr. Nebozuk had two years from the filing of the Discontinuance of Action in the Underlying Tort Action to commence his SEF 44 Action against Northbridge, not the 12 months in the SEF 44 Endorsement. In other words, since the Discontinuance of Action was filed on October 31, 2017, the limitation for commencing an action against the SEF 44 insurer was October 31, 2019, two years after the filing of the Discontinuance of Action.

IV. Standard of Review

[18] The standard of review of an appeal from an Applications Judge's decision is correctness and the review itself takes the form of a *de novo* application: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166 at para 3.

[19] The Court may also consider new evidence and new arguments: see *Charuk v Terravest Industries Limited Partnership*, 2019 ABQB 747 at para 7; see also *Rule* 6.14(3). New evidence is allowed, namely the supplemental affidavit of R. Reusch, senior technical specialist with Northbridge, and a letter from the Tort Defendants' counsel addressed to Mr. Berndt dated December 22, 2016.

[20] When new evidence is allowed on appeal, the Court must undertake a "fresh assessment of the facts": *Gudzinski Estate v Allianz Global Risks US Insurance Company Limited*, 2012 ABCA 5 at paras 21 and 24.

V. Issues

[21] The issues to be determined are as follows:

- (a) When does the limitation period start? When did the Plaintiff know or ought to have known that his claim exceeded the minimum limits for motor vehicle liability insurance?
- (b) What is the limitation period for suing under the SEF 44 Endorsement?

[22] I will discuss each issue in turn.

VI. Relevant Provisions

[23] Section 593 (previously s 647) of the *Insurance Act*:

Limitation re commencement of action

593. An action or proceeding against an insurer in respect of insurance under a contract referred to in section 586, 587 or 588 must be commenced within the limitation period specified in the contract, but in no event may the limitation period be less than 2 years from the occurrence of the accident. [emphasis added]

[24] Section 6(c) of a standard SEF 44 Endorsement reads as follows:

Every action or proceeding against the insurer for recovery under this endorsement shall be commenced within 12 months from the date upon which the eligible claimant or his legal representative knew or ought to have known that the quantum of the claims with respect to an insured person exceeded the minimum limits for

motor vehicle liability insurance in the jurisdiction which the accident occurred. No action which is commenced within 2 years of the date of the accident shall be barred by this provision. [emphasis added]

[25] Section 3 of the *Limitations Act*, RSA 2000, c L-12, reads as follows:

3(1) Subject to subsections (1.1) and (1.2) and sections 3.1, 3.2 and 11, if a claimant does not seek a remedial order within

(a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,

(i) that the injury for which the claimant seeks a remedial order had occurred,

(ii) that the injury was attributable to conduct of the defendant, and

(iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,

or

(b) 10 years after the claim arose,

whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

[26] Section 7 of the *Limitations Act* reads as follows:

7(1) Subject to section 9, if an agreement expressly provides for the extension of a limitation period provided by this *Act*, the limitation period is altered in accordance with the agreement.

(2) An agreement that purports to provide for the reduction of a limitation period provided by this *Act* is not valid.

VII. Analysis

Issue 1 - When does the limitation period start? When did the Plaintiff know or ought to know that his claim exceeded the minimum limits for motor vehicle liability insurance?

[27] The Respondent submits that the Applications Judge was correct when he found that the limitation period began to run on October 31, 2017, when the Discontinuance of Action in the Underlying Tort Claim was filed.

[28] The Appellant argues that Mr. Nebozuk or his counsel were in receipt of sufficient expert medical and other expert opinions much earlier than October 31, 2017, to trigger an earlier start for the limitation period.

[29] The Applications Judge was not prepared to find that the limitation period began to run before filing the Discontinuance of Action in the Underlying Tort Claim, relying on the *usual rule* as set out in *Shoemaker v Wawanesa Mutual Insurance Co.*, 1993 CanLII 7048 (AB KB)

[*Shoemaker*] and upon Justice Côté's commentary of *Shoemaker* in *Shaver v Co-operators General Insurance Company*, 2011 ABCA 367 [*Shaver*].

[30] In *Shoemaker*, the Court stated:

41. If the drafters of para. 6(c) did not intend "claims" to mean the bare claims as made in the pleading, can it be said that they meant counsel's opinion of the claim at some point in time and not the court's opinion as determined by judgment? A case is built for trial brick by brick. In the course of building, many a brick will prove weak, unreliable or unavailable. There will be moments when counsel would not settle for less than full perfect compensation and then there will be moments when counsel would happily recommend whatever could be obtained. At which of these moments are we to take counsel's opinion and start the limitation period running under para. 6(c)? Once running can it be stopped because counsel discovers his or her ace is a deuce?

