



Backgrounder

Ultimate Limitation Period for Professionals

Existing limitation periods and the problem

- A limitation period is the time within which an action must be brought against a person to sue them for damages in relation to services which they have provided. Every province except Prince Edward Island has now enacted legislation to establish an ultimate limitation period (“ULP”). A ULP acts in conjunction with the existing limitation period to provide a definitive end date as to when an action may be commenced. The problem with our limitation period is that it is indefinite. A claim in negligence must be brought within 6 years of the cause of action arising, however, there’s a discoverability rule, which means that the 6 year period does not commence until the date the claimant knew or ought to have known of material facts giving rise to the claim. In Prince Edward Island, such claims could last indefinitely stretching well into retirement and beyond.

Considerations of ULPs

- In considering an ultimate limitation period, the legislature must balance the interests of persons seeking to litigate claims and the interests of defendants who seek to avoid and/or defend stale claims fairly. An indeterminate limitation period creates uncertainty, costs and stress. There are 4 points which are often considered in conjunction with ultimate limitation periods:
 1. Availability and deterioration of evidence over time;
 2. “Peace and repose” – the need for at some point in time for a defendant to gain peace of mind with the knowledge that “you’re free from litigation”;
 3. Economic costs – the cost of indefinite storage of records and maintaining insurance long after services were provided; and
 4. Complexity regarding the applicability of the “discoverability rule”.

Mobility

- The lack of an ultimate limitation period in Prince Edward Island is a barrier to recruitment in Prince Edward Island. The absence of a ULP in this province puts the province at a disadvantage when attracting professionals who will be subject to an indefinite potential liability, whereas in other Canadian jurisdictions they would have peace of mind knowing that a definitive period after work is done potential liability would cease.

Endorsement

- The concept of the ULP has received much attention across the country and has been implemented in the other Canadian provinces. Engineers PEI endorses the implementation of an ultimate limitation period in Prince Edward Island.