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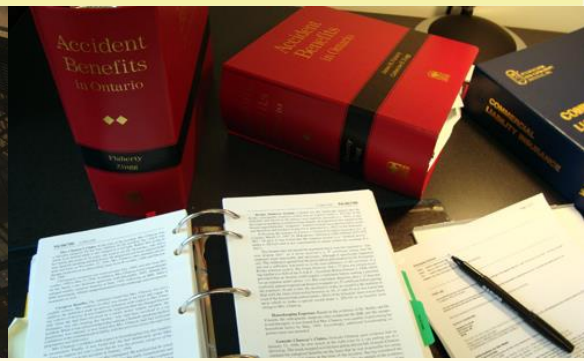

COVID-19: Litigation Remains Alive and Well

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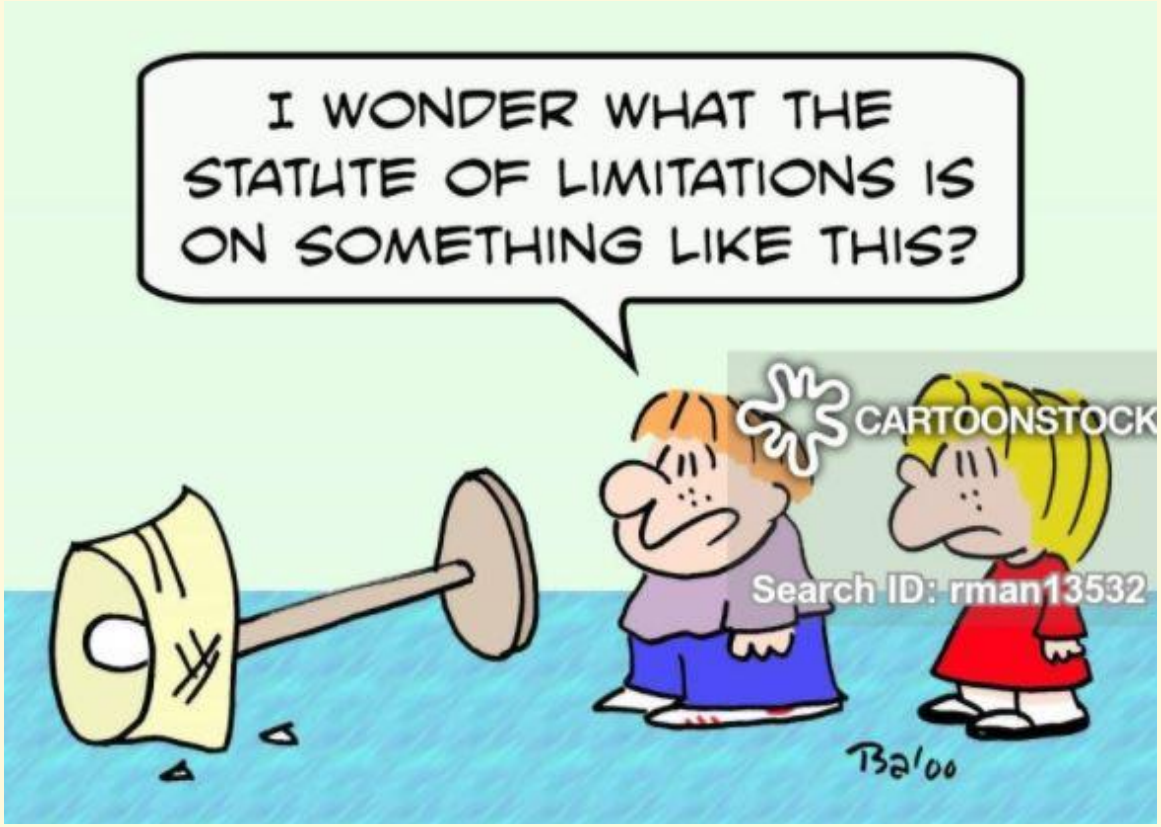
LIMITATION PERIODS IN THE COVID ERA



LIMITATION PERIODS IN THE COVID ERA

- **O. Reg 73 / 20: *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***

Limitation periods

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended, and the suspension shall be retroactive to Monday, March 16, 2020. O. Reg. 73/20, s. 1; O. Reg. 258/20, s. 1.

LIMITATION PERIODS IN THE COVID ERA

- **O. Reg 73 / 20: *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***
  - Legislation was revoked on September 14, 2020.
  - Period in which the limitations clock was stopped – March 16th to September 14th, 2020.
  - Length of Time: 183 days, or 5 months and 30 days when the limitations clock was officially stopped!

WHAT DOES THIS MEAN FOR YOUR CLAIMS?

LIMITATION PERIODS IN THE COVID ERA

- **O. Reg 73 / 20: *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***

  Implications:

  - Limitation periods did not continue to run between March 16 and September 14, 2020.
  - Parties retain the benefit of the 183-day extension, even when their limitation period does not fall within the timeframe of March 16 to September 14, 2020.
  - The effect of this legislation will run its course on September 14, 2022 (i.e. two years after O. Reg 73 / 20 was revoked).