[...]

43. I need not and do not decide that in no case can the limitation in para. 6(c) begin to run before final judgment or settlement. There may be cases where there is no doubt. This is not one.

[emphasis added]

[31] *Shoemaker* was appealed and the appeal was dismissed. While not determinative of the issue, the Court of Appeal indicated that the approach of the trial judge on the interpretation of the limitation period was *compelling*: see *Shoemaker v Wawanesa Mutual Insurance Co.*, 1994 ABCA 87 (CanLII).

[32] The conclusion in *Shoemaker* was that s 6(c) of the standard SEF 44 was ambiguous and therefore that the interpretation most favourable to the insured must be given: *Shoemaker* at para 29 (approved by the Court of Appeal in *Shaver*).

[33] In *Shaver*, Justice Côté, writing for the Court of Appeal, stated:

18 Indeed, discoverability may come still later. The above description assumes that a plaintiff and his or her lawyer have to make their own decision about the worth of the claims of the plaintiff and of the other persons injured in the accident. That may well be wrong; the time under cl 6(c) may start to run only when a judgment or binding settlement legally fixes the amount of those claims. A trial judge held that that was usually the rule, in *Shoemaker v Wawanesa Mutual Insurance Co.* (1993), 9 Alta. L.R. (3d) 214 (Alta. Q.B.), 223-24 (paras 23-29). The Court of Appeal dismissed an appeal from that, saying that the trial judge's interpretation was "compelling": (1994), 155 A.R. 2 (Alta. C.A.). (But the Court of Appeal did not positively decide the point.) That interpretation is also supported by the brief decision of the Court of Appeal in *Mellon (Next Friend of) v Gore Mutual Insurance Co.*, 1995 ABCA 340, 174 A.R. 200 (Alta. C.A.) (para 4).

[34] The Appellant argues that *Shoemaker* is no longer good law as it was influenced by an unreported Ontario decision of *Wimbush v Progressive Casualty Insurance Co.* In support of

this, the Appellant argues *Roque v Pilot Insurance Company*, 2012 ONCA 311 [*Roque*] rejected *Wimbush* and stated the proper approach to follow is as set out in para 6 of *Roque*:

While applying discoverability in this way has some advantages, it is inconsistent with the text of the provision. If the limitation period begins when the plaintiff knows the quantum of the claim with certainty, the phrase "or ought to have known" in the provision is left without meaning.

[...]

The plaintiff's case runs from when he has a body of evidence accumulated that would give him a "reasonable chance" of persuading a judge that his claims would exceed \$200,000.

[35] I reject the proposition that *Shoemaker* is no longer good law in Alberta. In 2011, the Court of Appeal in *Shaver* specifically referred to *Shoemaker* as quoted above. The caselaw from Alberta suggests that the time under the SEF 44 may start to run only when a judgment or binding settlement legally fixes the amount of those claims: see *Shoemaker* at paras 23-29, *Shaver* at para 18 and *Mellon (Next Friend of) v Gore Mutual Insurance Co.*, 1995 ABCA 340 at para 4.

[36] The *usual rule* applied is that the limitation period starts to run at the time of a final judgment or settlement. In my view, this is not one of the cases where there is *no doubt* that the claim exceeded the minimum limits for motor vehicle liability insurance in Alberta. The documents and evidence before the Court indicate that there are some contradictory opinions as to the existence and severity of the injuries, the cause of the injuries, and the corresponding quantum of the claim.

[37] The evidence before the Court also shows Mr. Nebozuk (and his counsel) were only made aware that the policy limit in the Underlying Tort Action was \$200,000 on December 22, 2016, when they received a letter from counsel for the Tort Defendants indicating that Mr. Nebozuk's settlement offer would be rejected.

[38] At the time of the Motor Vehicle Accident, there did not appear to be any obligation upon the Tort Defendants to disclose the existence of a policy, if any, or the policy limits to Mr. Nebozuk. The *Fair Practices Regulation*, Alta Reg 128/2001, specifically s 5.1, now makes the disclosure of a liability policy and the policy limits mandatory. That section came into effect in 2011 and does not apply retroactively.

[39] I note that the Statement of Claim claimed \$51,000.00 in damages, which is significantly lower than the minimum limits for motor vehicle liability insurance in Alberta and policy limits. The Amended Statement of Claim increased the quantum sought to \$251,000.00. The quantum sought in the Amended Statement of Claim does not, in my view, trigger the start of the limitation period under the SEF 44 Endorsement because the quantum in the relief sought may bear no reasonable relationship to the amount actually recovered: *Shoemaker* at para 23.

