**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Peters v. Great-West Life Assurance Company*, 2024 NSCA 21

**Date:** 20240221
**Docket:** CA 521257
**Registry:** Halifax

**Between:**

Susan Peters

Appellant

v.

The Great-West Life Assurance Company and
Sun Life Assurance Company of Canada
and London Life Insurance Company

Respondents

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| **Judge:** | The Honourable Justice Peter M. S. Bryson |
| **Appeal Heard:** | January 31, 2024, in Halifax, Nova Scotia |
| **Subject:** | Life insurance – Cause of action – Pre-judgment interest – Actions of policies – Sufficient proof of accidental death |
| **Cases Cited:** | *Prevost Estate v. Prevost Estate*, 2013 NSCA 20; *Wittenberg v. Wittenberg Estate*, 2015 NSCA 79; *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43; *Air Canada v. Bush*, 1992 NSCA 6; *Jorna & Craig Inc. v. Chiasson*, 2020 NSCA 42; *Altschuler v. Bayswater Construction Ltd.*, 2019 NSSC 197; *Canada (Attorney General) v. MacQueen*, 2013 NSCA 143; *Reashore and Reashore Services Limited v. INA Insurance Company of Canada*, (1982), 53 N.S.R. (2d) 574; *Richards Estate v. Industrial Alliance Insurance and Financial Services*, 2019 NSSC 3; *Balzer v. Sun Life Assurance Co. of Canada*, 2003 BCCA 306; *Thornton v. RBC General Insurance Company*, 2014 NSSC 215; *Irish v. Sun Life Assurance Company of Canada* (2003), 65 O.R. (3d) 87 (Ont. C.A.); *Alamwala v. Aetna Life Insurance Co. of Canada*, [1992] B.C.J. No. 2388 (BCSC); *Loney v. The* |

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| | *Northern Life Assurance Company of Canada*, [1989] O.J. No. 193; |
| **Legislation Cited:** | *Judicature Act*, R.S.N.S. 1989, c. 240, s. 41(i); *Insurance Act*, R.S.N.S. 1989, c. 231, s. 206; *Limitation of Actions Act*, S.N.S. 2014, c. 35, s. 8; *Limitations Act*, S.O. 2002, c. 24, s. 4; |
| **Summary:** | The parties disagreed on pre-judgment interest. This turned on when the cause of action arose respecting claims for accidental death benefits. The hearing judge found the cause of action arose when the insurers had medical evidence of accidental death but failed to pay. Ms. Peters appealed, arguing that the cause of action arose upon denial of coverage following her initial demand for payment. |
| **Issues:** | When did the cause of action arise, triggering the obligation to pay pre-judgment interest? |
| **Result:** | Appeal dismissed. The insurance policies required "sufficient" or "due" proof of accidental death. The initial medical evidence negated accidental death. The insurers refused payment. Later medical evidence established death was accidental. The insurers eventually paid. The judge found that the cause of action arose and pre-judgment interest should have been paid thirty days after the insurers received medical evidence establishing accidental death. The insurers had a thirty-day grace period thereafter, as provided for in s. 206 of the *Insurance Act*. |

***This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 57 paragraphs.***

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| | |
|---|---|
| **Judges:** | Bryson, Scanlan and Van den Eynden JJ.A. |
| **Appeal Heard:** | January 31, 2024, in Halifax, Nova Scotia |
| **Held:** | Appeal dismissed with costs, per reasons for judgment of Bryson J.A.; Scanlan and Van den Eynden JJ.A. concurring |
| **Counsel:** | David Parker and J. W. Stephen Johnston, for the appellant<br>Michelle Awad, K.C. and Jane Soucy, for the respondents |

**Reasons for judgment:**

## Introduction

[1] Susan Peters has appealed the assessment of pre-judgment interest awarded her by Justice Peter Rosinski in an application brought to settle that amount (2022 NSSC 193). The "Estate of David Peters" is not a legal person and has been removed from the style of cause.[1]

[2] Ms. Peters sued Great-West Life and London Life[2] for accidental death benefits arising from the tragic death of her husband, David Peters. The insurers paid the disputed benefits prior to the hearing, but the parties could not agree on the amount of pre-judgment interest.

[3] Ms. Peters argued interest should be payable from the time the insurers denied coverage. The judge found interest was payable from the time the insurers received medical evidence of accidental death.

[4] The *Judicature Act*[3] provides for payment of pre-judgment interest starting "when the cause of action arose".

