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Dukelow

Guide to Ontario and Federal Limitation Periods

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-one new case summaries. Case updates have been added to the following subjects covered by the Federal Table of Limitation Periods: Bankruptcy, Courts, Criminal Law, Crown, Customs and Excise, and Income Tax.

Highlights

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

Bankruptcy — Dentist — Sale of Dental Clinic — Under Value — Setting Aside — The debtor was a dentist who operated two dental offices. The debtor accumulated close to \$3,000,000 in tax debt, and filed a notice of intention to make a proposal on October 8, 2014. D Inc. was the proposal trustee. The debtor filed her proposal on December 22, 2014, and the first meeting of creditors was held on February 3, 2015. Canada Revenue Agency attended the meeting, and alleged that the sale of one of the dental clinics to the debtor's spouse's company on January 2, 2014 was made for under value. The proposal was voted on and defeated on March 25, 2015, and the debtor was deemed bankrupt on that date, and D Inc. became the trustee in bankruptcy. On March 21, 2017, the trustee in bankruptcy brought a motion to set aside the sale of the clinic. The debtor, her spouse, and her spouse's company took the position that the trustee's motion to set aside the sale was statute-barred under the *Limitations Act, 2002*, S.O. 2002, c. 24. The debtor, her spouse, and her spouse's company further took the position that the sale of the clinic to the non-arm's length buyer was discoverable on October 8, 2014, when the statement of affairs was prepared showing the existence of a promissory note promising repayment of the balance of the purchase price by the debtor's spouse's company, and personally guaranteed by the debtor's spouse. A hearing was held on the issue of the limitation period. The limitation period began to run when the debtor was deemed bankrupt on March 25,

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2015 upon defeat of the proposal. The earliest that D Inc. would have found the sale to be for under value was the date that it began its tenure as trustee in bankruptcy on March 25, 2015. The trustee brought its motion within the two-year limitation period, and the motion could proceed as scheduled. The duties of a proposal trustee were different than the duties of a trustee in bankruptcy. In its capacity as a proposal trustee, D Inc. was entitled to rely on information provided by the then debtor in preparing the statement of affairs, and had no onus to verify its contents. It was reasonable that D Inc. did not discover the claim regarding the under value of the sale until it had further reason to seek an additional appraisal as the trustee in bankruptcy, and was required to verify the bankrupt's statement of affairs: *Saran (Re)*, 2018 CarswellOnt 7602, 2018 ONSC 2998, 60 C.B.R. (6th) 296 (Ont. S.C.J.).

Criminal Law — Summary Conviction Proceedings — Amending Information — Amendments Not Constituting New Proceedings — The accused was charged with firearms offences. During the trial, one charge was amended to change ammunition to firearm, and another amendment was made to change to replace the word “store” with the word “transport”. The accused appealed, and the summary conviction appeal judge allowed the appeal regarding the amended charges, and set aside the related convictions. The trial judge found whether the accused would be prejudiced by the amendments was not determinative. The trial judge found the amendments did not clarify the charges, but changed the elements of the charges. The appeal judge found that although the charges were under same the section of the *Criminal Code*, this did not mean that the charges remained the same, and in fact, the charges became new charges. The appeal judge found amendments were outside the six month limitation period set out in s. 786(2) of the *Criminal Code*. The Crown appealed to the Court of Appeal, and the appeal was allowed, and the convictions were reinstated. The limitation period in s. 786(2) of the *Criminal Code* did not restrict the types of amendments that could be made to informations in summary conviction proceedings. Section 786(2) of the *Code* did not bar amendments that substituted one offence for another in summary conviction proceedings. The amendments do not constitute proceedings under s. 786(2) of the *Code*. The power to amend allowed for a determination of the criminal cases on their merits, and ensured multiplicity of proceedings did not arise from a single transaction. The accused knew what the Crown alleged, and the case he was required to meet. The case was simple, and the scope was clear from the outset: *R. v. Bidawi*, 2018 CarswellOnt 20639, 2018 ONCA 698, [2018] O.J. No. 4559, 142 O.R. (3d) 520 (Ont. C.A.).

Customs and Excise — Excise Tax Act — New Residential Rental Property Rebate — Two Year Limitation — In October 2011, the registrant and his spouse entered into an assignment of an agreement of purchase and sale with the builder for the acquisition of a condominium property. Subsequently, in March 2012, they entered into a lease agreement with two tenants for a term of one year commencing on April 15, 2012. On April 18, 2012, the registrant took legal possession of the property, and neither he nor his qualifying relations were the first to occupy the premises as their primary place of residence. The registrant signed a GST/HST New Housing Rebate (New Housing Rebate) application form, and received a credit on closing of \$27,239. The builder submitted the New Housing Rebate application form to the Canada Revenue Agency (CRA) approximately 22 months after the date of closing. The registrant filed his GST/HST New Residential Rental Property Rebate (Rental Rebate) form with a cover letter dated January 28, 2015. The Minister of National Revenue issued a Notice of Assessment denying the New Housing Rebate on February 13, 2015, and the registrant did not file a notice of objection to the assessment. The Minister then issued a Notice of Assessment denying the Rental Property Rebate, to which the registrant objected, and the assessment was confirmed. The registrant appealed, and his appeal was dismissed. The lease agreement was the best evidence as to the registrant's true intentions for the purposes of the analysis. The registrant did not meet the requirements of s. 254(2)(g) of the *Excise Tax Act*. The registrant was not entitled to the New Housing Rebate, and assessment of February 13, 2015 was correct in law and in fact. The final date for the filing of the Rental Rebate application was April 30, 2014. The Minister acted “with all due dispatch” during the two months that followed the receipt of the application from the builder. Since there was no indication in the New Housing Rebate application that property had been rented and no mention of the duration of the rental period, it seemed apparent that this was much more than a mere “deviation”, and that the registrant could not be said to have “complied substantially” with the requirements of s. 256.2 of the Act. It was clear that the “prescribed information” required to support the Rental Rebate application was not included with the New Housing Rebate application: *Poirier v. The Queen*, 2019 CarswellNat 85, 2019 TCC 8 (T.C.C. [General Procedure]).