[40] The increase in the quantum sought in the Amended Amended Statement of Claim is more significant. The Plaintiff's claim substantially increased in 2009, when he applied to amend his Amended Statement of Claim. The application to amend the Amended Statement of Claim was contested but ultimately granted, and the Amended Amended Statement of Claim reflected damages sought in the amount of \$634,500.00.

[41] While the Plaintiff claimed relief in a much higher amount in the Amended Amended Statement of Claim, there is a lengthy list of medical evidence that paints a nebulous picture of the cause and severity of Mr. Nebozuk's injuries. The medical evidence put before the Court is lengthy. I do not intend to go through all of it but will highlight some reports.

[42] In the contested amendment application, the Tort Defendants hired Dr. John Huckell to provide an IME of Mr. Nebozuk. The Tort Defendants argued that Dr. Huckell's Report indicated that "[i]n short, I believe that any injury that this man may have sustained as a result of the motor vehicle accident of July 1998 has long since resolved[...]"

[43] During the contested application it was also indicated that Mr. Nebozuk had obtained expert reports from Dr. Citow dated May 25, 2005 and June 15, 2005. Those submitted reports did not materially assist Mr. Nebozuk. The reports indicated "there is no structural reason why he would need to miss any work, but this would be mainly related to his pain level" and "certainly the vast majority of people having findings just like this on an MRI are completely asymptomatic."

[44] On February 12, 2007, Dr. Salim Esmail produced a report for Mr. Nebozuk, where he diagnosed Mr. Nebozuk with post-traumatic cervicothoracic dysfunction with possible musculoligamentous injuries.

[45] The Plaintiff obtained a report dated September 7, 2008, from Dr. Brian Knight wherein he diagnosed Mr. Nebozuk with myofascial pain syndrome and thoracic outlet syndrome, both of which he opined are causally connected to the Accident.

[46] In a further report from Dr. Salim Esmail dated October 6, 2008, he again confirmed Mr. Nebozuk's diagnosis as a post-traumatic cervicothoracic dysfunction and thoracic outlet syndrome.

[47] On September 20, 2010, following an independent medical examination for the Tort Defendants, Dr. Ian Clarke prepared a report tendering his opinions on the extent of Mr. Nebozuk's injuries. Dr. Clarke's Report raised significant issues with regard to the extent, severity, and cause of the injuries suffered by Mr. Nebozuk. As pointed out by Mr. Nebozuk, these findings included:

- (a) There is little evidence to support any significant neck injury. Mr. Nebozuk's symptoms had resolved by the Spring of 1999, when Mr. Nebozuk reported more lower back pain and discomfort at the thoracolumbar junction.
- (b) In July 1999, Mr. Nebozuk suffered a cycling accident which, in Dr Clarke's opinion, was potentially much more serious than anything that could have happened in the Motor Vehicle Accident a year earlier.
- (c) Dr. Clarke's assessment of the voluminous documents supplied, and his own interview and examination did not convince him that Mr. Nebozuk suffered any injury beyond a mild muscle strain in July 1998.
- (d) There is no indication that Mr. Nebozuk suffered any serious psychological injury from this collision, nor is there any sign of a current Mood Disorder which might explain his ongoing symptoms and apparent disability.

[48] A letter from Dr. Clarke dated March 26, 2011, indicated that “Mr. Nebozuk’s complaints and claimed disability are related to psychological, behavioural or voluntary factors rather than physical problems.”

[49] The Appellant also points to three additional expert reports obtained after the May 14, 2009 Application to amend the Amended Statement of Claim. The Appellant argues that the three reports support a finding that Mr. Nebozuk knew or ought to have known that the value of his claim was in excess of the \$200,000 minimum limits for motor vehicle liability in Alberta.

[50] The three reports include: (1) March 30, 2010 Function Capacity Evaluation Report from Joanne Appelt; (2) March 17, 2016 Updated Medical Report from Dr. Salim Esmail; (3) September 21, 2016 Loss of Earning Capacity and Future Compensation Analysis from Dr. Alexander Jenkins.

[51] While Dr. Jenkins Loss of Earning Capacity and Future Compensation Analysis estimates the quantum of the claim at higher than the minimum policy limits in Alberta, to obtain those damages, the Plaintiff still needed to overcome the pitfalls of some of the medical evidence. Dr. Jenkins’ Report was based upon certain assumptions about Mr. Nebozuk’s past and future loss of income claim which needed to be proven.

[52] The evidence before the Court suggests that the severity and the cause of Mr. Nebozuk’s injuries from the Motor Vehicle Accident are far from clear.