[5] In a contract case like this, the question is not simply when the loss was incurred but whether and when the contract entitled the claimant to payment for that loss.

[6] In her Notice of Appeal, Ms. Peters alleges ten errors of law and two errors of fact. These are reduced to four in her factum. They all come to this: the judge erred in not finding the cause of action arose when coverage was initially denied.

[7] In support of her fundamental proposition, Ms. Peters says the judge did not actually decide when the cause of action arose. She alleges he erred in applying "the subjective idea as to when the Respondents were in receipt of evidence 'sufficient' to prove the claim". She adds the judge was wrong to use s. 206 of the *Insurance Act*[4] to determine when pre-judgment interest should start.

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[1] "The Estate of David Peters" is named as an appellant and plaintiff in the court below. An estate is not a legal person and cannot maintain an action. It must sue through legal representation: *Prevost Estate v. Prevost Estate*, 2013 NSCA 20 at ¶19; *Wittenberg v. Wittenberg Estate*, 2015 NSCA 79 at ¶2. Accordingly, the Court has amended the style of cause by deleting reference to the Estate.

[2] Counsel acknowledge Sun Life was erroneously included in the style of cause.

[3] R.S.N.S. 1989, c. 240, s. 41(i).

[4] R.S.N.S. 1989, c. 231.

[8] For reasons developed below, the appeal should be dismissed. The judge did not err in deciding when pre-judgment interest became payable. He correctly interpreted the contractual provisions of the policies and applied them to the evidence. Following a review of the facts, the issue of when the cause of action arose will be addressed.

**Facts**

[9] On November 22, 2015, David Peters was helping to unload a commercial truck at his car dealership. It was windy. One of the large rear doors of the truck was caught in the wind and struck Mr. Peters in the head. He felt unwell. He drove home. Susan Peters noticed her husband was in distress. He complained of a headache and nausea. She called 911, and Mr. Peters was taken to the Aberdeen Hospital in New Glasgow, losing consciousness en route.

[10] Within two hours of arriving in hospital, Mr. Peters was placed on a ventilator. He died on November 23, 2015 after being taken off the ventilator.

[11] Mr. Peters had life insurance; a Group Policy issued by Great-West Life through the Canadian Automobile Dealers Association provided a death benefit of $350,000 and an additional $350,000 for accidental death. An individual Policy issued by London Life provided a life and accidental death benefit of $25,000, respectively. Ms. Peters was the beneficiary of these policies.

[12] The death benefits were paid in January 2016. The accidental death benefits were not paid until December 7, 2021.

[13] The November 24, 2015 postmortem report described the cause of Mr. Peter's death as "Nontraumatic Cerebral Parenchymal Hemorrhage, Hypertensive Type". Apparently, Mr. Peters had a history of hypertension. The Death Certificate repeated the report's cause of death and noted "Manner of Death: Natural".

[14] On June 9, 2016, Ms. Peters made accidental death claims on both policies. She provided the insurers with hospital records and medical reports, including the postmortem report. On August 17, 2016, London Life denied Ms. Peters' claim. Great-West followed on September 20, 2016. The insurers rejected the claims because Mr. Peters' death was the result of an existing infirmity and therefore was not an accidental death.

[15] On November 22, 2016, Ms. Peters sued for payment of the accidental death payments.

[16] Later medical opinion disagreed with the initial postmortem report.

[17] In a report of November 8, 2019, neurologist Dr. David King concluded "… this haemorrhage was more likely, based on the best clinical data, a traumatic brain haemorrhage rather than a hypertensive one". The report of Dr. King was disclosed to the insurers on July 9, 2020.

[18] In January 2021, neurologist Dr. Dale Robinson opined that "on the balance of medical probabilities … but for the index incident of Mr. Peters' head trauma on November 22, 2015, his ultimately fatal intraparenchymal hemorrhage would not have occurred". The report of Dr. Robinson was provided to the insurers on February 22, 2021.

[19] On June 3, 2021, Dr. Mont, who had authored the initial postmortem report, revised his opinion and issued an amended Death Certificate describing Mr. Peters' death as "accident". The insurers received this amended certificate on July 5, 2021.

[20] Great-West Life and London Life paid the full amounts of accidental death benefits on December 7, 2021. The case carried on with respect to pre-judgment interest.

[21] The judge decided a proper rate of interest was five percent, non-compounded. That is not appealed. He also found pre-judgment interest should have been paid thirty days after July 9, 2020 when Dr. King's report was first provided to the insurers. The insurers had argued interest should only be due when the medical examiner's revised Death Certificate was provided to them on July 5, 2021.

