

# Court of King's Bench of Alberta

**Citation: Schoenbrunn v Alberta New Home Warranty Program, 2025 ABKB 448**

**Date:** 20250725  
**Docket:** 2406 00800  
**Registry:** Lethbridge

Between:

**Karen Jane Schoenbrunn**

Applicant

- and -

**Alberta New Home Warranty Program and The New Home Warranty Insurance (Canada)  
Corporation**

Respondents

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**Memorandum of Decision  
of the  
Honourable Justice Donald Lee**

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## **Introduction**

[1] I am ruling on an Application filed by Karen Schoenbrunn on October 30, 2024, in which she seeks relief under Section 776 of the *Insurance Act* (the “Schoenbrunn Application”); and an Application to Strike the Schoenbrunn Application filed by the Alberta New Home Warranty Program [“NHWICC”] on January 17, 2025 (the “Application to Strike”).

[2] This matter arises out of a claim by Ms Schoenbrunn under her New Home Warranty Insurance Policy with regard to her home located in Lethbridge, Alberta (the “Home”) and, more particularly, the process that she has chosen to dispute the decisions made by NHWICC in relation to that claim.

## Facts

[3] NHWICC issued a new home warranty insurance policy with respect to the Home (the “Policy”). New home warranty insurance coverage is a mandatory legislated requirement for all new homes sold in Alberta pursuant to the *New Home Buyer Protection Act*, SA 2012, c N-3.2 (the “NHBA”), and new home warranty insurance providers are insurance companies regulated by the *Insurance Act*, RSA 2000, c 1-3. Pursuant to the NHBA and its regulations, a new home warranty insurance policy must provide the following coverages:

- (a) Defects in Materials and Labour (one year);
- (b) Defects in Materials and Labour in Delivery and Distribution Systems (two years);
- (c) Defects in Building Envelope (five years); and
- (d) Structural Defects (ten years).

[4] Pursuant to the Policy, the applicable warranty insurance with respect to the Home are as follows:

Type	Coverage Commenced	Coverage Expiry
Defects in Materials and Labour	May 25, 2021	May 24, 2022
Defects in Materials and Labour in Delivery and Distribution Systems	May 25, 2021	May 24, 2023
Defects in Building Envelope	May 25, 2021	May 24, 2026
Structural Defects	May 25, 2021	May 24, 2031

[5] Ms. Schoenbrunn submitted a request for assistance on May 2, 2022 with respect to defects that Ms. Schoenbrunn said were present in the Home. NHWICC conducted a claims assessment inspection (the "Report") on May 27, 2022, and issued a Claims Assessment Report [“CAR”] on October 31, 2022. The CAR considered 160 alleged defects identified claimed by Ms. Schoenbrunn. As set forth in the Report, three of the claims were identified as warrantable defects requiring action while the remainder were determined to be either not warrantable under the Policy or no action was required (i.e. not a defect).

[6] Following the issuance of the Report, Ms. Schoenbrunn engaged in correspondence with both NHWICC and others in which she raised numerous complaints with the manner in which her claim was handled. Ms. Schoenbrunn’s primary complaint was that NHWICC made incorrect determinations with respect to her claim, and her primary motivation was the repair of what she alleged were defects covered by the Policy.

## Issues

- [7] The issues to be determined in these applications are:
- (a) Is Section 519 Dispute Resolution the appropriate forum for the determination of Ms. Schoenbrunn's dispute; and/or
  - (b) Is Section 776 an appropriate process for the adjudication of Ms. Schoenbrunn's dispute.

## Analysis

### **Was Section 519 Dispute Resolution the appropriate forum for the determination of Ms. Schoenbrunn's dispute?**

[8] Ms. Schoenbrunn has confirmed in her Affidavit that she was generally aware of the legislation that applies to the present issues, and the general contents of her warranty.

[9] One of those Conditions in the Policy states:

#### (f) IN CASE OF DISAGREEMENT

In the event of disagreement as to whether a Defect exists, the nature and extent of the repairs or replacements required, the adequacy of repairs or replacements made or the amount of loss or damage, those questions **must** be determined using the applicable dispute resolution process set out in section 519 of the Insurance Act whether or not the Insured's right to recover under the Home Warranty Insurance Policy is disputed, and independently of all other questions.

There is no right to a dispute resolution process under this Condition until:

- (i) a specific demand has been made for it in writing; and
- (ii) the proof of loss has been delivered to the Warranty Provider.

[10] The above policy condition, is mandatory and is required by the *Home Warranty Insurance Regulation* to be included in all new home warranty insurance policies. Questions of Coverage such as determination of expired warranty or exclusions are matters to be determined by the Court through contractual interpretation.

[11] Following the submissions of her many claims, Ms. Schoenbrunn confirms she was contacted by NHWICC:

On May 5, 2022 I received an e-mail from ANHWP/NHWICC acknowledging receipt of my claim submission, some information on the inspection process, the *Limitations Act*, and a Proof of Loss form that I was instructed was not necessary to complete unless I was not in agreement with the adjustment of the loss.

