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INSURANCE LAW IN CANADA Craig Brown Release No. 6, September 2024

This work provides an extensive treatment of insurance law in Canada, combining a scholarly treatment of general principles with a practical treatment of the issues arising in specific types of insurance practice. Chapters 1 through 15 contain the established text on the subject, Insurance Law in Canada. Chapters 16 through 20 are authored by practitioners who are experts in their respective fields: accident and sickness insurance; automotive insurance; liability insurance; marine insurance; and property insurance. The service gives you practical coverage of the issues arising in practice, combined with trusted coverage of first principles, all at your fingertips. The authors deal with legislation and case law from all across Canada. The work is published in a looseleaf format, ensuring currency through regular updates.

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What's New

This release includes updates to Appendix A (Ontario Insurance Limitation Periods), Appendix WPJ (Words and Phrases) and Appendix WPL (Legislatively Defined Terms). Five memoranda have been updated to June 2024 in Appendix IF (Issues in Focus).

Highlights

- **Appendix IF. Issues in Focus – IF: 7. Limitation Periods and Liability Insurance in Ontario** – This memorandum has been updated to June 2024 in this release. This memorandum considers how the two obligations of liability insurance, the duty to defend and the duty to indemnify, are treated differently in terms of the applicable limitation periods. The statutory limitation period of both duties is two years. The two-year limitation period for the duty to indemnify does not start to run until the date of judgment or settlement in the underlying action. Subject to the terms of the contract, the two-year limitation period for the duty to defend commences with the denial of coverage, or, in the absence of a denial, with the date of judgment or settlement in the underlying action. The memorandum concludes, however, that there is a good argument that the two-year limitation period renews itself with each dollar spent on defence.
- **Appendix A. Ontario Insurance Limitation Periods – 38. Insurance – 38.1 Commence a proceeding in respect of a claim** – The case law in this appendix has been updated in this release. In *Lagana v. 2324965 Ontario Inc.*, 2024 CarswellOnt 1825 (ONSC), the applicant shareholder brought an application under the Ontario *Business Corporations Act* (OBCA) to enforce his right as a shareholder to receive audited financial statements from the respondent numbered company. The court ordered the numbered company to conduct an audit for the fiscal years 2013 to 2022 and to produce its findings and audited financial statements to the shareholder. The respondents appealed and the appeal was allowed. The appeal was allowed to the extent necessary to bring the period for which the audited financial statements must have been produced in line with the time limit for such claim as prescribed by *Limitations Act* (LA). The relief provided for within s. 253 of the OBCA fit logically into the framework and understanding of what is meant by “claim” under the LA. Section 253 of the LA is a statutory proceeding which exists to enforce omissions under the OBCA, including the corporation’s core obligations to its shareholders. There is no statutory exemption under either the LA or the OBCA from the operation of the basic limitation period. The application judge erred in determining that the limitation period of two years pursuant to LA did not apply to this demand for audited financial statements for several years prior to those two years. Accordingly, the claim for an order to require the respondents to produce audited statements for those years prior to 2020 was statute-barred.