

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *McGregor v. Chennel*, 2013 NSSC 223

**Date:** 20130710  
**Docket:** Hfx. No. 339322  
**Registry:** Halifax

**Between:**

Amanda McGregor

Plaintiff

v.

Jerid Allen Chennel

Defendant

**Judge:** The Honourable Justice Arthur W.D. Pickup

**Heard:** June 19, 2013, in Halifax, Nova Scotia

**Counsel:** S. Bruce Outhouse and Justin Adams, for the Plaintiff  
Peter M. Rogers and Juliet Crabbe, for the Defendant

**By the Court:**

[1] The defendant, Jerid Allen Chennel, seeks summary judgment on the evidence pursuant to *Civil Procedure Rule* 13.04.

[2] The defendant submits that the plaintiff's action is statute-barred pursuant to the provisions of the *New Brunswick Limitations of Actions Act*, R.S.N.B. 1973, c. L-8, s. 5(1), and/or the *Limitations of Actions Act*, S.N.B. 2009, c. L-8.5 (in force as of May 10, 2010), s. 5(1). The defendant says s. 21 of the 1973 *Act* applies only to people normally resident in New Brunswick, and therefore the plaintiff, being a non-resident, cannot avail himself of s. 20(1) to extend the limitation period which has expired.

[3] The plaintiff's position is that the 1973 *Act* applies, that her claim against the defendant was commenced in time in accordance with the 1973 *Act*, and that accordingly Mr. Chennel's motion for summary judgment must be dismissed with costs.

[4] The parties have agreed to have this limitations issue determined on this summary judgment motion based on an agreed statement of facts, dated February 27, 2013 the agreed statement of facts are as follows:

1. The Plaintiff, Amanda McGregor, and the Defendant, Jerid Allen Chennel currently and at all material times have resided together at 1442 Myra Road, Porters Lake, in the Halifax Regional Municipality, Province of Nova Scotia.
2. At all material times the Defendant was the owner of a 2005 Mazda 6 Station Wagon (the "Vehicle").
3. On June 8, 2008 the Defendant and Plaintiff commenced a trip from Porters Lake, Nova Scotia to Quebec in the Vehicle.
4. At approximately 10:30 p.m. on June 8, 2008 the Plaintiff and Defendant were involved in a single-vehicle accident while driving in the Vehicle on a highway near Woodstock, New Brunswick (the "Accident").
5. At the time of the Accident, the Plaintiff was seated in the front passenger seat and the Defendant was seated in the driver's seat.

6. The Plaintiff was taken to the Upper River Valley Hospital by paramedics that had arrived at the scene of the Accident.
7. The Defendant's history in New Brunswick is summarized as follows:
  - a. The Defendant has never owned, rented or occupied a principal residence in the Province of New Brunswick;
  - b. Both before and after the Accident, the Defendant's parents had a summer cottage in Shediac, New Brunswick which the Defendant and his family visited and stayed at for a week each summer and on some long week-ends [sic];
  - c. Both before and after the Accident, the Defendant has travelled to New Brunswick for work commitments, usually involving an overnight stay at an [sic] hotel within that Province, or at his parents' cottage, depending on the location within New Brunswick where he was working. This business travel was approximately 2 - 3 times per month before the Accident and 1 - 2 times per month since the Accident. Since the Accident the overnight stays have been somewhat less frequent.
  - d. Both before and after the Accident, the Defendant has travelled through the Province to drive to Prince Edward Island for business purposes.
  - e. Both before and after the Accident, the Defendant, sometimes in the company of the Plaintiff, has travelled to New Brunswick to attend hockey tournaments in which his son participates.
  - f. The Defendant was out of the Province of New Brunswick during the greater part of the last year between June 8, 2009 and June 8, 2010, as was the case during the greater part of each preceding and subsequent year.
8. On November 10, 2010 the Plaintiff filed a Notice of Action and Statement of Claim in the Supreme Court of Nova Scotia against the Defendant for damages arising from injuries alleged to have been sustained in the Accident, ...

9. On March 15, 2011 the Defendant filed a Notice of Defence and Statement of Defence denying liability and pleading that the claim was barred by New Brunswick limitations legislation, ...