[12] At paragraph 60 of her Affidavit Ms. Schoenbrunn confirms:

I observed in the Policy and the applicable Section 519 of the Insurance Act that if there is a disagreement as to whether a defect exists it is to formally and finally be determined by the Umpire, if necessary, in the DRP process.

[13] On April 21, 2023, in response to an e-mail from Ms. Schoenbrunn, Byron Moore, NHWICC's VP Operations, wrote to Ms. Schoenbrunn to address her various concerns with the

manner in which the investigation of her claims occurred. At the end of this e-mail, Mr. Moore stated:

Should you disagree with the findings in the Claims Assessment Report, you are entitled to commence the legislated dispute resolution proceedings under Section 519 of the *Insurance Act*, as outlined in the policy.

[14] Ms. Schoenbrunn's Affidavit also discloses communication between her and the Superintendent of Insurance. As part of this communication, on February 5, 2024, the Superintendent of Insurance also confirmed that Section 519 of the *Insurance Act* was the appropriate process, stating:

The Dispute Resolution Process (DRP) is the mechanism that **must be used** in the event of disagreement as to whether a defect exists, the nature and extend of the repairs or replacements required, the adequacy of repairs or replacements made or the amount of loss or damage [emphasis added].

[15] The following day Ms. Schoenbrunn wrote an e-mail to the President of Treasury Board and Minister of Finance (which oversees the insurance industry) as well as her MLA in which she outlined her questions and concerns again. In response, the then Minister of Municipal Affairs, the Honourable Ric McIver, wrote to Ms. Schoenbrunn on March 8, 2024:

My colleague, the Honourable Nate Horner, President of Treasury Board and Minister of Finance, shared your e-mail of February 6, 2024, regarding the New Home Warranty Insurance Regulation. As Minister of Municipal Affairs and Minister responsible for the *New Home Buyer Protection Act*, I am pleased to respond on behalf of the Government of Alberta...

With regard to your claims issues with the ANHWP, I encourage you to explore one of the following options:

- Contact an independent dispute resolution service with the General Insurance Ombudservice (GIO). The GIO can help address consumer concerns about claims, interpretation of policy coverage, and policy processing and handling. The GIO can be contacted at 1-877-225-0446, or via [www.giocanada.org](http://www.giocanada.org).
- Enter a Dispute Resolution Process as set out in Section 519 of the *Insurance Act*. For more information, visit [www.alberta.ca/insurance-consumer-complaints](http://www.alberta.ca/insurance-consumer-complaints) [emphasis added].

[16] Ms. Schoenbrunn later acknowledges the advice she received:

I received repeated encouragement to take my disagreements through DRP and Mr. Moore's suggestion that DRP was 'best suited' for resolution of my concerns submitted June 19, 2023, despite most denials being matters of practices and adjudication and not whether or not a defect exists.

I elected not to submit a Proof of Loss to date as I know that in doing so, NHWICC could legitimately demand my participation in DRP, an expensive process that NHWICC made necessary by claiming all denials were not defects without substantiation, and most reasons given for denial were related to handling

of my claim making DRP wholly inappropriate for these matters [emphasis added].

[17] Ms. Schoenbrunn also received legal advice from more than one law firm as she has attached invoices at Exhibit “K” to her Affidavit.

[18] Despite being advised to utilize the dispute resolution process in Section 519 of the *Insurance Act* by everyone with whom Ms. Schoenbrunn spoke, and having the benefit of prior legal advice, she made the decision to pursue an application under Section 776 of the *Insurance Act*.

[19] Ms. Schoenbrunn argues that Section 519 is inappropriate as she is not arguing about whether or not there is a defect or the nature and extent of repairs necessary, but rather that her complaints relate to the inspection process that gave rise to the decisions in the Report. That argument, however, mischaracterizes the nature of Ms. Schoenbrunn’s dispute.

[20] Ms. Schoenbrunn’s complaint arises from her dissatisfaction with the outcome of a new home warranty insurance claim. Despite her subsequent objections being framed as procedural concerns, they ultimately reflect her disagreement with the underlying decision regarding whether or not the various claims submitted to NHWICC were warrantable defects under the Policy.

**Section 776 is not the appropriate process for the adjudication of Ms. Schoenbrunn’s dispute**

[21] Ms. Schoenbrunn has sought relief under Section 776 of the *Insurance Act*. In order to have standing to bring an application for relief under Section 776 of the *Insurance Act*, one must be a “complainant” within the meaning set forth in Section 774, which reads:

774 In this Division,

(b) “Complainant” means

(i) the Minister,

(ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a provincial company or of any of its affiliates,

(iii) a director or an officers or a former director or officer of a provincial company or of any of its affiliates,

(iv) a participating policy holder or former participating policyholder of a provincial company, or

(v) any other person who, in the opinion of the Court, is a proper person to make an application under section 775 or 776.

[22] During the appearance before my colleague, Justice D.V. Hartigan, on February 26, 2025, Ms. Schoenbrunn confirmed that she is seeking to be considered a complainant under subsection (v) as she does not fall within any of the other definitions in Section 774.

