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GUIDE TO ONTARIO AND FEDERAL LIMITATION PERIODS

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This is a comprehensive manual that 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 new case summaries. Case updates have been added to the following subject area: Alternative Dispute Resolution, Barristers and Solicitors, and Contracts.

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Highlights:

The following is a highlight of new case digests added to this publication:

Alternative Dispute Resolution—Arbitration—Notice of Arbitration—Issue Whether Notice Being Statute-Barred—Arbitrator Having Jurisdiction to Make Ruling—Under s. 17 (1) of the *Arbitration Act*, 1991, SO 1991, c 17, arbitrators might rule on their own jurisdiction, including whether the notice of arbitration was statute-barred, and then decide the issues that were properly before them. In this case, the contractor contracted to perform construction services with the municipality. The parties agreed to arbitrate any disputes under their construction agreement. The contractor filed a notice of arbitration, and sought to appoint an arbitrator. The municipality refused to appoint an arbitrator, claiming that the notice of arbitration was statute-barred and, in any event, the contractor had failed to comply with the preconditions required before the contractor was entitled to commence arbitration under the construction agreement. The contractor brought an application for the appointment of an arbitrator; the municipality brought a cross-application for summary judgment for a declaration that the notice of arbitration was statute-barred, and a declaration that the contractor had failed to satisfy the preconditions for arbitration. The contractor's application was granted; the municipality's cross-application was dismissed.

The municipality did not deny that there was an arbitration agreement between the parties and did not contend that the agreement was illegal. Instead, the municipality applied for an interpretation of the jurisdiction of the arbitrator under the agreement. The existence of a limitation defence might make arbitration inefficient, just as a full trial on the merits in court would be wasted if the claim could be defeated by a limitation period, no matter how valid the debt or underlying claim might be. That did not mean that the issue of whether a limitation period had run could always be hived off from the main hearing, and dealt with summarily in advance. Moreover, the fact that there might be a defence on the merits available to a party did not undermine the jurisdiction of the arbitrator. The best course was to implement the "hands off" policy required by s. 6 of the *Arbitration Act*, 1991, S.O. 1991, c. 17, in order to respect the competence-competence principle to allow the arbitrator to consider the matter first. The issue of whether the contractor failed to follow the claims process, and therefore had no right to commence the arbitration should also be left to the arbitrator. The arbitrator would be fully steeped in the facts, including hearing any conflicting evidence, after appropriate production, and any other pre-hearing steps as may be agreed or allowed. The arbitration should proceed: *Cruickshank Construction Ltd. v. The Corporation of the City of Kingston*, 2022 CarswellOnt 14316, 2022 ONSC 5704, 39 C.L.R. (5th) 264 (Ont. S.C.J.).

Barristers and Solicitors—Lawyer's Misstep—Construction Lien—Failure to Set Lien Action Down for Trial—Lawyer Liable for What Client Could Have Received—Where a lawyer's misstep resulted in the client's loss of the ability to enforce its construction lien, the lawyer was liable for breaching his standard of care, and his client

was awarded damages based on what the client might have received when the property was sold. In this case, the contractor sought the recovery of $697,198 from the property owner. The contractor's lawyer registered a claim for lien, did not set down the lien action for trial within two years as required under s. 37 of the former *Construction Lien Act*. The delay caused the expiration of the lien on March 20, 2010. The property owner sold the property in 2011 without paying the contractor, with the result that the contractor lost the ability to enforce the lien. While acknowledging the lawyer's breach of the standard of care, the lawyer contested the contractor's claim of damages, arguing that the contractor failed to demonstrate that it suffered any damages because of the lawyer's breach. The lawyer also contended that the contractor's damages resulted from not acting on the lawyer's recommendation to enforce the judgment in 2008. The contractor brought an action for damages for breach of contract and negligence. The contractor's action was allowed.

