



LITIGATION MATTERS

Rules related to claims notifications & limitation periods

In this new issue of Munich Re's claims and litigation newsletter, we address two topics. The first examines the role of underwriting in litigation. For the second topic, we are pleased to provide you with a table summarizing legislation and case law for each Canadian province related to the deadlines for submitting a claim related to Death and Accident & Illness (including Disability, Critical Illness, etc.) and also related deadlines for initiating legal proceedings.

MUNICH RE'S 2019 CLAIMS LITIGATION FORUM

On June 13, exactly one year after the first Forum in Toronto, we held our Claims Litigation Forum in Quebec City, which was attended by more than thirty lawyers, litigation specialists, and claims managers from eight companies.

This first francophone Forum also provided an opportunity for dialogue with participants on the following topics:

- Best Practices in litigation management
- 2018-2019 review of case law in relation to Disability Insurance
- Testimonials and negotiations: do's and don'ts
- What tribunals have taught us about litigation in relation to Critical Illness

Thanks to the participants for your positive comments and feedback.

See you at the next Forum!

UNDERWRITING'S ROLE IN LITIGATION

Key role

Once a notice of legal proceeding has been received, it is important to review the claim file and consult with the underwriting team, depending on the reason(s) for the claim's denial. One best practice is to seek a second opinion from underwriting, since they will likely have a role to play in resolving the issue. The underwriter's role may vary during litigation:

- Review the file to reconfirm that the underwriting decision would have been different if the information was disclosed during the underwriting process, and that the insurance policy in question would not have been issued under these conditions.
- Perform a new review of the file when any new information unknown to the insurer is added during the litigation process.
- Consider seeking the expertise of an independent underwriter depending on the amounts at stake.

Underwriting Manual and Copyright

It may sometimes be necessary to present extracts from an Underwriting manual, depending on the nature of the litigation.

Please remember that **no part of Munich Re's EDGE Underwriting manual may be reproduced, used, or entered in the litigation and Court's file without Munich Re's prior written consent.**

TABLE OF APPLICABLE RULES AND CASE LAWS FOR CLAIM NOTIFICATION AND LIMITATION PERIOD BY REGION

In the next pages, you will find a table detailing the applicable laws for each provincial jurisdiction for Claim Notification and Limitation Period for reference only. All Case Law is available simply by clicking on the case. You will find the links to all mentioned laws and regulations at the end of the appendix.

Disclaimer: Always refer to your legal counsel for confirmation of current relevant and any additional information pertaining to the content and/or interpretation of the rules that follow. Munich Re disclaims all liability of any kind arising out of your use of, or reliance on, the information provided in this table.

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Comments

If you have comments, would like us to write an article on a particular subject, or have any legal issues you would like us to discuss in a future newsletter, please write to jstlaurent@munichre.ca.

Eastern Canada

Ontario

Business Line	Notice of Claim	Limitation Period	Remarks
Life Insurance	*We were unable to find any applicable legislation.		In Ontario, policies issued since January 2004 are subject to the <i>Limitations Act, 2002</i> .
			Boyce v. The Co-operators, 2013 ONCA 298 Policies issued before January 2004: limitation period may be different (possibly shorter).
Accident and Sickness Insurance	Written notice of claim given not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability. Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability. If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability. <i>Insurance Act, Section 300, 7. (1) (a) & (b) + (2) (a).</i>	Up to 2nd anniversary of the day on which the claim was discovered. <i>Limitations Act, 2002, Section 4.</i>	For Limitation Period and Notice of Claim: Abdullah v. Canadian Premier Life Insurance Company, 2019 ONSC 209 Date of discoverability for which the limitation date would start to run: if the evidence record does not enable the Court to make a factual determination concerning the discoverability of the claim, a genuine issue requiring a trial may exist.
			Three-part test for relief from forfeiture from the notice requirement: the determination of the discoverability date is critical to the application of part one (reasonable conduct of the plaintiff) and part two (gravity of the breach) of the test. Clarke v. Sun Life Assurance Company of Canada, 2019, ONSC 2942