[53] The Court is asked to determine when the Plaintiff or his legal counsel knew or ought to have known that the quantum of the claim exceeded the minimum limits for motor vehicle liability in Alberta. In my view, this is not one of the clear cases as indicated in *Shoemaker* at para 43 where there is no doubt. Indeed, the uncertainty about Mr. Nebozuk’s medical condition and dispute between experts about their assessment of the medical evidence very much demonstrates how a case is built for trial brick by brick. In the course of building, many a brick will prove weak, unreliable or unavailable: see *Shoemaker* at para 41.

[54] When the Underlying Tort Action was settled and Discontinuance of Action filed, Mr. Nebozuk and his counsel knew or ought to have known that the quantum of Mr. Nebozuk’s claim exceeded the minimum limits for motor vehicle liability insurance in Alberta.

[55] In my view, the Applications Judge was correct when he found that the limitation period to commence an action against the SEF 44 insurer in this matter began to run on October 31, 2017, when the Discontinuance of Action in the Underlying Tort Action was filed.

Issue 2 - What is the limitation period for suing under the SEF 44 Endorsement?

[56] The second issue before the Court is to determine what limitation period applies to a claim brought under the SEF 44 Endorsement.

[57] The Appellant argues that the 12-month limitation period outlined in the SEF 44 Endorsement applies. The Respondent argues that the 12-month limitation period contained in the SEF 44 Endorsement is invalidated by operation of s 7(2) of the *Limitations Act* and therefore a 2-year limitation period applies.

[58] I note that both parties rely on Justice Côté’s analysis in *Shaver* to support their respective positions. In applying the analysis in *Shaver* to this matter, I agree with the Respondent.

[59] In *Shaver*, the Court of Appeal considered which limitation period applied to an action brought against the plaintiff's own insurer with respect to an underinsured motorist under an SEF 44 Endorsement. The plaintiff issued a statement of claim against his insurer six months after the fund's payout but ten years and two weeks after the date of the accident. In other words, within the limitation period provided for in the SEF 44 Endorsement but beyond the ten-year period provided in the *Limitations Act*. The defendant insurer argued that the ten-year limitation period found in s 3(1)(b) of the *Limitations Act* applied and was not dependant on discoverability; in essence that s 3(1)(b) of the *Limitations Act* barred the claim and therefore, the defendant insurer applied to dismiss the claim summarily: see *Shaver* para 5.

[60] In *Shaver*, the plaintiff argued that the limitation period only started to run when the plaintiff knew or ought to have know that he had a claim greater than the insurance or other fund available elsewhere, or alternatively, that the limitation period in the SEF 44 Endorsement was valid as his claim had been brought within the year prescribed.

[61] Justice Côté writing for the Court of Appeal found that the contractual limitation period in the SEF 44 Endorsement expressly only begins to run on discovery: see *Shaver* at para 10. That is, when the plaintiff learns of inadequate insurance, or of total claims exceeding minimum insurance limits, or both: see *Shaver* at para 43. In *Shaver*, it took over nine years for the plaintiff to make this discovery. The plaintiff brought his claim ten years and two weeks after the accident.

[62] The one-year contractual limitation period contained in the SEF 44 Endorsement resulted in a limitation period which exceeded the ten-year limitation period provided for in s 3(1)(b) of the *Limitations Act*. The Court of Appeal found it was valid. Justice Côté looked at s 647 of the *Insurance Act* (now s 593) which states that a suit under such coverage "must be commenced within the limitation period specified in the contract ...": see *Shaver* at para 21.

[63] The Court of Appeal found that, "[o]n its face, s 647 ratifies and permits the contractual limitation period, cl 6(c) of the SEF 44 endorsement": see *Shaver* at para 22. After some discussion on legislative interpretation, Justice Côté stated that, [i]f s 647 is looked on as a statutory limitation period, then s 2(4)(b) of the *Limitations Act* permits it and does not overrule it: see *Shaver* at para 26 [emphasis added].

[64] A claim governed by a statutory provision referred to in s 2(4)(b) is completely removed from the *Limitations Act*: see *Fenrich v Wawanesa*, 2005 ABCA 199 [*Fenrich*] at para 20. This allowed the new limitation period to start based on discoverability as set out in the SEF 44 Endorsement, completely unrelated to the ten-year limitation.

