

The Ultimate Limitation Period for Contribution and Indemnity Claims: What We Know (and What We Don't) (Lower William Properties Ltd. v. Santaguida)

Contribution and indemnity | Limitations Act | Litigation & Dispute Resolution | Third party claims

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In *Lower William Properties Ltd. v. Santaguida*, 2026 ONCA 581, the Court of Appeal for Ontario provided some guidance on the application of the ultimate limitation period to third party claims for contribution and indemnity, while leaving several important questions to be resolved in future cases.

The matter arose from a fire at the respondents' restaurant in 2019 that spread to neighbouring buildings. The plaintiff owners of those buildings sued the respondents for the damage caused by the fire. In turn, the respondents alleged that the appellant's architectural work during a 2001 renovation of the restaurant contributed to the spread of the fire. They commenced a third party claim against him, seeking contribution and indemnity.

The appellant brought a motion to strike the third party claim, arguing that it was barred by the 15-year ultimate limitation period, which would have expired in 2016.

The parties had agreed that the ultimate limitation period had expired with respect to claims by the plaintiffs and the respondents against the architect for their own direct losses resulting from the fire. The court was asked to resolve whether the respondents' third party claim for contribution and indemnity against the architect was also statute-barred.

The key issue before the Court was how [section 18](#) of the *Limitations Act, 2002* affects the operation of the 15-year ultimate limitation period set out in [section 15](#).

The 15-year ultimate limitation period, introduced in 2004, bars claims commenced more than 15 years after the "act or omission" on which the claim is based, regardless of whether another limitation period under the *Limitations Act, 2002* has expired. Unlike the basic two-year limitation period, set out in [section 4](#), it is not dependent on discoverability, injury, loss, or damage, and simply begins to run when the act or omission occurs. Certain exceptions apply, but none were relevant in this case.

Section 18 addresses claims for contribution and indemnity. For the purposes of the limitation analysis, it deems the relevant "act or omission" to occur when the defendant seeking contribution and indemnity is served with the underlying claim.

The motion judge dismissed the appellant's motion to strike the third party claim, finding that it was not time-barred. Specifically, the motion judge found that, when read together, a plain reading of [sections 15 and 18](#) provided for a 15-year ultimate limitation period for the respondents' claim of contribution and indemnity against the appellant, running from the date they were served with the plaintiffs' statement of claim. This was regardless of whether the alleged negligence or breaches of contractual or other duties took place more than 15 years earlier.

The motion judge interpreted the phrase “act or omission” as meaning the failures of other concurrent tortfeasors to pay their fair share of a plaintiff’s loss and held it would be unfair to bar a person’s right to make a claim for contribution and indemnity before they are in a position to pursue a third-party claim, i.e., before they are served with the statement of claim.

On appeal, the appellant argued that the motion judge’s interpretation effectively allowed the 15-year ultimate limitation period to be circumvented whenever a claim for contribution and indemnity was asserted. In the appellant’s view, this would expose parties to the very open-ended liability the provision was intended to prevent and would lead to the absurd result that a direct claim arising from the 2001 renovation work could be statute-barred while the same allegations could still be pursued through a claim for contribution and indemnity.

The appellant brought his motion under [Rule 21 of the Rules of Civil Procedure](#), which prohibits evidence and restricts the analysis to the pleadings. The Court of Appeal held that limitation period issues are generally fact-dependent and do not lend themselves to determination at the pleadings stage. Such issues should only be raised on Rule 21 motions where the pleadings are closed and the facts relevant to the limitation period are undisputed.

In this matter, the characterization of the third party claim was relevant to the issue of whether the claim was statute-barred, and accordingly, the question could not be determined on the pleadings alone.

The Court of Appeal clarified that there are two types of claims for contribution and indemnity:

1. Claims for contribution and indemnity in respect of duties owed by the third party to the plaintiff, and
2. Claims for contribution and indemnity that depend on a duty, contractual or otherwise, owed by the third party to the defendant.

The first type consists of statutory claims for contribution and indemnity under the [Negligence Act](#). These claims arise where a plaintiff’s loss may have been caused, in whole or in part, by someone who was not initially named in the action. They allow responsibility for the loss to be apportioned among those at fault according to their respective degrees of responsibility. These claims are derivative in nature because they depend on the third party being liable to the plaintiff.

The second type of claim for contribution and indemnity depend on an alleged breach of duty owed by the third party to the defendant, which exposed the defendant to the plaintiff’s claim. This type of claim is not contingent on a duty owed by the third party to the plaintiff. While the first type of claim is statutory, this second type is based in common law.

