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GUIDE TO ONTARIO AND FEDERAL LIMITATION PERIODS

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This is a comprehensive manual provides an authoritative, one-stop reference to legislated limitation periods in both Ontario and federal legislation. It identifies excerpts and organizes those sections in each statute which contain notice requirements, time for appeals, limitation of actions, time for judicial review and other time requirements in a convenient and easy-to-use table format. Case annotations are included for every limitation section that has been interpreted by the courts. This looseleaf also has an **Issues in Focus** section related to Ontario limitation periods which features memoranda on points of law relevant to Ontario limitation periods.

What's New in this Update:

This release features 14 new case summaries. Case updates have been added to the following subject area: Copyright, Courts, Income Tax, Patents, Pensions, Shipping, and Trade and Commerce.

Case Highlights

Copyright—Copyright Infringement—Section 43.1 of Copyright Act—Applicant Designing Pipe-in-Pipe (PIP) System—Promotional "Image" Depicting Cross-Section of Proprietary PIP System—Use of Similar "Image" by Respondent in Legal Proceedings—Applicant Claiming Copyright Infringement—Claim Within Three Years of Applicant Reasonably Having Knowledge—Claim Not Statute—Barred—The applicant was a French corporation specializing in the design and manufacture of pipe-in-pipe (PIP) systems for industrial projects. Between 2012 and 2014, the applicant contracted with N Inc., which was the predecessor of the respondent, to supply PIP technology and related services for work on a pipeline in Alberta. Those contracts concluded by January 30, 2015. In mid-2015, a failure occurred, apparently in the applicant's technology installed on the pipeline, leading to a shutdown and subsequent repair efforts. Legal proceedings ensued against the applicant. In September 2016, the applicant produced a promotional Image (Image) depicting a cross-section of its proprietary PIP system. In 2018, the respondent sought regulatory approval from the Alberta Energy Regulator (AER) for the replacement of the failed pipeline. The replacement involved installing a new PIP system constructed by a different contractor. The presentation for the replacement application included slides containing a PIP cross-section image that was substantially similar in appearance to the applicant's Image. Following the pipeline's replacement, the applicant became aware in 2020 that its proprietary illustration, or similar version, had been presented to the AER. In December 2023, the applicant brought an application against the respondent for copyright infringement. In December 2023, the respondent denied that there was copyright infringement, and claimed that the proceeding was time-barred. The applicant's application was dismissed.

Section 43.1 of the *Copyright Act*, R.S.C. 1985, c. C-42, outlined a three-year statutory limitation period; the discoverability clock started upon actual or constructive knowledge of a potential liability. The Court found that a reasonably diligent plaintiff reviewing the documents disclosed by the respondent on November 30, 2020, could not reasonably have discovered sufficient material

facts to form an inference of copyright infringement before December 4, 2020. Accordingly, the applicant's claim was not time-barred since it was commenced within three years of the applicant reasonably having knowledge of sufficient material facts to form a plausible inference of copyright infringement. However, the applicant failed to establish, on a balance of probabilities, that it held valid copyright in the Image. The applicant claimed that the Image was created by a former employee T, but failed to present any affidavit or direct testimony from T. Moreover, the applicant provided no explanation as to why obtaining an affidavit from T was impossible or prohibitively difficult. In addition, the applicant failed to provide direct documentation such as internal design files, engineering drafts, or dated records, linking T to the creation of the Image. The failure to prove the authorship of the Image constituted a fatal gap in the applicant's evidence. Without that evidentiary foundation, the applicant's claim of copyright ownership failed: *ITP SA v. CNOOC Petroleum North America* ULC 2025 CarswellNat 1307, 2025 FC 684, [2025] F.C.J. No. 667 (F.C.).

Courts—Federal Court—Judicial Review—CERB and CRB Benefits—CRA Determining Ineligibility—Applicant Demonstrating "Weak" Intent to Seek Judicial Review—Applicant Bringing Motion for Extension to Commence Application—Over Three Months After CRA's Decision—Motion Dismissed—Applicant Not Meeting Test in Canada v. Hennelly—The applicant brought a motion, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the "Rules") for an extension of time within which to commence an application for judicial review of a decision of the Canada Revenue Agency (the "CRA") . In that decision, the CRA determined that he was not eligible for the Canada Emergency Response Benefit (the "CERB") and the Canada Recovery Benefit (the "CRB"). The decision was made by way of a letter dated March 17, 2025. The applicant filed his motion record on July 4, 2025. His motion is supported by his affidavit, affirmed on July 4, 2025. He also filed written submissions in support of his motion, in which he acknowledged the test for an extension of time and argued that he had met that test.