[5] Issues to be determined on this summary judgment application are as follows:

1. ***Does the 1973 Act or the 2009 Act apply to this proceeding?***
2. ***If the 1973 Act applies, is the plaintiff's action against the defendant statute-barred?***

### ***Law and Argument***

1. ***Does the 1973 Act or the 2009 Act apply to this proceeding?***

[6] There does not appear to be a dispute between the parties that New Brunswick law applies. I am satisfied that the New Brunswick legislation applies, and I note that the Nova Scotia Court of Appeal in *Vogler v. Szendroi*, 2008 NSCA 18, established that where a claim concerns a motor vehicle accident the substantive law to be applied is that of the jurisdiction where the accident occurred.

[7] The defendant takes no definitive position in respect to which *Act* of New Brunswick's limitation regime applies.

[8] I am satisfied that the 1973 *Act* applies.

[9] It is not disputed that the accident occurred on June 8, 2008. On that date the 1973 *Act* was in effect in New Brunswick.

2. ***If the 1973 Act applies, is the plaintiff's action against the defendant statute-barred?***

[10] The plaintiff relies on s. 20(1) of the 1973 *Act*, which effectively postpones the expiration of the limitation period where a defendant is absent from New

Brunswick for the greater part of the last year of the period of limitation. Subsection 20(1) reads:

20(1) Where a person against whom a cause of action accrues is out of the Province during the greater part of the last year of the period of limitation, the person entitled to the cause of action may bring the action within two years after the return of the absent person to the Province.

[11] The action in this instance was commenced two years after the “effective date”. The question then becomes whether s. 20(1) of the 1973 *Act* gives rise to an extension of the limitation period.

[12] The defendant submits that s. 20(1) is not applicable to the plaintiff’s action as neither the plaintiff nor the defendant have been residents in New Brunswick at any time. The defendant’s position is that s. 20(1) applies only to persons who are normally resident in New Brunswick, such that absences for more than one-half a year constitute a break in residency from which a person may be said to “return”.

[13] The defendant submits the modern approach to statutory interpretation is the purposive approach which seeks to apply the ordinary meaning of words used in a statutory provision and in the manner consistent with the legislative purpose. This approach was recently applied by the Nova Scotia Court of Appeal in *MacDougall v. Nova Scotia (Workers Compensation Tribunal)*, 2010 NSCA 92, amongst other cases.

[14] The defendant submits that the phrase “after the return of the absent person” in s. 20(1) contemplates a person who ordinarily has his or her personal residence in New Brunswick. By this reasoning, the defendant not being a resident of New Brunswick, the plaintiff is unable to have the benefit of the extension of the limitation period.

[15] The defendant says that the accident occurred while the plaintiff and defendant were merely driving through New Brunswick to reach the final destination of Quebec. The defendant submits that a broader interpretation of s. 20(1) would deprive him of the benefit of the limitation period by creating an unlimited and unpredictable timeframe during which the plaintiff’s cause of action could accrue.

[16] The arguments of the plaintiff are several. Firstly, s. 20(1) uses the word “person” not “resident”. The plaintiff argues that if the New Brunswick Legislature had intended s. 20(1) to apply only to residents of the Province, the word “resident” would have been used instead of “person”.

[17] Further, the plaintiff submits that the wording of s. 20(1) is unambiguous in its meaning and when principles of statutory interpretation are considered, the intent of the provision is clear. That is, it is intended to postpone the expiration of the limitation period against a defendant who is absent from the Province of New Brunswick during the greater part of the last year of the limitation period, applying to residents and non-residents alike. According to the plaintiff, the defendant’s argument that s. 20(1) only applies to residents does not align with the clear intention of the Legislature.

[18] The plaintiff submits that while the motion should be dismissed on the basis of the plain language and intent of s. 20(1), further support for her position can be found in the legislative record.

[19] The plaintiff submits that s. 20(1) has been part of the New Brunswick limitation regime since 1952. In 1952, the legislature passed a *Limitations Act* which contained marginal notes as follows:

“Non-resident defendants .....20”

“Defendeurs non-residents .....20”

[20] These notes were retained in the 1973 *Act*, and, in the plaintiff’s submission, are of assistance in analysing the intent of s. 20(1).

[21] The plaintiff acknowledges that marginal notes, while they serve as an aid to construction, are not typically recognized as forming part of the *Act*, but are for convenience of reference only. The *New Brunswick Interpretation Act*, RSNB 193 c. I-13, contains a section to that effect. Section 16 provides:

16. The marginal notes, the chapter outlines, the tables of contents, the headings, and the references to former enactments or regulations that appear at the end of sections form no part of an *Act* or regulation but are inserted for convenience of reference only.

[22] Notwithstanding this provision, the plaintiff notes that the Supreme Court of Canada has repeatedly stated that examining headings and marginal notes is a proper part of statutory analysis. For example, in *Law Society of Upper Canada v. Skapinker*, [1984] 1 S.C.R 357, Justice Estey explained the benefit of using headings as indicators of statutory interpretation, with specific reference to the *Charter of Rights and Freedoms*. He said at 376 - 377:

The question of the role of the heading in the interpretation of statutes appears to be open... It may be that headings were adapted to make for easy reference to a very important document consisting of thirty-four separate provisions, most of which are of independent significance... It is clear that these headings were systematically and deliberately included as an integral part of the *Charter* for whatever purpose. At the very minimum, the Court must take them into consideration when engaged in the process of discerning the meaning and application of the provisions of the *Charter*. The extent of the influence of a heading in this process will depend upon many factors including (but the list is not intended to be all-embracing) the degree of difficulty by reason of ambiguity or obscurity in construing the section; the length and complexity of the provision; the apparent homogeneity of the provision appearing under the heading; the use of generic terminology in the heading; the presence or absence of a system of headings which appear to segregate the component elements of the *Charter*; and the relationship of the terminology employed in the heading to the substance of the headlined provision. Heterogeneous rights will be less likely shepherded by a heading than a homogeneous group of rights.

[23] Both parties submitted case law to support their positions. The plaintiff cites *Lax v. Lax* (2004), 239 D.L.R. (4<sup>th</sup>) 683, 2004 CanLii 15466 (Ont. C.A.). The defendant relies upon *Clemens v. Brown and International Nickel Co Of Canada Ltd* (1958), 13 D.L.R. (2d) 488, 1958 CarswellOnt 173 (Ont. C.A.) and *Martell v Davidson* (1986), 63 Nfld. & P.E.I.R. 70, [1986] P.E.I.J. No. 85 (P.E.I.S.C.). I find none of these cases particularly helpful in my determination of this issue.

### ***Analysis***

[24] To say the least there is very little definitive case law to assist in determining this issue. The defendant in argument relies partly on various definitions. *Black's Law Dictionary*, for instance, defines "absence" as "the state of being away from one's usual place of residence". The difficulty with this approach is that focussing on the word "absence" does not consider the earlier

language of s. 20(1), which refers to the respective defendant being “out of the Province”. Nor am I satisfied that the word “return” necessarily implies that the person is a resident of the Province. The *New Shorter Oxford English Dictionary* simply refers to a “act of coming back to or from a place”. That is, a person can come back to a place where one has been before but does not live.

[25] I am satisfied that on a plain reading s. 20(1) is unambiguous and that when principles of statutory interpretation are considered, the intent of the provision is clear. It is intended to postpone the expiration of the limitation period against a defendant who is absent from the Province of New Brunswick during the greater part of the last year of the limitation period.

[26] The defendant seeks to limit this section “to residents” of New Brunswick. With respect, this does not align with the clear intention of the provision. The defendant rightly points out that the modern approach to statutory interpretation is the purposive approach, which seeks to apply the ordinary meaning of words in the statutory provision in a manner consistent with the legislative purpose. That is, the words are to be read in their entire context and in their grammatical and ordinary sense in the context of the relevant *Act* and the object and the intention of the legislature.

[27] The defendant’s interpretation is based on there being three requirements for the application of s. 20(1):

- i. the defendant must have been out of the Province for more than half of the last year of the ordinary limitation period;
- ii. at some earlier point, the defendant must have been in New Brunswick for more than a half year; and
- iii. the defendant must return to live in New Brunswick.

[28] The defendant’s approach appears to be that the statute can only have one meaning, the meaning that he ascribes to it, and if the language does not support this interpretation, additional language must be read into it. It would seem that only the first of his three conditions can be found in the language of s. 20(1).



[29] The plaintiff offered the additional support of the marginal notes inserted by legislative drafters. While these are of little weight, what weight they do carry as aids to construction of the statute weigh against the defendant's interpretation.

[30] I am satisfied that s. 20(1) of the *Limitations of Actions Act* is applicable to residents, as well as non-residents, and, therefore, applies to the defendant. The defendant's application for summary judgment is dismissed.

[31] Costs are in the amount of \$750.00 payable to the plaintiff by the defendant.

J. Pickup