LIMITATION PERIODS IN THE COVID ERA

- **O. Reg 73 / 20: *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020***

  Implications:

  - Keep in mind that this applies to Third Party / Fourth Party Claims as well! Diarize diarize diarize!
  - The effect of this legislation will run its course on September 14, 2022 (i.e. two years after O. Reg 73 / 20 was revoked).

LIMITATION PERIODS IN THE COVID ERA

Case Example: MVA occurs on March 16, 2018. When does the plaintiff's limitation period expire?

Answer: September 14, 2020 (i.e. ordinary limitation of March 16, 2020 + 183 days)

LIMITATION PERIODS IN THE COVID ERA

Case Example: MVA occurs on June 30, 2019. When does the plaintiff's limitation period expire?

Answer: December 30, 2021 (i.e. ordinary limitation of June 30, 2021 + 183 days)

LIMITATION PERIODS IN THE COVID ERA

Case Example: MVA occurs on August 1, 2020. When does the plaintiff's limitation period expire?

Answer: September 14, 2022 (i.e. ordinary limitation of August 1, 2022 + 44 days)

LIMITATION PERIODS IN THE COVID ERA

Case Example: MVA occurs on September 14, 2020. When does the plaintiff's limitation period expire?

Answer: September 14, 2022 (i.e. ordinary limitation period of two years)

LIMITATION PERIODS IN THE COVID ERA

- **Exception to O. Reg 73 / 20: Contractual Limitation Periods**
  - It does **not** apply to **contractual limitation periods** agreed upon between two parties.
  - Classic Example: Property loss claim under a standard contract of insurance with a 1-year limitation period.

BRAVE NEW WORLD – REMOTE HEARINGS

REMOTE HEARINGS – THE NEED TO ADAPT

- In response to the COVID-19 pandemic, Ontario Courts have consistently pushed parties to keep matters moving forward through the use of technology.
- As Justice Myers underlined in *Arconti v. Smith*, 2020 ONSC 2782.

> "*In my view, in 2020, use of readily available technology is part of the basic skillset required of civil litigators and courts. This is not new and, unlike the pandemic, did not arise on the sudden. However, the need for the court to operate during the pandemic has brought to the fore the availability of alternative processes and the imperative of technological competency. Efforts can and should be made to help people who remain uncomfortable to obtain any necessary training and education.*"

CONDUCTING LITIGATION REMOTELY

- Examinations for discovery and cross-examinations
- Mediations
- Pre-trial conferences
- Medical Assessments

"Keep your facial expressions where I can see them."

RECENT CASES OF NOTE

OBC INSPECTIONS AND DUTY OF CARE

Breen v. The Corporation of the Township of Lake of Bays, 2021 ONSC 533

- Plaintiffs purchased a cottage property in the Township of Lake of Bays in 1999.
- The previous owner/seller had built the cottage between 1989 and 1991. The Township performed inspections around the time of the build.
- The Plaintiffs initiated renovations to the cottage in 2012. During the renovation process several latent defects were discovered, and the Plaintiffs sued the Township for negligence regarding its performance of inspections pursuant to the *Ontario Building Code*.

OBC INSPECTIONS AND DUTY OF CARE

Breen v. Township of Lake of Bays, Continued

- Following a multi-day (remote) trial, Justice Sutherland accepted the Plaintiffs' position and ordered the Township to pay damages totaling $360,000.00, plus costs.
- In so doing, Justice Sutherland held that the Township's duty of care was owed not only to the original owner (i.e. at the time the inspection was completed) but extended to subsequent owners of the property.
  - "*The Plaintiffs are subsequent owners of a building that the Township granted a building permit for construction and inspected the construction…It is reasonable to conclude that the Township would owe a duty of care to the Plaintiffs who might be injured by the Township's negligent exercise of their authority not only to inspect the progress of the construction but also in the process of granting a building permit, not to subsequently revoke said building permit which is the subject matter of the construction".*

MUNICIPALITIES AS SOCIAL HOSTS

Jonas v. Elliott and the City of Stratford, 2021 ONCA 124

- Recent Ontario Court of Appeal decision – released February 25, 2021.

- The Plaintiff (appellant) was assaulted by a guest while both were attendees at a party hosted at a facility owned by the City of Stratford.

- The City of Stratford successfully moved for summary judgment, as the motion judge held that the municipality did not owe the Plaintiff a duty of care in the circumstances.

MUNICIPALITIES AS SOCIAL HOSTS

Jonas v. Elliott and the City of Stratford, *Con't*

- The Court of Appeal accepted the motion judge's decision that the Plaintiff's injuries were not reasonably foreseeable to justify the imposition of a duty of care, for the following reasons:
  - Experienced and trained staff were hired to serve alcohol;
  - Both the Plaintiff and the individual defendant (i.e. the assaulter) had consumed alcohol prior to arriving at the municipal venue, but the evidence on the motion was that neither exhibited signs of intoxication or aggressive behaviour; and
  - The incident itself was both sudden and brief.

