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He has been counsel in many important actions, arbitrations, and appeals before all levels of courts in many Canadian provinces as well as the Supreme Court of Canada.

Thomas Heintzman is the author of Goldsmith & Heintzman on Building Contracts, 4th Edition which provides an analysis of the law of contracts as it applies to building contracts in Canada.

Goldsmith & Heintzman on Building Contracts has been cited in 182 judicial decisions including the two leading Supreme Court of Canada decisions on the law of tendering:

M.J.B. Enterprises Ltd. v. Defence Construction (1951), [1999] 1 S.C.R. 619 and
Double N Earthmovers Ltd. v. Edmonton (City), 2007 SCC3, [2007] 1 S.C.R. 116-2007-01-25
Supreme Court of Canada

Construction Projects - An Important Issue with respect to the Limitation Period

The Court of Appeal for Ontario has recently settled an important issue with respect to the **Limitation** period for actions arising from construction projects. In *Waterloo Region District School Board v. Truax Engineering Ltd.*, the Court confirmed that the limitation period for a claim for contribution and indemnity brought by a defendant against another party involved in the project is two years from the date that the defendant is served with the plaintiff's claim.

The defendant Truax Engineering Ltd. provided services for a construction project. Its services were concluded on February 19, 2003. Under the *Professional Engineering Act* at that time, the

limitation period was one year and expired on February 19, 2004. Accordingly, the claim by the owner against Truax had expired by the time the owner sued all the parties in 2008. The owner's action against Truax was dismissed based on the limitation period. However, one of the other defendants sought to maintain a claim for contribution and indemnity against Truax.

The Ontario's new *Limitations Act, 2002* had come into force on January 1, 2004. It repealed, among other limitation periods, the limitation period in the *Professional Engineering Act*, and provided for a standard two year limitation period. Section 18 of the new Act establishes a limitation period for a "claim by one alleged wrongdoer against another for contribution and indemnity". In that case, section 18 states that "the date on which the first alleged wrongdoer was served with the claim...shall be deemed to be the day the act or omission on which that alleged wrongdoer's claim is based took place."

Truax argued that the old law, which existed before 1946, was re-introduced by section 18. Truax said that, since the limitation period for the plaintiff to sue it had long since expired, a claim for contribution and indemnity could no longer be asserted against it by a defendant, even though that defendant had been properly sued within the relevant limitation period applicable to it.

That old pre-1946 law had established a regime in which the limitation period for a claim over for contribution and indemnity could expire before the defendant was even sued by the plaintiff and before the defendant even knew that it had a claim over against another alleged wrongdoer. That law had been changed by section 8 of the Negligence Act introduced in 1948, to allow such claims to be made by the defendant within one year of the judgment against it. Truax argued that the new Limitations Act had re-established the old pre-1946 law.

The Court of Appeal disagreed. It held that section 18 clearly and unambiguously provided that the limitation period for a claim for contribution and indemnity started on the date that a defendant is served with the plaintiff's claim. Therefore the limitation period had not expired when one of the defendants made a claim for contribution and indemnity against Truax within two years of being served with the plaintiff's claim.

The Court of Appeal obviously considered this matter to be important as it assigned five members to the hearing panel instead of the normal three members. In its decision, the Court made a number of observations.

First, it said that the two year period applies to the claim "whether in tort or otherwise".

Second it said that "this is the only limitation period provision that applies to claims for contribution and indemnity."

The court confirmed the position that the *Limitations Act, 2002* is intended to create a "comprehensive and simplified limitations regime."

Accordingly, there is one limitation period in Ontario for the claims for contribution or indemnity, whether they are in tort, contract or however they may arise. In arriving at this

conclusion, the Court of Appeal brought certainty to the limitation period for these sorts of claims which are very common in the construction industry.

Limitation periods relevant to construction projects are dealt with in my book *Goldsmith and Heintzman on Canadian Building Contracts* (“CBC”) in Chapters 1 (part 2(a)), 6, and 8 (part 3).

Limitations: *Waterloo Region District School Board v. Truax Engineering Ltd, 2010 ONCA 838.*

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