Eastern Canada

Ontario

Business Line	Notice of Claim	Limitation Period	Remarks
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p>		<p>For Limitation Period:</p> <p>Western Life Assurance Company v. Pentilla 2019 ONSC 14 Action for LTD benefits was not statute barred. The judge held that the limitation period began to run once two conditions were satisfied: (i) the plaintiff knew that she had a claim against the insurer (i.e., that a loss was occasioned) and (ii) that a proceeding would be an “appropriate means” to seek a remedy.</p>
	<p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn’t reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p>		<p>For Notice of Claim:</p> <p>Wiles v Sun Life Assurance Company of Canada, 2018 ONCA 766 Relief from forfeiture from the notice requirement is only available for imperfect compliance with a term of the insurance policy but is not available for non-compliance with a term of the policy. Case law has generally treated failure to give notice of claim in a timely fashion as imperfect compliance. Thus, courts have generally been willing to consider granting relief from forfeiture when notice of claim has been delayed.</p>
	<p><i>Insurance Act, Section 300, 7. (1) (a) & (b) + (2) (a).</i></p>		<p>For Limitation Period:</p> <p>Pepper v Standard Life, 2018SCC 78748</p> <p>Usanovic v La Capitale 2017 ONCA 395</p> <p>There is no obligation on an insurer to advise the insured about statutes of limitation.</p>

Eastern Canada

Quebec

Business Line	Notice of Claim	Limitation Period	Remarks
<p>Life Insurance</p>	<p>3 Years following the date on which insured amounts due under a life insurance contract became due or payable.</p> <p><i>Unclaimed Property Act, Section 3 (9).</i></p>		
<p>Accident and Sickness Insurance</p>	<p>Written notice of loss given to the insurer within 30 days of becoming aware of it.</p> <p>All relevant information pertaining to the loss transmitted to the insurer within 90 days.</p> <p>In case of impossibility to act within the prescribed time, the information is to be sent to the insurer within 1 year of the loss.</p> <p><i>Civil Code of Quebec, Section 2435.</i></p>	<p>3 Years, if the prescriptive period is not otherwise determined.</p> <p><i>Civil Code of Quebec, Section 2925.</i></p>	<p>For Notice of Claims in A&S:</p> <p>M.B. c. Financière Manuvie, 2016 QCCA 498 The time-limit of 1 year of the loss is a delay of forfeiture: the insured loses the right to claim if the insurer is notified after 1 year.</p> <p>For Limitation Period:</p> <p>Palazzo v. Standard Life, 2016 QCCS 278 After a deadlock that lasted more than ten years, the employee's claim was time barred. When things came into deadlock (in 2006), the claimant would have been able to take action after that date; hence all claims would have been receivable if the claimant had sued the defendant prior to the fall of 2009.</p>

Western Canada

British Columbia

Business Line	Notice of Claim	Limitation Period
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>An action or proceeding against an insurer for the recovery of insurance money payable in the event of a person's death must be commenced not later than the earlier of</p> <p>a) 2 years after the date evidence is furnished under section 73, and</p> <p>b) 6 years after the date of the death.</p> <p><i>Insurance Act, Part III, Section 76 (1), (a) & (b).</i></p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the start of the sickness or disability.</p> <p>If it wasn't reasonably possible to give the notice or furnish the proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Insurance Act, Part IV, Section 101, 5. (1) (a) & (b) + (2) (a).</i></p>	<p>Recovery of insurance money not referred to in subsection (1) (insurance money payable on death) must be commenced not later than 2 years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money.</p> <p><i>Insurance Act, Part IV, Section 104 (3).</i></p>

