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Ontario Radically Amends Limitations Legislation

by [Brett G. Harrison](#)

The Canadian Province of Ontario has radically amended its limitations regime, effective January 1, 2004. Counsel dealing with disputes that may be subject to Ontario law will need to become familiar with the new regime. Among the major changes are:



- (1) The reduction of the general limitation period from six years to two years.
- (2) Changes to rules for determining when a limitation period will commence.
- (3) A restriction on agreements to alter the limitation period.
- (4) Transition rules for the applicability of the new legislation.

Reduction of Limitation Period

Ontario has reduced the limitation period for most actions, including actions in tort and contract, from six years to two years.

In addition to the general two-year limitation period, there is also a new fifteen-year ultimate limitation period. This means that all claims will be barred fifteen years from the date the allegedly wrongful act took place, regardless of whether the facts giving rise to the claim were discoverable by the plaintiff. This is a change from the prior regime, where the limitation period did not begin to run until the facts were discoverable, no matter how long they remained undiscoverable. The ultimate limitation period does not run during any period in which the potential defendant willfully conceals the facts or willfully misleads the potential plaintiff as to the appropriateness of a proceeding as a means of remedying the injury, loss or damage.

The new legislation also provides that there is no time limit for certain claims, including:

- (1) a proceeding to enforce a court order or arbitration award;
- (2) undiscovered claims involving harm to the environment;
- (3) certain proceedings to recover money owing to the Crown;
- (4) certain assault and sexual assault claims; and
- (5) a proceeding to obtain support under the *Family Law Act*.

Commencement of Limitation Period

As was the case for most limitation periods under the prior regime, the general limitation period under the new regime begins to run only when the claim is discovered, or is discoverable, by the potential plaintiff. This means the date on which the potential plaintiff knew, or ought to have known, that the potential defendant's act or omission caused it a loss, injury or damage and that a proceeding would be an appropriate means to seek to remedy it.

Counsel should note that under the new legislation there is a statutory presumption (rebuttable by the plaintiff) that the claim was discoverable on the date the wrongful act took place. Also, the abilities and attributes of the person seeking to bring the claim are taken into account in determining when the claim was discoverable. Thus a sophisticated businessperson, for example, may be required to be held to a higher standard, say, than an average person.

Counsel should note that the new legislation also permits a potential defendant to start the limitation period by providing notice of the claim to the potential plaintiff.

Restriction on Altering Limitation Periods

Under the old legislation it was possible for parties to enter into tolling agreements to stop the limitation period from running while they were negotiating a resolution. This is no longer possible. Under the new legislation the

limitation period only stops running when a statement of claim is filed with the Court or the parties appoint an independent third party to resolve the matter. Thus, in effect, where a potential plaintiff needs more time to investigate its claim it will be necessary to engage a mediator in order to implement an effective tolling agreement.

In certain circumstances it is possible to renew the limitation period without engaging a third party. If a creditor is concerned that the limitation period may expire on a debt, but is reluctant to commence proceedings, it can renew the limitation period by having the debtor provide it with a signed written acknowledgement of the debt. The limitation period on enforcing that debt then starts afresh on the date of the acknowledgement.

Transition Rules

The new legislation provides for transition rules for claims based on when the act or omission was discoverable. These rules provide that:

(1) For a claim where the former limitation period had expired before January 1, 2004, no proceeding may be commenced.

(2) For a claim where the former limitation period had not expired before January 1, 2004 and the new legislation provides a limitation period, then:

(a) if the claim was not discovered before January 1, 2004, the new legislation applies as if the act or omission for the claim had taken place on that date; or

(b) if the claim was discovered before January 1, 2004, the former limitation period applies.

(3) For a claim for which there was no former limitation period, but the new legislation provides a limitation period:

(a) if the claim was not discovered before January 1, 2004, the new legislation applies as if the act or omission for the claim had taken place on January 1, 2004; or

(b) if the claim was discovered before January 1, 2004, there is no limitation period.

Conclusion

There are many other aspects of the new legislation that may affect parties' rights to commence litigation. As usual, Counsel must be careful to analyze the facts and circumstances of each case in determining whether a limitation period is an issue.

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