

Court of King's Bench of Alberta

**Citation: Sniper Pressure Services Ltd v Northbridge General Insurance Company,
2025 ABKB 77**

Date: 20250211
Docket: 2203 03354
Registry: Edmonton

2025 ABKB 77 (CanLII)

Between:

Sniper Pressure Services Ltd

Applicant

- and -

Northbridge General Insurance Company

Respondent

**Memorandum of Decision
of
Applications Judge L.A. Smart**

Introduction

[1] The Plaintiff, Sniper Pressure Services Ltd (Sniper) is applying to remove Ken Haluschak (Haluschak) as counsel for Northbridge General Insurance Company (Northbridge) due to an alleged conflict of interest.

[2] Sniper owned land and a commercial building in Woodlands County. The roof of the building collapsed on March 4, 2020. A second roof collapse occurred on January 17, 2022. Sniper was insured with Northbridge for both losses. Sniper has sued the alleged tortfeasors for \$5,000,000 in damages. Northbridge paid approximately \$2,000,000 to Sniper and, in turn,

Northbridge commenced proceedings also as against the alleged tortfeasors for its subrogated claims arising from the two losses. Sniper commenced this action against Northland claiming \$650,000 alleged to be due to it under its insurance claims.

[3] Haluschak acts for Northbridge for the subrogated claim action and is also defending the action by Sniper against Northbridge for the amounts alleged owing under the insurance. Sniper takes the position that Haluschak has a conflict of interest and as a consequence should be disqualified from acting in this and the subrogated claim action. Haluschak opposes the first relief and objects to the latter relief as it is not part of the application brought by Sniper.

Discussion

[4] Section 546 of the *Insurance Act*, RSA 2000, c I-3, applies to this situation, in particular, the subsections set out below:

Subrogation of insurer to rights of recovery

546(1) Subject to section 570(6), an insurer that makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring an action in the name of the insured to enforce those rights.

...

(4) When the interest of an insured in any recovery exceeds that referred to in subsection (3) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured,
- (b) the conduct and carriage of the action or any related matters,
- (c) any offer of settlement or the apportionment of an offer of settlement, whether an action has been commenced or not,
- (d) the acceptance or the apportionment of any money paid into Court,
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Court for the determination of the matters in question, and the Court may make any order it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard on the application are the insured and the insurer, and no material or evidence used or taken on the application is admissible on the trial of an action brought by or against the insured or the insurer.

[5] There has been no agreement on the solicitors to be instructed, nor who should have conduct and carriage of the subrogated action or any related matters. Indeed, we have two actions commenced for the same claim. Neither Sniper nor Northbridge have brought an

application for resolution of these issues. While I concede, the application is permissive, it appears to me that it would be the most effective way to resolve the issues.

[6] Regardless, both parties have implored me to focus on the current state of the proceedings suggesting that how the various actions might proceed has too many uncertainties. This is not a “carriage” application. It seems the objective here is not to advance the actions but to get a determination as to which lawyer is “right”. Both have obtained advice from Law Society Practice Advisors but at different times and from different advisors. Unfortunately, they completely differ in their conclusions.

Arguments.

[7] Sniper argues that because Haluschak is Counsel on the subrogated claim that Sniper is properly characterized as its client and, therefore, he cannot act as Counsel in defence of this claim against Northbridge. If such is the case the “Bright Line Rule” (*Canadian National Railway Co v McKercher LLP*, 2013 SCC 39) would apply and Haluschak must cease to act. The opposite view is that when Counsel is retained by an insurer on a subrogated claim that it is incorrect to characterize that as creating a solicitor client relationship between that Counsel and the insured.

[8] Both parties have presented authorities which they say supports their respective positions. Without going into a detailed analysis, suffice it to say that the law, as one would expect, is not black and white but rather the characterization is dependant upon the specific facts in the circumstances.

[9] The subrogated claim is brought by Northland, as it must, in the name of the insured (Sniper). Sniper is said to be a “nominal” Plaintiff. It is suggested that the proper characterization of Sniper is then that of the “nominal client”. Northland is clearly entitled to bring the subrogated action and *prima facie* is entitled to retain its own Counsel and instruct them accordingly. There is no retainer nor has there ever been one between Sniper and Haluschak. Although it is no doubt awkward for the principals of Sniper to work with Haluschak, I am not convinced that the “Bright Line Rule” is applicable in the “current” circumstances.

[10] Regardless, Sniper says that Haluschak has been and will continue to be privy to Sniper’s solicitor/client information, that is, confidential information. What that information may be has been the subject of an earlier application to compel an answer arising from questioning on an Affidavit filed on behalf of Sniper in support of this Application. The question sought specific production of information generally described in the Affidavit as “privy”. Judge Schlosser ordered its production. The subsequent answer provided a generic response without actual production or satisfactory description of specific information of concern. To date, that continues to be the case. Consequently, I have no basis to conclude that the concern is valid or warranted.

Conclusion

[11] It must not be lost that there is only one cause of action available against the tortfeasor. Sniper has commenced an action for all of its alleged damages and Northbridge has commenced an action for a lesser amount being its subrogated claim. At some point this must be reconciled but that is not the Application before me. The question is whether Haluschak ought to be removed as counsel for Northbridge in this action. Based on the circumstances as presented to

me, I am not prepared to remove Haluschak as Counsel in defence of the Claim by Sniper against Northbridge. The application for his removal is dismissed.

Costs

[12] My view is that this is a proper case for each of the parties to bear their own costs. However, I am advised that a *Calderbank* offer was made by Northbridge, and in light of that, I am prepared to consider written argument relative to the offer and costs. Argument will be limited to 3 pages plus the offer, any Bills of Cost and authorities. Northbridge shall submit its argument within 30 days of the date of this decision and Sniper shall have 21 days thereafter to provide any response it may wish to make.

Dated at the City of Edmonton, Alberta this 11th day of February, 2025.

L.A. Smart
A.J.C.K.B.A.

Appearances:

Glenn K Epp
Thompson, Laboucan & Epp LLP
for the Plaintiff/Applicant

Ken Haluschak
Bryan & Company LLP
for the Defendant/Respondent