
Limitation Periods The Special Circumstances Doctrine under the New Limitations Act

By John Nicholson

One of the important features of the new *Limitations Act, 2002* which came into force on January 1, 2004 was a provision that seemed to bring an end to the so called “special circumstances doctrine”. The special circumstances doctrine was developed by the courts and permitted a new party or a new cause of action to be added to an existing claim after the expiry of a limitation period if the plaintiff was able to show that there were “special circumstances”. The special circumstances doctrine had become much criticized because it allowed plaintiffs to get around the operation of limitation periods in a huge number of cases. What the courts became to consider “special circumstances” were not terribly special at all. All the plaintiff had to show was that the defendant would not be irreparably prejudiced by the addition of the new claim or party and that it was in the interest of justice for the claim to be decided on its merits. In most cases the plaintiffs were able to meet this test and they were therefore able to avoid the operation of the limitation period.

Section 21 of the new *Limitations Act, 2002* appeared to do away with the special circumstances entirely. It states that: “If a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding.”

Although the Court of Appeal for Ontario has confirmed that this provision has indeed done away with the special circumstances doctrine in the vast majority of cases, (in their decision in *Joseph v. Paramount Canada's Wonderland*) the court has left open some significant exceptions allowing for the continued operation of the special circumstances doctrine.

In *Meady v. Greyhound Transportation Corp.* the Court of Appeal held that the transition provisions in the new *Limitations Act* preserved the special circumstances doctrine for actions that arose from events prior to January 1, 2004 provided that the action was not commenced until after that date. There are of course a number of cases still before the court related to events that occurred before January 1, 2004 and this exception is still therefore an important one. However, as time passes it will obviously become a less and less important exception.

The more important exception on a long term basis arises from the Court of Appeal's decision in *Bikur Cholim Jewish Volunteer Services v. Penna Estate*. In this decision the Court of Appeal held that the abolition of the special circumstances doctrine only applies to cases which are governed by the basic 2 year limitation period contained in the *Limitations Act, 2002*. All other limitation periods which are contained in different legislation, and which were preserved when the new limitations regime came into force, are still subject to the special circumstances doctrine. Perhaps the most notable of those limitations periods is s. 38(3) of the *Trustee Act* which applies to cases involving fatalities.

In summary, while the special circumstances doctrine has been abolished for the vast majorities of claims insurers should be aware that it continues to have application in those actions which relate to events which occurred before January 1, 2004 and in relation to any case involving a fatality.

John Nicholson is an insurance defence lawyer at Leners and can be reached at 519.640.6372 or jnicholson@leners.ca