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By Sunny Rehsi and Laura DeMarco

Ontario's 15-Year Ultimate Limitation Period Bars Old Product Liability Lawsuits

"U.S. manufacturers, distributors, and insurers defending product claims in Ontario should be aware that Ontario's limitation regime contains a defense that can operate much like a statute of repose."

U.S. manufacturers, distributors, and insurers defending product claims in Ontario should be aware that Ontario's limitation regime contains a defense that can operate much like a statute of repose. Even where a plaintiff suffers a recent injury and sues within Ontario's ordinary two-year discoverability period, the claim may still be barred if it is based on acts or omissions that occurred more than 15 years before the action commenced.

On January 1, 2004, Ontario introduced a two-year limitation period (*Limitations Act*, 2002) (the "Act"), which covers civil claims, including product liability lawsuits. The purpose of the Act was to provide clarity for the precise timeframes within which legal claims must be brought forward. The clock starts to run following discovery of a legal claim. This is known as the discoverability rule, which generally requires a plaintiff to file a claim within two-years after the claim was discovered, or ought to have been discovered. When it comes to when a claim is or ought to have been discovered, such claims may be brought years after the underlying act or omission took place. This creates uncertainty, as a defendant would not automatically know whether the two-year limitations period applies. To address this issue, the Act also provided an ultimate limitation period of 15 years, which is not subject to discoverability. Rather, the Act provides no lawsuit can be commenced after the "fifteenth anniversary on the day on which the act or omission on which the claim is based took place."[1] As a result, the proper application of the ultimate limitation period can relieve a manufacturer or distributor from liability for products that were either manufactured or distributed more than 15 years before a plaintiff commenced the

1 The Act, section 15(2)

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action. The mere continued presence or use of a product will not, without more, constitute a continuing act or omission that postpones the running of the ultimate limitation period, providing product manufacturers greater certainty on potential litigation of older products.

The Act was designed to "balance the plaintiff's right to sue with the defendant's need for certainty and finality."[2] The ultimate limitation period ensures parties "avoid costs associated with continuously having to keep records and maintain insurance; address evidentiary concerns arising from deceased or missing witnesses or records that might have been destroyed by fires, floods, or other intervening events; recognizing memories fade and even where a witness sis available their ability to recall events that took place many decades in the past will be limited; and serving the public interest in bringing an end to litigation and revising of past errors."[3] Importantly, there is an exception to the ultimate limitation period if the defendant engaged in "continuous acts or omissions."[4]

The "continuous acts or omissions" exemption risks swallowing the ultimate limitation period rule. This risk was addressed in *Huether v. Sharpe*, 2025 ONCA 140, where the Court clarified that a mere allegation a defendant "has some generalized ongoing duty to the plaintiff is, in and of itself, insufficient to toll the running of the ultimate limitation period, absent some successive or repeated actionable conduct on the part of the defendant."[5] To fall under the exemption, a continuing act or omission "requires a repetition of actionable conduct on a continuous basis by a defendant."[6] The Court ultimately held conduct is not considered continuing "merely because it can be rectified or because the harm it causes is either continuing or delayed"[7] and looked at case law dealing with an ongoing duty of care or failure to warn. As the Court observed, to hold otherwise, "delayed harm from a tort could be dressed up as failures to warn, with no limitation period," which would limit the scope of the Act in ways the legislature did not intend.[8] This was an important decision for defendants, as it clarified what constitutes a continuing cause of action that would take a claim outside the ultimate limitation period. However, there remained uncertainty about how the ultimate limitations period would apply in a product liability case.

The applicability of the ultimate limitation period and the continuing cause of action exemption was addressed in a recent Ontario product liability lawsuit, *Hennebury v. Makita Canada Inc*., 2025 ONSC 3850. Makita successfully relied on the ultimate limitation period in its motion for summary judgment.

In *Hennebury*, the plaintiff alleged that he was injured while using a Makita router and brought suit on March 13, 2020, approximately 19 years after the router was manufactured. Makita, the distributor of the router, argued that the claim was barred by the ultimate limitation period. The Court agreed with Makita and held claims arising from the "design, manufacture and distribution" of the router were "statute-barred by virtue of the 15-year ultimate limitation period set out in s. 15(2) of the Limitations Act."[9]

The factual posture is important for product defendants, particularly those selling into Canada through affiliates, distributors, or retailers. Makita was the Canadian distributor of Makita products, but it did not design the incident router. The router was designed by Makita's Japanese parent and manufactured by Makita Corporation of America in Georgia. Makita also had no record of distributing the incident router in Canada and did not sell directly to consumers.

While the plaintiff's injury did not materialize until June 4, 2019, the Court found his claim rested on alleged defects tied to the router's design, manufacture, distribution, and warnings, all of which arose more than 15 years before the action commenced. Plaintiff tried to argue the ultimate limitation was not applicable on the basis Makita

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2 Huether v. Sharpe, 2025 ONCA 140 at para. 32 (citing Canaccord Capital Corp. v. Roscoe, 2013 ONCA 378 at para. 17).

