

Does s.18 of The Limitations Act, 2002 Apply Equally to Claims in Contract and Tort?

A Commentary on *Canaccord v. Roscoe* by John D. Strung Strung Mediations and Arbitrations Inc.

In the motions court decision in *Canaccord Capital Corporation v. Roscoe*, [2012 ONSC 5714](#), the motions court judge held that s. 18 of the [Limitations Act, 2002, S.O. 2002, Ch. 24](#), which reads:

Contribution and indemnity

18. (1) For the purposes of subsection 5 (2) and section 15, in the case of a claim by one alleged wrongdoer against another for contribution and indemnity, the day on which the first alleged wrongdoer was served with the claim in respect of which contribution and indemnity is sought shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place.

Application

(2) Subsection (1) applies whether the right to contribution and indemnity arises in respect of a tort or otherwise.

applied only to indemnity claims in tort, not to indemnity claims based on contract.

Canaccord was a case in which Gregory Roscoe, was an investment advisor employed by the Canaccord Capital Corporation. Roscoe's employment agreement contained a provision providing that Roscoe would indemnify Canaccord for any claim made against Canaccord arising out of Roscoe's acts or omissions.

Canaccord and Roscoe were both sued by former clients, the Cavanaghs, and presented a united defence with no crossclaims.

Canaccord settled with the Cavanaghs and started an action against Roscoe for indemnity pursuant to the indemnity agreement in the employment contract. The indemnity action was commenced more than two years after the Cavanagh's statement of claim was served. Roscoe therefore moved for summary judgment to have the action dismissed on the basis of s. 18 of the Limitations Act, 2002, quoted *supra*.

The motions court judge held that s. 18 was not applicable to indemnity claims arising out of contract. The court held that Canaccord's action was not a claim for "contribution and indemnity" as between one wrongdoer and another". Instead, the motions court judge characterised Canaccord's action as a claim for breach of Roscoe's

employment contract that was governed by the basic two-year limitation period that ran from the date Canaccord settled the Cavanagh action.

This was the first time this matter has been considered by the Court of Appeal.

The Court of Appeal in their decision at [2013 ONCA 378](#), released June 7, 2013, did an extensive review of the history of the legislation and concluded that s.18 was equally applicable to claims in contract and in tort.

In particular, the court noted that the change in wording from the prior limitation period, which used the word “tortfeasor”, to the wording in the new act, which uses instead “wrongdoer”, combined with the wording of s. 18(2), which reads, “Subsection (1) applies whether the right to contribution and indemnity arises in respect of a tort or otherwise” made it clear that contract claims for indemnity come within the ambit of s. 18 of the Act.

The Court of Appeal also held that it was clear from the evolution of the new Act that it was intended to simplify and reduce the number of limitation periods and it would be anomalous to apply a different limitation period to tort and contract claims.

The Court noted however, that if Canaccord and Roscoe had wanted to present a united front and litigate their differences later, it was open to them to enter into a tolling agreement under s. 22 of the Act, but there was no evidence that they had done so.

The long and short of it is that there is now no doubt that the same limitation period applies to claims for contribution and indemnity in both contract and in tort, however it is open to parties to toll the limitation period to present a united front to plaintiffs.

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