The Court of Appeal held that the proper characterization of the third party claim against the appellant, i.e., whether it was based on duties owed by the appellant to the plaintiffs, or duties owed to the respondents, or both, was necessary before the limitation period defence could be determined. This could not be done on a Rule 21 motion and thus, the motion judge’s decision was “premature”.

Accordingly, the Court of Appeal allowed the third party claim to proceed, with the appellant retaining the ability to raise the limitation defence as the matter moves forward.

The Court then discussed some of the issues which may arise in interpreting sections 15 and 18 of the [Limitations Act, 2002](#), when the appellant’s limitation defence is ultimately determined.

- Is the legislative purpose of [section 15](#) reconcilable with a “plain reading” of sections 15 and 18?

The purpose of [section 15](#) is to balance the needs of claimants to have sufficient time to commence an action with the needs of defendants for certainty that they would not be called to respond to a claim after a fixed period of time.

The motion judge had held that it would be unfair to bar a person’s right to contribution and indemnity before they had a reasonable opportunity to bring the claim, i.e., before they are served with the statement of claim. However, the Court of Appeal held that it is also unfair for a party who has received the benefit of [section 15](#) in respect of an act or omission that took place more than 15 years earlier to face ongoing potential liability in respect of the same act or omission when asserted as a claim for contribution and indemnity. This was the appellant’s argument on appeal.

The Court held that interpreting the interplay between [sections 15 and 18](#) must be informed, to the extent possible, by the purpose of [section 15](#), which is to avoid the indefinite postponement of a limitation period.

- Does [section 18](#) apply to *all* claims for contribution and indemnity, or only those between joint or concurrent wrongdoers (i.e., the first type of claim)?

The Court of Appeal recognized that there were arguments for both possibilities. While there was some case law broadly supporting the application of [section 18](#) to *all* claims, there were also arguments for concluding that it only applied to the first type of claim. This included the fact that [section 18](#) used the term



“wrongdoer” which suggests that both the claimant and the third party/person against whom the claim for contribution and indemnity is asserted must be “wrongdoers” in relation to the plaintiff’s claim.

- If [section 18](#) does not apply, when does the “act or omission” in respect of a claim for contribution and indemnity occur?

The Court further observed that, if [section 18](#) is limited to claims for contribution and indemnity arising from duties owed by a third party to a plaintiff, and the third party claims in this case do not fall within that category, it remains unclear what constitutes the relevant “act or omission” for the purposes of the 15 year ultimate limitation period.

More specifically, it is uncertain whether the relevant act or omission is the appellant third party’s failure to contribute and indemnify after the respondents were sued, or the appellant’s underlying negligent act itself. The former would effectively defer the start of the limitation period until the respondents were called upon to answer the plaintiffs’ claim, while the latter would tie the limitation period to the date of the third party’s original conduct.

- If [section 18](#) does apply, does the expiry of the ultimate limitation period in relation to the plaintiffs’ claim against the appellant afford a defence?

The court that held if [section 18](#) is limited to claims for contribution and indemnity based on duties owed by a third party to a plaintiff (i.e., the first type), and the third party claim against the appellant architect is characterized as this type of claim, it was possible for the claim to be timely. However, the question remained whether the appellant could raise, as a defence, the fact that the plaintiffs’ claims against him had expired.

Given that claims for contribution and indemnity under the [Negligence Act](#) are founded on the exposure of joint or concurrent wrongdoers to the plaintiff, if there is no possibility of a claim by the plaintiffs against the appellant, arguably, the claim for contribution and indemnity under the [Negligence Act](#) would be defeated.

Takeaway

This decision provides some, but not complete, clarity on how [sections 15 and 18](#) of the [Limitations Act, 2002](#) apply to claims for contribution and indemnity. While many questions remain unanswered and it remains to be seen how this case and similar claims will ultimately be resolved, the Court of Appeal has offered some guidance for litigants and counsel navigating these issues.

Most notably, the decision serves as a reminder that a [Rule 21](#) motion will generally not be the appropriate vehicle for determining limitation defences in claims for contribution and indemnity, particularly where there is uncertainty about the nature of the claim or the statutory provisions that govern it. Where the characterization of the claim is disputed, or where the limitation analysis depends on unresolved legal or factual issues, the courts may be reluctant to dispose of the matter at a preliminary stage. Instead, those issues may need to be addressed on a more complete evidentiary record.

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