[22] The judge was satisfied Dr. King's report provided the insurers with adequate proof of accidental death. Accordingly, the claims should have been paid within 30 days as required by s. 206 of the *Insurance Act*. He calculated pre-judgment interest from thirty days after July 9, 2020 to and including December 7, 2021.[5]

[23] The judge did not fault either party for their pre-hearing conduct:

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[5] Decision at ¶80.

> [16] The chronology reveals that the plaintiff made what I conclude were reasonably diligent and *bona fide* sustained efforts to bolster its case with expert opinion evidence. The balance of the opinion evidence progressed over time to become [more so] in the plaintiff's favour.
>
> [17] I also conclude that the evidence does not satisfy me that there was a breach of the duty of good faith by the defendants, nor did the defendants inadequately handle or introduce improper considerations to the claims process - see *Industrial Alliance Insurance and Financial Services Inc. v. Brine*, 2015 NSCA 104 and *Fidler v Sunlife Assurance Co. of Canada*, [2006] 2 SCR 3 at paras. 63-78.
>
> [18] I find that the plaintiff did not inordinately delay the advancing of its claims.
>
> [Footnote omitted.]

[24] Ms. Peters appealed on February 14, 2023.

## Pre-judgment interest is payable when the cause of action arises

[25] There is no common law right to obtain pre-judgment interest on damages.[6] That authority is granted by s. 41(i) of the *Judicature Act*:

> **Rules of law**
>
> **41** In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:
>
> […]
>
> (i) in any proceeding for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period ***between the date when the cause of action arose*** and the date of judgment after trial or after any subsequent appeal;
>
> [Emphasis added.]

[26] Pre-judgment interest may be refused in circumstances that do not apply here. The purpose of pre-judgment interest is to compensate the plaintiff for the loss of the use of the money that should have been paid when the cause of action arose.[7]

*Did the judge err in deciding when the cause of action arose?*

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[6] *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 at ¶34-35.
[7] *Air Canada v. Bush*, 1992 NSCA 6; *Jorna & Craig Inc. v. Chiasson*, 2020 NSCA 42 at ¶79.

[27] Ms. Peters faults the judge for failing to determine when the cause of action arose. She complains of the subjectivity of the insurers' judgment concerning sufficiency of evidence of accidental death. She says the cause of action arose when coverage was denied.

[28] The judge did say when the cause of action had not arisen:

> [25] I am satisfied that the defendants were legally entitled to deny benefits at that time [August-September 2016]. ***The cause of action had not yet arisen***. The only expert opinion evidence regarding the cause of death at that time arose from the Medical Examiners' report dated December 3, 2015.
>
> [26] The plaintiff had not satisfied the contractual pre-conditions to be entitled to be paid for the claims presented (there being no wrongful denial/breach).
>
> [Emphasis added.]

[29] Justice Rosinski referred indirectly to when a cause of action arises:

> […] As to when a cause of action arises, [see] also Justice Bodurtha's reasons in *Altschuler v. Bayswater Construction Ltd.*, 2019 NSSC 197 citing *Letang v. Cooper*, [1964] 2 All ER 929.[8]

[30] In ¶20 of *Altschuler*, Justice Bodurtha quotes English authority:

> [20] In *Letang v. Cooper*, [1964] 2 All E.R. 929 (Eng. C.A.) at 934, Lord Diplock offered what is now considered the classic definition of "cause of action":
>
> > A cause of action is simply a factual situation ***the existence of which*** entitles one person to obtain from the court a remedy against another person.
>
> [Emphasis added.]

Also see: *Canada (Attorney General) v. MacQueen*, 2013 NSCA 143 at ¶35.

[31] Establishing a cause of action is not a matter of simple pleading. For the cause of action to have arisen, the facts pleaded must exist. In a contractual case, the cause of action arises when a breach of contract results in a loss.

[32] The judge did find the accident benefits were payable when the insurers became aware the contractual conditions of payment had been satisfied:

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[8] Decision at FN 3.

> [30] I conclude that those pre-conditions are satisfied once the defendants could be said to have first known, or ought reasonably to have known, (based on the information they themselves had in their possession, and the information provided by other/outside sources including the plaintiff) that they had received "due proof" (London Life) and "satisfactory proof" (Great-West Life) that the claimed "accidental" death was one covered by the insurance policies.
>
> [Footnote omitted.]

