Ontario court bars product liability suit under ultimate limitation period

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In what is believed to be a first, the recent decision of the Ontario Superior Court of Justice in *Hennebury v Makita Canada Inc*, 2025 ONSC 3850 dismissed product liability claims, including allegations of failure to warn, based on the ultimate limitation period.

Background

In 2019, the plaintiff was using a router in his workshop, when allegedly the router sped up without warning, causing a stone grinding bit to break apart and strike him resulting in personal injury. He brought an action against Makita Canada Inc. (Makita) alleging various acts of negligence, including a failure of the duty to warn.

During litigation, it became known that the router was manufactured in March 2001, 19 years before the plaintiff commenced the action.

Makita brought a summary judgment motion, arguing that the claim was barred by the fifteen-year ultimate limitation period in section 15(2) of the *Limitations Act, 2002*, SO 2002, c 24, Sched B (the Act).

The decision

The motion judge granted Makita's motion for summary judgment, dismissing the action in its entirety.

The fifteen-year ultimate limitation period is rigid, reflecting the need for finality in litigation. Without a bright line rule, parties would be expected to incur costs related to record-keeping and insurance indefinitely. Accordingly, the principle of discoverability does not apply to the ultimate limitation period.

However, to balance the interests of litigants, the Act sets out certain exceptions. In the case of continuous acts or omissions, the limitation period commences when the act or omission ceases, pursuant to section 15(6)(a) of the Act. The question before the motion judge, therefore, was whether a failure of the duty to warn the plaintiff of the

manufacturing defect constituted a “continuous act or omission” for the purpose of the Act.

The motion judge found that it did not. While a distributor’s duty to warn consumers of a defect is an ongoing, continuing duty, the motion judge held that merely alleging a failure to warn does not shield a plaintiff from the ultimate limitation period.

As a starting point, the motion judge noted that the allegations in the statement of claim rested entirely on an alleged manufacturing defect of which Makita was allegedly aware. Relying heavily on the recent Ontario Court of Appeal decision of *Huether v Sharpe*, 2025 ONCA 140, the motion judge then considered the definition of a “continuous cause of action.”

The motion judge confirmed that conduct is not continuous simply because it causes continuing or delayed harm. Rather, a continuous act or omission requires repeated acts of the same character. A generalized, ongoing duty of care owed to the plaintiff–including the duty to warn consumers of a defect in the product liability context–does meet this definition.

The motion judge concluded that Makita had done nothing that would constitute a continuing act or omission since the manufacture of the router, and therefore the ultimate limitation period began running in March 2001 with respect to the failure to warn claim.

Accordingly, the claim was barred in its entirety, and summary judgment was granted in favour of Makita.

Takeaways

In the product liability context, one should always be mindful of whether the product was manufactured more than 15 years prior to the commencement of the claim. A plaintiff cannot defeat the ultimate limitation period by simply tacking on an allegation of a failure of the duty to warn without any further particulars or allegations. It is believed that this decision represents the first time that the ultimate limitation period in any province has been successfully applied in the context of a product liability claim.

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