
Court of Appeal for Saskatchewan

Docket: CACV4234

**Citation: *Holowachuk v Saskatchewan
Workers' Compensation Board, 2025 SKCA 58***

Date: 2025-06-12

Between:

Lorraine Holowachuk

*Appellant
(Plaintiff/Respondent)*

And

Saskatchewan Workers' Compensation Board

*Respondent
(Defendant/Applicant)*

Before: Tholl, Kalmakoff and McCreary JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Jeffery D. Kalmakoff
In concurrence: The Honourable Justice Jerome A. Tholl
The Honourable Justice Meghan R. McCreary

On appeal from: KBG-SA-00193-2023 (Sask KB), Saskatoon
Appeal heard: June 2, 2025

Counsel: Lorraine Holowachuk on her own behalf
Allison Graham for the Respondent

Kalmakoff J.A.

I. INTRODUCTION

[1] Lorraine Holowachuk appeals from a decision in which a Court of King’s Bench Chambers judge struck her claim against the Saskatchewan Workers’ Compensation Board [WCB], under Rule 7-9(2) of *The King’s Bench Rules (Holowachuk v Saskatchewan Workers’ Compensation Board (29 May 2023) Saskatoon, KBG-SA-00193-2023 (Sask KB) [Decision]*).

[2] I am of the view that the appeal must be dismissed. My reasons follow.

II. A PRELIMINARY ISSUE

[3] In the lead-up to the appeal hearing, through correspondence with the Registrar, Ms. Holowachuk raised concerns about the composition of the panel assigned to hear her case. The nature of Ms. Holowachuk’s correspondence suggested that she would be asserting that there was an apprehension of bias on the part of one or more of the assigned judges. Accordingly, at the outset of the hearing, Ms. Holowachuk was invited to address the Court on that point. However, when given that opportunity, she unequivocally stated that she did not wish to raise the issue and confirmed that she was content to proceed with the hearing before the panel as composed.

[4] We then proceeded to hear the parties’ submissions, and reserved our decision.

III. ANALYSIS

[5] In the *Decision*, the Chambers judge concluded that there were two bases upon which Ms. Holowachuk’s claim should be struck. The first of those was his determination that the claim was frivolous, within the meaning of Rule 7-9(2)(b), because it was plain and obvious that it was statute-barred under *The Limitations Act*, SS 2004, c L-16.1 [*Act*]. Cutting directly to the bottom line, I can see no basis to interfere with that conclusion.

[6] Where it is plain and obvious – or, said differently, beyond a reasonable doubt – that an action cannot succeed because a statutory limitation period expired before the claim was

commenced, it may properly be struck as frivolous (*Yashcheshen v Janssen Inc.*, 2022 SKCA 140 at paras 20 and 23).

[7] Section 5 of the *Act* provides, subject to certain exceptions that do not apply in this case, that an action must be commenced within two years of the day on which the claim is discovered. The date on which a claim is discovered is determined by reference to the criteria set out in s. 6:

Discovery of claim

6(1) Unless otherwise provided in this Act and subject to subsection (2), a claim is discovered on the day on which the claimant first knew or in the circumstances ought to have known:

- (a) that the injury, loss or damage had occurred;
- (b) that the injury, loss or damage appeared to have been caused by or contributed to by an act or omission that is the subject of the claim;
- (c) that the act or omission that is the subject of the claim appeared to be that of the person against whom the claim is made; and
- (d) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

(2) A claimant is presumed to have known of the matters mentioned in clauses (1)(a) to (d) on the day on which the act or omission on which the claim is based took place, unless the contrary is proved.

[8] In this case, the evidence before the Chambers judge clearly established that Ms. Holowachuk was aware of everything that was necessary to have discovered her claim – namely, that WCB had not paid her the amounts to which she believed she was entitled – by no later than March of 2018, which was nearly five years before she filed her statement of claim.