[23] I have concluded that Ms. Schoenbrunn is not a “proper person” to make such application as one of the primary purposes of the *Insurance Act* is to regulate conduct by insurers towards their insureds. If the Legislature intended that insureds under a regular policy of insurance should

have standing under Section 776, it would have included those insureds in the definition of “complainant”, which it did not do.

[24] I am advised that Section 776 has not been judicially considered, however it is structured and worded similarly to the oppression provisions in the *Business Corporation Act*. Like Section 242 of the *Business Corporations Act*, Section 776 is not a catch-all but is intended to be used in very specific circumstances. Considering Section 242 of the *Business Corporation Act*, the Alberta Court of Appeal in *Shefsky v California Mining Inc.*, 2016 ABCA 103, held at para 22:

A court’s broad equitable jurisdiction under the oppression remedy is subject to three governing principles:

Second: not every interest is protected by the statutory oppression remedy.

Although other personal interests may be connected to a particular transaction, the oppression remedy cannot be used to protect or advance, directly or indirectly, these other personal interests. “[I]t is only their interests as shareholder, officer or director as such which are protected”: *Nanef v. Con-Crete Holdings Ltd.* at para 27. Furthermore. “the oppression remedy protects only the interests of a shareholder qua shareholder. Oppression remedies are not intended to be a substitute for an action in contract, tort or misrepresentation”: *Stahlke v. Stanfield*, 2010 BCSC 142 (B.C. S.C.) at para 23, aff’d 2010 BCCA 603 (B.C. C.A.) at para 38, (2010), 305 B.C.A.C. 18 (B.C. C.A.).

[25] In denying the applicability of the oppression remedy, the Court of Appeal held in *Shefsky* at para 74:

The essential difficulty with Mr. Shefsky's invocation of the oppression remedy in respect of the Term Sheet, however, is that he attempts to gain access to the court's equitable oppression remedy jurisdiction for a personal claim that arises pursuant to the provisions of the Term Sheet: his personal claim for breach of contract ... It would be dangerous territory, indeed and an improper conflation of contract law and equitable oppression principles to suggest that the latter can come to the aid of a claim for breach of any contractual promises made to Mr. Shefsky in his personal capacity [emphasis added].

[26] Before me, Ms. Schoenbrunn is not making a claim as a financial or regulatory stakeholder in NHWICC, or as a creditor, but rather as an insured policyholder. While the circumstances giving rise to this matter are different, the principles enunciated in *Shefsky* by the Court of Appeal apply in this case as well. In the present case, as an insured under the Policy, Ms. Schoenbrunn’s rights and interests are contractual, and the concept of oppression does not apply to Ms. Schoenbrunn’s contractual rights or expectations.

[27] While not determinative of the issue, it is also worth noting that Section 776 applies to all insurance companies, not just new home warranty insurance companies. When one considers the number of insurance policies, of all kinds, issued in Alberta each year, and the disputes that arise between insurers and insureds, the fact that Section 776 has not been judicially considered further indicates that it is not an appropriate avenue for the determination of disputes between insurers and insureds.

## Conclusion

[28] Ms. Schoenbrunn is the holder of a new home warranty insurance policy, the same as all other purchasers of new homes in Alberta. Ms. Schoenbrunn made a claim under that Policy and was dissatisfied with the determinations made by NHWICC in response. That Policy, and the legislation governing that Policy, identify a dispute resolution process to be utilized when such a dispute arises. Ms. Schoenbrunn has sworn in her Affidavit that she was aware of the Section 519 Dispute Resolution. She does not have standing under Section 776, and even if I could find that she did, it does not provide the effective remedy that Ms. Schoenbrunn seeks.

[29] Ms. Schoenbrunn's current procedural complaints about the inspection process are a means to challenge the determination that certain defects either do not exist or are not covered under the Policy. Her objective is clearly the repair of the alleged defects in the home, as no other rights or entitlements exist under the Policy. This is the type of dispute that Section 519 is intended to address and which process is mandated by both the contractual Policy and governing the legislation.

[30] Accordingly, her application is dismissed, and the Application to Strike is granted.

[31] No costs however are awarded given the unique relief Ms. Schoenbrunn sought which ought to be judicially considered. She is also facing unfortunate financial circumstances regarding the large investment in her home that has been compromised.

[32] Ms. Schoenbrunn correctly noted the difficult position Alberta homeowners like her face. She inherited the warranty after her purchase closing. The warranty had been negotiated earlier before her closing between the homebuilder and the Insurer, whose financial interests were aligned against hers.

[33] As such, she was largely unaware that the warranty was a very limited one, and her eligibility to be compensated was determined by the Insurer with little effective input from Ms. Schoenbrunn, pursuant to a contract and process she likely did not fully appreciate until it was too late.

Heard on the 30<sup>th</sup> day of June, 2025.

**Dated** at the City of Lethbridge, Alberta this 25<sup>th</sup> day of July, 2025.

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**Donald Lee**  
**J.C.K.B.A.**

**Appearances:**

Karen Schoenbrunn  
Self-Represented Litigant

Tyler A. Derksen  
for the Respondents