



# Ontario's new Limitations Act, 2002:

## An overview

*On December 9, 2002, the Ontario legislature passed Bill 213 – the Justice Statute Law Amendment Act – by unanimous consent, without debate. Wrapped up in a single bill were three pieces of legislation, one of which will become known as the Limitations Act, 2002.*

*The following are highlights of the new Act and its implications for Ontario lawyers. A more detailed discussion of the Act, as well as a table of the commonly found limitation and notice periods still in effect, can be found on the practicePRO Web site at <http://www.practicepro.ca/practice/limitation.asp>*

The *Limitations Act, 2002*, will come into force on a date to be proclaimed, most likely later this year or the beginning of 2004. It represents a huge reform of the existing law of limitations, except for the provisions of the current Act concerning real property, which are preserved. It is by no means perfect, but nevertheless represents a substantial improvement, which will hopefully make

the law of limitations more intelligible to lawyers and clients alike. Other benefits, which are anticipated, are a reduced drain on court and judicial resources of limitation-related motions, and fewer negligence claims against lawyers resulting from missed limitation periods.

### BASIC LIMITATION PERIOD OF TWO YEARS

A basic limitation period of two years is introduced running from the day the “claim” is discovered. “Claim” is defined as “a claim to remedy an injury, loss or damage that occurred as a result of an act or omission.” The basic limitation period replaces the general limitation periods found in the present *Limitations Act*, as well as many of the numerous special limitation periods found in other statutes.

### SOME SPECIAL LIMITATION PERIODS REMAIN

A schedule to the new Act contains a list of special limitation periods contained in other statutes, which will remain in force. If a limitation period set out in or under another act is not listed in the schedule, it is of no effect. Many of the special limitation periods that have been the bane of advocates’ existence are expressly repealed. Gone are old favourites such as:

- section 7 of the *Public Authorities Protection Act* (actions against public authorities), sections 44(7) and 84 of the *Municipal Act* and section 33(5) of the *Public Transportation and Highway Improvement Act* (highway repair claims);
- section 31 of the *Public Hospitals Act* (claims against public hospitals);
- section 89 of Schedule 2 to the *Regulated Health Professions Act* (claims against healthcare professionals); and
- section 46 of the *Professional Engineers Act* (claims against engineers).

### ULTIMATE LIMITATION PERIOD

The concept of an ultimate limitation period is introduced by section 15, subsection 2, of which provides that no proceeding shall be commenced in respect of any claim more than 15 years after the day on which the act or omission on which the claim is based took place. Accordingly, even if a claim has not been discovered within 15 years of the occurrence which gave rise to the claim, an action commenced after the 15<sup>th</sup> anniversary of that occurrence will be statute barred. Section 15(6) provides a definition of the day of occurrence where there is a continuous act or omission or a series of acts or omissions. In the case of a default in performing a demand obligation, the ultimate limitation period runs from the date of default. Special considerations apply to “incapable” parties and situations where the existence of a cause of action is concealed from a claimant.

### NO LIMITATION PERIOD

It has always been the case that if a limitation period is not provided for there is either no limitation period at all or, if the claim

is one for equitable relief, the doctrine of laches applies. Under the new Act, a claim will only be subject to no limitation period at all if that is expressly provided for in the *Limitations Act*. (For details see <http://www.practicepro.ca/practice/limitation.asp>)

### TRANSITION PROVISIONS

There are transition provisions for claims based on acts or omissions that took place before the coming into force of the new Act (the “effective date”) where no proceeding has been commenced before the effective date.

If the limitation period applicable before the new Act comes into force (the “former limitation period”) has expired before the effective date, the new Act will not, except in certain cases involving assault or sexual assault, revive the claim.

If the former limitation period has not yet expired on the effective date then:

- if the claim is one that, if it was based on an act or omission that took place after the effective date would not be subject to any limitation period under the new Act, there is no limitation period;
- if a limitation period under the new Act would apply if the claim was based on an act or omission that took place after the effective date, (a) if the claim was not discovered before the effective date, the new Act applies as if the act or omission had taken place on the effective date; and (b) if the claim was discovered before the effective date, the former limitation period applies.

If there was no former limitation period but, under the new Act a limitation period would apply if the claim was based on an act or omission that took place after the effective date, then:

- if the claim was not discovered before the effective date, the new Act applies as if the act or omission had taken place on the effective date;
- if the claim was discovered before the effective date, there is no limitation period.

If claims are based on an assault or sexual assault, even if the former limitation period has expired before the effective date, the provisions of the new Act will effectively apply to most, if not all, such claims.

*This article has been condensed from a detailed discussion of the new **Limitations Act, 2002**, prepared by Graeme Mew of Gowling Lafleur Henderson LLP for The Advocates’ Society and LAWPRO. The full article by Mr. Mew is available on the practicePRO Web site at <http://www.practicepro.ca/practice/limitation.asp> and is reproduced with the permission of The Advocates’ Society.*