Western Canada

Alberta

Business Line	Notice of Claim	Limitation Period	Remarks
Life Insurance	*We were unable to find any applicable legislation.	<p>An action or proceeding against an insurer for the recovery of insurance money payable in the event of a person's death must be commenced not later than the earlier of</p> <p>a) 2 years after the date evidence is furnished under section 674, and</p> <p>b) 6 years after the date of the death.</p> <p><i>Insurance Act, Part V, Subpart V, Section 677 (1).</i></p>	<p><i>Cusano v RBC Life Insurance</i>, (November 2, 2018) Unreported (Alta. Q.B.):</p>
Accident and Sickness Insurance	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Insurance Act, Part V, Subpart VI, Section 705, 5(1) (a) & (b) + 5 (2) (a).</i></p>	<p>Recovery of insurance money not referred to in subsection (1) (insurance money payable on death) must be commenced not later than 2 years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money.</p> <p><i>Insurance Act, Part V, Subpart VI, Section 708 (3).</i></p>	<p>The reasonable test (first part of the three-part test for relief from forfeiture from the notice requirement) requires consideration of the nature of the breach, what caused it and what the insured attempted to do about it.</p>

Western Canada

Saskatchewan

Business Line	Notice of Claim	Limitation Period	Remarks
<p>Life Insurance</p>	<p>Notwithstanding any other Act or law, a claim is not barred by the failure to give a notice within a specified period in case of the death of the claimant.</p> <p><i>The Limitations Act, Section 25 (2) (b).</i></p>		
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>The Saskatchewan Insurance Act, Section 234, 7 (1) (a) & (b) + (2).</i></p> <p>Notwithstanding any other Act or law, a claim is not barred by the failure to give notice within a specified period if a judge or Court is of the opinion that (i) there is reasonable excuse for the failure to give notice; and (ii) the defendant isn't prejudiced in making a defence by the failure to give notice.</p> <p><i>The Limitations Act, Section 25 (2) (a) (i), (ii).</i></p>	<p>No proceedings shall be commenced with respect to a claim after 2 years from the day on which the claim is discovered.</p> <p><i>The Limitations Act, Section 5.</i></p>	<p>Under <i>The Limitations Act</i>, an insured has 2 years from denial of coverage to start an action.</p>

Western Canada

Manitoba

Business Line	Notice of Claim	Limitation Period
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>Recovery of insurance money payable in the event of a person's death: an action or proceeding against an insurer must be commenced not later than the earlier of a) 2 years after the date evidence is provided under section 180; and b) 6 years after the date of the death.</p> <p><i>The Insurance Act, Part V, Section 184 (1), (a) & (b)</i></p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>The Insurance Act, Schedule C, Section 5(1) (a) & (b) + 5 (2) (a).</i></p>	<p>Recovery of insurance money not referred to in subsection (1) (insurance money payable on death) must be commenced not later than 2 years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money.</p> <p><i>The Insurance Act, Part VI, Section 230.3 (3).</i></p>

Atlantic Canada

New Brunswick

Business Line	Notice of Claim	Limitation Period
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>Recovery of insurance money: an action or proceeding against an insurer shall not be commenced more than 1 year after the furnishing of the evidence required by section 165, or more than 6 years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.</p> <p><i>Insurance Act, Section 168 (1).</i></p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Insurance Act, Section 194, 7 (1) (a) & (b) + Section 194 (2).</i></p>	<p>An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than 1 year after the date the insurance money became payable or would become payable if it had been a valid claim.</p> <p><i>Insurance Act, Section 194 (2).12</i></p>

Atlantic Canada

Nova Scotia

Business Line	Notice of Claim	Limitation Period	Remarks
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>Recovery of insurance money: an action or proceeding against an insurer shall not be commenced more than 1 year after the furnishing of the evidence required by section 206, or more than 6 years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.</p> <p><i>Insurance Act, Part VIII, Section 209 (1).</i></p>	<p>For Limitation Period:</p> <p>Cameron v. Nova Scotia Association of Health Organizations Long Term Disability Plan, 2019 NSCA 30</p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Insurance Act, Part V, Section 103, 7 (1) (a) & (b) + 7 (2).</i></p>	<p>An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than 1 year after the date the insurance money became payable or would become payable if it had been a valid claim.</p> <p><i>Insurance Act, Part V, Section 103, 12.</i></p>	<p>The Court upheld shorter policy limitation period against the two-year limit of the new <i>Limitations of Actions Act</i>.</p>

