

LITIGATION

BULLETIN

October 2003

NEW LIMITATIONS ACT ACCELERATES LITIGATION CLOCK

On January 1, 2004, *The Limitations Act, 2002* (the "Act") will come into effect and reduce the general time limit from commencing litigation from six (6) years from the date the claim was discovered to two (2) years.

The clock starts running when the claim is discovered or discoverable by the potential plaintiff. It is important to highlight four issues regarding discoverability:

- (1) It is a rebuttable presumption that the claim was discoverable on the date the wrongful act took place.
- (2) A potential defendant can start the clock by providing notice of the claim to the potential plaintiff.
- (3) The abilities and attributes of the person seeking to bring the claim are taken into account in determining when the claim was discoverable. A sophisticated businessperson may be required to be more diligent than the average person.
- (4) There is a general ultimate limitation period of 15 years from the date the allegedly wrongful act took place, regardless of the discoverability of the claim.

The clock only stops running when a statement of claim is filed with the Court. Parties are not permitted to waive the time limits, making alternate limitations periods inserted in contracts unenforceable. Further, unless the parties engage a mediator/arbitrator to resolve the claim, the clock will keep running during negotiations despite any agreements to the contrary.

There are many other aspects of the Act that may effect parties' rights to commence litigation. As usual, the facts and circumstances of each case are unique and critical in determining whether a limitation period is an issue. If you become aware of a potential claim, you should contact legal counsel immediately to ensure that you comply with the Act.

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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