The decision in question was made on March 17, 2025. The decision clearly set out that if the applicant "disagreed" with the decision, he could seek judicial review before the Federal Court "within 30 days" of the date of the letter communicating the decision. This meant that the time limited for seeking judicial review was April 16, 2025. This motion for an extension of time was filed on July 4, 2025. The applicant's explanation for the delay was reliance upon alleged misinformation from agents of the CRA. This explanation was not supported by the notes attached to the affidavit of the CRA's Program Officer. Those notes recorded a number of phone calls from the applicant to the CRA and include reference to his willingness to seek judicial review but that he "would like to avoid it". This entry was made in the notes on April 4, 2025.The Attorney General argued that the applicant had shown only a "weak" intention to seek judicial review of the decision. He also submitted that the applicant had failed to reasonably explain the delay and to address the alleged errors in the decision. He also noted that the applicant was aware of the judicial review process but did not want to engage with it.

Upon judicial review, the court could not make a "new" decision, in this case, about the applicant's eligibility. That was the task assigned to the CRA. The court agreed with the position of the Attorney General that the applicant had not identified an error in the decision of the CRA that he wanted to challenge by way of an application for judicial review. It was not enough for the applicant

to assert that he met the eligibility criteria. Upon considering the affidavits filed by the applicant and the Attorney General, and the arguments advanced by each party, the court not satisfied that the applicant had met the test set out in *Canada (Attorney General) v. Hennelly* (1999), 167 F.T.R. 399 (F.C.A.): *Barbaro v. Canada* (Attorney General), 2025 CanLII 89928 (F.C.)

Income Tax—Director's Liability—Unremitted Source Deductions—Purported Resignation of Director—British Columbia Business Corporations Act—Director Expressing Subjective Intent to Resign—Resignation Not Effective Until Director Providing Signed Resignation to Company's Lawyer—Director Assessed Within Two-Year Limitation Period—Where the taxpayer was an investor and director of a company that ran into financial difficulties and failed to remit the source deductions, as well as PST/GST remittances, he was liable as director under the *Income Tax Act* for the company's debt when he was assessed within two years of his written resignation, and when he did not turn his mind to preventing such failure. In this case, the taxpayer invested in a business venture to open a craft brewery and restaurant, agreeing to become one of the directors of the company. He contributed $50,000 to become a 10% shareholder of the company. The company ran into financial difficulties, and he became more involved as a director in 2016, The company failed to remit source deductions for income tax, employment insurance premiums, and Canada Pension Plan contributions. The parties agreed that a certificate for the corporation's liability was registered in the Federal Court, and execution for that amount was returned unsatisfied, so the prerequisite under subparagraph 227.1(2)(a) of the *Income Tax Act* had been met. The taxpayer, who was not actively involved in the operation of the business, provided a signed resignation as a director to the company's lawyer. The Minister assessed the taxpayer under the Act as a director for the company's unremitted sources deductions. The taxpayer appealed, and his appeal was dismissed.

By the objective standard in determining the defence of due diligence, the taxpayer as a director was required to turned his attention to the required remittances and show that he exercised his duty of care, diligence, and skill with a goal of preventing the company's failure to remit. It required that he demonstrate that he was specifically concerned with these remittances, and his efforts must be proactive (to prevent failure) rather than reactive (to remedy the failure). The objective standard for due diligence meant that the director was not to be judged based on his own skill set, knowledge, abilities, and capacities. Rather, did he do what a reasonable prudent person would have done in comparable circumstances? The stricter objective standard discouraged the appointment of inactive/outside directors who (for one reason or other) did not discharge their duties and leave decision making to the active/inside directors; i.e. a director must actively carry out their duties to be considered duly diligent: *Buckingham v. Canada*, 2011 FCA 142 at paragraph 38; *Helgesen v. The Queen*, 2016 TCC 114 at paragraph 22, affirmed by *Helgesen v. Canada*, 2017 FCA 21.

The taxpayer had a degree in business administration, and experience with the payroll systems. However, his experience as a director was limited to being an outside director, and he seemed to expect a similar arrangement in this venture. When the taxpayer became aware of the company's financial issues, he became more directly involved by trying to obtain the financial records, following up with his partner and controller, and asking the staff if they were paid. These in-

quiries were not directed at preventing the failure to remit, but rather were efforts to obtain information with a view to deciding the next steps. There was no evidence that the taxpayer was aware of the unremitted source deductions or turned his mind to preventing such failure.

