

litigation bulletin

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Don't Take it to the Limit: Ontario Court of Appeal says Limitation Periods Can No Longer Be Extended by "Special Circumstances"

In the recent decision of **Joseph v. Paramount Canada's Wonderland**, the Ontario Court of Appeal held that courts cannot extend an expired limitation period for "special circumstances" under the *Limitations Act, 2002* ("Act"). For Plaintiffs this means that they must be diligent in bringing an action within two years of the date of discoverability. For defendants, this decision provides some certainty that the two year limitation period under the Act is truly two years and is not subject to the discretion of the Courts.

In **Joseph**, the plaintiff was injured at an amusement park and the plaintiff's counsel inadvertently failed to issue a statement of claim within the basic two-year limitation period. On a motion to determine as a question of law whether the claim was statute-barred, the motions judge applied the doctrine of special circumstances and exercised his discretion to extend the limitation period. The special circumstances doctrine was a longstanding common law rule that gave judges discretion, where special circumstances allowed it, to extend a limitation period so long as it did not prejudice the other party. On appeal, however, the Court of Appeal declared that the doctrine of special circumstances had been no longer applicable under the new Act. This analysis was based on the conclusion that the new Act is intended to provide a comprehensive limitations scheme.

Exception under the Old Act

It is important to note, the Court of Appeal found in **Meady v. Greyhound Canada Transportation Corporation** (released concurrently with Joseph), that the Court may continue applying the special circumstances doctrine to extend a former limitation period when the Act's transition provisions apply. These provisions are only applicable in the increasingly rare instances where there is an attempt to commence a proceeding when the former limitation period for the action expired before January 1, 2004.

Written by Brett Harrison and Benjamin Delanghe, Student-at-Law

A Cautionary Note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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