

## CORPORATE BULLETIN

October 2006

### VARYING LIMITATION PERIODS BY CONTRACT MADE AFTER OCTOBER 18, 2006

Bill 14, the *Access to Justice Act, 2006* (Ontario) received Royal Assent on October 19, 2006 and is now in effect. Among other things, Bill 14 makes important changes to the no contracting-out rule in the *Limitations Act, 2002* (Ontario) (Act). What follows is a summary of how the amended Act affects the variation of limitation periods by contract (including tolling agreements):

Limitation Period	Business Agreements	Consumer Agreements
Basic 2-year limitation period	Can extend or suspend ( <i>e.g.</i> by way of a tolling agreement) or shorten.	Can extend or suspend ( <i>e.g.</i> by way of a tolling agreement).  Cannot shorten.
Ultimate 15-year limitation period	Can extend or suspend only if relevant claim has been discovered ( <i>i.e.</i> tolling agreements only).  Can shorten regardless of whether relevant claim has been discovered.	Can extend or suspend only if relevant claim has been discovered ( <i>i.e.</i> tolling agreements only).  Cannot shorten.

Notes:

1. No statutory restrictions on contracting-out of limitation periods apply to agreements entered into before January 1, 2004.
2. After December 31, 2004 but before October 19, 2006, the Act prohibits contracting out of any limitation period.
3. A “consumer agreement” is every agreement other than a “business agreement”.
4. A “business agreement” is an agreement made by the parties none of whom is a “consumer” as defined in the *Consumer Protection Act, 2002*.
5. The basic 2-year limitation period runs from day on which the claim is discovered (or was discoverable).
6. The ultimate 15-year limitation period runs from the day on which the act or omission on which the claim is based took place.
7. Tolling agreements are now permitted in all circumstances (business and consumer agreements) and for all limitation periods (basic and ultimate) regardless of whether the parties agree to have an independent third party (mediator or arbitrator) assist in resolving the claim.

*Written by Wayne D. Gray.*

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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