Atlantic Canada

Prince Edward Island

Business Line	Notice of Claim	Limitation Period	Remarks
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>Recovery of insurance money: an action or proceeding against an insurer shall not be commenced more than 1 year after the furnishing of the evidence required by section 151, or more than 6 years after the happening of the event upon which the insurance money becomes payable, whichever period first expires.</p> <p><i>Insurance Act, Part V, Section 155 (1).</i></p>	<p><i>Insurance Act, Section 85:</i></p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Insurance Act, Part VI, Section 183, 7 (1) (a) & (b) + 7 (2).</i></p>	<p>An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than 1 year after the date the insurance money became payable or would become payable if it had been a valid claim.</p> <p><i>Insurance Act, Part VI, Section 183.12.</i></p>	<p>Where not inconsistent with this Act, Part III applies to every contract of insurance made in the province other than contracts of life and accident and sickness insurance.</p>

Atlantic Canada

Newfoundland and Labrador

Business Line	Notice of Claim	Limitation Period
<p>Life Insurance</p>	<p>*We were unable to find any applicable legislation.</p>	<p>6 Years after the date on which the cause of action arose.</p> <p><i>Limitations Act, Section 9.</i></p>
<p>Accident and Sickness Insurance</p>	<p>Written notice of claim given to the insurer not later than 30 days from the date a claim arises under the contract on account of an accident, sickness or disability.</p> <p>Within 90 days from the date a claim arises under the contract, furnish to the insurer such proof as reasonably possible in the circumstances of the happening of the accident or the beginning of the sickness or disability.</p> <p>If it wasn't reasonably possible to give notice or furnish proof within the required time, the notice or proof is given or furnished in no event later than 1 year from the date of the accident or the date a claim arises under the contract on account of sickness or disability.</p> <p><i>Accident and Sickness Insurance Act, Section 12, 7 (1), (a) & (b) + 7 (2).</i></p>	<p>An action or proceeding against the insurer shall not be started more than 1 year after the date the insurance money became payable or would have become payable if it had been a valid claim.</p> <p><i>Accident and Sickness Insurance Act, Section 12.</i></p>

Links to aforementioned laws

Name of the law	Link
<i>Insurance Act (Ontario)</i>	https://www.ontario.ca/laws/statute/90i08
<i>Limitations Act (Ontario)</i>	https://www.ontario.ca/laws/statute/02l24#BK5
<i>Unclaimed Property Act (QC)</i>	http://legisquebec.gouv.qc.ca/en/pdf/cs/B-5.1.pdf
<i>Civil Code of Quebec</i>	http://www.legisquebec.gouv.qc.ca/en/showdoc/cs/CCQ-1991
<i>Insurance Act (British Columbia)</i>	http://www.bclaws.ca/civix/document/id/complete/statreg/12001_04
<i>Insurance Act (Alberta)</i>	http://www.qp.alberta.ca/documents/Acts/i03.pdf
<i>The Limitations Act (Saskatchewan)</i>	https://www.canlii.org/en/sk/laws/stat/ss-2004-c-l-16.1/latest/ss-2004-c-l-16.1.html
<i>The Saskatchewan Insurance Act</i>	https://www.canlii.org/en/sk/laws/stat/rss-1978-c-s-26/latest/rss-1978-c-s-26.html
<i>The Insurance Act (Manitoba)</i>	https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=i40
<i>Insurance Act (New Brunswick)</i>	http://laws.gnb.ca/en/showfulldoc/cs/l-12//20190731
<i>Insurance Act (Nova Scotia)</i>	https://nslegislature.ca/sites/default/files/legc/statutes/insurance.pdf
<i>Insurance Act (Prince Edward Island)</i>	https://www.princeedwardisland.ca/sites/default/files/legislation/l-04-Insurance%20Act.pdf
<i>Accident and Sickness Insurance Act (NL)</i>	https://www.assembly.nl.ca/Legislation/sr/statutes/a02.htm
<i>Limitations Act (NL)</i>	https://www.assembly.nl.ca/Legislation/sr/statutes/l16-1.htm