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News Concerning Recent Subrogation & Recovery Issues

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LIMITATIONS ACT, 2002

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On January 1, 2004, the Ontario Limitations Act, 2002, came into force. This new statute represents an enormous reform of the existing law of limitations in the province. It is a substantial improvement over the old legislation and will make the law of limitations in Ontario more intelligible to both lawyers and clients.

The new legislation introduces a basic limitation period of two (2) years, running from the day the “claim” is discovered, which is defined as a “claim to remedy an injury, loss or damage that occurred as a result of an act or omission.” This basic limitation period replaces the general limitation periods found in the old Limitations Act, as well as many of the other special limitation periods found in provincial statutes. A schedule to the new act contains a list of special limitation periods contained in other statutes that will remain in force, and if a limitation period set out in another act is not listed in the schedule, it is of no force and effect. As a result, some of the more notoriously short limitation periods governing actions against public authorities and claims against engineers, are no longer applicable.

One of the more important aspects of the new legislation is that it will no longer be possible to contract out of a limitation period in Ontario. While agreements made before the new Limitations Act came into force are grandfathered, parties cannot enter into tolling agreements that suspend the running of time. It also means that contractual limitation periods in insurance policies will be of no force and effect, except for those limitation periods which are based on statutory conditions or regulations that are listed in the schedule to the Limitations Act.

One of the most difficult aspects of the new statute is the transition provisions for claims based on acts or omissions that took place before December 31, 2002, the effective date of application of the new act. These transition provisions are extremely complicated, and therefore it is imperative that clients with losses in Ontario seek advice from counsel as soon as possible to ensure that a potential subrogation claim is not statute barred.

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