

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: COURT OF APPEAL OVERTURNS MOTION JUDGE, FINDING CLAIM FOR DISABILITY BENEFITS IS STATUTE BARRED

Insurance law – Group insurance – Long term disability benefits – Limitation of actions – Practice – Appeals – Summary judgments

Clarke v. Sun Life Assurance Co. of Canada, [2020] O.J. No. 71, 2020 ONCA 11, Ontario Court of Appeal, January 8, 2020, D.M. Brown, G. Huscroft and G.T. Trotter JJ.A.

The insured made a claim for long-term disability benefits due to health problems in 2011. The insurer offered disability benefits by reference to two periods of time. The first period, which covered the plan's elimination period and the following 24 months, treated an insured as "totally disabled" who was prevented from performing the essential duties or their regular or "Own Occupation". For the second period beyond 24 months, the plan treated an insured as "Totally Disabled for Any Occupation" if they were prevented from engaging in any commensurate occupation for which they were or became reasonably qualified by education training or experience.

The insurer initially denied the insured's claim for benefits. Following an internal appeal, the insurer notified the insured on February 24, 2014, that she was eligible for benefits under the first period, but not the second. The insurer invited the insured to submit further medical information regarding her entitlement to benefits in the second period.

The insured made a further internal appeal in March 2017. On June 19, 2017, the insurer notified the insured that it maintained its denial of benefits for the second period and advised her that consideration of the appeal should not constitute a waiver of the limitation period set out in the *Limitations Act*, 2002 [S.O. 2002, c. 24, Sched. B] (the "Act") or rights under the policy. The insured commenced an action on August 2, 2018. The insurer brought a motion for summary judgment to dismiss the action.

The motion judge dismissed the insurer's application on the basis that the language in the February 24, 2014, letter was equivocal and did not amount to "injury, loss or damage" as per the Act. The motion judge further determined that the limitation period actually commenced as of the date of the June 19, 2017, letter. These determinations were overturned on appeal as errors of law.

First, the Court of Appeal held that the motion judge erred in determining when the "injury, loss or damage" occurred. Per the principle in *Pepper v. Sanmina-Sci Systems (Canada) Inc.*, 2017 ONCA 770, the Court of Appeal noted that the cause of action for breach of contract and "injury, loss or damage" occurred as of February 24, 2014, when the insurer stopped paying long-term disability benefits. Second, the motion judge failed to properly apply the cumulative and comparative discovery analysis to determine when a proceeding would be an appropriate means to remedy the "injury, loss or damage" by failing to make the requisite findings of fact. As a result, the motion judge's holding lacked an adequate legal and factual foundation and the order was set aside. The Court of Appeal declined to make its own determination as there was not an adequate factual record and ordered that the remaining issues be determined by some form of trial.

This case was digested by [Michael J. Robinson](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Michael J. Robinson at mrobinson@harpergrey.com.