[33] The judge plainly decided the cause of action arose when the insurers received proof of accidental death but failed to pay.

[34] The obligation of the insurers to pay the benefits claimed first depends on the language of the policies. It is then a question of deciding whether the facts accommodate the contractual language.

[35] The London Life Policy provided benefits would be payable:

> Upon receipt […] of ***due proof*** that the Insured's death resulted, directly and independently of all other causes, from accidental bodily injury […]
>
> [Emphasis added.]

[36] The Policy excluded the payment of benefits:

> […] if the injury or death results […] directly or indirectly from bodily or mental infirmity […]

[37] Great-West's Master Contract provided for payment of a death benefit from an "accident" which was a "Covered Loss" if it occurred "as a direct result of the injury, independent of all other causes". There was a general limitation that no benefits would be paid for loss resulting from or associated with "disease or infirmity". Great-West's coverage incorporated a description of the benefits in its group benefit plan Booklet. The Booklet described such limitations as "[n]o benefits are paid for injury or death resulting from … [a]ny form of illness or physical or mental infirmity".

[38] Great-West's "Plan Outline" was explicitly to be read in conjunction with the employee Booklet (unless contradicted by the latter). It specifically provided the insured had to prove entitlement to benefits:

> The claimant must provide information required to prove his entitlement to benefits and must also authorize Great-West Life to obtain information from other sources for this purpose.

[39] Under "Proof of Claim" entitlement to death benefits was described in this way:

> Death benefits under the Group Benefits Plan will be paid only after Great-West Life has received ***satisfactory proof*** that payment is due.
>
> [Emphasis added.]

[40] The judge found payment was due thirty days from the insurers' receipt of the King Report which was the first medical evidence of accidental death.

[41] Payment was not due when coverage was initially denied because, as the judge found, Ms. Peters had not provided "due proof" or "satisfactory proof" of accidental death. Accordingly, the judge found the insurers were entitled to refuse to pay when demand was first made. That refusal was not a breach of contract.

[42] Ms. Peters argues by analogy to limitation period cases in which denial of coverage triggers the right of action: *Reashore and Reashore Services Limited v. INA Insurance Company of Canada*;[9] *Richards Estate v. Industrial Alliance Insurance and Financial Services*.[10]

[43] *Reashore* is unhelpful. It affirms the cause of action in a fire insurance case arose in contract. No cause of action matured until there was default by the insurer. The contract provided that payment for the insured's loss should have been made within sixty days after completion of proofs of loss. As Justice Hallett said:

> [3] […] It is not payable from the date of the fire as the cause of action did not arise on the policies on that date but only after the insurance companies had defaulted in payment; that is, on the expiration of sixty days after the filing of the proofs of loss.

[44] But in this case, the judge found that failure to pay when demand was made did not constitute a breach of contract because "due" or "satisfactory" proof of loss had not been provided by Ms. Peters.

[45] *Richards Estate* quoted the British Columbia Court of Appeal in *Balzer v. Sun Life Assurance Co. of Canada*[11] which found denial of coverage was when "an

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[9] (1982), 53 N.S.R. (2d) 574 at p. 575.
[10] 2019 NSSC 3 at ¶74.
[11] 2003 BCCA 306.

insured would have reason to sue the insurer". The court relied upon the following quotation from *Balzer*:

> [75] […] A clear and unequivocal denial of coverage precludes the need to furnish a claim (where the policy does not require the filing of a proof of claim) and triggers the commencement of the limitation period.

[46] *Richards Estate* also quoted from *Thornton v. RBC General Insurance Company*, 2014 NSSC 215 where the court found a limitation period could run from the date on which proof of claim was given or alternatively when the proof of claim was required or from the date on which the cause of action arose.

[47] These cases are unhelpful. Limitations of action cases do not invariably depend on when a cause of action arose. As the Ontario Court of Appeal noted in *Irish v. Sun Life Assurance Company of Canada*:[12]

> [23] […] Some statutory limitation periods run from the occurrence of a specific event which is not germane to the existence of a cause of action.

[48] In *Sun Life*, the Ontario Court of Appeal found "discovery" of the existence of a cause of action was of no assistance in interpreting a fixed limitation period. Recent statutory changes to limitation statutes have moved away from the language of "cause of action" to "claim".[13] Respectfully, the cases cited by Ms. Peters do not assist in answering the question of when a cause of action arose in this case.