[65] The Appellant argues that the Court of Appeal in *Shaver* affirmed the validity of the one-year contractual limitation period and therefore the one-year contractual limitation period applies. I disagree. Justice Côté stated that the one-year contractual limitation period was valid because s 647 (now s 593) of the *Insurance Act* specifically permitted it, meaning the *Limitations Act* limitation period of ten-years did not apply. This resulted in the claim being able to proceed notwithstanding it was brought beyond ten years after the accident. This should not be construed that the contractual limitation period of one-year in this SEF 44 Endorsement is always valid. That contractual limitation period is still subject to the s 7 of the *Limitations Act*.

[66] At the time, s 647 of the *Insurance Act* stated that the limitation period for commencing an action was that "in no event may the limitation period be less than one year after the

happening of the accident”. The current *Insurance Act* s 593 is “2 years”, not one year. The interplay of s 7 with the SEF 44 Endorsement contractual limitation period (the one-year) was somewhat irrelevant in *Shaver*. The limitation issue that arose in *Shaver* is different from the limitation issue in this matter. In this matter, the contractual limitation period is at issue.

[67] In *Shaver*, Justice Côté touched on the applicability of s 7 and the contractual limitation period:

29 Counsel for the defendant insurer argued briefly that cl 6(c) of the endorsement is therefore in effect repealed or barred by s 7 of the *Limitations Act*. That is because the contractual period is a year (12 months), which is shorter than the ordinary two years, and 10 years, respectively in that *Act*.

30 However, it is far from clear that that is what s 7 says. The key words in both its subsections are "extension [or reduction] of a limitation period provided by this *Act*". That is not necessarily confined to how to calculate the time period from commencement to end, i.e. the number of years. Most lawyers would concentrate on the end, the last date to sue.

[68] To that end, Justice Côté went on to say:

36 The only way that I can see to reconcile all this is to interpret s 7(1), (2) the way that a plaintiff or a practising lawyer would. What is the last day that the [*Limitations*] *Act* allows the plaintiff to sue? Does the contract choose a date earlier or later than that? If earlier, that contract is invalid; if later, that is valid. [emphasis added]

[69] Further in *Fenrich* the Court of Appeal stated:

The Institute concluded that "contractual provisions in an agreement which purport to shorten a limitation period contravene the *Limitations Act* and would be void.": *Standardizing Limitation Periods for Actions on Contracts (Consultation Memorandum No. 10)* (Edmonton: Alberta Law Reform Institute, 2001) at para. 88. It recommended that insurance companies should not be able to contractually impose shorter limitation periods in insurance contracts: *Limitations Act: Standardizing Limitation Periods for Actions on Contracts (Final Report No. 90)* (Edmonton: Alberta Law Reform Institute, 2003) at 35.

[70] In his analysis, Justice Côté found that it may well take a long time until one injured person can find whether the total claims from the accident exceed the statutory minimum limits for motor vehicle liability insurance in Alberta (or exceed any other relevant ceiling or sum): see *Shaver* at para 16. In fact, Justice Côté concluded that:

It may well take over nine years to learn of inadequate insurance, or of total claims exceeding minimum insurance limits, or both. It took that long here. So the contractual cl 6(c) in the endorsement quite often will purport to let the injured person sue later than the ultimate "ten-year" statutory s 3(1)(b) of the *Limitations Act* will. Therefore s 7(1) of the *Limitations Act* expressly allows that. And its s 7(2) does not forbid it. Or its s 7(2) does not forbid it in these circumstances. In any event, s 647 of the *Insurance Act* permits the contractual limitation period in the endorsement in issue here.

[71] In this matter, I find that the SEF 44 Endorsement 12-month limitation period is invalidated by s 7 of the *Limitations Act*. The applicable limitation period is two years for a claim against the SEF 44 insurer brought under an SEF 44 Endorsement.

[72] The Statement of Claim in this action was filed by Mr. Nebozuk against Northbridge on December 20, 2018. Given my finding on discoverability that the limitation period began to run on October 31, 2017, the Statement of Claim in this action was filed on December 20, 2018, within the two-year limitation.

[73] As pointed out by the Appellant, I note that Mr. Nebozuk's Amended Amended Statement of Claim states that he or his solicitors became aware on December 22, 2016, that the quantum of Mr. Nebozuk's claim exceeded the limits for motor vehicle liability insurance held by the Tort Defendants. Even if I were to find that the limitation for commencing an action against the SEF insurer commenced on December 22, 2016, Mr. Nebozuk's Statement of Claim was filed on December 20, 2018, which is a date within the two-year limitation period.

VIII. Conclusion

[74] The appeal is dismissed.

Heard on the 21st day of March, 2024.

Dated at the City of Edmonton, Alberta this 31st day of March, 2025.

M. Kraus
J.C.K.B.A.

Appearances:

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