By October 2017, the problems at the business were increasing. Two months earlier, a provincial ministry of finance representative contacted the taxpayer about unremitted provincial sales tax. The taxpayer also became aware of unremitted GST and both failures were discussed at a meeting with another director in October 2017. References to unpaid taxes in the minutes of his meeting in October 16, 2017, and his November 1, 2017 text exchange with that director seemed more likely to refer to the company's own unpaid taxes rather than the unremitted source deductions. The taxpayer stated that when he followed up about the unremitted PST/GST, he was assured by the other director that there was a plan in place; he stated that he felt better with this reassurance and took no other steps in this regard. The taxpayer claimed that he first learned of the company's unremitted source deductions when he was contacted by a CRA officer in 2019. The taxpayer did not meet the requirements of s. 227.1(3) of Act.

British Columbia law (*Business Corporations Act*. S.B.C. 2002, c. 57, subs. 128(2)) required that a director's resignation be written and provided to either the company or the company's lawyer. Business efficacy required that third parties be able to rely on available information as to who the directors of a corporation were. For practical reasons, a director's status must be capable of objective verification such that one need not (and should not) rely on a director's subjective intent: *Canada v. Chriss*, 2016 FCA 236 at paragraphs 14 and 15. In November 2017, the taxpayer's text exchange with his partner expressing his desire to be "done with it all" indicated a subjective intent to resign, but the earliest point at which his resignation complied with legal requirements for resigning was when he provided a written resignation to the company's lawyer seven months later. In December 2019, the Minister assessed the taxpayer as a director for the unremitted source deductions within the two-year limitation period from the resignation as set out in s. 227.1(4) of Act: *Astle v. The King*, 2025 CarswellNat 3088, 2025 TCC 105 (T.C.C. [Informal Procedure]).

Shipping—Marine Liability Act—Hague-Visby Rules Incorporated—Contract of Carriage by Water—Claim For Damages as Cargo Not Arriving at Changed Port of Discharge—One Year Limitation Period in Hague-Visby Rules and Bills of Lading—Geographic Deviation Not Altering One-Year Time Bar—Claim Beyond One-Year Limitation Period—The plaintiff retained the defendant to transport a quantity of red lentils (cargo) from Vancouver, British Columbia to Kolkata, India by water, but later changed the port of discharge to Karachi, Pakistan. The plaintiff alleged that the cargo never arrived in Karachi, with result it lost a pre-arranged sale. On August 24, 2022, the plaintiff brought an action for damages for breach of contract and negligence in the amount of US$268,493. The defendant denied any responsibility for non-delivery, alleging the cargo had arrived in Kolkata on September 20, 2020, but could not be reloaded for transport to Karachi, and deteriorated because the plaintiff, or its customers, had failed to provide the documents required by the customs authorities. The defendant also claimed the action was time-barred, having been commenced outside the one-year limitation period provided by the *Marine Liability Act*, and as set out in the bills of lading. The defendant submitted the action was commenced more than one year after

the cargo should have been delivered. The defendant further argued that the action had been improperly brought against it as agent of the carrier, not against the carrier itself, an international shipping company of which it was the Canadian subsidiary. The plaintiff argued that the limitation period did not apply where there had been a geographic deviation, with the transport to Kolkata rather than Karachi, amounting to a breach of contract and resulting in repudiation. The defendant brought a motion for summary judgment dismissing the action. The defendant's motion was granted.

Although it had been the subject of academic writings and judicial comment, geographic deviation had never been recognized by Canadian court as a defence to the limitation period in respect of a contract of carriage by water. While there had been a geographic deviation in this case, when the cargo was transported to Kolkata rather than Karachi, that did not defeat the limitations defence where the bills of lading, as here, absolved the carrier of liability for loss or damage "in any event". The defendant had shown that the action was time-barred. The plaintiff's action was commenced beyond the one-year limitation period that was set out in the bills of lading. The Statement of Claim in the proceeding was issued on August 24, 2022. That date was nearly 24 months after the arrival of the cargo in Kolkata. It was nearly 21 months after the anticipated arrival of the cargo in Karachi. It was nearly 16 months after the plaintiff received notice of the cancellation of the contract to purchase the cargo. As noted by the defendant, the shipment originated in a Canadian port and was subject to Canadian maritime law, including the *Marine Liability Act*. That Act incorporated the *Hague-Visby Rules* which included a one-year time bar. The defendant had successfully established that the one-year time limitation contained in the contract of carriage was valid and enforceable, according to the applicable law and jurisprudence. The motion was granted, and the action was dismissed on the basis there was no genuine issue requiring a trial: *ETG Commodities Inc. v. Hapag-Lloyd (Canada) Inc.*, 2025 CarswellNat 841, 2025 FC 474, [2025] F.C.J. No. 468 (F.C.).