

## Publisher's Note

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### **GUIDE TO ONTARIO AND FEDERAL LIMITATION PERIODS**

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**Release No. 6, June 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in May 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the May 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This is a comprehensive manual provides an authoritative, one-stop reference to legislated limitation periods in both Ontario and federal legislation. It identifies excerpts and organizes those sections in each statute which contain notice requirements, time for appeals, limitation of actions, time for judicial review and other time requirements in a convenient and easy-to-use table format. Case annotations are included for every limitation section that has been interpreted by the courts. This looseleaf also has an **Issues in Focus** section related to Ontario limitation periods which features memoranda on points of law relevant to Ontario limitation periods.

### **What's New in this Update:**

This release features twenty-three new case summaries. Case updates have been added to the following subject area: Access to Information and Privacy, Courts, Customs and Excise, Income Tax, and Patents.

### **Highlights**

The following is a highlight of new content added to this publication:

**Access to Information and Privacy — PIPEDA — Unjust Dismissal Action — Complaint Relating to Release of Cognitive Assessment — Privacy Commissioner's Report — Application for Court Hearing to Review Decision — One Year Limitation** — The applicant had previously brought an unsuccessful action against the bank for unjust dismissal under section 240 of the *Canada Labour Code*. The applicant had also sought damages for intrusion upon seclusion arising from the use and release of information from a cognitive assessment conducted by an occupational therapist employed by a third party consultant. The applicant, who was self-represented, filed a motion in writing pursuant to Rule 369 of the *Federal Courts Rules [Rules]* for an order granting him an extension of time to file an application to review the decision of the Office of the Privacy Commissioner of Canada (OPC) made in a Summary Report dated March 16, 2020. The OPC determined that the applicant's complaint against the bank for collecting his personal information from a third party consultant without his consent was not well-founded. The personal information was obtained from assessments conducted in the context of workplace accommodations for the applicant. The applicant alleged that the bank's human resources department documented incorrect personal information in the reasons for his dismissal, in internal memos, and when suggesting he needed a cognitive assessment. The OPC found that the consents signed by the applicant were fatal to his complaint: *Maqsood v. Canada (Attorney General)*, 2011 FCA 309 at para 12; *McCann v. Canada (Pension Plan Disability Benefit)*, 2016 FC 878 at para 25; *Jog v. Bank of Montreal*, 2022 FC 243 (F.C.).

**Customs and Excise — Rebate of Money Paid in Error — CRA Requiring Four Years to Rule Product Exempt From GST/HST — Registrant Applying for Rebate of GST/HST Paid — Two-Year Limitation Period Barring Recovery — Whether Remission Available Based on "Incorrect Action"** — Where the registrant sought a ruling from the CRA on whether its *in vitro* diagnostic testing kit was zero-rated, and the CRA took four years to af-

firm the test kits were exempt from GST/HST following a complete policy review, but the two-year limitation period barred the applicant from receiving a rebate, the registrant's request for remission of GST/HST based on the CRA's "incorrect action" was denied. In this case, in September 2009, the registrant requested a ruling from the Canada Revenue Agency (CRA) on whether certain cartridge-based reagents used in drug testing [the test kits] were zero-rated under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA). and therefore exempt from GST/HST pursuant to a July 20, 2007 Tax Court of Canada decision, *Centre Hospitalier Le Gardeur v. The Queen*, 2007 TCC 425 [*Le Gardeur*]. The registrant retained KPMG to represent them in their ruling request. Between January 2010 and July 2014, the applicant and KPMG made over twenty inquiries to the CRA with respect to the ruling request. By a letter dated August 5, 2014, the CRA affirmed that the test kits were exempt from GST/HST (or "zero-rated"), and that a rebate request could be made within two years after the amount was paid. The two-year limitation effectively barred the registrant from receiving rebates for any GST/HST paid outside of that period. On behalf of the registrant, KPMG submitted a request for remission dated September 10, 2014, for just over \$1 million paid in GST/HST between 2007 and 2012. The registrant made the request on the basis of what they argued to be CRA error and delay, as well as based on similar circumstances as a remission order, which was granted to a foundation. The Minister rejected the remission request. The applicant applied for judicial review, and its application was dismissed: *Ontario Addiction Treatment Centres v. Canada (Attorney General)*, 2022 CarswellNat 675, 2022 FC 393, 2022 D.T.C. 5031 (F.C.).

**Income Tax — Estate — Collection of Estate's Tax Debt of 2006-2010 — Liability of Executor — Transfer of Property in 2010 Without Clearance Certificate — Executor Assessed in 2017 — Ten Year Plus 90 Days Limitation Period Applying** — When the taxpayer's father died in 1994, the taxpayer and his brother became executors of his estate. Sixteen years after the father's death, the taxpayer took steps with his brother to ensure that the taxpayer's daughter received a share of the taxpayer's father's estate in the form of a mortgage against the deceased's property. The deceased father's estate owed income tax, and was in arrears when the mortgage in the amount of \$240,000 was granted in 2010. The taxpayer's brother died in 2016, and the Minister of National Revenue assessed the taxpayer personally under the *Income Tax Act* for the tax debt because the mortgage was granted without first obtaining a tax clearance certificate. The Minister's authority to assess an executor for an estate's unpaid tax debt fell under section 159 of the *Income Tax Act*. The issue was whether the taxpayer was liable for the 2006 to 2010 tax debt of his father's estate. The taxpayer appealed, and his appeal was dismissed. The taxpayer did not renounce the executorship of the estate. A handwritten letter purportedly renouncing the executorship was not valid. The taxpayer understood that he was signing mortgage documents as the executor, and that such authority was needed in order to deal with property and secure a mortgage in his daughter's favour. Subsection 159(2) of the Act required the executor to obtain a clearance certificate before distributing estate property. The taxpayer was assessed under subsection 159(3) on May 4, 2017 for the estate's 2006 to 2010 tax liabilities.

## **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages