

Insurance

Uncertainty surrounding extension of limitation periods at LAT: Recent cases

By Alon Barda



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(May 12, 2020, 1:29 PM EDT) -- The first part of this article discussed competing cases regarding the applicability of s. 7 of the *Licence Appeal Tribunal Act* (LAT Act), which provides the tribunal with the discretion to relieve against a missed limitation period. This second part will address cases since the conflicting case and will comment on the direction an appellate court may take.

Is *A.F. v. North Blenheim Mutual Insurance Company* correct after all?

Three recent decisions have rejected the decision in *[S.S.] v. Certas Home and Auto Insurance Company* (file number 18-001196 /AABS) regarding the application of s. 7 of the LAT Act.

In the reconsideration decision of *V.M.L. v. Aviva General Insurance Company* (file number 18-001713/AABS), the adjudicator highlighted that the executive chair in *A.F. v. North Blenheim Mutual Insurance Company* (file numbers 16-002336/AABS, 16-002606/AABS) analyzed the legislature's intent and concluded that the legislature could have amended this section of the LAT Act but did not do so, despite amending other sections of the Act

The adjudicator noted that, while both decisions are in direct contrast and that he is not bound by another member's decision, he prefers the opinion of the executive chair and "the reasoning in *North Blenheim* that the legislature is presumed to know the law and not make mistakes."

In this regard, he stated that s. 7 of the LAT Act was "not repealed or amended when the Tribunal assumed jurisdiction for matters under the *Schedule* as of April 1, 2016." As such, he agreed with the executive chair that s. 7 of the LAT Act applies to statutory accident benefits schedule (SABS) claims.

In *S.W. v. Aviva General Insurance* 2020 ONLAT 19-002127/AABS (file number 19-002127/AABS). Aviva relied on the decision in *[S.S.] v. Certas* and argued that the Tribunal does not have jurisdiction to extend the limitation period under s. 7 of the LAT Act. The adjudicator found as follows at paragraph 14 of that decision regarding the decision in *[S.S.] v. Certas*:

Respectfully, I disagree with its analysis and ultimate conclusion and note that it is currently under appeal. In any event, I note that that decision is not binding on me here. Absent direction from a court of superior jurisdiction on the applicability of s. 7, I follow the significant body of existing jurisprudence from this Tribunal indicating that this Tribunal does have jurisdiction under s. 7 of the *LAT Act* to extend a limitation period if the justice of the case supports it. Here, I find evidence to justify exercising the Tribunal's discretion to extend the limitation period under s. 7 of the *LAT Act*.

In the recent decision of *R.M. v. Certas Home and Auto Insurance Company* 2020 ONLAT 18007521/AABS (file number 18007521/AABS) the same adjudicator who decided the reconsideration decision of *V.M.L. v. Aviva General Insurance Company* stated once again that he prefers the decision of the executive chair in *A.F. v. North Blenheim* at it pertains to the applicability of s. 7.

Takeaway: Where do we go from here?

It is notable that there are no other adjudicators at the LAT that have followed the decision in *[S.S.] v. Certas*. Conversely, the decision in *A.F. v. North Blenheim* was widely followed prior to the *[S.S.] v. Certas* decision and has since been favoured by adjudicators.

It is the opinion of this writer that an appellate court will likely find that s. 7 applies to applicants seeking relief in SABS claims from a missed limitation period based on the reasoning set out in *A.F. v. North Blenheim*.

The writer understands that this issue is likely to be addressed on an appeal in the near future. However, until a decision is rendered by an appellate court, counsel should be aware of the conflicting case law and address it appropriately pursuant to their respective positions.

This is the second article in a two-part series. Part one: Uncertainty surrounding extension of limitation periods at LAT.

Alon Barda is an associate with Rogers Partners LLP in Toronto. Alon's practice involves primarily insurance defence litigation with a particular focus on first-party statutory accident benefits claims, priority disputes, and loss transfer disputes.

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