The contractor's lawyer searched the title to the property, and lien was still registered so he did not understand that he failed to comply with s. 37 of Act. The contractor's lawyer informed the contractor that the amount owed was secured by the lien, and this would have affected decisions made by the contractor about enforcement until he learned that the lien was vacated. The contractor's decision was influenced by the lawyer's belief that the lien was a valid charge on the property. The court did not doubt that the lawyer's beliefs influenced the advice he gave the contractor. Accordingly, the court concluded that the contractor did not act unreasonably in not enforcing the judgment in 2008. However, contractor also assumed the risk that the value of the property might not have been enough to pay the amount owing on the lien or the judgment. If the lien was valid and enforceable then the contractor would have had the opportunity to negotiate for recovery of some amount or received some amount owing following the sale of the property. The contractor's lawyer breached his contract with the contractor, and his standard of care resulting in a loss to the contractor. Although unable to precisely ascertain the property's value in 2011, the court found that the contractor had convincingly proven a real loss resulting from the lawyer's breach. The court assessed the contractor's loss based on the available evidence, and fixed the contractor's damages at $472,000: *Envirofix Corporation v. Faber*, 2023 CarswellOnt 20397, 2023 ONSC 7197, 41 C.L.R. (5th) 104 (Ont. S.C.J.).

Contracts—Settlement Agreement—Agreement Based on Valuation by Ernst &Young—Plaintiffs Claiming Overpayment—Appraisal Report Allegedly Incomplete Due to Lack of Information From Plaintiffs—Settlement Agreement Varying Limitation Period—Claim Barred by Contractual Limitation Periods and by Statute—SD, the widow of HD and his estate trustee, brought an application against her husband's surviving brothers and other defendants, seeking an order that they purchase the estate's interest in certain properties. The court ordered that the estate had a 20 per cent interest in the properties, that the brothers to pay the estate's 20 per cent inter-

est in the properties, and for the parties to jointly retain a valuator to value the properties. The following month, the parties jointly retained E&Y to carry out the valuation. On February 1, 2019, E&Y provided a draft report valuing the properties. On February 28, 2020, the parties entered into a settlement agreement whereby the plaintiff brothers would pay $1.7 million to the estate for its 20% interest in the properties. On September 12, 2022, the plaintiffs commenced an action contesting that settlement agreement. The action was brought against E&Y and the plaintiffs' former lawyer. The action against E&Y asserted that the plaintiffs overpaid the estate in the settlement because of the lack of a definitive appraisal report of E&Y, which caused the court to take extraordinary measures and ordered the sale of the properties. The basis of the plaintiffs' claim against E&Y was contested, E&Y submitted that its draft appraisal report was never finalized because the surviving brothers never gave the information it needed to finalize the report, and never asked it to finalize the report. E&Y sought summary judgment dismissing the plaintiffs' action against it on the basis that the limitation period had elapsed. The plaintiffs claimed that this was an improper motion for partial summary judgment, because if successful it would only extract E&Y from the action, and that E&Y would be an important witness in the action against the remaining defendants in any event. E&Y's application was granted.

It was appropriate to consider partial summary judgment in the context of this litigation as a whole. Under the *Limitations Act,* 2002, parties to a business agreement might vary the limitation periods set forth in the Limitations Act, 2002. The contractual one-year and two-year limitation periods in the settlement agreement properly varied those in the Act, and applied to this case. Both the one-year and two-year limitation periods established in the agreement, and the two year limitation period established in the *Limitations Act*, 2002, plus the 182-day time period for which limitation periods were suspended due to COVID-19 (O. Reg. 73/20), had passed. There was no issue requiring a trial with respect to the expiry of these contractual limitation periods. Granting summary judgment in respect of the expiry of these limitation periods was a proportionate, more expeditious, and less expensive means to achieve a just result than going to trial. The claim of one defendant that he did not learn about the settlement was plainly contradicted by the balance of the evidentiary record. The court found that the defendant knew about the settlement agreement. There was no issue requiring a trial with respect to the expiry of this limitation period: *Singh v. Chaitons LLP* et al, 2025 CarswellOnt 6719, 2025 ONSC 2529, [2025] O.J. No. 1988 (Ont. S.C.J.), additional reasons 2025 ONSC 3967, 2025 CarswellOnt 10822 (Ont. S.C.J.), leave to appeal refused *Singh v. Chaitons LLP*, 2025 ONSC 6557, 2025 CarswellOnt 19313 (Ont. Div. Ct.).