3 Id. at para. 35.

4 The Act, section 15(6)(a); Huether, 2025 ONCA 140 at para. 36.

5 Id. at para. 48.

6 Id. at para. 55.

7 Id. at para. 43.

8 Id. at para. 45 (citing Bowes v. Edmonton (City of), 2007 ABCA 347 at paras. 173-74).

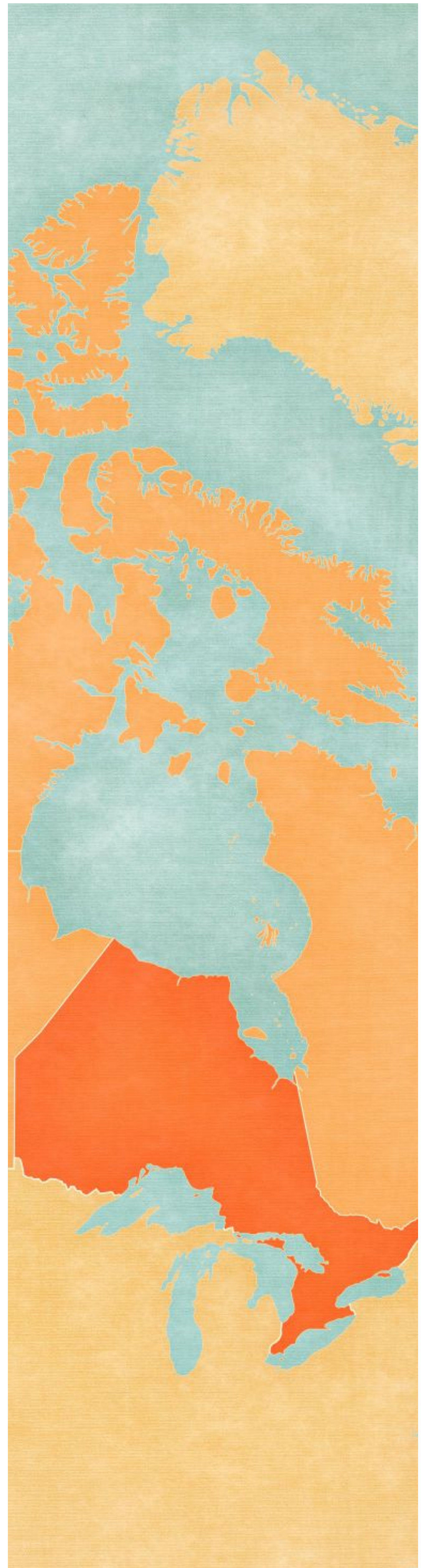
9 Hennebury v. Makita Canada Inc., 2025 ONSC 3850 at para. 25.

was engaged in a "continuing cause of action" – the same exception addressed in *Huether*. The Court disagreed. Plaintiff's manufacturing defect claim raised no evidence of successive or repetitive acts that supported a continuing cause of action. Instead, the Court emphasized the "rigid ultimate limitation period seeks to balance a plaintiff's right to bring an action against the need for finality in litigation. If a limitation period were endless, parties would be expected to indefinitely incur the burden of unreasonable costs related to record-keeping and insurance."[10] Accordingly, the Court reaffirmed the principle of discoverability was not applicable to the ultimate limitation period.[11]

Hennebury is also useful procedurally. The Court was prepared to decide the ultimate limitation defense on summary judgment where the relevant chronology was established by the record. The plaintiff argued that a trial was required because of credibility issues relating to the timing of production of the manufacturing-date documents, but the Court held that any credibility issues were limited and did not require a full trial. The Court also noted that the plaintiff could have sought to reopen discoveries after receiving the documents, but did not do so. The Court also noted that the plaintiff had submitted anonymous online forum posts regarding alleged router speed-variation issues, but those materials did not establish successive or repetitive actionable conduct by Makita.

Hennebury illustrates the application of the ultimate limitation period in product liability cases involving older products. The decision is particularly helpful where plaintiffs attempt to avoid the ultimate limitation period by pleading failure to warn, failure to recall, failure to test, unsafe distribution, breach of warranty, or other continuing-duty theories. Hennebury does not mean every failure-to-warn claim involving an older product is automatically barred. It does mean that a plaintiff must identify something more than the continued use of an old product or the continued existence of an allegedly inadequate warning. There must be evidence of successive or repeated actionable conduct by the defendant.

For U.S. manufacturers, distributors, and insurers defending product claims in Ontario, *Hennebury* is an important reminder that the key limitation question is not simply when the plaintiff was injured or when the claim was discovered. The more important question may be when the alleged act or omission giving rise to the claim occurred. Where the alleged defect, warning, distribution, or other product-related conduct dates back more than 15 years, and the plaintiff cannot point to successive or repeated actionable conduct within the limitation period, Ontario's ultimate limitation period may operate as a complete defense. Product defendants should therefore investigate the chronology of design, manufacture, sale, distribution, warnings, recalls, and post-sale conduct at the outset of the case, and consider whether the limitation issue can be resolved by summary judgment.



10 Id. at para. 23.

11 Id. at para. 24.