

The *Limitations Act* 2002: Two years and counting

More than two years have now passed since the *Limitations Act, 2002*, came into effect. Because the Act marks a sharp break from traditional concepts of limitations law, Ontario lawyers need to be familiar with the Act: For example, many acts or omissions that took place before January 1, 2004, (the date on which the Act came into effect) will be governed by the *Limitations Act, 2002*. As well, the clock is potentially ticking on many claims, as the new Act provides a basic two-year limitation period running from the day that the claim is discovered.

Third-party claims

Another reason that lawyers should familiarize themselves with the *Limitations Act, 2002* involves third-party claims.

The *Limitations Act, 2002*, has repealed Section 8 of the *Negligence Act*, R.S.O. 1990, c. N.1. Under that Act, defence counsel had until a year post judgment in the action to commence a third-party claim.

As a result of the enactment of Section 18 of the *Limitations Act, 2002*, defence counsel now face a limitation period for contribution and indemnity of two years. The Act deems the running of the limitation period to commence when the defendant is served with the statement of claim in respect of which contribution and indemnity is sought.

Defence counsel would be wise to run a tickler system to alert counsel of the two-year period from service of the statement of claim, where service was effected after January 1, 2004.

The answer to the question of what limitation period applies to contribution claims arising of claims served before January 1, 2004 is not clear. Once again the best option is to refer to the transition chart.

Section 22 – No opting out

Another area of concern to Ontario lawyers is Section 22 of the *Limitations Act, 2002*, which provides that a limitation period under the Act applies:

“despite any agreement to vary or exclude it.”

By way of example, a typical agreement for the purchase and sale of a business would contain representations and warranties by the vendor and would provide that claims for breach of those representations and warranties must be pursued within a specific period

following closing. This negotiated time period may be inconsistent with the limitation period specified under the new law.

Section 22 affects business transactions under Ontario law and puts Ontario out of step with the common law provinces, the state of New York and other U.S. States and England.

The government under the leadership of Attorney General Michael Bryant has recognized the problem, and in response has introduced for first reading Bill 14/06, as of October 27, 2005.

Schedule D to the Bill provides as follows:

“2. Subsection 22(2) of the Act is repealed and the following substituted:

(2) Subsection (1) does not affect an agreement that was made before January 1, 2004.

Same

(3) Subsection (1) does not affect,

(a) an agreement made on or after the effective date by parties who are all acting for business purposes; or

(b) an agreement made on or after the effective date to suspend or extend a limitation period.”

If enacted Bill 14 should allow parties to suspend or extend but not shorten a limitation period.

Transition provisions

The LAWPRO website provides a number of tools that will assist lawyers in understanding the implications of the changes that the new Act has brought to the limitations area. Available at www.practicepro.ca/limitations are a transition provision chart, as well as a summary and detailed limitation periods tables. These items are among the top 10 most frequently downloaded items on this website.

Conclusion

It is still early days for the implementation of the *Limitations Act, 2002*. Watch for cases that will interpret the new Act. Ensure you are working with the correct limitations period. Above all obtain the transition chart and tables mentioned earlier.

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