[9] The Chambers judge also rejected Ms. Holowachuk’s contention that the operation of the limitation period ought to have been suspended or delayed pursuant to s. 17 of the *Act*. That section reads as follows:

Concealment

17 The limitation periods established by this Act or any other Act or regulation are suspended during any time in which the person against whom the claim is made:

- (a) wilfully conceals from the claimant the fact that injury, loss or damage has occurred, that it was caused by or contributed to by an act or omission or that the act or omission was that of the person against whom the claim is made; or
- (b) wilfully misleads the claimant as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

[10] The Chambers judge dismissed Ms. Holowachuk's s. 17 argument because he did not agree that WCB could be said to have misled her just because it relied on the relevant statutory provisions and a settlement agreement that the parties had entered into many years earlier as its bases for denying additional compensation to her. He also found that nothing in the evidence suggested that WCB had misled Ms. Holowachuk in any other way, or that it had concealed any material facts from her. The evidence in this matter leaves no room for any other factual findings than those made by the Chambers judge, and I see no error in the way he applied the law to them.

[11] In the course of her submissions during the appeal hearing, Ms. Holowachuk candidly acknowledged that, by January of 2015, she was aware of the essential facts underpinning her claim, which were that "injury loss or damage" (i.e., the alleged non-payment of the compensation to which she believed she was entitled) had occurred, and that it was "caused by or contributed to by an act or omission" on the part of WCB (i.e., its alleged failure to comply with its statutory obligations). That acknowledgment was consistent with the evidence that was before the Chambers judge. Notwithstanding all of that, Ms. Holowachuk argued that the limitation period ought to have been suspended, because WCB's refusal to pay her what she thought she was owed, and its reasons for taking the position that it did, amounted to concealment within the meaning of s. 17(a).

[12] In my respectful view, Ms. Holowachuk's argument under this heading is premised on a fundamental misunderstanding of the term "conceals" in s. 17(a). In its ordinary grammatical use, the word "conceal" refers to the act of hiding something. There is nothing in the record to suggest that WCB hid anything of relevance from Ms. Holowachuk, let alone something that might have prevented her from discovering whether she had a litigable claim against WCB. WCB simply disagreed that it had committed any wrongful acts that caused Ms. Holowachuk to suffer loss or damage, and it took the view that, in any event, it enjoyed statutory immunity from the nature of the claim that she asserted. Disagreement is not concealment. Nor is the assertion by a party that the wording of a public statute provides it with immunity from civil actions.

[13] Ms. Holowachuk also argued, during the appeal hearing, that no limitation period applies where the cause of action is framed in breach of statute. I would not give effect to this argument. Ms. Holowachuk cited no authority for this proposition; nor am I aware of any. Moreover, the Supreme Court of Canada has held that breach of a statute is not a stand-alone cause of action.

Rather, the civil consequences of a breach of statute are subsumed in the law of negligence. The provisions of a statute can inform the duty and standard of care, and proof of a statutory breach that is causative of damages may be evidence of negligence. But liability for a statutory breach is not absolute (*Canada v Saskatchewan Wheat Pool*, [1983] 1 SCR 205 at 227–228).

[14] In the result, in my view, there is no basis to interfere with the Chambers judge’s determination that Ms. Holowachuk’s claim should be struck under Rule 7-9(2)(b).

[15] As that conclusion is dispositive of the appeal, there is no need to analyse whether the Chambers judge was also correct to strike the claim as an abuse of process under Rule 7-9(2)(e), or to address WCB’s argument concerning the statutory immunity provision in s. 167 of *The Workers’ Compensation Act, 2013*, SS 2013, c W-17.11.

IV. CONCLUSION

[16] I would dismiss the appeal, with costs to WCB, fixed at \$1,000.

“Kalmakoff J.A.”

Kalmakoff J.A.

I concur.

“Tholl J.A.”

Tholl J.A.

I concur.

“McCreary J.A.”

McCreary J.A.