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Insurers Unable to Enforce Litigation Timelines when Common Courtesies Extended: *Jelonek v Monterrosa-Renaud*, 2022 ABKB 738

By Drew Wilson, Lawyer

It is not unusual for plaintiff's counsel to file a Statement of Claim (usually to preserve their limitation period) and then provide a courtesy copy to the defendant's insurer without actually serving the Statement of Claim on the defendant. Plaintiffs in Alberta have one year to serve their Statement of Claim after filing it.

It is common practice for insurers upon receipt of a Statement of Claim (whether it is a courtesy copy or it has been served upon their insured) to ask as a courtesy that no further steps be taken against their insured (such as noting the insured in default) to allow time to either appoint defence counsel or reach a settlement without defence counsel. However, what happens when the one year time limit for serving the Statement of Claim expires after this courtesy has been granted by plaintiff's counsel to the insurer? This is what occurred in *Jelonek v Monterrosa-Renaud*, 2022 ABKB 738.

In *Jelonek*, plaintiff's counsel filed a Statement of Claim for injuries sustained from a motor vehicle accident and provided a courtesy copy to the defendant's insurer without serving it. The insurer requested that plaintiff's counsel refrain from requiring a Statement of Defence which was agreed to by plaintiff's counsel.

The plaintiff was also involved in another lawsuit related to a prior motor vehicle accident. Both lawsuits were being treated globally by the plaintiff. The plaintiff actually served an Affidavit of Records and a settlement proposal on the defendants for both actions without ever serving the Statement of Claim on the defendant in the second action.

The plaintiff and defendants for the first accident reached a settlement agreement which was effected by way of a Pierringer Agreement. This was signed by the defendant's insurer for the second lawsuit in their capacity as agent for the insured. It is important to note that the defendant's insurer did not ever inform plaintiff's counsel they would be strictly enforcing the one-year time limit for service of the Statement of Claim. Further, plaintiff's counsel requested the contact information of the insured but the insurer did not ever reply.

Eventually, the one-year time period lapsed and the defendant's insurer took the position the claim had expired. Plaintiff's counsel brought an application under Rule 3.27 of the Alberta *Rules of Court* to extend the time for service of the Statement of Claim.



Rule 3.27 contains a number of exceptions to serving the Statement of Claim within one year of filing but the relevant exception to this matter was that the defendant's insurer caused the plaintiff to "reasonably" believe the time limit would not be relied on or was waived.

Here, the Court found the defendant's insurer was estopped from relying on the one-year time limit for service on the basis plaintiff's counsel granted their request that they did not need to file a Statement of Defence. Once plaintiff's counsel granted the insurer this courtesy they could reasonably assume that other litigation deadlines would not be strictly enforced against the plaintiff. The defendant's insurer was also a party to settlement discussions as they signed the Pierringer Agreement and did not ever explicitly state they would be enforcing the one-year time limit for service. Further, the defendant's insurer could not show any prejudice as a result of the plaintiff's failure to serve the Statement of Claim. Thus, the plaintiff was granted an additional two months to serve the Statement of Claim.

Jelonek shows the Court will not strictly enforce the one-year time limit for service when the defendant's insurer is involved with settlement discussions and common courtesies have been exchanged. The Court appeared to focus on the courtesy of not requiring a Statement of Defence and that the insurer did not ever advise plaintiff's counsel they would be strictly enforcing litigation timelines after being granted a courtesy from plaintiff's counsel. It also did not assist the insurer's case that they had not responded to plaintiff counsel's prior correspondences asking for the address of their insured.

Insurers should be aware that when they are granted a common courtesy from plaintiff's counsel they may have implicitly waived their right to enforce the one-year time limit for service. It is also common for insurers to engage in settlement discussions prior to service being effected. In these circumstances, insurers should make it clear to plaintiff's counsel that they are not waiving the one year time limit for service and they will be enforcing the deadline. Otherwise, insurers risk being faced with a much longer time period for service than one year.

Lastly, plaintiff's counsel attempted to argue special or extraordinary circumstances existed on the basis the original counsel for the plaintiff transferred the file due to poor health and did not properly inform new counsel of the circumstances. However, the Court rejected this argument finding that inadequate briefings on file transfers and incomplete files are common. The Court did leave the door open for special or extraordinary circumstances to exist when file transfers occur but the transfer would have to be so compromised that it amounts to a special or extraordinary circumstance. The Court did not provide an example of what this may look like and only commented that it did not exist here.



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Drew Wilson started with Brownlee LLP as a student and has been with the firm since. He was able to gain courtroom experience early in his

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If you have any questions with respect to this bulletin, please contact

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