*Did the judge err in his use of s. 206 of the Insurance Act?*

[49] In giving the insurers a thirty-day grace period to pay the claim following their receipt of the King Report, the judge relied on s. 206 of the *Insurance Act*:

> **Matters to be proved**
>
> **206** Where an insurer receives sufficient evidence of
>
> (a) the happening of the event upon which insurance money becomes payable;
>
> (b) the age of the person whose life is insured;
>
> (c) the right of the claimant to receive payment; and

[12] *Irish v. Sun Life Assurance Company of Canada* (2003), 65 O.R. (3d) 87 (Ont. C.A.).
[13] For example: *Limitation of Actions Act*, S.N.S. 2014, c. 35, s. 8; *Limitations Act*, S.O. 2002, c. 24, s. 4.

> (d) the name and age of the beneficiary, if there is a beneficiary,
>
> it shall, within thirty days after receiving the evidence, pay the insurance money to the person entitled thereto.

[50] The judge did not use s. 206 to ascertain entitlement to interest as Ms. Peters suggests.[14] Section 206 does not displace the Policy language. Section 206 would only require payment upon receipt of "sufficient evidence" of the "event upon which insurance money becomes payable". That requires resort to the contractual language of the Policy. In this case, that would coincide with receipt of the King Report because it satisfied the contractual requirement of "due" or "satisfactory" proof. This is a question of fact.[15]

*Did the judge wrongly apply a "subjective" standard of proof?*

[51] Ms. Peters protests the judge applied a "subjective" standard when determining whether the insurance benefits were payable. The standard applied came from the language in the policies. The insurer had to be satisfied the benefits were due. But that satisfaction required the objectivity of evidence—as here, ultimately reviewable by the Court. The decision of the insurer to accept or reject a claim had to have an evidentiary foundation, as the Ontario Court of Appeal explained in *Sun Life*:

> [18] Although ***it is the insurer who must determine the sufficiency of the evidence*** in order to decide whether to make payment on the policy, ***that does not mean that it is the insurer's assessment that governs if the sufficiency of the evidence furnished to the insurer becomes an issue in litigation***. If it becomes an issue, it will be for the court to decide, on an objective basis, after an examination of the information provided to the insurer when the insurer was furnished with sufficient evidence of the facts referred to in s. 203: see Insurance Act, ss. 208, 210.
>
> [Emphasis added.]

[52] With respect, Ms. Peters is wrong to characterize the test as purely subjective and to fault the judge for implementing language which the policies required him to honour.

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[14] Appellant's Factum, at ¶54.
[15] *Sun Life*, *supra* at ¶17.

[53] Ms. Peters also refers to *Alamwala v. Aetna Life Insurance Co. of Canada*,[16] in which Aetna did not initially pay disability benefits, relying upon s. 21 of the British Columbia *Insurance Act* which required payment "… within 60 days after reasonably sufficient proof of the claim and of the right to receive payment has been furnished to it". In *Alamwala*, the court interpreted both the *Act* and the policy as requiring payment after sufficient "notice of the claim". Unlike this case, *Alamwala* did not involve an evidentiary standard threshold.

[54] In *Alamwala*, the court distinguished *Loney v. The Northern Life Assurance Company of Canada*,[17] which found pre-judgment interest did not start to run on a disability claim until the claimant provided "sufficient evidence" entitling payment:

> [29] However ***in Loney, the insured was required to provide "satisfactory proof of disability"; this is to be contrasted with the language of the Aetna policy which does not contain any such subjective language***. Here the plaintiff was required to provide proof in writing stating the occurrence, character and extent of the loss and the notice of July 18, 1988 met that requirement because it contained sufficient information about the occurrence, character and extent of the loss and the plaintiff was in fact disabled within the meaning of the policy on that date. […]
>
> [Emphasis added.]

[55] *Alamwala* is not this case. Justice Rosinski did not rely on the *Insurance Act* for the requirement that Ms. Peters provide "sufficient" or "due" proof of accidental death. Rather, as the court did in *Loney*, he relied on the contractual language for that determination.

## Conclusion

[56] The judge did not err in fact or law when concluding that pre-judgment interest should be calculated from the time that the insurer received evidence of accidental death in the King Report.

[57] I would dismiss the appeal with costs of $3,500, all inclusive, payable by the appellant to the respondents.

Bryson J.A.

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[16] [1992] B.C.J. No. 2388 (BCSC).
[17] [1989] O.J. No. 193.

Concurred in:

Scanlan J.A.

Van den Eynden J.A.