COSTS CONSEQUENCES FOR A PRINCIPLED POSITION?

Teglas v. The City of Brantford et al., 2021 ONSC 997

- This is a recent costs decision released on February 7, 2021.
- In the underlying motion, the City of Brantford was entirely successful at trial, in defence of a case where the Plaintiff sought damages for injuries he sustained during an assault by an unknown third party which occurred in a municipal parking lot.
- The trial judge found that the attack was random, and the defendant municipality did nothing to *cause* the Plaintiff's injuries.

COSTS CONSEQUENCES FOR A PRINCIPLED POSITION?

Teglas v. The City of Brantford et al., Continued

- Despite having been entirely successful at trial, the defendant municipality was only awarded $13,000.00 in costs. Why?
  - Sympathetic Plaintiff who had nobody else he could recover from;
  - No Rule 49 Offer to Settle delivered by defendant municipality;
  - Defendant municipality refused to mediate the case (despite the fact that this was not a mandatory mediation jurisdiction); and
  - The defendant municipality did not concede that a duty of care was owed to the Plaintiff (who paid to park his vehicle in a municipal parking lot), which necessitated more trial time.

COSTS CONSEQUENCES FOR A PRINCIPLED POSITION?

Teglas v. The City of Brantford et al., Continued

- **How can a municipal defendant protect itself from a costs perspective?**
  - Make sure to deliver a Rule 49 offer to settle – preferably, early in the action, but certainly before trial.
  - If the Plaintiff has an arguably meritorious case, consider attending at a mediation;
  - Endeavour to make the necessary pre-trial admissions, to lessen the length of a trial.

SCHOOL BOARDS AND VICARIOUS LIABILITY

O.C. v. Williamson & Trillium Lakelands District School Board, 2020 ONSC 3874

- In this action, the female plaintiff alleged that she was sexually abused by her male high school music teacher in 1983. In total, there were approximately 10 incidents of abuse, which included oral, vaginal and anal intercourse.
- The plaintiff testified that the abuse occurred at the high school, during an overnight school trip, and in the defendant teacher's vehicle while he was driving her home after band practice.
- Importantly, it was clear that the defendant school board had actual knowledge of this private and unsupervised access the defendant teacher had to the plaintiff.

SCHOOL BOARDS AND VICARIOUS LIABILITY

O.C. v. Williamson & TLDSB, Continued

No criminal charges had been brought against the individual defendant, and he did not participate in the civil action.

- As the individual defendant did not participate in the action, and as there was some contemporaneous documentation with respect to the plaintiff complaining to another teacher about the abuse, the Court accepted the plaintiff's evidence, both with respect to the severity of the abuse, and where it occurred.

- At trial, the primary question was whether the defendant School Board should be held vicariously liable for the alleged abuse.

SCHOOL BOARDS AND VICARIOUS LIABILITY

O.C. v. Williamson & TLDSB, Continued

- In finding that the defendant school board *was* vicariously liable for the defendant teacher's actions, Justice Salmers focused on the nature of the teacher/student relationship and on the fact that the school board had knowledge of the private and unsupervised access.
- Justice Salmers concluded that there was a "strong connection" between the power that the school board afforded the teacher, and the sexual abuse. He stated that:

> [The teacher's] employment as a teacher and band leader not only afforded to him the opportunity to abuse his power over the plaintiff, but also materially increased the risk of sexual assault and harm to the plaintiff. There was a strong connection between the [school board's] policies and practices and [the teacher's] employment obligations that significantly increased the risk of harm to the plaintiff.

SCHOOL BOARDS AND VICARIOUS LIABILITY

O.C. v. Williamson & TLDSB, Continued

- It appears that Justice Salmers' decision to hold the defendant school board vicariously liable was at least in part due to the fact that the defendant teacher would not be able to satisfy any judgment made against him only.

- By finding the defendant school board vicariously liable for the teacher's actions, it ensured that the plaintiff would be compensated for the abuse. As Justice Salmers stated in his reasons:
  - "The policy considerations that justify the imposition of vicarious liability are fair and efficient compensation for wrongs and deterrence".

Questions?

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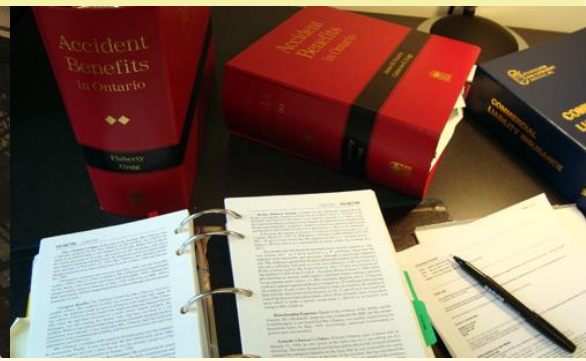

Thank You!

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